

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Establishing Just and Reasonable Rates For Local Exchange Carriers)	WC Docket No. 07-135

REPLY COMMENTS OF FAIRPOINT COMMUNICATIONS, INC.

FairPoint Communications, Inc. (“FairPoint”) hereby replies to the comments on its Petition for Declaratory Ruling concerning the application to the FairPoint rate-of-return (“ROR”) local exchange carriers (“LECs”) of Section 51.917 of the FCC’s rules.¹ The National Exchange Carrier Association (“NECA”) supports a declaratory ruling to remove uncertainty. FairPoint believes the rules are clear, but a declaratory ruling from the Commission (or the Bureau acting on delegated authority) is necessary to cause NECA to make required changes to its tariffs and its calculation of FairPoint’s 2015 and 2016 Adjusted Base Period Revenue and Eligible Recovery. The Comments submitted in response to the Petition all support prompt action on this request.

As explained in the Petition, NECA’s FCC filings for the 2014/2015 and the 2015/2016 tariff periods correctly calculated Adjusted Base Period Revenues and Eligible Recovery for FairPoint pursuant to Section 51.917 of the FCC’s rules, when taking into consideration the rule prohibiting duplicate recovery which serves as an exception to the normal operation of Section 51.917. However, as of January 1, 2015, NECA should have ceased making a deduction for

¹ Petition of FairPoint Communications, Inc. for Declaratory Ruling, WC Docket Nos. 07-135 and 10-90, CC Docket No. 01-92 (filed Dec. 10, 2015) (the “Petition”). See Public Notice, DA 15-1440 (Wireline Competition Bur. rel. Dec. 17, 2015).

FairPoint’s ROR LECs equal to the amount FairPoint received in Frozen CAF Phase I Support formerly attributed to LSS (to which the FairPoint ILECs were entitled as price cap carriers). While in prior periods NECA might have received “duplicate support” for the FairPoint ROR LECs if it accepted the former LSS amount through Frozen CAF Phase I Support while also being compensated for an equivalent amount through ICC Transitional Support under the rules for ROR carriers, as of January 1, 2015 FairPoint is receiving model-based, forward-looking support in all but two states, and duplicate support no longer is possible.² Therefore, this deduction is not permitted by the FCC’s rules. The exception to Section 51.917 no longer applies. NECA does not dispute this analysis – NECA continues to deduct the amount at issue while it seeks affirmative direction from the Commission, effectively calling this a case of first impression.³ The Commission should provide the guidance NECA seeks.

In its Comments, ITTA – the Voice of Mid-Size Communications Companies (“ITTA”) supports FairPoint’s request for a declaratory ruling directing NECA to recalculate FairPoint’s Eligible Recovery and restore its ICC Transitional Support to January 1, 2015. ITTA agrees that NECA is failing to implement the Commission’s rule as written. ITTA observes that Section 51.917 is “crystal clear and easy to follow,” and there is no longer any possibility of duplicate recovery so that exception to the rule should not come into play.⁴

As ITTA acknowledges, in the Commission’s *USF/ICC Transformation Order*, ICC Transitional Support was created, *inter alia*, to replace amounts formerly received through LSS.⁵

² As explained in the Petition, model-based support in FairPoint’s ROR states is actually *less* than Frozen Support, undermining any argument that duplicate recovery could be possible. Petition at 21.

³ Comments of NECA at 4.

⁴ Comments of ITTA at 2.

⁵ *Id.* at 3-4.

ITTA agrees with FairPoint’s reading of Section 51.917, as set forth in the Petition, requiring that NECA cease any LSS-related deduction as of January 1, 2015 because there is no possibility of duplicate recovery from the point at which FairPoint began receiving forward-looking model-based support.⁶ Moreover, ITTA notes that many LECs rely on ICC Transitional Support to provide uninterrupted service.⁷ Thus, it would be both contrary to the Commission’s rules and inequitable to allow NECA to deny FairPoint its full ICC Transitional Support. As ITTA states, the Commission “should not allow NECA either to set new precedent by selectively interpreting the rules, or to misinterpret the rules.”⁸

NECA seeks clear direction to resolve this controversy. NECA acknowledges that it has no basis in the Commission’s rules to continue making deductions for former LSS amounts following FairPoint’s acceptance of the right of first refusal (“ROFR”) for model-based CAF Phase II support in all but two states.⁹ Yet NECA continues to do so because, it argues, the rules do not “*direct that such adjustments cease* when a carrier’s CAF Phase II ROFR election becomes effective.”¹⁰ NECA supports the request for a declaratory ruling, and asks that the Commission promptly provide guidance so, if FairPoint is correct, NECA may increase FairPoint’s Eligible Recovery for 2015 and 2016, and incorporate the correct calculations in NECA’s 2016 tariff filing. Specifically, NECA requests that the Commission act before May 1, 2016.¹¹ FairPoint supports the request that the Commission act before May 1st both to prevent

⁶ *Id.* at 4-5.

⁷ *Id.* at 3-4.

⁸ *Id.* at 2. *See also id.* at 5-6.

⁹ NECA Comments at 4. NECA states that the rules “do not explicitly direct” this continued deduction. In fact the opposite result is compelled by both the rules and the *USF-ICC Transformation Order*, as explained in the Petition.

¹⁰ *Id.* at 4 (emphasis added).

¹¹ *Id.* at 4-5 & n.11.

further hardship to FairPoint and to obviate the need for further changes after the 2016 tariff filings. ITTA agrees that prompt resolution of this matter is merited.¹²

As stated in the Petition, FairPoint's acceptance of the ROFR caused forward-looking, model-based CAF Phase II support to wholly supersede legacy-based Frozen CAF Phase I Support, and CAF Phase II broadband service obligations to supersede Frozen CAF Phase I obligations, effective January 1, 2015.¹³ Receipt of model-based CAF Phase II Support in no way duplicates legacy support amounts or amounts received through ICC Transitional Support. It should have no impact on ICC Transitional Support. Both the rules and the Commission's intent are clear. The Commission should issue the requested ruling to compel NECA to recompute its tariffs and correctly compensate FairPoint for its Adjusted Base Period Revenue through a correction to its Eligible Recovery, effective January 1, 2015.

Respectfully submitted,



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¹² Comments of ITTA at 5-6 (“ITTA respectfully requests that the Commission expedite this action to avoid any further undue hardship to FairPoint and its ROR operations”).

¹³ *CAF Phase II Final Order* ¶¶90, 94.