**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
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| **CONNECT AMERICA FUND** | ) | **WC Docket No. 10-90** |
| | ) | |
| **A NATIONAL BROADBAND PLAN FOR OUR FUTURE** | ) | **GN Docket No. 09-51** |
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| **ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS** | ) | **WC Docket No. 07-135** |
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| **HIGH-COST UNIVERSAL SERVICE SUPPORT** | ) | **WC Docket No. 05-337** |
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| **DEVELOPING AN UNIFIED INTERCARRIER COMPENSATION REGIME** | ) | **CC Docket No. 01-92** |
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| **FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE** | ) | **CC Docket No. 96-45** |
| | ) | |
| **LIFELINE AND LINK-UP** | ) | **WC Docket No. 03-109** |

# COMMENTS OF FAIRPOINT COMMUNICATIONS, INC. ON INTERCARRIER COMPENSATION ARBITRAGE ISSUES

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**COMMENTS OF FAIRPOINT COMMUNICATIONS, INC.**
**ON INTERCARRIER COMPENSATION ARBITRAGE ISSUES**

FairPoint Communications, Inc. ("FairPoint") hereby files comments with respect to the three intercarrier compensation arbitrage issues (*i.e.*, compensation owed for Voice over Internet Protocol ("VoIP") traffic, identifying phantom traffic, and protecting against access stimulation/traffic pumping) that the Federal Communications Commission ("FCC" or "Commission") raises in the *Notice* issued in the above-captioned proceedings.[1] FairPoint commends the Commission for recognizing the severity of these issues and the need for

[1] *Connect America Fund*, WC Docket No. 10-90, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("*Notice*"). The *Notice* requests comments on Section XV, the three arbitrage issues discussed in these comments, by April 1, 2011. 76 Fed. Reg. 11632, 11657 (Mar. 2, 2011).

immediate action prior to the Commission's efforts on broader reform of the current intercarrier compensation ("ICC") and universal service fund ("USF") regimes. These matters have had significant economic and operational impact on FairPoint for some time. Therefore, FairPoint supports FCC adoption of the proposed rules to address these three issues, within the parameters described herein.

### A. FairPoint supports the Commission's proposals to adopt rules addressing the three arbitrage issues, consistent with the comments filed by ITTA.

As a member of the Independent Telephone & Telecommunications Alliance ("ITTA"), FairPoint supports and agrees with the comments that are being filed by ITTA in response to the *Notice*. In these comments FairPoint expands on the ITTA comments to provide company perspective on why it is so important for the Commission to take action now to require VoIP providers to pay access for calls terminated on the public switched telephone network ("PSTN"), to eliminate phantom traffic by requiring carriers to identify originating numbers on all traffic so that access charges can be collected when appropriate, and to implement rules to protect carriers from paying inflated charges caused by access stimulation traffic.

As with other mid-sized local exchange carriers, intercarrier compensation is a substantial and necessary segment of FairPoint's revenues,[2] which revenues enable FairPoint to maintain and expand its critical carrier of last resort ("COLR"), broadband-capable infrastructure over which customers access voice and data services. The access arbitrage issues before the Commission must be resolved now in order to prevent further loss of legitimate carrier revenue that is essential to maintaining and expanding FairPoint's critical infrastructure and in order for

[2] Across the company, intercarrier compensation accounts for approximately 7% of FairPoint's revenues.

the Commission to fairly evaluate longer term reforms to the ICC/USF regimes under which carriers currently operate and upon which they necessarily depend.

FairPoint is the COLR in 32 study areas in 18 states. It provides a critical safety net for consumers, a platform for competitors, and essential services to interconnecting carriers. Like other incumbent local exchange carriers ("ILECs"), FairPoint built the stable and reliable network that gave rural Americans access to voice telephone service within the last century and FairPoint continues to expand and update the network that gives rural Americans access to broadband and new communications services today and tomorrow. Yet, access arbitrage unjustly limits FairPoint's access to legitimate compensation for operating essential facilities, particularly in rural areas. Thus, the network is put at risk when the ILECs are not paid for the use of their network.

### B. FairPoint is a rural carrier that has been negatively impacted by access arbitrage activities.

FairPoint owns and operates local exchange carriers, and provides local, long distance, data, Internet, broadband, television, and business communications services in 18 states to approximately 1.4 million access line equivalents (as of December 31, 2010). FairPoint's legacy has been to provide service in very rural areas of the country, operating as an ILEC. In 2008, FairPoint acquired the Verizon landlines in Maine, New Hampshire, and Vermont ("Northern New England" or "NNE") and while much of this territory is still very rural, the Commission designated FairPoint's operating subsidiaries in the acquired territory as Bell Operating Companies ("BOCs") in that territory. FairPoint has subsidiaries that are classified as rate of return carriers, as well as others classified as price cap carriers, for interstate regulation. FairPoint is the first of a new species of carrier. It is a rural BOC.

As a rural BOC, FairPoint serves customers across the entire nation in some of the most rural areas of the country; it faces stiff competition from wireless providers, cable providers, and competitive local exchange carriers ("CLECs"); and it is subjected to significantly more regulation that its wireless, cable, and CLEC competitors.

Like other BOCs, FairPoint has lost approximately 50% of its access lines since 2000,[3] and like other BOCs it continues to lose approximately 10% of its access lines annually. These losses are a result of a general shift by consumers to mobile services and other wireline competitors, namely cable providers and CLECs.[4] In many cases already, and increasingly so, FairPoint is no longer the dominant provider of communications services.

Loss of access lines means lost local service revenues, lost intrastate long distance revenues, lost interstate Subscriber Line Charges, lost interstate long distance revenues, and lost interstate switched access charges. While FairPoint has worked hard to increase revenue from broadband and special access services, these increases in no way offset the dramatic revenue losses incurred from lost access lines.

In dealing with a highly competitive market for voice services and in facing eventual changes in the ICC/USF regimes that have made it possible for ILECs to operate and provide consumers with access to voice and data services at just, reasonable, and affordable rates, FairPoint's loss of legitimate access revenue for known arbitrage issues over the past ten plus years has only made it more difficult to strive for profitability while continuing to be the carrier

[3] This loss is demonstrated in the FCC's Automated Reporting Management Information System ("ARMIS") reports for the Verizon legacy landlines acquired by FairPoint in Maine, New Hampshire, and Vermont covering the period from 2000 through 2010.

[4] The most recent FCC Local Competition Report from June 30, 2010 shows that for FairPoint's NNE region, wireless carriers have 58% of the voice market. Further, based on calculations from that June 30, 2010 Local Competition Report, in Northern New England the ILECs' share of the wireline market has declined from 82% to 58% and the overall wireline market, which includes ILEC, CLEC and VoIP services, has declined by 10% since 2006.

of last resort. The Commission must be fully apprised of the financial environment that carriers like FairPoint face before the Commission enters into ICC/USF regime change that may hasten the decline of COLRs. The first step in understanding this financial environment is to recognize the loss of legitimate access revenue from arbitrage activities and to take appropriate steps to rectify the arbitrage.

### C. Access charges are rightfully owed on VoIP traffic.

Traffic exchanged between VoIP providers and carriers that terminate traffic on the PSTN should not be compensated on a bill and keep basis. Carriers should be compensated for the costs of using their networks. As between VoIP providers and providers of the PSTN, the costs differ and the structure of who pays differs. Until there is uniformity in the network, meaning all providers of communications services have an Internet Protocol ("IP") network, and until there is uniformity in how consumers pay for that network, there has been and there continues to be a need for payment for access to the PSTN, that is, payment for calls from VoIP customers who make a call to someone whose service is accessed by the PSTN.

The PSTN is a network of network interface devices ("NIDs"); drop wires; aerial, buried, and underground cable (both copper and fiber); conduit; poles; switches; power sources; buildings; work vehicles; and other infrastructure required to maintain its facilities. There is great expense in maintaining this reliable and stable network that has the farthest reach to the most rural areas. On the other hand, VoIP providers have networks consisting of routers and servers. Without denying that there are certainly expenses in maintaining a VoIP network, there is no comparison to the costs of the PSTN network. For example, in its NNE territory, FairPoint has cable facilities on approximately 1.4 million poles, most of which it owns or jointly owns with other utilities. VoIP providers don't own any poles; don't have any aerial, buried or underground cable; don't own trucks; and don't have technicians to maintain the facilities they don't have. When a winter storm hits FairPoint's NNE region and knocks down hundreds of poles, as happened last year, VoIP providers are not dispatching trucks and technicians in zero degree weather in the middle of the night to restore service by replacing poles, transferring facilities to new poles, replacing fallen drops, and ferrying generators to field equipment where commercial power is down and batteries are running low. There is a real cost to maintaining a network that everyone can use.

For PSTN providers, the cost of maintaining the network is paid for by the revenues of the carriers who built them. As entities that are highly regulated by state and federal regulators, PSTN providers derive their revenues from wholesale and retail customers through a combination of local service, intrastate long distance service, interstate long distance service, state switched and special access charges, and interstate switched and special access charges. VoIP services, on the other hand, ride over the national broadband network without incurring charges from the facilities owner. End users typically pay their network provider a flat monthly rate for access to the Internet, and their carrier provides the capacity for the VoIP provider. Unless and until all carriers convert to an all-IP network, PSTN providers need retail and wholesale customers to pay for network usage, including VoIP providers whose customers want to be able to reach consumers located on the PSTN. Artificially accelerating a conversion to an all-IP network by withholding appropriate compensation for access to the PSTN will result in insufficient revenue for ILECs to maintain the PSTN and may result in degradation of service for customers.

The Commission therefore should require VoIP providers to pay access charges for traffic terminating on the PSTN at the same rate applicable to comparable voice traffic. In addition, the Commission should condemn self-help measures by VoIP providers to avoid payment of intercarrier compensation for VoIP traffic terminating on the PSTN.

### D. Profiting from discrepancies in how traffic is exchanged, at the cost of consumers, is simply wrong.

Disguising the originating number of a call or failing to take action to ensure that the originating number of a call is identified so that access charges can be assessed, and creating business arrangements for the sole purpose of stimulating access traffic for illicit profit are classic examples of access arbitrage. Passing phantom traffic – that is, traffic on which the originating number cannot be identified for purposes of accurate access charge assessment – is clearly a blatant example of one carrier using a traffic exchange discrepancy, whether created intentionally or not, to avoid a cost. While the carrier that avoided that cost benefitted, as did likely the customer of that carrier, the carrier that terminated the call lost revenue upon which it depends to maintain the ubiquitous network that reaches the most rural corners of this country. Similarly, when a carrier raises its access charges above a cost-justified level in conjunction with a business arrangement with a customer to stimulate access traffic,[5] the carriers paying those access charges are paying unjust and unreasonable rates at the expense of their own end users. Over time, paying excessive charges detracts from a carrier's ability to maintain that ubiquitous network that reaches the most rural corners of this country. Both arbitrage activities border on fraud at the expense of ratepayers and the public good.

FairPoint supports the Commission's proposal to issue rules requiring all carriers to accurately identify the originating number on all traffic, and urges the Commission to

[5] For example, access stimulation may occur when a carrier, often a CLEC, partners with a conference service provider to put conference facilities in rural locations served by rural LECs, where the CLEC can charge higher switched access rates to the interexchange carrier carrying the call.

aggressively enforce those rules. FairPoint also supports the Commission's adoption of rules protecting access charge customers from paying inflated charges exacerbated by access stimulation.

In conclusion, FairPoint urges the Commission to take action now to stop intercarrier compensation arbitrage. Loss of legitimate revenue from charges that should be assessed on terminating VoIP traffic or on disguised or unidentified traffic, along with the unnecessary expenses incurred in paying inflated access charges on artificially stimulated traffic, have a significant negative impact on consumers, carriers, stockholders, and the sustainability of the ubiquitous network. The Commission will not be in a position to fairly evaluate and implement reform of the ICC and USF regimes without an understanding of, and the ability to address, the impact that these arbitrage activities have had on carriers that legitimately rely upon ICC revenue.

Respectfully submitted,

By: /s/ *Robin E. Tuttle*

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