

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,¹ FairPoint Communications, Inc. (“FairPoint”) hereby requests a limited waiver of the filing deadline for the Commission’s data collection in the above-captioned proceeding (the “Special Access Data Collection”).² FairPoint has met the Commission’s December 15 deadline for entities required only to certify that they are not covered providers, and FairPoint expects to meet the Commission’s January 29 deadline for six of its price cap companies. FairPoint seeks a 90-day extension of time in order to complete the data submission for just four FairPoint subsidiaries by April 29, 2015. The requested waiver is supported by due cause and will serve the public interest.

BACKGROUND

Under the FCC’s Special Access Data Collection, all price cap incumbent local exchange carriers (“ILECs”), including FairPoint’s eight price cap ILECs, are subject to

¹ 47 C.F.R. §1.3.

² 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”).

the Commission's nationwide Special Access Data Collection.³ FairPoint is a mid-sized company uniquely comprising four 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 carriers⁴ 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.⁵ 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 CAF purposes, but FairPoint's ROR ILECs are subject to the inter-

³ 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).

⁴ 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).

⁵ FairPoint's petition to convert the remainder of its cost-based ROR carriers to price cap regulation 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).

carrier compensation rules, including the transitional access pricing rules, that generally govern ROR carriers, rather than the price cap ICC transition.⁶

The Commission's Special Access Data Collection was announced in late 2012, subject to approval of the Office of Management & Budget ("OMB"). In September 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.⁷

Initially, responses to the Data Collection were due December 15, 2014. FairPoint sought a partial waiver for eight of its subsidiaries to file up to 90 days later, by March 16, 2015.⁸ Acting on delegated authority, the Wireline Competition Bureau granted partial relief, a 45-day extension, until January 29, 2015, for all responding companies with more than 1,500 employees (February 27, 2015 for others required to respond), except that companies required only to certify that they are not required to furnish information in response to the Data Collection remained subject to the December 15, 2014 deadline.⁹ FairPoint has more than 1,500 employees and thus is subject to the January 29 deadline for its responding subsidiaries, and the December 15 deadline for its other subsidiaries. The Bureau indicated that, should FairPoint find it needs more time as

⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011), para.129.

⁷ Reconsideration Order at para. 8.

⁸ FairPoint Communications, Inc. Petition for Limited Waiver of Deadline for Data Submission, WC Docket No. 05-25, RM-10593 (filed Nov. 5, 2014).

⁹ *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order, DA 14-1706 (Wireline Competition Bur., rel. Nov. 26, 2014), para. 4.

the January deadline approaches, the Bureau would entertain FairPoint’s request “related to specific subsidiaries impacted by the strike and weather-related disruptions.”¹⁰

FairPoint has filed the mandatory certification for its 24 ROR ILECs and three other subsidiaries on December 15, 2014, indicating that they are not required to provide data in response to the Special Access Data Collection because they are not covered “providers.” FairPoint does *not* seek an extension of time for any of those 27 companies. Moreover, FairPoint has been diligently working on its response and expects to meet the Commission’s January 29 deadline for six of its eight price cap ILECs: China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company and Standish Telephone Company, Inc.¹¹ FairPoint seeks no further relief for any of these entities.

This waiver request is limited in scope as well as duration, covering only two price cap ILECs for which FairPoint must file “long form” special access data, operating entirely in Maine, New Hampshire and Vermont, plus two other FairPoint subsidiaries that are not local exchange carriers but provide deregulated services that fall within the definition of “dedicated services” under the Data Collection Order:

Company Name	FRN
Northern New England Telephone Operations LLC (“NNETO”)	0016-0226-18
Telephone Operating Company of Vermont LLC (“TOCV”)	0017-5513-59
Enhanced Communications of Northern New England Inc. Utilities, Inc.	0016-0226-34
	0007-1759-20

These four FairPoint subsidiaries (the “petitioning companies”) provide service and are staffed primarily in the northern New England region, and therefore have been

¹⁰ *Id.* at para. 10.

¹¹ Declaration of Michael T. Skrivan, attached, paras. 4-5.

particularly adversely affected by the union employee walk-out that occurred in October, and several severe storms hitting northern New England from late October up to the present week.

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

By this petition, FairPoint seeks a 90-day extension of time until April 29, 2015 in which to comply with the Special Access Data Collection for the four petitioning companies. 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.¹² Such circumstances are present in this case due to a major walk-out of union employees as well as a confluence of severe weather events that have hamstrung the petitioning companies since October. These circumstances, which are beyond FairPoint's control, have made it impossible for the petitioning companies to fully comply with the Special Access Data Collection deadline of January 29, notwithstanding the extraordinary efforts that FairPoint has devoted to completing the required responses. In this petition, FairPoint seeks a brief extension of time in order to complete the data submission for just four FairPoint subsidiaries that have been hardest hit by these events, two ILECs, and two non-ILEC providers of "dedicated services" that are required to respond to the Special Access Data Collection.

Commission precedent supports the grant of the requested relief. In considering the merits of a waiver, the Commission may take into account considerations of hardship,

¹² 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).

equity, or more effective implementation of overall policy on an individual basis.¹³ In the current instance, special circumstances have conspired to wreak severe hardship on the petitioning companies, and strict enforcement of the rule would compound that hardship without serving the public interest. Circumstances beyond these companies' control that have rendered them incapable of complying with the January 29 deadline.

On October 17, 2014, trade unions representing approximately 1,700 FairPoint employees in northern New England walked out on the job, particularly affecting NNETO and TOCV, FairPoint's two largest ILEC operating companies, and the other petitioning companies. This strike continues to the present day.¹⁴

As FairPoint noted in its prior waiver request, 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 were reassigned to "strike duty" to perform critical operational tasks supporting northern New England telephone service, 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

¹³ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ Skrivan Declaration, para. 6.

at FairPoint's northern New England operations have been working six days a week, twelve hours each day since October, to ensure that essential services such as local connectivity and 911 access remain available to all customers.¹⁵

FairPoint employees working strike duty must have knowledge of the operating companies' geography, services, operations and systems, and must be trained to provide support to contract technicians in the field. These requirements are complex and cannot easily be handed off to temporary employees. Similarly, complying with the Special Access Data Collection requires knowledge of the companies' operations, systems, services, processes and an understanding of the FCC Special Access Data Collection. These functions cannot practically be assigned to temporary employees or outsourced to consultants.¹⁶ FairPoint has been forced to choose between assigning its regulatory and metrics employees to strike duty or to the Special Access Data Collection, but it could not do both.

Further exacerbating the staffing shortage for the petitioning companies, extraordinarily harsh storms over the past several months have wreaked havoc in the same northern New England region affected by the strike. FairPoint's service territory in northern New England was affected by a Nor'easter during the third week of October that damaged utility poles and telephone lines, and interrupted service in Maine and New Hampshire. Another storm on November 3 left tens of thousands of locations in Maine without power. The Thanksgiving snowstorm in the northern New England region on November 27 resulted in additional power outages and trouble reports for the contract work force, for example, when generators failed at remote sites in Maine, and FairPoint

¹⁵ Skrivan Declaration, paras. 7-8.

¹⁶ Skrivan Declaration, para. 9.

personnel had to be dispatched over nearly impassable roads to replace batteries. That storm was one of the worst in New Hampshire's history in terms of power outages. Yet another storm December 9 knocked out power to tens of thousands of locations in Vermont.¹⁷

The severe weather that has impacted FairPoint's northern New England service territory has diverted key senior employees, including regulatory personnel, from their work on the Special Access Data Collection. In the absence of the union workforce, FairPoint personnel who otherwise would have been working on the petitioning companies' data production for the Commission have been diverted to emergency service restoration and other critical operational activities, made all the more urgent by the severe weather events of the past few months. All available personnel are attending 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 planned to meet, and will not be able to deliver the required data for the petitioning companies by January 29.¹⁸

Requiring strict compliance with the filing deadline will not serve the public interest in FairPoint's case. 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). FairPoint employees not assigned to strike duty have worked diligently on the Special Access Data Request with the result that a significant portion of the work has been completed or is expected to be completed by the

¹⁷ Skrivan Declaration, paras. 10-14.

¹⁸ Skrivan Declaration, para. 15.

revised due date. FairPoint has devoted ten full-time equivalent employees to responding to the Special Access Data Collection, 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 petitioning companies 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. The petitioning companies have been unduly burdened by the combination of a strike and storms that have necessitated an emergency shift in personnel away from data production. The Commission surely would agree that maintaining the availability of essential telecommunications services and emergency access should continue to be FairPoint's highest priorities.

Regardless of whether the strike is settled in the next few weeks, the petitioning companies will miss the January 29 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 additional extension of time for 90 days, until April 29, 2015, to allow the four petitioning companies to comply with the Special Access Data Collection. While it is possible that the work stoppage may end in time for FairPoint to complete its filing sooner than April 29, 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. The Commission initiated this proceeding in 2005. 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 four FairPoint companies, including its two northern New England ILECs, to respond to the Special Access Data Collection until April 29, 2015. Due to extraordinary hardships caused by circumstances beyond its control, FairPoint can only partially comply with the Commission’s deadlines, but will submit the remaining information as soon as it reasonably can do so, no later than April 29, 2015. Prompt action on this petition is requested in light of the upcoming January 29 deadline.

Respectfully submitted,



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