

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of ILEC Rates for Interstate Special Access Services	)	RM-10593
	)	

**FAIRPOINT COMMUNICATIONS, INC**  
**PETITION FOR LIMITED WAIVER OF DEADLINE FOR DATA SUBMISSION**

Pursuant to Section 1.3 of the Commission’s rules,<sup>1</sup> FairPoint Communications, Inc. (“FairPoint”) hereby requests a limited waiver of the December 15, 2014 filing deadline for the Commission’s data collection in the above-captioned proceeding (the “Special Access Data Collection”).<sup>2</sup> Due to extraordinary hardships caused by circumstances beyond its control, FairPoint seeks temporary relief in the form of a 90-day extension of time in order to complete its data submission by March 16, 2015. The requested waiver is supported by due cause and will serve the public interest. Prompt action on this petition is requested in light of the upcoming December 15 deadline.

**BACKGROUND**

FairPoint is a midsized company uniquely comprising four different types of incumbent local exchange carriers (“ILECs”) for purposes of interstate rate regulation. The operations that FairPoint acquired from a Bell Operating Company (“BOC”) in

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<sup>1</sup> 47 C.F.R. §1.3.  
<sup>2</sup> See *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order on Reconsideration, DA 14-1327 (Wireline Competition Bur. rel. Sept. 15, 2014) (“Reconsideration Order”); Report & Order, 28 FCC Rcd 13189 (Wireline Competition Bur. 2013) (“Data Collection Implementation Order”); Report & Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (“Data Collection Order”).

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 carriers<sup>3</sup> with the exception of Community Service Telephone Company, which is a rural ROR company settling on an average schedule basis. Outside of Northern New England, FairPoint's ILECs all are non-BOC, rural ROR ILECs. Most of the FairPoint ROR ILECs settle on a cost basis and participate in the National Exchange Carrier Association ("NECA") traffic-sensitive pool.<sup>4</sup> The remaining ROR ILECs settle on an average schedule basis, also through NECA. Under the Commission's *USF/ICC Transformation Order*, all of FairPoint's ILECs are treated as price cap carriers for CAF purposes, but FairPoint's ROR ILECs are subject to the inter-carrier compensation rules, including the transitional access pricing rules, that generally govern ROR carriers, rather than the price cap ICC transition.<sup>5</sup>

Under the FCC's Special Access Data Collection, all price cap ILECs, including FairPoint's eight price cap ILECs, are subject to the Commission's nationwide Special

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<sup>3</sup> 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).

<sup>4</sup> FairPoint petitioned the Commission more than two years ago to convert the remainder of its cost-based ROR carriers to price cap regulation. That petition remains pending. See *Wireline Competition Bureau Seeks Comment on the Petition of the FairPoint Cost Companies for Conversion of Their Special Access Services to Price Cap Regulation and for Limited Waiver Relief*, Public Notice, WC Docket No. 12-71, DA 12-525 (rel. April 2, 2012).

<sup>5</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), para.129.

Access Data Collection.<sup>6</sup> While FairPoint is required to file certain basic information on all of its ILECs, including its ROR ILECs, the information required for the latter under the Special Access Data Collection is minimal, thus FairPoint does *not* seek an extension of time in which to file that “short form” information for its ROR companies.

The scope of this waiver request covers only the eight price cap ILECs for which FairPoint must file “long form” special access data, plus Enhanced Communications of Northern New England Inc., a FairPoint subsidiary that is not a local exchange carrier but provides services that fall within the definition of “dedicated services” under the Data Collection Order. These companies operate entirely within a three state area – Maine, New Hampshire and Vermont – no other states are impacted by this Petition. The companies covered by this Petition and their FCC registration numbers (“FRNs”) are shown in the table below:

<b>Company Name</b>	<b>FRN</b>
China Telephone Company	0003-7082-45
FairPoint Vermont, Inc.	0003-7232-02
Maine Telephone Company, Inc.	0003-7082-29
Northern New England Telephone Operations LLC	0016-0226-18
Northland Telephone Company of Maine, Inc.	0003-7231-86
Sidney Telephone Company	0003-7232-10
Standish Telephone Company, Inc.	0003-7082-86
Telephone Operating Company of Vermont LLC	0017-5513-59
Enhanced Communications of Northern New England Inc.	0016-0226-34

The Commission’s Special Access Data Collection was announced in late 2012, subject to approval of the Office of Management & Budget (“OMB”). In September

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<sup>6</sup> Data Collection Order, 27 FCC Rcd at 16327-28. *See also* Data Collection Implementation Order at para. 15 (clarifying that entities providing special access service in only areas where the ILEC is subject to interstate ROR regulation are not required to provide data in response to the Special Access Data Collection).

2013, the Commission revised and clarified the scope and requirements for the required data production. Throughout this period, the Commission indicated that carriers would be expected to file special access data for calendar years 2010 and 2012. However, when OMB approval finally was granted in August 2014, the required data production for the Special Access Data Collection was revised to calendar year 2013 data.<sup>7</sup>

**REQUEST FOR LIMITED WAIVER IN THE FORM OF AN EXTENSION OF TIME**

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.<sup>8</sup> Such circumstances are present in this case due to events beyond FairPoint's control that make it impossible for the company to fully comply with the Special Access Data Collection deadline of December 15. Specifically, while FairPoint will be able to timely complete the "short form" filings for its ROR ILECs, the company requires an extension of 90 days, until March 16, 2015, to complete the production of data for its price cap ILECs.

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.<sup>9</sup> In the current instance, special circumstances have conspired to wreak severe hardship on FairPoint, and strict enforcement of the rule would compound that hardship without serving the public interest.

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<sup>7</sup> Reconsideration Order at para. 8.

<sup>8</sup> 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).

<sup>9</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

Specifically, on October 17, 2014, trade unions representing some 1,700 FairPoint employees in Northern New England walked out on the job, and continue to be on strike. The FairPoint price cap ILECs operate in Northern New England and thus were directly impacted. Until the strike, FairPoint had ten equivalent full-time employees working on the production of data in response to the Special Access Data Collection. This included four employees in the regulatory department working full-time on the data collection, one person in the billing department devoting 50 percent to this task, one person in the revenue assurance department also devoting 50 percent to the data collection, and five employees from the metrics team working full-time on this project. As a result of the unions' work stoppage, six of those ten full-time equivalents have been reassigned to critical operational tasks such as fielding requests for operator assistance and working in dispatch (loading jobs for technicians, calling customers to schedule work, talking to technicians to provide system information, and scrubbing trouble tickets and service orders to provide technicians with information necessary for them to complete their job duties). Members of the skeletal crew remaining at FairPoint's Northern New England operations have been working six days a week, twelve hours each day, to ensure that essential services such as local connectivity and 911 access remain available to all customers.

Further exacerbating the staffing shortage, FairPoint's service territory in Northern New England was affected by a Nor'easter during the third week of October. The damage caused by the storm includes downed utility poles and telephone lines, and interruptions in service in Maine and New Hampshire. An early snowstorm in the region in the past week has resulted in additional trouble reports for the contract work force, for

example, when generators failed at remote sites in Maine, and FairPoint personnel had to be dispatched over nearly impassable roads to replace batteries. These severe storms have compounded the need for management personnel to support dispatch functions for temporary field personnel. Because of the strike, FairPoint personnel who otherwise would have been working on the data production for the Commission have been diverted to emergency service restoration and other operational activities. FairPoint has been forced to assign all available personnel to attend to installs, repairs, and service restoration for customers in Northern New England. Therefore, FairPoint's regulatory and metrics teams have been unable to work on responding to the Special Access Data Collection on the schedule the company had initially planned to meet, and will not be able to deliver the required data to the Commission by December 15.

Requiring strict compliance with the filing deadline will not serve the public interest in FairPoint's case. The Commission has been investigating BOC special access charges since at least 2005. The instant Data Request was delayed by OMB consideration and then substantially modified – even if the price cap carriers could have anticipated a December 15 filing date, any work they could have done in advance would have had to be discarded because, until August 15, they were under FCC instructions to gather 2010 and 2012 data, not 2013 data. Since the release of the Reconsideration Order in mid-September, FairPoint has diligently worked toward completing the revised data collection (which it could not have completed any sooner in light of the changes made by OMB to the Special Access Data Collection). The unions' work stoppage necessitates a temporary shift in personnel away from data production because essential services and emergency access continue to be the highest priorities.

FairPoint has devoted ten full-time equivalent employees to responding to the Special Access Data Collection by the December 15 due date, but FairPoint is a leanly staffed company. Recent events demand that FairPoint divert some of those resources to ensuring the continuation of ILEC operations, which include services that are vital to public health and safety, such as 911 access. If the company were to pull personnel away from essential operational tasks to return to their work on the data production, basic local exchange and exchange access services likely would suffer and consumers would be harmed. If the data production remains understaffed, as appears likely for the coming weeks, FairPoint will miss the FCC filing deadline and potentially suffer penalties that will further set back a company already struggling to respond to hardships not within its control. FairPoint has no other option.

FairPoint therefore respectfully requests that the Commission grant an extension of time in this case, until March 16, 2015, to comply with the data production. While it is possible that the work stoppage may end in time for FairPoint to complete its filing sooner than March 16, FairPoint cannot say with any certainty whether that is likely to be the case.

No party will be harmed by the requested extension. This data collection has been years in the making. At this point, a modest delay of merely 90 days to receive data that will affect only one small region of the nation – Maine, New Hampshire and Vermont – cannot be expected to cause any hardship to the Commission or other interested parties. To the contrary, grant of the requested waiver will help ensure that the data FairPoint provides is complete and useful, and help FairPoint manage a substantial regulatory burden and fully comply with the Commission's data gathering effort.

**CONCLUSION**

For the foregoing reasons, the Commission should grant FairPoint the limited relief requested herein and extend the deadline for FairPoint's price cap ILECs to respond to the Special Access Data Request until March 16, 2015. Prompt action on this petition is requested in light of the upcoming December 15 deadline.

Respectfully submitted,



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