

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
FairPoint Communications, Inc.) WC Docket No. _____
Petition for Waiver of Section 69.3(e)(9))
Of the Commission's Rules)

**FAIRPOINT COMMUNICATIONS, INC. PETITION FOR WAIVER
TO WITHDRAW FROM ASSOCIATION COMMON LINE TARIFF**

Pursuant to Section 1.3 of the Commission's rules,¹ FairPoint Communications, Inc. ("FairPoint") hereby requests a waiver of the requirement in Section 69.3(e)(9) of the Commission's rules requiring that a carrier intending to file its own Carrier Common Line tariff to notify the National Exchange Carrier Association ("NECA") by March 1st of the year in which the tariff will become effective. FairPoint rate-of-return ("ROR") incumbent local exchange carriers ("ILECs") are regulated similarly to carriers that elect the Commission's Alternative Connect America Fund cost model ("A-CAM") in that they no longer receive cost-based support for carrier common-line elements, yet remain under ROR rules for traffic-sensitive elements. FairPoint intends to withdraw from the NECA Common Line pool simultaneously with the ILECs electing the A-CAM. To the extent that withdrawal is effective as of January 1, 2017, a waiver is required under the Commission's rules.² A waiver is also requested of any other rules as necessary to effectuate the withdrawal described herein. Grant of this waiver will serve the public

¹ 47 C.F.R. §1.3.

² See 47 C.F.R. §69.3(e)(9) ("a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff").

interest. Prompt action on this petition is requested in light of the intended tariff filing date.

BACKGROUND

FairPoint is a mid-sized company uniquely comprising different types of ILECs for purposes of interstate rate regulation. The operations that FairPoint acquired from a Bell Operating Company (“BOC”) in Northern New England (Maine, New Hampshire and Vermont) are regulated by the FCC as mandatory price cap operations. FairPoint’s non-BOC ILECs in Northern New England are permissive price cap carriers³ with the exception of Community Service Telephone Company, which is a ROR company settling on an average schedule basis. Outside of Northern New England, FairPoint’s ILECs all are non-BOC, rural ROR ILECs, some of which settle on an average schedule basis. A list of the carriers covered by this petition is attached.

Under the new Inter-Carrier Compensation regime, FairPoint’s ILECs continue to be subject to diverse regulation. Under the Commission’s *USC/ICC Transformation Order*, all of FairPoint’s ILECs are treated as price cap carriers for Connect America Fund purposes, but FairPoint’s ROR ILECs, including cost-based and average schedule companies, are subject to the inter-carrier compensation rules, including the transitional

³ Pursuant to FCC consent, FairPoint converted these study areas from cost-based rate-of-return (“ROR”) to price cap operations. See *Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*; *China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*; *Windstream Petition for Limited Waiver Relief*, Order, 25 FCC Rcd 4824 (2010).

access pricing rules, that generally govern ROR carriers, rather than the rules that govern price cap inter-carrier compensation.⁴

All of the FairPoint ROR ILECs participate in the NECA Common Line pool, whereas FairPoint's price cap companies do not. Other ROR ILECs that elect the A-CAM will be similarly situated to the FairPoint ROR ILECs. The Commission has found that the public interest will be served by the A-CAM companies exiting the NECA Common Line pool.⁵

In order to simplify FairPoint's tariffs and billing systems, and avoid unnecessary administrative expenses, FairPoint intends to remove all of its ILECs from the Common Line pool. FairPoint elects to exit the NECA Common Line pool just as other ROR carriers may do, and either participate in the NECA Common Line tariff or file its own Common Line tariff. As permitted under the Commission's rules for other ROR carriers, the FairPoint ROR ILECs will continue to participate in the NECA Traffic-Sensitive tariff.

Section 69.3(e)(9) of the Commission's rules requires that a carrier intending to file its own tariff and exit the NECA Common Line pool to notify NECA by March 1st of the year in which the exit will become effective.⁶ In this case, that would be either impossible or ineffective, if read literally – notifying NECA as of last March 1 is not possible, and notifying NECA March 1, 2017 would fail to serve the rule's purpose if FairPoint should exit the pool before that date. Therefore, a limited waiver is requested to notify NECA now of the impending withdrawal from the Common Line pool.

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), ¶129.

⁵ *See infra*, n. 9.

⁶ 47 C.F.R. §69.3(e)(9).

FairPoint seeks to exit the pool simultaneously with the A-CAM companies, as early as January 1, 2017 or as soon as possible thereafter.

WAIVER OF THE MARCH 1ST NOTIFICATION REQUIREMENT IS JUSTIFIED

The Commission may waive any of its rules for good cause where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission’s purposes than strict enforcement of the rule.⁷ In considering the merits of a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸

In the present case, strict adherence to the rule is not necessary the purpose of the rule – to provide NECA with adequate notice for an orderly exit from the pool – and deviation from the rule would better serve the public interest. The requested waiver is of a very limited nature, and NECA has received actual notice of FairPoint’s intention to withdraw its remaining pooling companies from the Common Line pool, and does not object to the withdrawal as described herein.

The Commission has found that the public interest will be served if those ROR ILECs that elect the A-CAM withdraw from the NECA Common Line pool.⁹ This includes both cost-based and average schedule companies, though they may remain in the

⁷ 47 C.F.R. §1.3. *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁸ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁹ Under the Commission’s new universal service and inter-carrier compensation rules for ROR carriers, ILECs that choose model-based support under the A-CAM must exit the Common Line pool, though the exact timing is not specified. *Connect America Fund, et al., WC Docket No. 10-90 et al.*, Order, FCC 16-33 (March 30, 2016), ¶195 (“*ROR CAF-ICC Order*”).

Traffic-Sensitive pool.¹⁰ The Commission held: “For carriers electing model-based support, we see little benefit from pooling their common line or consumer broadband-only loop costs. In fact, it would likely increase the costs of administering the pooling process with no concurrent benefit for carriers. We accordingly conclude that carriers electing model-based support will not be eligible to participate in the NECA common line pooling mechanism.”¹¹

For similar reasons, FairPoint desires to withdraw its ROR ILECs from the Common Line pool. FairPoint believes this will help the company and NECA reduce administrative complexity and expenses. Common Line pooling is elective. With respect to carriers electing A-CAM as well as the FairPoint ILECs, the purpose of the Common Line pool largely has been superseded by regulatory reforms adopted by the Commission. It is now clear that the Commission considers the only interstate services effectively remaining under ROR regulation to be special access services.¹² As permitted under the Commission’s rules for ROR carriers electing the A-CAM, the FairPoint ROR ILECs will exit the Common Line pool and file their own Common Line rates (either through NECA or by filing a FairPoint company tariff). The FairPoint ROR ILECs will continue to participate in the NECA Traffic-Sensitive tariff.¹³ FairPoint anticipates that rates for Common Line elements would be capped, as they will be for carriers electing the A-CAM.

¹⁰ *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Order, DA 16-661 (Wireline Competition Bur. June 15, 2016), ¶17.

¹¹ *Id.*

¹² *See id.*

¹³ *ROR CAF-ICC Order*, ¶196.

No party will be harmed by the requested extension. NECA has been notified of FairPoint's intention, and has indicated no objection to FairPoint. FairPoint proposes to exit the Common Line pool simultaneous with that of the A-CAM companies, effective as early as January 1, 2017 or whenever the Commission and NECA permit such exit. This will permit NECA to make a single tariff filing for all affected companies. FairPoint's election is consistent with the Commission's policies governing ROR ILECs who opt into the A-CAM (not applicable to FairPoint, as explained above). The participating FairPoint ILECs will continue to participate in the NECA Traffic Sensitive pool.

CONCLUSION

For the foregoing reasons, the Commission should grant FairPoint the limited relief requested herein so FairPoint may withdraw its ROR companies from the NECA Common Line pool in the coming months. FairPoint should be permitted to elect from among the same alternatives as the A-CAM companies to either file its own Common Line tariff or file its Carrier Common Line rates through the NECA tariff, establishing Carrier Common Line rates for the FairPoint ROR ILECs under the same policies that apply to ILECs electing the A-CAM. This relief should permit FairPoint to make its exit from the pool simultaneous with that of the A-CAM companies, effective as early as January 1, 2017.

Prompt action on this petition is requested in light of the upcoming filing date.

Respectfully submitted,



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September 16, 2016

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FairPoint Rate-of-Return ILECs

| Study Area Number | Name of Operating ILEC | Cost-Based (C) or Average Schedule (A) | FRN |
|--------------------------|--|---|--------------|
| 170145 | The Bentleyville Telephone Company (Bentleyville Communications Corp.) | A | 0003-7749-65 |
| 150073 | Berkshire Telephone Corporation | C | 0004-4915-44 |
| 462192 | Big Sandy Telecom, Inc. | C | 0003-7235-09 |
| 411835 | Bluestem Telephone Company (Sunflower Telephone Company, Inc.) | C | 0003-7232-36 |
| 150078 | Chautauqua and Erie Telephone Corporation | C | 0004-3316-82 |
| 431981 | Chouteau Telephone Company | C | 0003-7235-17 |
| 462204 | Columbine Telecom Company | C | 0002-1470-98 |
| 300604 | The Columbus Grove Telephone Company | A | 0004-3321-02 |
| 100015 | Community Service Telephone Co. | A | 0004-3216-18 |
| 341009 | C-R Telephone Company | C | 0003-7234-67 |
| 341004 | The El Paso Telephone Company | C | 0003-7235-25 |
| 522412 | Ellensburg Telephone Company | C | 0001-5812-97 |
| 421472 | FairPoint Communications Missouri, Inc. | C | 0014-7103-88 |
| 300618 | The Germantown Independent Telephone Company | C | 0003-7346-96 |
| 210291 | GTC, Inc. - Florala | C | 0001-8246-06 |
| 210329 | GTC, Inc. – Perry | C | 0001-8246-07 |
| 210339 | GTC, Inc. – St. Joe | C | 0001-8246-08 |
| 170185 | Marianna and Scenery Hill Telephone Company | C | 0004-3676-78 |
| 341065 | Odin Telephone Exchange, Inc. | C | 0002-8191-91 |
| 300649 | The Orwell Telephone Company | C | 0002-9468-79 |
| 190244 | Peoples Mutual Telephone Company | C | 0002-0711-16 |
| 461835 | Sunflower Telephone Company, Inc. | C | 0003-7232-36 |
| 150084 | Taconic Telephone Corp. | C | 0003-7727-53 |
| 522453 | YCOM Networks, Inc. | C | 0001-5819-74 |