BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
FairPoint Communications, Inc.	)	WC Docket No. 10-90
Petition for Waiver of Section 54.313(c)	)	
of the Commission's Rules, 47 C.F.R. 54.313(c)	)	WC Docket No. 05-337

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom")[1] submits these comments, pursuant to the Public Notice of the Wireline Competition Bureau "(*Notice*"),[2] on the Petition for Waiver of Section 54.313(c) of the Commission's rules requested by FairPoint Communications, Inc. ("*Petition*").[3] Section 54.313(c) requires price cap recipients of frozen high-cost support to certify annually that a percentage of the frozen high-cost support received in a given year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.[4] FairPoint seeks a waiver of Section 54.313(c) as it applies to Interstate Access Support ("IAS"), Interstate

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] *See* Public Notice, DA 13-213, released February 14, 2013, Wireline Competition Bureau Seeks Comments on the Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket Nos. 10-90, 05-337.

[3] FairPoint Communications, Inc. Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (filed February 8, 2013).

[4] *Petition* at page 2.

Common Line Support ("ICLS"), and Local Switching Support ("LSS") because such support is already "spoken for" elsewhere in the Commission's rules.[5]

This rule conflict affects all price cap incumbent local exchange carriers, and USTelecom and several price cap carriers have urged the Commission to issue on its own motion an order clarifying this conflict and adopting the same substantive solution as is requested in the instant *Petition*: the application of frozen IAS, ICLS and LSS to the calculation of interstate access charges, and exclusion of these categories of support from the Section 54.313(c) requirement.[6] In the absence of such a *sua sponte* clarification, USTelecom supports the grant of FairPoint's waiver petition and the grant of identical relief to all price cap ILECs. The Commission should act promptly, as the broadband requirements affect spending obligations for the current calendar year.

I. The Commission Should Resolve the Conflict in the Rules

Certain language in the *USF/ICC Transformation Order* and rules appears to direct companies to allocate frozen IAS and frozen ICLS annually, at amounts equal to 2011 support levels, to the calculation of interstate access charges.[7] FairPoint also receives LSS which is also used in the calculation of interstate access charges. Other language in the *Order* and rules appears to direct carriers to spend increasingly large amounts of frozen high-cost support,

[5] FairPoint is the only price cap LEC that receives both legacy IAS and legacy ICLS and also operates rate-of-return companies that are treated as price cap companies for inter-carrier compensation (ICC) purposes.

[6] *See, e.g.*, Letter from David Cohen, Vice President, Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Jan. 31, 2013).

[7] *See* 47 C.F.R. § 54.312(a)(3) and *Connect America Fund et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 152 (Order), *pets. for review pending* sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

defined to include IAS, ICLS, and LSS, to build and operate broadband networks in certain areas.[8] Funding cannot be applied to both purposes at the same time. The Commission should resolve this conflict by permitting the application of IAS, ICLS and LSS to the calculation of interstate access charges by all price cap carriers through either the requested waiver of 54.313(c) or a clarifying order.

Frozen IAS and ICLS, discussed in sections 54.312 and 54.313, should be used for the purpose for which they were designed: to compensate carriers for required reductions in interstate access charges and mandated limits on end-user charges.[9] Carriers receiving LSS, including formerly rate-of-return ILECs that converted to price caps as well as rural ILECs that are treated as price cap ILECs under the *Order* because they are affiliated with a price cap carrier, require the same clarification. LSS, along with ICLS, historically helped ensure that ILECs could maintain services in rural high-cost areas without excessively burdening end-user rates.

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[8] *See* 47 C.F.R. § 54.313(c)(2)-(4). In 2013, price cap carriers are to spend one-third of their frozen high-cost support on broadband. In 2014 and 2015, the share of frozen high-cost support that is to be spent toward broadband increases to two-thirds and 100 percent, respectively. If CAF Phase II is not implemented prior to the end of 2013, FairPoint will be obligated to demonstrate that it has spent $13,841,492 to build and operate broadband-capable networks (*see Petition* at page 5.)

[9] Although the treatment of frozen ICLS for carriers that have converted study areas to price cap regulation is slightly different than for legacy IAS study areas, the intent of frozen ICLS is identical; to constrain end-user charges. Legacy IAS treatment is outlined in Commission rules, while price cap ICLS treatment is generally addressed in each company's respective waiver order, which is the effective rule for that company. FairPoint falls into both categories – it receives legacy IAS as well as ICLS pursuant to its waiver orders. *See Petition* at page 5. FairPoint also receives frozen ICLS attributable to its rate-of-return study areas that are treated as price cap for USF purposes under the *Order*.

As data filed by several price cap carriers last week demonstrates,[10] if the Commission chooses to require carriers to apply a portion of the access replacement funding to broadband deployment, it will result in an increase in many end user charges and revenue shortfalls for price cap carriers that will diminish overall network investment. If carriers are required to apply one-third of frozen IAS toward broadband rather than toward constraining end-user charges, such carriers would be required to raise Subscriber Line Charges ("SLCs") in study areas where they are not already at the cap. However, even after raising SLCs to the caps, and in other study areas where SLCs are already at the maximum levels set by the Commission's rules, carriers would be denied appropriate recovery because of the end user charge limitations embodied in the rules. Moreover, price cap carriers who receive frozen ICLS support pursuant to the terms of price cap conversions are not permitted to make up support reductions through increases in SLCs absent waivers, and even assuming such carriers are able to obtain waivers to raise end user rates, as with IAS, they would be constrained in many study areas by the SLC, PICC and CCL limitations. Carriers receiving frozen LSS will no longer be able to use that support reduce the Eligible Recovery amount associated with the intercarrier compensation transition,[11] and the higher Eligible Recovery amount will lead to higher Access Recovery Charges ("ARCs") and, where ARCs are already at the allowed maximum, higher Connect America Fund ("CAF") ICC support amounts. As FairPoint explains, even with added CAF ICC, such carriers would experience revenue shortfalls.[12]

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[10] *See,* Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (March 14, 2013), with attached data illustrating the potential fiscal effects of the tension between the conflicting rules on support, access, and subscriber charges.

[11] *See* 47 C.F.R. §§ 51.915, 51.917.

[12] *See Petition* at page 11.

II. Waiver or Clarification Would Prevent Undue Hardship to FairPoint and Other Price Cap Carriers and Their Customers

Absent waiver or clarification of the conflict in the rules, FairPoint and other price cap carriers would be unable to recover sufficient revenues to continue investing in its network at current levels, and would likely raise end-user rates to the extent permitted to make up a portion of the amount it is forced to divert to broadband deployment.[13] Neither of these impacts is beneficial for voice or broadband customers.[14] The overall purpose of the *Order* is best achieved by continuing to use IAS, ICLS and LSS to compensate carriers for required reductions in interstate access charges and mandated limits on end-user charges. Absent waiver or clarification FairPoint would be forced to raise end-user rates (through a combination of SLC and ARC increases) on all subscribers, and would face under-recovery of nearly $6 million for 2013 alone.[15] Likewise, Alaska Communications Systems, AT&T, CenturyLink, Verizon and Windstream combined would face under-recovery of more than $80 million in 2013, and many of their residential and business customers will face substantial rate increases.[16]

III. Conclusion

For the foregoing reasons, the Commission should issue on its own motion an order clarifying the rules conflict discussed above and adopting the same substantive solution as is requested in the instant *Petition*: the application of frozen IAS, ICLS and LSS to the calculation

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[13] *Id* at page 10.

[14] *See Petition* at page 11 which details the customer impacts in FairPoint's territory of not permitting IAS, ICLS and LSS to be used in the calculation of interstate access charges.

[15] *See Petition* at page 12.

[16] *See*, Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (March 14, 2013), with attached data illustrating the potential fiscal effects of the tension between the conflicting rules on support, access, and subscriber charges.

of interstate access charges, and exclusion of these categories of support from the Section 54.313(c) requirement. In the absence of such a *sua sponte* clarification, the Commission should promptly grant FairPoint's waiver petition and grant identical relief to all price cap ILECs.

Respectfully submitted,

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