



PUBLIC NOTICE

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DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Domestic Section 214 Applications of FairPoint Communications, Inc., Debtor-In-Possession, and FairPoint Communications, Inc. for Transfer of Control and Assignment of Section 214 Authority

WC Docket No. 10-126

By the Chief, Wireline Competition Bureau:

Pursuant to section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, the Wireline Competition Bureau (Bureau) approves the application of FairPoint Communications, Inc. (FairPoint), Debtor-in-Possession before the United States Bankruptcy Court (Court), requesting Commission approval for various assignments and transfers of control of licenses and authorizations.¹ The Bureau has determined that grant of this application serves the public interest,² and accordingly the application is granted pursuant to the Commission's procedures for domestic section 214 transfer of control applications.³

On June 25, 2010, the Commission released a public notice accepting the application for non-streamlined processing. On July 26, 2010, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the Executive

¹ FairPoint Communications, Inc., Debtor-in-Possession and FairPoint Communications, Inc., Application for Consent to Assign Domestic Section 214 Authority, WC Docket No. 10-126 (filed June 3, 2010) (Application); *Applications of FairPoint Communications, Inc., Debtor-In-Possession, and FairPoint Communications, Inc. for Assignment and Transfer of Control of Section 214 Authority*, WC Docket No. 10-126, Public Notice, 25 FCC Rcd 8181 (2010). Biddeford Internet Corporation; Freedom Ring Communications LLC, d/b/a BayRing Communications; Mid Maine Telplus and CRC Communications of Maine, Inc., collectively d/b/a OTT Communications; One Communications, Inc.; Otel Telekom, Inc.; and segTEL, Inc. (Joint Commenters) jointly filed comments addressing the application on July 26, 2010. FairPoint filed a reply to the comments on August 10, 2010. In addition, on October 7, 2010, The Destek Group, Inc. filed a petition with the Commission seeking reconsideration of the Settlement Agreement and Bankruptcy Reorganization Plan filed in the Bankruptcy Court. We have no authority or jurisdiction over the Bankruptcy Court's proceedings, and we therefore deny Destek's petition.

² *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5529, para. 22 (2002).

³ 47 C.F.R. § 63.03.

Branch Agencies), filed a letter requesting that the Commission defer action on this application while they reviewed potential national security, law enforcement, and public safety issues.⁴ Consistent with Commission precedent, the Wireline Competition Bureau deferred action on the application in response to the Executive Branch Agencies' request.⁵ On August 18, 2010, the Executive Branch Agencies withdrew their request to defer action, stating that they have no comment regarding the applications.⁶

The Joint Commenters argue that, unless the Bureau imposes conditions, approval of the transaction would facilitate anticompetitive conduct by FairPoint,⁷ expressing concern that FairPoint's record in Maine, New Hampshire, and Vermont indicates that FairPoint may attempt to avoid its obligations regarding the provision of service to competitive local exchange carriers (LECs).⁸ Specifically, Joint Commenters request that the Commission confirm that FairPoint will continue to be subject to all duties and obligations that were required by the Commission's *Verizon/FairPoint Order*,⁹ including obligations pursuant to sections 251, 252, and 271 of the Act.¹⁰ Finally, Joint Commenters ask that the Commission require that any interconnection agreement; pole attachment agreement; service relationship between FairPoint and an interconnecting LEC; Statement of Generally Available Terms and Conditions (SGAT); or state or federal wholesale tariff continue in full force and effect until either (1) the expiration of that agreement, service relationship, SGAT, or tariff by its own terms, or (2) FairPoint and the interconnecting LEC enter into a new agreement or service relationship, or FairPoint has a new SGAT or tariff approved.¹¹

⁴ Letter from Siobhan E. Dupuy, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 10-126 (filed Jul. 26, 2010).

⁵ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

⁶ Letter from Richard C. Sofield, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 10-126 (filed Aug. 18, 2010).

⁷ *See* Comments of Joint Commenters, WC Docket No. 10-126 (filed Jul. 26, 2010) (Joint Comments).

⁸ Joint Comments at 7.

⁹ *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd 514 (2008) (*Verizon/FairPoint Order*).

¹⁰ Joint Comments at 1-2, 8; *see also* 47 U.S.C. §§ 251, 252, 271.

¹¹ Joint Comments at 2, 9-10. We note that at least one of the Joint Commenters, OTT, availed itself of the bankruptcy court process to resolve this issue with respect to its own interconnection agreements with FairPoint, and therefore does not join that particular request for relief here. *See id.* at nn.4-5. The record is silent as to whether the remaining commenters attempted to do the same, or why they did not do so.

In response, FairPoint asserts that the Joint Commenters fail to cite any specific examples of FairPoint failing to meet its statutory or regulatory obligations, and merely speculate about potential harms that could result if FairPoint were to take certain actions.¹² FairPoint notes that it will remain subject to the Act and the Commission's rules and that its federal statutory obligations are not in dispute.¹³ In addition, FairPoint notes that the Joint Commenters will continue to be able to avail themselves of state and federal procedures, including the Commission's complaint procedures, for enforcing sections 251, 252, and 271 of the Act.¹⁴ Further, FairPoint argues that Joint Commenters primarily take issue with the bankruptcy process, which lies within the exclusive jurisdiction of the federal courts, and specifically with the fact that "federal law permits debtors like FairPoint to reject certain executory contracts – including interconnection agreements and other intercarrier arrangements – as part of the bankruptcy process."¹⁵ FairPoint, however, points out that it has not rejected any interconnection agreement to date, that rejection of any such agreement would require negotiation of a new arrangement consistent with its statutory obligations,¹⁶ that "FairPoint has stated that it will honor the terms and conditions of an interconnection agreement while negotiating a new interconnection agreement,"¹⁷ and that objections or issues with FairPoint's right to reject a contract may be brought before the bankruptcy court.¹⁸

After careful consideration of the record in this proceeding, we conclude that the concerns raised by the Joint Commenters are not sufficient to persuade us to impose conditions on the terms of the transfer. As an initial matter, we note that facilitating the successful resolution of a bankruptcy proceeding is a factor in our public interest analysis.¹⁹ It is the Commission's policy to support the bankruptcy laws and, where possible, to accommodate them in a manner that is consistent with the Act.²⁰ The Commission has stated that facilitating a telecommunications service provider's successful emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors."²¹ Here, we find that the transaction is likely to result

¹² FairPoint Reply Comments at 5.

¹³ *Id.* at 2-3, 6-7.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 7; *see, e.g.*, Response of Lisa R. Hood, Interim Chief Financial Officer, FairPoint Communications, Inc., New Hampshire Public Utilities Commission Docket No. DT 10-025 (May 14, 2010) ("[I]n the event that FairPoint rejects an interconnection agreement with a CLEC prior to the effective date of the Plan, then FairPoint plans to continue to offer the CLEC the same services at the same rates, terms and conditions as contained in the rejected contract pending the parties' entering into to a new interconnection agreement.").

¹⁸ *Id.* at 3-4.

¹⁹ *WorldCom, Inc. and its Subsidiaries (debtor-in possession), Transferor, and MCI, Inc., Transferee*, WC Docket No. 02-215, Memorandum Opinion and Order, 18 FCC Rcd 26484, 26503, para. 29 (2003) (*WorldCom Order*).

²⁰ *Id.*; *see also Application of Orbital Communications Corp. and ORBCOMM Global, L.P., Assignors, and ORBCOMM License Corp. and ORBCOMM LLC, Assignees*, 17 FCC Rcd 4496, 4504, para. 15 (2002) ("Because this transaction permits the [licensee] to emerge from bankruptcy and continue operations, the competitive impact will be beneficial Successful emergence from bankruptcy is critical to the continued operation and expansion of the ORBCOMM system.").

²¹ *WorldCom Order*, 18 FCC Rcd at 26503, para. 29.

in certain public interest benefits, including allowing FairPoint to emerge from bankruptcy and restructure its operations in order to efficiently and effectively serve the public.²²

Furthermore, we find that Joint Commenters' concern that FairPoint will engage in future anticompetitive behavior is speculative and not supported by the record. Where competitors have raised allegations concerning past discriminatory conduct by parties to a transaction with respect to pole attachments, access to remote terminals, and unbundled loop requests, and asserted that they are likely to perpetuate the alleged anticompetitive behavior absent conditions, the Commission has been clear that those issues are more appropriately addressed in other proceedings.²³ While it is possible that actual changes to existing contracts between FairPoint and competitive LECs such as Joint Commenters could run afoul of statutory requirements, there is no allegation that such changes have been made here.²⁴ Indeed, FairPoint has stated that it will continue to honor the terms and conditions of an interconnection agreement while negotiating a new interconnection agreement. As FairPoint correctly notes, it will remain subject to its federal statutory obligations under the Act and the Commission's rules, and Joint Commenters will continue to be able to avail themselves of state and federal procedures to enforce sections 251, 252, and 271 of the Act.²⁵ In addition, the conditions and obligations imposed on FairPoint in the *Verizon/FairPoint Order* remain in full force and effect. We are thus satisfied that the proposed transaction is in the public interest and should be granted.

The Bureau finds, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity, and therefore grants the requested authorization. This grant is contingent on FairPoint obtaining final approval by the bankruptcy court of the proposed Amended Plan of Reorganization as submitted,²⁶ without any material changes apart from those changes set forth in the FairPoint Nov. 22 *Ex Parte*.²⁷ Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Alex Johns, (202) 418-1167, Competition Policy Division, Wireline Competition Bureau.

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²² Application at 2, 10.

²³ See *Applications Filed By Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5989, n.121 (2010) (stating that, in the absence of any basis for concluding that Frontier is likely to engage in anti-competitive behavior post-merger, pole attachment and other issues are more appropriately addressed in enforcement proceedings or rulemakings of general applicability).

²⁴ To the extent the dispute raised by Joint Commenters concerns the amount of money owed by FairPoint, an entity attempting to emerge from bankruptcy, that dispute is more appropriately addressed by the bankruptcy court.

²⁵ FairPoint Reply Comments at 2-3, 6-7.

²⁶ The Amended Plan of Reorganization was submitted on June 3, 2010 as an attachment to the Application.

²⁷ See Letter from Karen Brinkmann, Esq., Counsel for FairPoint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-126 (filed Nov. 22, 2010) (FairPoint Nov. 22 *Ex Parte*).