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BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Notice in WC Docket No. 10-90, CC Docket Nos. 02-33, 01-92

Dear Ms. Dortch:

On March 1 and 2, 2017, Michael Skrivan of FairPoint Communications, Inc. ("FairPoint") and I met with Kris Monteith, Acting Wireline Competition Bureau Chief, Lisa Hone, Alex Minard, Ryan Palmer, and Dana Zelman of the Wireline Competition Bureau, Jay Schwarz of Chairman Pai's office, Claude Aiken of Commissioner Clyburn's office, and Amy Bender of Commissioner O'Rielly's office. The subject of these meetings was FairPoint's pending December 10, 2015 petition for declaratory ruling for the restoration of ICC Transitional Support being improperly deducted by NECA under the Commission's rules.

Under the *USF-ICC Transformation Order* and Section 54.917 of the Commission's rules, amounts previously received by rate-of-return local exchange carriers ("LECs") as local switching support ("LSS"), were part of the 2011 Interstate Switched Access Revenue Requirement and thus became part of the 2011 Rate-of-Return Carrier Base Period Revenue. 47 C.F.R. §54.917(b)(7). Under the Commission's rule governing "eligible recovery for rate-of-return carriers," 47 C.F.R. §54.917(d), the FairPoint rate-of-return ILECs are entitled to receive those amounts through the mechanisms set forth in Sections 54.917(e) and (f) of the Commission's rules, 47 C.F.R. §54.917(e), (f). The Commission's rules do not specify deducting LSS-related amounts from the Eligible Recovery or ICC Transitional Support of FairPoint or of any other rate-of-return LEC. FairPoint requests equal treatment under the rules.

FairPoint's rate-of-return LECs that have accepted CAF Phase II model-based support in all but two states. For those rate-of-return study areas in states where FairPoint accepted CAF II, the "duplicative recovery" rule, 47 C.F.R. §54.917(d)(vii), has no applicability since January 1, 2015, the effective date of FairPoint's acceptance of

CAF Phase II model-based support. Therefore, under the Commission's rules, the FairPoint rate-of-return LECs in CAF II states should receive their eligible recovery through the mechanisms cited above, without any deduction of amounts formerly associated with LSS. FairPoint requests that NECA be instructed to comply with these rules.

The amounts at issue are $3.5 million for calendar year 2015, $3.3 million for 2016, $3.1 million for 2017, and continuing declining amounts subject to the ICC Transition. To the extent that CAF Phase II support includes any "duplicative" switching-related support, that amount is *de minimis*, as previously documented by FairPoint.[1]

FairPoint asks that Bureau confirm to NECA that for study areas in states where FairPoint accepted CAF Phase II support, as the effective period of CAF Phase I ended on December 31, 2014 and CAF Phase II was effective as of January 1, 2015, revenue calculations and ICC Transitional Support payments for FairPoint's rate-of-return LECs should have been adjusted consistent with that time frame, and in accordance with the Commission's transition rules for CAF Phase II, and the amounts noted above should be restored retroactive to January 1, 2015.

FairPoint urgently requests that the Bureau provide this clarification at the earliest possible opportunity.

The enclosed materials were provided at the meeting. Please direct any questions concerning this filing to me.

Very truly yours,

Karen Brinkmann

Counsel for FairPoint

Enclosure

cc: Jim Frame, National Exchange Carrier Association

[1] See "FairPoint Rate of Return ICC Transition Funding," Letter from Karen Brinkmann to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90; CC Docket Nos. 02-33, 01-92, Attachment at 10 (filed April 22, 2016) (using model inputs, such amount is not more than $62,022 per year for all the FairPoint rate-of-return LECs combined).