

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**CLEC Access Charge Reform**

**Complete Detariffing for Competitive Access  
Providers and Competitive Local Exchange Carriers**

**CC Docket No. 96-262**

**CC Docket No. 97-146**

**REPLY COMMENTS OF FAIRPOINT COMMUNICATIONS SOLUTIONS CORP.**

Submitted by:

Michael M. Kent  
John La Penta  
FairPoint Communications Solutions Corp.  
6324 Fairview Road, 4<sup>th</sup> Floor  
Charlotte, NC 28270  
(704) 414-2535

Dated: January 26, 2001

## **I. INTRODUCTION AND SUMMARY**

The following Reply Comments of FairPoint Communications Solutions Corp. are presented in response to certain other comments filed as of January 11, 2001 pursuant to the Common Carrier Bureau's request for input in Public Notice DA 00-2751.<sup>1</sup> At issue is whether CLECs operative in rural or otherwise high-cost Tier 1 ILEC markets<sup>2</sup> should be exempt, either wholly or partially, from mandatory detarriffing or "benchmarking," which would limit CLEC access charges to the ceiling of rates charged by Tier 1 ILECs in overlapping or congruent markets. In view of the sheer tenuousness of competition in rural and high-cost markets, FairPoint continues to maintain that CLECs in such markets should be wholly exempt from mandatory detarriffing. However, political realities being what they are, FairPoint recognizes that a complete exemption is probably too much to hope for. As set forth in detail in its December 21, 2000 filing in this proceeding<sup>3</sup>, FairPoint represents that it would therefore support a mechanism which places reasonable limits on the rates chargeable by CLECs to IXCs for access to their local networks, but which fully accounts for the fact that a single, once-size-fits-all approach is

---

<sup>1</sup> Public Notice, "Common Carrier Bureau Seeks Additional Comments on Issues Relating to CLEC Access Charge Reform; Pleading Cycle Established," CC Docket No. 96-262, DA 00-2751, released December 7, 2000 ("Public Notice"), published at 65 FR 77545 (December 12, 2000).

<sup>2</sup> FairPoint stresses that the rural or high-cost markets referenced herein are not synonymous with markets occupied by independent ILECs presently covered by the Telecommunication's Act rural exemption from competition. Rather, FairPoint's focus is on entry into markets currently occupied by the RBOCs (Verizon; Qwest; BellSouth; SBC) and Sprint. In these markets, the monthly recurring cost of leasing a local loop on a UNE basis from the incumbent carrier is typically the highest, or among the highest, in the state as a result of loop deaveraging proceedings, which lower the costs of entry into major metropolitan markets (where most CLECs are clustered) but which also raise the costs of entry into exurban, semi-rural and rural markets.

<sup>3</sup> Additional Comments of FairPoint Communications Solutions Corp., In the Matter of Additional Comments on Issues Related to Access Charge Reform, CC Docket 96-262, DA 00-2751, filed December 21, 2000.

inappropriate to the reality of a CLEC industry which is segmented between companies focused on entry into low-cost major metropolitan areas and companies seeking to bring the benefits of competition to underserved customers in rural/high-cost RBOC markets.

As discussed below, there is considerable support within the telecommunications industry for at least a limited exception applicable to CLECs competitive in high-cost/rural markets. Commenters such as the Association for Local Telecommunications Services (“ALTS”)<sup>4</sup>, which represents the consensus viewpoint of a diversity of CLECs, RICA<sup>5</sup>, which represents the CLEC affiliates of the smaller independent incumbent telephone companies, McCleod<sup>6</sup>, and Sprint<sup>7</sup> have expressed support for some form of a rural/high-cost exemption. Goliaths AT&T and WorldCom have taken a particularly hard line (AT&T more so, WorldCom somewhat less so) in opposing any form of an exemption, but, as will be discussed below, such inflexibility cannot be sustained.

## **II. DISCUSSION**

### **A. REPLY TO COMMENTS OF SPRINT CORPORATION**

---

<sup>4</sup> Comments of the Association for Local Telecommunications Services (ALTS), In the Matter of Access Charge Reform, CC Docket 96-262, DA 00-2751, filed January 11, 2001, at p. 5 (expressly endorsing FairPoint’s position at n. 10).

<sup>5</sup> FairPoint submits, however, that RICA’s definition of “rural” is simply far too restrictive. As FairPoint states in its December 21, 2000 filing in this proceeding, which explores in the definitional issues raised by the Commission in depth, the best approach would simply provide for an exemption for CLECs operative in markets located outside of a top 50 MSA.

<sup>6</sup> Comments of McCleodUSA Telecommunications Services, Inc., In the Matter of Access Charge Reform, CC Docket 96-262, DA 00-2751, filed January 11, 2001. McCleod’s brief is particularly well-presented and reasoned as to the specific issue of whether and when a rural exemption should apply.

<sup>7</sup> Comments of Sprint Corporation, In the Matter of Access Charge Reform, CC Docket 96-262, DA 00-2751, filed January 11, 2001, at pp. 4-6.

Sprint's position, in particular, deserves special attention. Sprint's interests are in many respects quite close to AT&T's and WorldCom's. Sprint, like AT&T and WorldCom, has CLEC affiliates. At the same time, Sprint, like AT&T and WorldCom, is also a major player in the IXC industry. However, Sprint's position at least admits of the workability of a limited exemption for CLECs seeking entry into rural/high-cost RBOC markets. To be sure, while Sprint states at the outset of its argument that it does not admit of any "sound basis" for a rural exemption, it does indicate that it would not oppose, or would at least contemplate, a "limited exemption" along the following lines<sup>8</sup>:

- Rural areas would be defined as areas outside a Metropolitan Statistical Area (MSA);
- In order to qualify for the rural carve-out,
  - The CLEC would only operate in the rural areas defined above and would not [qualify] for the carve-out if it also offered service within an MSA;
  - The CLEC would have to be competing with an ILEC that offers service in both rural and non-rural areas of the state
  - The CLEC would have to make its service available to all CLECs within its service area rather than, for example, limit such service to business customers or town within that area;
- A reasonable benchmark might be an averaged NECA rate, which Sprint understands to be in the area of 3.5 cents per minute at the present time.

Sprint's proposal is still too constrictive, in that it unrealistically eliminates CLECs whose present focus is on serving business customers located within towns (Sprint leaves the term "town" undefined) situated within rural/high-cost areas, and, further. It would also consider a CLEC to be completely contaminated, and therefore ineligible for an exemption, by virtue of the fact that even the smallest segment of its market stretches into the fringes of an

---

<sup>8</sup> *Id.*

MSA. FairPoint further objects to the use of an “averaged NECA rate,” as proposed by Sprint, but would accept use of a benchmark based on NECA rates operative in markets geographically proximate to those in which the CLEC is active.<sup>9</sup> Sprint’s proposal is in need of repair, but has substantial promise.

**B. REPLY TO COMMENTS OF AT&T**

Where there is some balance in Sprint’s approach, AT&T’s one-size-fits-all, winner-take-all approaches lacks virtually any.

AT&T’s position on the rural exemption is particularly inflexible. First, AT&T flatly states that “there is neither a legal nor an economic justification for creating any ‘exclusion’ for ‘rural’ CLECs from a general ruling limiting tariffed CLEC access charges to ILEC rate levels in the same service area.”<sup>10</sup> On the matter of the legality of a rural exemption, the clear purpose of the Communications Act is to bring the full benefits of a modernized, and continually modernizing, telecommunications system to all. In view of its unique history, AT&T should, of all parties to the proceeding, best recall the bedrock legal foundation on which all federal telecommunications regulation in this country rests. The very first sentence in the Communications Act of 1934 manifestly states that its purpose is to “make available, so far as possible, to *all the people* of the United States, a rapid, efficient, nationwide and worldwide wire

---

<sup>9</sup> FairPoint agrees in principle with McCleod’s point that CLECs ought to be able to charge access rates *higher* than those charged by NECA members, and urges the Commission to give strong consideration to McCleod’s argument. However, FairPoint also recognizes that telecommunications policy is not created out of political vacuums. *See* Comments of McCleodUSA Telecommunications Services, Inc., *supra* at p. 8.

<sup>10</sup> Comments of AT&T Corp., In the Matter of Access Charge Reform, CC Docket 96-262, DA 00-2751, filed January 11, 2001, at p. 5.

and radio communications service....”<sup>11</sup> Regulation which nurtures the growth of telecommunications services in underserved markets is seeded in the very foundation of the Act.

In any event, lacking full confidence in its argument as to the legality and economics of a rural exemption, AT&T goes on to state that “[e]ven if such a carve-out could be found to have a valid purpose,” then the Commission should reject it simply on the grounds that it would be difficult to administer.<sup>12</sup> This is simply not the case. Clear-cut guidelines have already been outlined by FairPoint, McCleod, ALTS, and Sprint, to name just four of the parties to this proceeding. These guidelines would be no more difficult to administer than any other set of regulations specific to an industry already well-conditioned to operate in a regulatory environment which has traditionally been marked by special complexity. Furthermore, some of the complexity attendant to the issue of CLEC access reform has, by AT&T’s own actions, simply been removed to the courts in view of the stark reality is that AT&T is flatly refusing to pay CLEC access charges it has unilaterally deemed to be too high, forcing CLECs with limited resources vis-à-vis AT&T into complicated, expensive, and ongoing litigation with the former monopolist.<sup>13</sup>

**C. REPLY TO COMMENTS OF WORLD COM**

WorldCom’s Comments shows more sensitivity to the reality of rural economics than does AT&T. WorldCom supports, in principle, “a ceiling that is higher than the average,

---

<sup>11</sup> Communications Act of 1934, Section 1. (47 USC Section 151.)

<sup>12</sup> Comments of AT&T Corp., *supra* at p. 6.

<sup>13</sup> ADVAMTEL, LLC, et al v. AT&T Corp. et al, Civil Action No. 00-643-A, United States District Court for the Eastern District of Virginia. FairPoint is a litigant in this proceeding.

effective per-minute ILEC rate to account for various factors, including operation in discrete rural areas as well as dependence on above-cost ILEC collocation and dedicated access services.”<sup>14</sup> WorldCom at least shows some cognizance of the *sui generis* nature of rural markets. At the same time, however, WorldCom rejects a mechanism that is specific to the needs of CLECs active in those markets, lending its support instead to a benchmark that could exceed the ILEC rate but which would nonetheless be the same nationwide . Again, a mechanism tailored to the realities of specific markets is essential.

**D. SUMMARY**

In any event, there is clearly a kernel of consensus within the industry around the concept that high-cost RBOC markets present special difficulties to CLEC entrants. FairPoint urges the Commission to take cognizance of this fact in crafting any policy concerning access charge reform in general, and CLEC access charge reform in particular.

**III. CONCLUSION**

The competitive situation in high-cost RBOC markets is tenuous enough to begin with. Barriers to entry are almost insurmountably high, in large part due to the higher monthly recurring local loop rates faced by CLECs in such markets. Fostering real competition in such markets requires exempting CLECs competing in high-cost RBOC markets from the “one size fits all” benchmarking and detariffing proposals currently under consideration. A more flexible approach which includes a so-called “high-cost” or “rural exemption” in one form or another is

---

<sup>14</sup> Further Comments of WorldCom, Inc., In the Matter of Access Charge Reform, CC Docket 96-262, , DA 00-2751, filed January 11, 2001, at p. 2.

critically necessary in view of the reality that CLECs are active in a broad range of markets, from urban to exurban and rural, each with unique cost characteristics and operating environments. At a minimum, the exemption must not be limited to CLECs attempting to enter markets occupied by independent telephone companies currently covered by a rural exemption from competition, but must cover CLECs active in high-cost exurban, semi-rural, and rural RBOC markets as well. It is within such markets that telecommunications consumers currently face the fewest choices and in which unmet demand for competitive telecommunications services is the greatest. Thus, a broader exemption, covering CLECs active in markets outside of the top 50 Metropolitan Statistical Areas (“MSAs”) will serve the major purpose of the Telecommunications Act of 1996, which is that of bringing the benefits of choice and competition to *all* consumers of telecommunications services, including underserved business and residential consumers who happen to be located outside of the low-cost major metropolitan markets on which most CLECs are focused.

Respectfully submitted,

By: \_\_\_\_\_ /s/  
Michael M. Kent  
John La Penta  
FairPoint Communications Solutions Corp.  
6324 Fairview Road, 4<sup>th</sup> Floor  
Charlotte, NC 28270  
Tel. No. (704) 414-2535  
Fax No. (704) 414-2505