Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
Comprehensive Review of the Part 32	)	WC Docket No. 14-130
Uniform System of Accounts	)	

FAIRPOINT COMMUNICATIONS, INC. REPLY COMMENTS

FairPoint Communications, Inc. ("FairPoint") hereby replies to certain of the comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] FairPoint urges the Commission to make permissive rather than mandatory any forbearance that may affect interstate or intrastate rate-making, including those aspects of Part 32 that affect jurisdictional separations.

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 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[2] with the exception of Community Service

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[1] *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, Notice of Proposed Rulemaking, FCC 14-123 (rel. Aug. 20, 2014) ("*Part 32 NPRM*").

[2] Pursuant to FCC consent, FairPoint converted these study areas from cost-based rate-of-return 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).

Telephone Company, which is a rural rate-of-return ("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.[3] The remaining ROR ILECs settle on an average schedule basis, also through NECA. Under the Commission's *USC/ICC Transformation Order*, all of FairPoint's ILECs are treated as price cap carriers for purposes of Connect America Fund ("CAF") high-cost support, 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.[4]

FairPoint's intrastate ILEC rates similarly are subject to a diversity of regulatory regimes, including cost-based regulation for some local exchange rates, price caps, price freezes, and deregulated prices. FairPoint's intrastate access rates also are subject to price reductions and caps mandated by the Commission's *USC/ICC Transformation Order*.

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[3] 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).

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

FORBEARANCE SHOULD BE PERMISSIVELY GRANTED TO RELIEVE EXCESSIVE REGULATORY BURDENS

The Commission is seeking comment on modifications to its Part 32 rules to reduce the burdens those rules impose on ILECs.[5] Although in 2013 the Commission denied the request of U S Telecom to forbear from enforcing the requirement that ILECs maintain the Uniform System of Accounts ("USOA"), in comments filed in this proceeding U S Telecom again seeks the elimination of the Commission's Part 32 rules.[6] FairPoint does not object in principle to forbearance from enforcing any Part 32 rule that a carrier finds burdensome, but FairPoint submits these reply comments to urge that such forbearance be permissive. For some carriers, including some of the FairPoint ILECs, certain aspects of Part 32 (such as those that affect separations under Part 36) may continue to support cost-based rate-making at the *intrastate* level.

As an ILEC, FairPoint has an obligation under state law to provide services in many high-cost areas where end-user rates are insufficient to cover FairPoint's costs. With the recent years' decline in federal high-cost support and interstate access revenues, FairPoint has been engaged in efforts to draw upon state universal service programs and local end-user rate increases to garner sufficient revenue to support its operations in those high-cost areas.[7] FCC rules delineating intrastate and interstate costs and revenues, and assigning costs between regulated and non-regulated services, are

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5 *Part 32 NPRM* at ¶1.
6 Comments of United States Telecom Ass'n in WC Docket No. 14-130, filed Nov. 14, 2014, at 19.
7 FairPoint's efforts are consistent with the FCC's policies. *See, e.g., USF/ICC Transformation Order, supra,* ¶83 (encouraging states to consider their own support mechanisms to help carriers make up revenues lost as a result of federal reforms); *id.*, ¶¶235-47 (creating an incentive for ILECs to increase below-average end-user rates rather than rely on federal high-cost support).

useful to FairPoint and the state regulators in achieving reasonable results, both ensuring that the company has a reasonable opportunity to recover its costs, and avoiding wide variations among the different states by which FairPoint is regulated. Eliminating Part 32 for all carriers on a mandatory basis could lead to arbitrary and unjust results in some states.

For example, in a recent proceeding in Maine, a witness for the Office of Public Advocate claimed that the FCC had forborne from enforcing its cost allocation rules with respect to price cap carriers, and argued that the Maine Public Utilities Commission ("PUC") could adopt new cost allocation rules, with no limit on the share of the costs of providing local voice service that could be allocated *out* of the intrastate jurisdiction. This is not the case, as the Commission's provisional grant of forbearance with respect to cost allocation was conditioned on an ILEC submitting a compliance plan with the FCC, and the plan being approved, neither of which has occurred in FairPoint's case. The Public Advocate also attempted to argue that the state PUC was free to reassign regulated costs to the unregulated services category, unrestrained by the FCC's rules. The Maine PUC finally rejected these arguments and concluded that it may not act in contravention of the FCC's cost allocation rules, and therefore may not allocate more costs to the interstate jurisdiction or to deregulated services than would be allowed by the comprehensive cost allocation scheme created in Parts 32, 64 and 36 of the Commission's rules.

Thus, the FCC's Part 32 rules, in combination with the separations and cost-assignment rules, provide an important guidepost for the states, serving to prevent a regulatory "price squeeze" in which an ILEC can no longer recover the costs of providing mandatory services under FCC rules but the states refuse to distribute universal service support or allow end-user rate increases to make up the difference.

FairPoint agrees with U S Telecom and other commenters that many of the Part 32 rules add unnecessary complexity to regulatory accounting, and add to the costs that ILECs like FairPoint (but not their competitors) are required to shoulder. In general, FairPoint supports the elimination of burdensome regulations that are not necessary to protect consumers. However, deregulation should bring relief from regulatory burdens, not create new ones. The Part 32 rules do not operate in a vacuum. Certain other Commission rules, such as the separations rules set forth in Part 36, refer to the USOA established in Part 32.[8] The cost assignment rules set forth in Part 64 also refer to Part 32-mandated accounts.[9] If the FCC forbears from Part 32 and permits carriers to keep their books of account in accordance with GAAP, questions could arise as to the states' ability to reallocate costs from the intrastate to the interstate jurisdiction, and from regulated to unregulated categories of services. For some carriers in some states, the Part 32 USOA can help keep costs aligned with the services they support, and help identify revenue deficiencies associated with mandatory services. Therefore, as long as ILECs remain subject to mandatory service obligations under state "carrier of last resort" requirements and federal "dominant carrier" regulation,[10] any forbearance granted from

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[8] *See, e.g.,* 47 C.F.R. §36.3.

[9] *E.g.,* 47 C.F.R. §64.902.

[10] Under the Communications Act, ILECs are required to offer telecommunications services upon reasonable request, at regulated rates, and may not discontinue service without Commission approval. *See, e.g., 47* U.S.C. §§201(b), 202(a) and 214(a). The Commission separately is considering whether to modify ETC obligations under Section 214(e), but not those other carriage obligations, for ILECs that do not receive universal service high-cost support when CAF Phase II is implemented. *See Connect America*

the Part 32 rules should be optional for individual price cap carriers.

CONCLUSION

For the foregoing reasons, FairPoint supports the grant of permissive forbearance from the Part 32 USOA.

Respectfully submitted,

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Fund, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 14-54, ¶184 (rel. June 10, 2014).