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

In the Matter of

Connect America Fund
Developing a Unified Intercarrier Compensation Regime
Establishing Just and Reasonable Rates For Local Exchange Carriers

WC Docket No. 10-90
CC Docket No. 01-92
WC Docket No. 07-135

COMMENTS

of the

NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.

By petition dated December 10, 2015, FairPoint Communications, Inc. (FairPoint) has asked the Commission for a declaratory ruling directing the National Exchange Carrier Association, Inc. (NECA) to recalculate Eligible Recovery (ER) amounts for certain of FairPoint’s rate-of-return (RoR) study areas. According to FairPoint, the calculation of ER amounts for the affected study areas performed by NECA for data months since January 1, 2015 has not been in accordance with section 51.917 of the Commission’s rules. As a result, FairPoint claims it is not receiving the full amount of Connect America Fund - Intercarrier Compensation


2 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).
(CAF-ICC) Transition support to which it is entitled. FairPoint requests the Commission accordingly issue a declaratory ruling directing NECA to correct its calculation of ER for FairPoint’s affected study areas retroactive to January 1, 2015, so that full CAF-ICC Transitional Support funding can be restored to FairPoint.

NECA agrees the rules governing such calculations are less than clear as applied to FairPoint’s particular circumstances, and accordingly supports issuance of a declaratory ruling to resolve the issue.

I. BACKGROUND

FairPoint explains in its petition that it operates local exchange carriers (LECs) under price cap regulation in three states and under RoR regulation in 15 states. FairPoint’s RoR affiliates participate in NECA’s access charge pools. As pool administrator, NECA calculates ER amounts for FairPoint’s participating study areas. These calculations, in turn, determine the amount of CAF-ICC Transition Support FairPoint is entitled to receive from the Universal Service Administrative Company (USAC).

Beginning January 1, 2012, legacy high-cost universal service support provided to price cap carriers and RoR companies affiliated with price cap carriers was replaced by Frozen CAF Phase I Support. A portion of Frozen CAF Phase I Support was attributable to Local Switching Support (LSS). Beginning July 1, 2012, former LSS amounts were replaced by the CAF-ICC Transition Support pursuant to section 51.917 of the Commission’s rules.

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3 Petition at 3.
4 Id. at 8-9.
As FairPoint correctly points out, section 51.917 contains a provision prohibiting “double recovery” of Universal Service Support amounts. The rule specifically requires that “[a]ny duplicative recovery shall be reflected as a reduction to a carrier’s Eligible Recovery calculated pursuant to [s]ection 51.917(d) of this Part.”

Consistent with this rule, NECA began making adjustments to FairPoint’s ER amounts beginning in July 2012, to avoid double recovery of USF support amounts through both Frozen CAF Phase I Support and CAF-ICC Transition Support. FairPoint does not appear to dispute that such adjustments were made in accordance with Commission rules. The instant petition instead relates to calculation of FairPoint’s ER for data months beginning January 1, 2015. As of that date, FairPoint’s election to accept CAF Phase II Right-of-First-Refusal (ROFR) support became effective, and its CAF Phase I Frozen Support was eliminated. In FairPoint’s view, CAF Phase II support amounts do not contain any compensation related to the former LSS mechanism. Therefore, in FairPoint’s view, there is no longer any danger of double recovery of LSS-derived amounts via both CAF Phase II support and CAF-ICC Transitional Support for FairPoint’s RoR study areas.

FairPoint accordingly claims adjustments to its ER to avoid potential duplicative recovery are no longer warranted as of January 1, 2015. FairPoint states NECA’s continuing adjustments cause it to lose approximately $4.2 million in support on an annual basis. It

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5 Id. at 7, citing 47 C.F.R. §51.917(d)(1)(iii)(D)(vii).
6 Id.
7 See id. at 6-8.
8 Id. at 10-11, 15. FairPoint also points out that in two of states in which it operates RoR affiliates, the reduction actually exceeds FairPoint’s CAF II funding, resulting in it effectively receiving “negative” CAF II funding. Id. at 21.
requests the Commission direct NECA to recalculate FairPoint’s ER so as to restore such funding, retroactive to January 1, 2015.

II. DISCUSSION

NECA agrees the rules governing calculation of ER amounts, at least in the particular circumstances faced by FairPoint, are not clear and that a ruling by the Commission on this issue would be helpful. FairPoint correctly states that Frozen CAF Phase I Support amounts, which explicitly incorporated former LSS support payments, terminated when FairPoint accepted CAF Phase II ROFR effective January 1, 2015. However, the Commission’s intent regarding the scope of model-based payments provided under CAF Phase II is not specifically defined.

While the rules do not explicitly direct continued adjustments of ER amounts after a RoR affiliate of a price cap ILEC elects to receive CAF Phase II ROFR support, neither do they direct that such adjustments cease when a carrier’s CAF Phase II ROFR election becomes effective.\(^9\) Lacking such specific direction, NECA exercised its judgment in interpreting the Commission’s rules, as it is required to do,\(^10\) and elected to continue adjusting FairPoint’s ER in accordance with prior practice under the CAF Phase I rules, pending FCC clarification.

Should the Commission determine that FairPoint is correct and that its ER adjustments related to former LSS amounts beginning January 1, 2015 are not required, NECA is prepared to file immediate increases to FairPoint’s ER amounts as directed by the Commission. On the other hand, in the event the Commission determines that such LSS adjustments continue to be

\(^9\) Ceasing these adjustments would result in an increase in ER and, assuming other data remain constant, an increase in CAF-ICC support.

warranted, the Commission should make clear FairPoint is not entitled to recover LSS-related revenue requirements via the NECA traffic-sensitive pool. Such clarification is warranted in order to avoid imposing unfair burdens on other pool members to cover these amounts, and the potential for additional controversy in this complex area.¹¹

III. CONCLUSION

For the reasons described above, NECA agrees the specific CAF-ICC rules governing such calculations are unclear, and supports issuance of a ruling by the Commission clarifying application of the rules in the particular circumstances faced by FairPoint. As discussed above, NECA stands ready to revise and refile with the Commission FairPoint’s ER amounts for the periods beginning January 1, 2015 and forward as directed by the Commission, should the Commission agree with FairPoint. In the event the Commission disagrees with FairPoint’s

¹¹ The Commission should also act promptly to resolve the issues raised in FairPoint’s Petition. Given the timing of the 2016 annual access tariff filing, a decision to include or exclude LSS revenues from the calculation of ER and ARC rates for the FairPoint study areas is needed by May 1st, in order to allow for processing and certification of CAF-ICC data by officers of companies participating in the NECA tariff filing. In addition, the Commission should clarify in their response as to whether the imputation of ARC revenues for prior periods under FCC 51.917(f)(2) applies here.
interpretation of the rules, NECA respectfully requests the Commission clarify that FairPoint is not entitled to recover LSS-related revenue requirements via the NECA pools.

Respectfully submitted,

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