

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS
of the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES,
WESTERN TELECOMMUNICATIONS ALLIANCE, and the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.
on
FAIRPOINT COMMUNICATIONS, Inc.’s
PETITION FOR LIMITED WAIVER OF THE COMMISSION’S
CALL SIGNALING RULES**

FairPoint Communications, Inc., on behalf of its wholly-owned regulated subsidiaries, seeks a waiver of the Commission’s newly-adopted call signaling rules with respect to certain

SS7 network elements and multifrequency (“MF”) signaling equipment.¹ FairPoint states its subsidiaries comprise a group of companies, many in rural areas, with a wide variety of legacy switches and signaling equipment. It asserts it makes little sense to invest significantly in SS7 network elements and MF signaling equipment for intercarrier compensation (“ICC”) purposes given the transition away from these technologies in favor of Internet protocol (“IP”)-based solutions and, eventually, to a full bill-and-keep regime. FairPoint also indicates it will take time to fully evaluate the capabilities of its signaling equipment and to implement new solutions where it is possible to do so.²

The above-named Associations, representing rural rate-of-return regulated incumbent local exchange carriers (“RLECs”),³ do not oppose grant of a waiver to FairPoint that is limited to circumstances identified in its petition, provided that such waiver is subject to the same limitations and conditions as those the Associations recommended for prior waiver requests.⁴

¹ FairPoint Communications, Inc. Petition for Limited Waiver, WC Docket No. 10-90, *et al.* (filed Mar. 28, 2012) (*Petition*).

² *Id.* at 2.

³ The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural RoR regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 420 small ILECs serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241(1983).

⁴ *See, e.g.*, Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al.*, at 5-7 (filed Feb. 9, 2012) (Comments on AT&T’s Petition); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al.*, at 6 (filed Feb. 29, 2012) (Comments on CenturyLink’s Petition); Comments of NTCA, OPASTCO, WTA, and NECA, WC Docket No. 10-90, *et al.*, at 5 (filed Apr. 9, 2012) (Comments on Hawaiian Telecom’s Petition); Comments

These limitations and conditions would include a requirement that companies obtaining waivers provide lists of the switch locations covered by such waivers and provision to terminating carriers information necessary to audit Percent Interstate Usage (“PIUs”) and/or call records.

I. INTRODUCTION

In its November 18, 2011 USF and ICC Transformation Order,⁵ the Commission amended its call signaling rules to require transmission of call signaling information on all traffic originating or terminating on the public switched telephone network (“PSTN”). In addition to rules requiring transmission of the Calling Party Number (“CPN”) data on all calls, the Commission also imposed a requirement that the Charge Number (“CN”) be passed unaltered where it is different from the CPN.⁶ The Order further makes clear that the CN field may only be used to contain a calling party’s charge number, and not contain or be populated with a number associated with an intermediate switch, platform, or gateway, or other number.⁷ The Commission also amended its rules to require service providers still using MF signaling to pass

of NTCA, OPASTCO, WTA, and NECA, WC Docket No. 10-90, *et al.*, at 6 (filed Mar. 19, 2012) (Comments on Verizon’s Petition).

⁵ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF and ICC Transformation Order* or *Order*).

⁶ *Id.* ¶ 714.

⁷ *Id.*

the number of the calling party (or CN, if different) in the MF Automatic Number Identification (“ANI”) field.⁸

FairPoint requests waiver of the new call signaling rules with respect to certain of its SS7 network elements and MF signaling equipment. FairPoint states its subsidiaries comprise a group of companies, many in rural areas, with a wide variety of legacy switches and signaling equipment, and its ongoing review of these networks indicates there are circumstances in which it will not be possible for FairPoint to comply fully with the new call signaling rules.⁹ FairPoint asserts it makes little sense to invest significantly in SS7 network elements and MF signaling equipment for ICC purposes given the transition away from these technologies in favor of IP-based solutions and, eventually, to a full bill-and-keep regime.¹⁰ FairPoint also indicates it will take time to fully evaluate the capabilities of its signaling equipment and to implement new solutions even where it is possible to do so.¹¹

Specifically, FairPoint requests a waiver of the requirement to originate and pass CN (if different from CPN) for non-Equal Access (“EA”) traffic traversing its SS7 switches if compliance would require upgrades or replacement of the SS7 capable equipment.¹² FairPoint asserts such a waiver will not undermine the efficacy of the call signaling rules because downstream carriers will still receive CPN for all non-EA traffic and thus be able to verify that FairPoint is the originating carrier.¹³ FairPoint explains significant software upgrades and modifications would be necessary before it could fully implement the new requirements for all

⁸ *Id.* ¶ 716.

⁹ *Petition* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 4-5.

SS7 switches. Furthermore, full compliance will never be feasible for a smaller subset of its SS7 switch equipment that is no longer supported by any vendor; thus entire switch replacements would be needed.¹⁴

Second, FairPoint requests a waiver of the requirement to transmit CPN or CN in the MF signaling ANI field for non-EA traffic if compliance would require upgrades or replacement of the MF capable equipment.¹⁵ FairPoint asserts such a waiver will not undermine the efficacy of the call signaling rules because the affected downstream carriers are very few, are generally directly interconnected and well known to FairPoint, and they will still receive ANI for all non-EA traffic and thus be able to verify that FairPoint is the originating carrier.¹⁶ FairPoint claims it would need to replace all of its existing MF equipment in order to comply with the new rule, and asserts even then this would likely be futile since, as a general rule, FairPoint's Feature Group C trunks are in place as an accommodation to a terminating carrier that cannot support SS7 signaling.¹⁷

FairPoint argues in light of the significant financial and operational burdens to fully implement the new rules regarding passage of CN for non-EA calls employing SS7 signaling and calls utilizing MF signaling, and what FairPoint claims is the relatively small benefit terminating carriers may obtain from receiving this information, grant of a limited waiver is warranted.¹⁸

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

II. DISCUSSION

The Commission declined to adopt a general technical infeasibility exception to its revised call signaling rules,¹⁹ indicating parties seeking limited exceptions or relief of the rules may avail themselves of the Commission's established waiver procedures.²⁰ While the Commission has stated on many previous occasions that waivers under section 1.3 of the rules "will not be granted routinely," it has frequently cited hardship, equity, and public policy considerations as reasons for granting requested waivers.²¹

The Associations do not object to grant of waivers of the new call signaling rules that are limited in scope to instances involving older generation technology that is neither SS7 nor IP. Consistent with comments filed on recent, similar waiver petitions, the Associations suggest that any waiver granted by the Commission, including any waiver granted FairPoint in this instance, include requirements for the carrier to publish a list of switches covered by the waiver, to provide terminating carriers with information necessary to audit PIUs and/or call records, and to submit reports to the Commission at regular intervals detailing the status of the carrier's efforts to upgrade its network to come into compliance with the rules.²²

¹⁹ *Id.* at 3, citing *Order* ¶ 723.

²⁰ *See id.*

²¹ Traditional standards for grant of Commission waivers were reviewed in *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. In the *Order*, however, the Commission announced without explanation that it will apply far more stringent standards to petitions for waiver of rules limiting high-cost support levels, despite extensive showings such rules will have unintended and unreasonable impacts on RLECs and rural consumers. *See, e.g.*, Petition for Reconsideration and Clarification of NECA, OPASTCO and WTA, WC Docket No. 10-90, *et al.*, at 19-22 (filed Dec. 29, 2011). It is critical the Commission apply uniform standards to parties seeking waivers of its rules. In the absence of a reasoned explanation for revising its standards, the Commission must continue to apply criteria previously developed under section 1.3 of its rules.

²² The Associations note that in its reply comments on its own waiver petition, AT&T claims such conditions are unnecessary and costly. *See* Reply Comments of AT&T, Inc., WC Docket

The Associations do not oppose grant of a waiver for calls originating on FairPoint's legacy switches employing MF signaling and for non-EA calls from local SS7 switches. The Commission should, however, require FairPoint to publish a list of switches covered by the waiver, provide terminating carriers with information necessary to audit PIUs and/or call records, and submit reports at regular intervals detailing the status of its efforts to upgrade its network to come into compliance.

III. CONCLUSION

The Associations recognize there may be some limited circumstances where the costs of compliance with the Commission's new call signaling rules outweigh the benefits, and accordingly do not oppose grant of limited waivers as described above. However, terminating carriers continue to need information to render accurate ICC bills. Therefore, the Associations recommend that any grant of a waiver to FairPoint include requirements for it to publish a list of switches covered by the waiver, provide terminating carriers with information necessary to audit

No. 10-90, *et al.*, at 6 (filed Feb. 24, 2012). However, each carrier requesting a waiver has indicated it has identified where the limited, specified waiver is supposedly required, and therefore have apparently already identified the switches that are not capable of meeting the new rules. Thus, preparing a list of already identified switches should not be terribly burdensome. Moreover, the idea that a carrier seeking special permission to send what would otherwise clearly be phantom traffic should bear no burden to ensure that the limits of that permission are well-defined and narrowly confined is highly problematic. It begs the question of what else might "leak through" if the waiver is granted. If the Commission is committed to solving the phantom traffic problem, it will: (a) make sure its rules govern; and (b) make sure that where providers are granted a limited waiver of those rules, it is unmistakably clear to what that limited waiver applies.

PIUs and/or call records, and submit reports at regular intervals detailing the status of its efforts to upgrade its network to come into compliance

Respectfully submitted,

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May 4, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 4th day of May, 2012, by electronic filing and e-mail to the persons listed below.

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