



PUBLIC NOTICE

Federal Communications Commission
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DA 13-1166
Released: May 20, 2013

**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON
FAIRPOINT COMMUNICATIONS, INC. PETITION FOR DECLARATORY RULING OR, IN
THE ALTERNATIVE, PETITION FOR WAIVER TO PROVIDE BROADBAND INTERNET
ACCESS SERVICE ON A NON-COMMON CARRIER BASIS**

CC Docket No. 02-33; WC Docket No. 10-90

Comment Date: June 10, 2013

Reply Comment Date: June 20, 2013

On May 1, 2013, FairPoint Communications, Inc. (“FairPoint”) filed a petition for declaratory ruling or, in the alternative, a petition for waiver of the Commission’s rules so that FairPoint may provide broadband Internet access on a non-common carrier basis.¹ Specifically, FairPoint “seeks a declaratory ruling that its rate-of-return (“ROR”) incumbent local exchange carriers (“ILECs”) subsidiaries that offer wireline broadband Internet access transmission services (“BBIAS”) on a common carrier basis may elect blanket certification to discontinue BBIAS as a common carrier service while following the [Part 69] cost allocation rules that the Commission adopted for price cap carriers as set forth in its *2005 Broadband Internet Access Order*.”² In the alternative, FairPoint seeks “a waiver as necessary for the FairPoint ROR ILECs to elect to provide non-common carrier BBIAS subject to the same [Part 69] cost allocation treatment as price cap carriers under the *2005 Broadband Internet Access Order*.”³ FairPoint argues that it is uniquely situated following adoption of the *USF/ICC Transformation Order*,⁴ that enforcement of the Commission’s Part 64 cost allocation rules would not serve the Commission’s policy goals, and that, in the alternative, a waiver would be equitable and in the public interest.⁵

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the date indicated above. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹ FairPoint Communications, Inc. Petition for Declaratory Ruling or, in the Alternative, Petition for Waiver to Provide Broadband Internet Access Service on a Non-Common Carrier Basis, CC Docket No. 02-33, WC Docket No. 10-90 (filed May 1, 2013) (Petition).

² *Id.* at 1, 11-13 (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, CC Docket No. 02-33 et al., Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14924-27, paras. 128-38 (2005) (*2005 Broadband Internet Access Order*)).

³ Petition at 2-3, 13-14 (citing *2005 Broadband Internet Access Order*, 20 FCC Rcd at 14927, para. 138).

⁴ See *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 (2011).

⁵ See Petition at 3, 13-14.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

⁶ 47 C.F.R. §§ 1.1200 *et seq.*

For further information, please contact Christopher S. Koves, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-1520 or *via* email at Christopher.Koves@fcc.gov.

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