FairPoint Rate-of-Return ICC Transitional Support

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Overview of the FairPoint Petition

- Rate-of-return (ROR) carriers receive ICC Transitional Support based on their Eligible Recovery as calculated under the FCC's rules.
- *There is no reduction for amounts previously associated with frozen LSS.*
- Because FairPoint is both price cap and ROR, it effectively received frozen LSS amounts twice, for several years, so NECA deducted the duplicative support as required by the rules.
- Now that FairPoint no longer receives frozen CAF, there is no duplicative support, and NECA should have ceased making this deduction Jan. 1, 2015.

Declaratory Relief Is Warranted

- There is no longer any duplication of former frozen LSS support amounts.
  - Former frozen CAF distributions have been discontinued. Model-based support is forward-looking and does not duplicate historic support.
  - The former LSS support amount is distributed only in the Eligible Recovery.

- NECA should be directed to discontinue subtracting so-called duplicate LSS amounts from FairPoint's Eligible Recovery, and restore funding as of January 1, 2015.

- Amounts at issue are significant for FairPoint: $3.5M for 2015, $3.3M for 2016, $3.1M for 2017

FairPoint ROR Carriers' Eligible Recovery

- ROR carriers' Eligible Recovery is calculated pursuant to Section 51.917 of the rules

Note 1 -- *Notwithstanding any other provision of the Commission's rules*, a Rate-of-Return Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) [Access Recovery Charges] and (f) [CAF-ICC Transitional Compensation]...

Eligible Recovery Per Sections 51.917(d)(1)(iii) and(iv)

- (iii) Beginning July 1, 2014, a Rate-of-Return Carrier's eligible recovery will be equal to the 2011 Rate-of-Return Carrier Base Period Revenue multiplied by the Rate-of-Return Carrier Baseline Adjustment Factor less:

- (A) The Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2014, reflecting forecasted demand multiplied by the rates in the rate transition contained in §51.909 (including the reduction in intrastate End Office Switched Access Service rates), adjusted to reflect the True-Up Adjustment for Transitional Intrastate Access Service for the year beginning July 1, 2012;

- (B) The Expected Revenues from interstate switched access for the year beginning July 1, 2014, reflecting forecasted demand multiplied by the rates in the rate transition contained in §51.909, adjusted to reflect the True-Up Adjustment for Interstate Switched Access for the year beginning July 1, 2012; and

- (C) Expected Net Reciprocal Compensation Revenues for the year beginning July 1, 2014 using the target methodology required by §51.705, adjusted to reflect the True-Up Adjustment for Reciprocal Compensation for the year beginning July 1, 2012.

- (D) An amount equal to True-up Revenues for Access Recovery Charges for the year beginning July 1, 2012 multiplied by negative one.

- (iv) Beginning July 1, 2015, and for all subsequent years, a Rate-of-Return Carrier's eligible recovery will be calculated by updating the procedures set forth in paragraph (d)(1)(iii) of this section for the period beginning July 1, 2014, to reflect the passage of an additional year in each subsequent year.

2011 Base Period Revenue Per Section 51.917(b)(7)

- 51.917(b)(7) *2011 Rate-of-Return Carrier Base Period Revenue.*

  2011 Rate-of-Return Carrier Base Period Revenue is the sum of:
  - (i) 2011 Interstate Switched Access Revenue Requirement;
  - (ii) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and
  - (iii) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less Fiscal Year 2011 reciprocal compensation payments paid and/or payable by March 31, 2012.

Prohibition Against Duplicative Funding

- Section 51.917(d) prohibits "duplicative" recovery of costs or revenues by ROR LECs:
  - 51.917(d)(vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund *shall be reduced to the extent it receives duplicative recovery*. Any duplicative recovery shall be reflected as a reduction to a carrier's Eligible Recovery calculated pursuant to §51.917(d).

CAF II Model-Based Support Superceded CAF I Frozen Support

- FairPoint's LECs are ROR-regulated in 22 study areas.
- In 20 study areas, FairPoint ROR LECs accepted statewide CAF Phase II obligations in return for forward-looking model-based support.
- CAF II support is calculated without regard to legacy support or ICC amounts – *FairPoint's election should have no effect on ICC Transitional Support under the Commission's rules*.
- Election of CAF II was retroactive to January 1, 2015.
- NECA therefore should have ceased the "duplicative support" deduction as of January 1, 2015.

Eligible Recovery Under CAF II Funding

- Effective January 1, 2015, FairPoint no longer received CAF Phase I Frozen Support (in all but two study areas).
- FairPoint contacted NECA to let them know the company accepted the ROFR and NECA should discontinue subtracting Frozen LSS from FairPoint's Eligible Recovery. NECA agreed.
- When it met with the FCC Staff, NECA was instructed not to make the change and to continue to subtract Frozen LSS from FairPoint's Eligible Recovery, even though FairPoint no longer receives it.

FairPoint’s Request

- FairPoint is <u>not</u> asking for a waiver of the rules nor seeking more funding than that which it is owed under the existing rules.
- FairPoint <u>is</u> asking the FCC to declare that NECA must apply the rules as written.
- The rules are not vague or subject to interpretation. Therefore, the Bureau may issue the requested ruling.
- NECA should be directed to discontinue subtracting “duplicative” LSS amounts from FairPoint’s Eligible Recovery and restore funding retroactive to January 1, 2015.

FCC Policy Supports This Ruling

- There is no basis in the rules to treat FairPoint differently from other ROR carriers.
  - All other rate-of-return carriers had their LSS frozen in the Base Period Eligible Recovery amount.
  - Rate-of-return carriers electing A-CAM also continue to receive full ICC Transition Funding.
- Nothing in the rules permits NECA to subtract frozen LSS from FairPoint's Eligible Recovery now that there is no duplication of support.
- The support is needed for continued investment in rural study areas.
- The amount declines as the ROR Carrier Baseline Adjustment Factor gets smaller each year.

Model Support is Not Duplicate LSS

- LSS represents an additional amount of local switching costs assigned to the interstate jurisdiction by Part 36 rules. No such mechanism exists in CAF II Model support.
- Even assuming that switching costs included in the Connect American Model (CAM) represent "duplicative" LSS funding, switching amounts in the CAM were *de minimis*.
  - FairPoint estimates these to be not more than $62,000 for all FairPoint ROR study areas.

Summary

- FairPoint is entitled to its Eligible Recovery "notwithstanding any other provisions of the Commission's rules."
- There is no basis in the rules for subtracting Frozen LSS amounts from FairPoint's Eligible Recovery since CAF Phase I Frozen Support was discontinued.
- <u>The FCC is obligated to follow its own rules.</u>
- FairPoint should not be paid twice for the funding formerly received as LSS, *but it should be paid once*, as prescribed by Section 51.917 of the FCC rules.
- The lost revenue impacts FairPoint's ability to serve the high-cost rural areas the FCC requires it to serve.