

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**REPLY COMMENTS OF  
FAIRPOINT COMMUNICATIONS, INC.**

FairPoint Communications, Inc. (“FairPoint”) submits these reply comments<sup>1</sup> in response to comments opposing its Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission’s Rules and Conditional Election of Incremental Connect America Fund (“CAF”) Support (the “Petition”).<sup>2</sup> The record supports grant of the Petition.

**I. FAIRPOINT HAS MET THE REQUIREMENTS FOR A WAIVER OF THE COMMISSION’S RULES ON DISTRIBUTION OF CAF PHASE I INCREMENTAL SUPPORT**

A. Special Circumstances Are Identified In the FairPoint Waiver Petition

FairPoint agrees with the National Cable & Telecommunications Association (“NCTA”) that the “Commission concluded that the primary goal of the [CAF Phase I] program is ‘to reach a significant number of relatively low-cost locations’”<sup>3</sup> where broadband deployment has not

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<sup>1</sup> See Public Notice, *Wireline Competition Bureau Seeks Comment on FairPoint Communications Petition for Waiver of Certain High-Cost Universal Service Rules*, DA 12-1473 (rel. Sept. 11, 2012) (“Public Notice”).

<sup>2</sup> See *Connect America Fund; High-Cost Universal Service Support*, FairPoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission’s Rules and Conditional Election of Incremental CAF Support, WC Docket Nos. 10-90 and 05-337 (filed Sept. 10, 2012) (“Petition” or “FairPoint Petition”).

<sup>3</sup> Opposition of the National Cable & Telecommunications Association, *Wireline Competition Bureau Seeks Comment on FairPoint Communications Petition for Waiver of Certain High-Cost Universal Service Rules*, at 3 (filed Oct. 11, 2012) (“NCTA Opposition”),

occurred due to the absence of a viable business case.<sup>4</sup> While the Commission also stated that the CAF Phase I program was not designed to “ensure that the entire \$300 million offered for Phase I is accepted,”<sup>5</sup> the amount elected by price cap carriers that were allocated CAF Phase I incremental support will not reach a *significant* number of unserved locations.<sup>6</sup> For this reason, special circumstances exist for waiver of the rule requiring that broadband be deployed to one unserved location, at Commission designated speeds, for each incremental \$775 in support that was elected.

The cost per location should not bar grant of the Petition. The Commission explained that it set the support level based on its understanding of the costs in the *highest-cost* price cap wire centers – even though it expected price cap carriers to use the support to deploy to the lowest-cost wire centers that would not otherwise be served.<sup>7</sup> In setting the amount of support per unserved location at an amount based on what it considered at the time to be at the high end, the Commission boldly strove to provide an immediate boost to broadband deployment. This should still be the purpose of the CAF Phase I incremental support program – to expand

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*quoting Connect America Fund*, Second Order on Reconsideration, 27 FCC Rcd 4648, § 20 (2012) (“*CAF Second Order on Reconsideration*”).

<sup>4</sup> See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 145 (2012) (“*USF/ICC Transformation Order*”).

<sup>5</sup> *CAF Second Order on Reconsideration*, § 20.

<sup>6</sup> The Commission announced on July 25, 2012 that about \$115 million of the budgeted \$300 million CAF Phase I incremental support fund had been elected by price cap carriers. See generally “FCC Kicks-Off ‘Connect America Fund’ With Major Announcement: Nearly 400,000 Unserved Americans in Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years,” FCC News (rel. July 25, 2012) (“FCC News July 25”). FairPoint pointed out in its Petition that this \$115 million election was barely over a 38% take rate of the total CAF Phase I fund. See Petition at 7.

<sup>7</sup> See *USF/ICC Transformation Order*, ¶ 145.

broadband as quickly as possible to price cap locations that would not otherwise be served – but the \$775 threshold simply is too low for the goal to be achieved.

Opponents of FairPoint’s Petition suggest that FairPoint demonstrated no special circumstances for the waiver of the Commission’s CAF Phase I rule, but they disregard the results of initial CAF Phase I election.<sup>8</sup> Now more than 60% of the CAF Phase I incremental support fund – approximately \$185 million – remains unelected, and will not be used absent the grant of a waiver such as the one proposed in the Petition. This unelected amount is not just “some of the incremental support” that the Commission recognized would likely be declined, but a majority of the total fund.<sup>9</sup> Strict adherence to the CAF Phase I election requirements is not consistent with the overarching goal of CAF Phase I incremental support “to promote the most rapid expansion of broadband to as many households as possible.”<sup>10</sup>

The Wireless Internet Service Providers Association (“WISP”) claims that FairPoint failed to provide a reason for not electing the remainder of the CAF Phase I support allocated to it by the July 24, 2012 deadline.<sup>11</sup> However, WISP ignores the statement in the Petition that, with support limited to \$775 per unserved location, it was economically infeasible to bring broadband to any more locations.<sup>12</sup> It would have been an inappropriate use of business resources to conduct further labor-intensive analysis of FairPoint’s network in order to determine

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<sup>8</sup> See NCTA Opposition at 2; Comments of the American Cable Association, *Wireline Competition Bureau Seeks Comment on FairPoint Communications Petition for Waiver of Certain High-Cost Universal Service Rules*, at 7 (filed Oct. 11, 2012) (“ACA Comments”); Opposition of the Wireless Internet Service Providers Association, *Wireline Competition Bureau Seeks Comment on FairPoint Communications Petition for Waiver of Certain High-Cost Universal Service Rules*, at 10 (filed Oct. 11, 2012) (“WISP Opposition”).

<sup>9</sup> *CAF Second Order on Reconsideration*, ¶ 20.

<sup>10</sup> *USF/ICC Transformation Order*, ¶ 145.

<sup>11</sup> See WISP Opposition at 4.

<sup>12</sup> See Petition at 8.

what amount of additional support would be needed per unserved location, as suggested by WISP, when FairPoint knew that support was limited to \$775 per unserved location.<sup>13</sup> Only after the elections were made by all eligible price cap carriers did it become clear that the Commission's \$775 in support per unserved location is substantially undersized for its purpose. Most of the price cap carriers apparently felt they could not provide an "immediate boost" to as many price cap locations as the Commission had hoped at the level of support the Commission had chosen. A waiver of the Commission's CAF Phase I rules is justified in light of these special circumstances.

B. The Public Interest Would Be Served By Granting the Requested Waiver

FairPoint agrees with the American Cable Association ("ACA") that the "Phase I incremental support program is limited both in time and in its aim, and it does not seek 'to create a new source of ongoing support.'"<sup>14</sup> Similarly, FairPoint agrees that the limited purpose of CAF Phase I is "to jumpstart broadband deployment by [price cap] carriers to unserved locations."<sup>15</sup> Indeed, this is exactly what FairPoint seeks through a waiver of the Commission's CAF Phase I incremental support rules. This further election by FairPoint would be limited; it would bring broadband at Commission-designated speeds to 697 unserved price cap locations in Maine, locations for which there otherwise is no business case to expand broadband, through a one-time infusion of incremental support.

FairPoint disagrees with NCTA that other options discussed by the Commission for use of forgone CAF Phase I incremental support "would be a better use for 'leftover' CAF Phase

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<sup>13</sup> WISP criticizes FairPoint for not considering conditions or devoting resources to its acceptance of remaining Phase I support until after the CAF Phase I election deadline. *See* WISP Opposition at 4-5.

<sup>14</sup> ACA Comments at 3 [footnotes omitted].

<sup>15</sup> ACA Comments at 5.

I.”<sup>16</sup> None of the options noted by NCTA – “minimizing high-cost support budget fluctuations . . . , reallocating funds to support broadband adoption efforts, and reducing the contribution burden on consumers”<sup>17</sup> – would spur broadband deployment as intended by the Commission.

All commenters opposing the FairPoint Petition have inappropriately focused on the per location support amount that FairPoint needs to bring broadband to an additional 697 unserved locations in Maine.<sup>18</sup> Admittedly the per location amount of support needed for the Maine locations is slightly more than \$4,000. However, when these 697 locations are considered in total with all locations that FairPoint would provide broadband to in Vermont and Maine, specifically 3,310 unserved locations that would received broadband by using all of the \$4,856,858 in CAF Phase I incremental support that FairPoint was allocated, then the average amount of per-location support drops to approximately \$1,467, less than twice the per location amount specified in the Commission’s rules.<sup>19</sup> This per-location support amount, combined with FairPoint’s own significant capital contributions, reflects the true costs of expanding broadband to unserved locations in Vermont and Maine.

Granting the Petition will “spur immediate deployment to as many unserved locations as possible.”<sup>20</sup> If the Petition is granted, CAF Phase I incremental support will help bring broadband to rural Americans at 697 additional locations, and 3,310 locations in total, that lack high-speed Internet access today and may not otherwise obtain such access for many years to come. The Commission should evaluate the benefits of granting the Petition taking into account

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<sup>16</sup> See NCTA Opposition at 4.

<sup>17</sup> NCTA Opposition at 4, *referencing USF/ICC Transformation Order*, note 221.

<sup>18</sup> WISP Opposition at 1, 3; ACA Comments at note 24; NCTA Opposition at 2.

<sup>19</sup> See Petition at 13.

<sup>20</sup> *USF/ICC Transformation Order*, ¶139.

the average per-location support amount based on the *total* locations to be served by FairPoint using CAF Phase I incremental support in Maine and Vermont.

**II. CAF PHASE I WAS INTENDED TO ADDRESS THE RURAL-RURAL DIVIDE AND GRANT OF THE FAIRPOINT WAIVER FURTHERS THE COMMISSION’S EFFORTS IN BRINGING BROADBAND TO THE MOST RURAL PARTS OF THE COUNTRY**

In reforming the universal service system, the Commission recognized that “a ‘*rural-rural*’ divide persists in broadband access,” noting that “some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access.”<sup>21</sup> More importantly, the Commission recognized that price cap carriers can play an important role in solving the rural-rural divide and accordingly it allocated \$300 million in incremental CAF Phase I support specifically to price cap carriers in order to begin the “process of closing the rural-rural divide” for “areas served by price cap carriers in a manner consistent with [its] overall budget goals and the more limited purpose of Phase I.”<sup>22</sup> Yet, the amount of this incremental support that was elected by price cap carriers demonstrates even more clearly the cause of the rural-rural divide, specifically the high costs of providing service in areas for which there is no business case to support the investment needed. FairPoint’s request for a waiver of the Commission’s \$775 per unserved location rule is just one case in point.

As FairPoint demonstrates in its Petition, the cost of bringing broadband to the most rural areas of this country, and its service territory in particular, is tremendous and the costs of serving these most rural area can vary significantly according to the characteristics of the service territory. Seeing the true costs of serving FairPoint’s most rural areas, as detailed in its Petition, permits the Commission to recalibrate its per unserved location support amount in order to fulfill

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<sup>21</sup> *USF/ICC Transformation Order*, ¶ 7 (emphasis added).

<sup>22</sup> *See USF/ICC Transformation Order*, note 201.

the rapid broadband deployment goals of the CAF Phase I incremental support program. Accordingly, this should steel the Commission's resolve to end the rural-rural divide,<sup>23</sup> recognizing that the \$775 in support per unserved location rule was based on an unrealistic benchmark. FairPoint is committed to bringing broadband to the most rural parts of its service territory, evidenced by its contribution of substantial amounts of its own resources that enable it to comply with the requirements of accepting CAF Phase I incremental support in its initial election, but it cannot further extend broadband to these most rural areas without a waiver of the \$775 in support per unserved location rule.

### **III. THE COMMISSION SHOULD NOT RELEGATE THE MOST RURAL HIGH-COST AREAS TO THE REMOTE AREAS FUND FOR BROADBAND DEPLOYMENT**

The rural-rural divide cannot be bridged by relegating all of the highest-cost areas of the country to support from the Remote Areas Fund ("RAF") for broadband deployment. WISP seems to suggest that any rural area for which there is no business case for accepting CAF Phase I incremental support should be deemed remote and funded through the RAF.<sup>24</sup> WISP overlooks the fact that only \$100 million has been allocated to the RAF. This amount of support is simply insufficient to provide broadband to all locations that will remain unserved after CAF Phase I incremental support and CAF Phase II support has been exhausted. Even if all the CAF Phase I incremental support had been elected by price cap carriers at the \$775 per unserved location rule, there would be many rural locations that still would not be served by broadband and that would be candidates for CAF Phase II support or RAF support. Moreover, the Commission should not

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<sup>23</sup> The Commission recently found that the "best data available indicate that more than 20 million Americans lack access to broadband that meets the benchmark set forth in the *Seventh Broadband Progress Report*. [footnote omitted] Significantly approximately 73 percent of these Americans reside in rural areas. [footnote omitted]" "Bringing Broadband to Rural America: Update to Report on a Rural Broadband Strategy," GN Docket No. 11-16 (June 17, 2011).

<sup>24</sup> WISP Opposition at 8.

subject more unserved locations than necessary to some unnamed technology to provide broadband with RAF funds. It is already known that satellite technology is inadequate and unproven for providing broadband at Commission designated speeds in the most rural and remote areas,<sup>25</sup> yet more than half of the CAF Phase I incremental support fund may not be put to its best and intended use of deploying broadband to some of the most rural areas served by price cap carriers when these carriers can provide broadband at reliable speeds and conditions. Allowing these rural areas to remain unserved by broadband when there are funds that could be used now to provide broadband in the near term, reserving or transferring the unused funds for another purpose, is not a prudent use of the funds that were intended to begin the process of ending the rural-rural divide.

#### IV. CONCLUSION

For these reasons, FairPoint continues to urge the Commission to grant its requested waiver of the Commission's Rules 47 C.F.R. § 54.312(b)(2) and (3).

Respectfully submitted,

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<sup>25</sup> In the National Broadband Plan the Commission recognized that satellite providers and wireless Internet service providers compete for broadband customers, but it stressed that “their services tend to be either more expensive or offer a lower range of speeds than today’s wireline offerings.” Connecting America: The National Broadband Plan at 37.