

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

In the Matter of)
FairPoint Communications, Inc.)
Petition for Declaratory Ruling Pursuant to)
Section 310(b)(4) of the Communications Act)

File No. FILED/ACCEPTED

JUN - 3 2010

Federal Communications Commission
Office of the Secretary

**PETITION FOR DECLARATORY RULING UNDER SECTION 310(B)(4)
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"),¹ and the Commission's *Foreign Participation Order*,² FairPoint Communications, Inc. ("FairPoint") and certain of its subsidiaries holding common carrier radio station licenses, each a debtor-in-possession (each a "Subsidiary" and, together with FairPoint, the "Petitioners"), hereby request that the Commission issue a declaratory ruling that it is in the public interest for certain institutional entities, funds, and other investment vehicles to take up to 100 percent indirect foreign ownership of the Petitioners, provided that less than 25 percent of such indirect foreign ownership is from non-World Trade Organization ("WTO") Member States. The Petitioners also request that the Commission permit the Petitioners to accept additional indirect foreign ownership beyond the interests held by the foreign entities identified herein to accommodate incremental shifts in ownership that may occur as a result of minor changes in the holdings of companies or individuals in the ownership chain.

¹ 47 U.S.C. § 310(b)(4).

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order*, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

I. BACKGROUND

FairPoint. FairPoint, a corporation formed in Delaware, is a leading provider of a full range of communications services to residential and business customers, including local and long-distance voice, data, Internet, television and broadband. FairPoint operates 33 local exchange companies in 18 states.³ With approximately 1.6 million access line equivalents, FairPoint is the seventh largest telecommunications holding company in the United States.

FairPoint provides service to its customers through a number of operating Subsidiaries, identified in Exhibit A hereto. FairPoint and these Subsidiaries hold a number of common carrier radio station licenses to which the foreign ownership restrictions set forth in Section 310(b)(4) of the Act apply. These licenses also are identified in Exhibit A hereto. With one exception, each Subsidiary is wholly-owned, directly or indirectly, by FairPoint.⁴ However, FairPoint's interest in each Subsidiary may be held through one or more wholly-owned holding companies directly or indirectly owning the equity in that Subsidiary. The name of each such holding company and its state of formation, if applicable, is specified in Exhibit B hereto. A simplified organizational diagram is provided in Exhibit C hereto.

The Chapter 11 Cases. On October 26, 2009, FairPoint and all of its direct and indirect subsidiaries (collectively, the "Company") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The cases are being jointly administered by the Bankruptcy Court under the caption *In re FairPoint*.

³ These include: (i) Alabama; (ii) Colorado; (iii) Florida; (iv) Georgia; (v) Idaho; (vi) Illinois; (vii) Kansas; (viii) Maine; (ix) Massachusetts; (x) Missouri; (xi) New Hampshire; (xii) New York; (xiii) Ohio; (xiv) Oklahoma; (xv) Pennsylvania; (xvi) Vermont; (xvii) Virginia; and (xviii) Washington.

Communications, Inc., Case No. 09-16335 (the “Chapter 11 Cases”). The Company continues to operate its business and manage its properties, with FairPoint and each subsidiary operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The filing of the Chapter 11 Cases resulted in the involuntary, *pro forma* assignment of the Commission licenses and authorizations held by each of FairPoint’s direct and indirect subsidiaries (*i.e.*, from subsidiary X to subsidiary X as debtor-in-possession), of which the Commission was properly notified.

The Proposed Transaction. On May 14, 2010, the Bankruptcy Court issued an Order substantially approving the Debtors’ Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated as of March 10, 2010, as modified on May 7, 2010 (the “Plan”).⁵ Pursuant to the Plan, and as of the effective date of FairPoint’s emergence from bankruptcy (the “Effective Date”), all existing equity interests in FairPoint will be cancelled and extinguished, and a single class of new voting common stock in FairPoint will be issued to certain holders of FairPoint’s secured debt and unsecured indebtedness. Each share of stock will be entitled to the same voting rights as every other share. More specifically, as of the Effective Date: (i) FairPoint’s secured lenders are expected to collectively receive approximately 92 percent of the common stock in FairPoint; and (ii) those individuals and entities currently holding the Company’s unsecured indebtedness are expected to collectively receive approximately 8 percent of the common stock in FairPoint. The Plan

⁴ Two shares of Sunflower Telephone Company, Inc., accounting for less than 0.5 percent of the ownership interests in that entity, are held by third parties.

⁵ The May 14, 2010 Order provides, among other things, that (i) the record of the Plan confirmation hearing is closed, and (ii) all parties in interest are precluded from raising any objections to confirmation other than with respect to certain discrete regulatory settlements, thereby substantially approving the Plan.

contemplates that FairPoint's common stock will be listed on a national securities exchange as of the Effective Date.

FairPoint's directors and officers are all United States citizens, and will have day-to-day control of FairPoint and the Subsidiaries. Further, as explained in greater detail below, FairPoint expects that a minimum of approximately 84 percent of the total equity and voting interests in FairPoint will be held by entities formed in the United States or other WTO Member States *and* either controlled by citizens of the United States or other WTO Member States (in the case of banks, insurance companies, pension plans, foundations and endowments) or with their principal places of business in the United States or other WTO Member States (in the case of private equity funds and management investment companies).⁶ Moreover, FairPoint is not aware of any prospective shareholder that is a citizen of, is controlled by, or has its principal place of business in a non-WTO Member State, or that is affiliated with a foreign carrier.

It is expected that only a single investor group, ultimately controlled personally by Messrs. John M. Angelo and Michael L. Gordon, both United States citizens (collectively "Angelo Gordon"), will own or control a 10 percent or greater ownership interest in FairPoint as of the Effective Date. More specifically, fourteen investment fund vehicles directly or indirectly controlled by AG Funds, L.P., a Delaware limited partnership controlled by Angelo Gordon, will hold an aggregate beneficial equity interest in FairPoint of approximately 15 percent. None of these investment fund vehicles individually, and no other subsidiary of AG Funds, L.P., will itself hold a 10 percent or greater ownership interest in FairPoint.

⁶ See, e.g. *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, 23 FCC Rcd 4436, at ¶ 10 (2008) (noting that the Commission views the Cayman Islands as a WTO Member).

Twelve of these investment fund vehicles, accounting for all but 1.5 percent of the Angelo Gordon interest, are formed in the United States. The other two investment fund vehicles are formed in the Cayman Islands and British Virgin Islands, both of which are treated as WTO Member States by the Commission. Each of the limited partners in these investment fund vehicles is insulated in accordance with the Commission's insulation criteria, such that the voting stock in FairPoint to be held by each of these vehicles will be voted and controlled by U.S. citizens. Further, the foreign limited partners in these vehicles are expected to hold total beneficial equity interests in FairPoint of less than 3 percent.

In short, no prospective shareholder—and, in particular, no *foreign* prospective shareholder—will control post-emergence FairPoint, which will be widely held, publicly traded, and controlled by its board of directors and its officers.

II. ANALYSIS OF PROSPECTIVE FOREIGN OWNERSHIP IN FAIRPOINT

A. Methodology of Foreign Ownership Analysis

To ensure compliance with Section 310 of the Act and the Commission's rules regarding foreign ownership, the Petitioners conducted an analysis of the expected ownership of FairPoint upon its emergence from bankruptcy. The Petitioners worked with the administrative agent for the Company's secured lenders and its outside legal counsel (collectively, the "Administrative Agent") to survey the secured lenders. Specifically, the Administrative Agent distributed a questionnaire to each party known to be a secured lender as of April 27, 2010 seeking information including, but not limited to, its jurisdiction of formation and principal place of business, ownership structure, and the nature and extent of its foreign investment and ownership.

Although the secured lenders were under no legal obligation to respond to this questionnaire, the Administrative Agent obtained questionnaire responses from secured lenders

expected to hold, in the aggregate, approximately 93 percent of the secured lender interests (or approximately 86 percent of the total equity and voting interests) in post-emergence FairPoint. The fact that questionnaire responses were not received from the remaining lenders is unsurprising given that the Company's secured debt is widely held. In fact, of all of the secured lenders: (i) roughly half are expected to hold equity and voting interests in post-emergence FairPoint of less than one-half of one percent; (ii) roughly 87 percent are expected to hold equity and voting interests in post-emergence FairPoint of less than one percent; and (iii) roughly 96 percent are expected to hold equity and voting interests in post-emergence FairPoint of less than two percent.⁷ For purposes of this petition FairPoint has assumed that any prospective equity and voting interests not covered by a questionnaire response will be held by foreigners with their principal places of business in non-WTO countries—even though FairPoint believes that virtually all of these interests *actually* are attributable to secured lenders in either the United States or other WTO Member States.

It was not feasible to identify or survey the universe of individuals and entities holding the companies' unsecured indebtedness, which FairPoint believes number in the hundreds. As noted, these individuals and entities are expected to receive in the aggregate approximately 8 percent of the common stock in FairPoint. In accordance with Commission precedent, FairPoint has assumed that any prospective equity or voting interests held by these individuals or entities will be non-WTO in nature.

⁷ Claims against the bankruptcy estate may be traded among the claim holders and with third parties during the pendency of the bankruptcy proceeding. The information provided herein reflects information available as of May 28, 2010.

B. Results of Foreign Ownership Analysis

As an initial step in evaluating the expected foreign ownership in post-emergence FairPoint, FairPoint attempted to ascertain the jurisdiction of formation of each prospective shareholder. FairPoint was able to do so with respect to secured lenders expected to hold, in the aggregate, approximately 86 percent of the ownership interests in post-emergence FairPoint. Each of these secured lenders was formed in the United States or another WTO Member State. Despite its best efforts, FairPoint was unable to identify the jurisdiction of formation of the other secured lenders, and it was infeasible to survey the individuals or entities holding the Company's unsecured indebtedness.

Notably, each of the secured lenders for which a jurisdiction of formation could not be identified is expected to hold a relatively small equity and voting interest in FairPoint. In fact, of the lenders for which a jurisdiction of formation could not be identified: (i) roughly half are expected to hold equity and voting interests in post-emergence FairPoint of less than 0.1 percent; (ii) roughly 96 percent are expected to hold equity and voting interests in post-emergence FairPoint of less than one percent; and (iii) all are expected to hold equity and voting interests in post-emergence FairPoint of less than two percent. Moreover, the several hundred individuals and entities that currently hold the Company's unsecured indebtedness are expected to split approximately 8 percent of the equity and voting interests in post-emergence FairPoint. While FairPoint has no reason to believe that any of these individuals or entities is formed in or a citizen of any country other than the United States or another WTO Member State, for purposes of this petition FairPoint has deemed these interests to be non-WTO in nature.

The following table summarizes the expected allocation of post-emergence ownership interests in FairPoint based on the jurisdictions of formation of the prospective shareholders:

Jurisdiction of Formation	Approximate Ownership Interest
USA	59.18%
Cayman Islands	23.82%
United Kingdom	1.55%
Switzerland	0.82%
British Virgin Islands	0.50%
Ireland	0.08%
Luxembourg	0.07%
Germany	0.06%
<i>Unknown/Deemed Non-WTO</i>	<i>13.93%</i>
Total	100.00%

Based on questionnaire responses, FairPoint also attempted to ascertain the institutional type of each prospective shareholder. The following table summarizes the results of this analysis:

Institutional Type:	Approximate Aggregate Ownership Interest	Jurisdiction of Formation
U.S. individuals	0.00%	N/A
U.S. banks, insurance companies, pension plans, foundations, and endowments	31.11%	United States
U.S. private equity funds and management investment companies	29.57%	United States
Non-U.S. individuals	0.00%	N/A
Non-U.S. banks, insurance companies, pension plans, foundations, and endowments	2.43%	WTO (Germany, Switzerland, United Kingdom)
Non-U.S. private equity funds and management investment companies	22.97%	WTO (British Virgin Islands, Cayman Islands, Ireland, Luxembourg)
Entities <i>potentially</i> formed in non-WTO countries	13.93% ⁸	Unknown
Total	100.00%	

⁸ This figure includes the roughly 8 percent interest to be held by individuals and entities currently holding the Company's unsecured indebtedness.

As indicated in the above tables, it is expected that as much as approximately 41 percent of the post-emergence equity and voting interests in FairPoint will be held by entities formed outside of the United States. In order to describe the expected level of foreign ownership in FairPoint more fully, and consistent with Commission precedent, FairPoint attempted to determine: (i) the aggregate percentage of equity and voting interest to be held by banks, insurance companies, pension plans, foundations, and endowments organized outside of the United States *or* controlled by foreign citizens; and (ii) the aggregate percentage of equity and voting stock to be held by private equity funds or management investment companies organized outside of the United States *or* with their principal places of business in a foreign country.⁹

In conducting this analysis, FairPoint took a conservative approach. For example:

- Where a questionnaire response provided by a bank, insurance company, pension plan, foundation, or endowment organized within the United States did not indicate whether that entity was controlled by foreigners, this was assumed to be the case;
- Where a questionnaire response provided by a bank, insurance company, pension plan, foundation, or endowment organized within the United States did not indicate whether that entity was controlled by citizens of the United States or a WTO Member State, it was assumed that the entity was controlled by citizens of a non-WTO country;
- Where a questionnaire response provided by a bank, insurance company, pension plan, foundation, or endowment organized within the United States indicated that the entity was a general partnership, limited partnership or limited liability company with foreign ownership, but did not indicate whether this foreign ownership was insulated within the meaning of the Commission's rules and

⁹ In determining the principal place of business of each such private equity fund or management investment company, FairPoint evaluated available information in questionnaire responses with respect to: (i) the entity's jurisdiction of formation; (ii) the nationality of the entity's foreign principals, officers, and directors; (iii) the country in which the entity's world headquarters is located; and (iv) the countries from which the entity derives the greatest sales and revenues from its operations. *See Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, at ¶ 207 (1995). FairPoint did not evaluate the locus of the entity's physical assets and operations, as virtually all prospective shareholders are merely investment vehicles.

precedent, it was assumed that this was not the case, and that foreigners therefore controlled the entity;

- Where a questionnaire response provided by a private equity fund or management investment company indicated that the entity's principal place of business was either in the United States or a WTO Member State, but did not provide sufficient information to determine definitively that the principal place of business was in the United States, the principal place of business was assumed to be in a non-U.S. WTO Member State; and
- Where a questionnaire response provided by a private equity fund or management investment company provided insufficient information to support any determination with respect to its principal place of business, the principal place of business was assumed to be in a non-WTO country.¹⁰

The following table summarizes the results of this analysis:

¹⁰ Critically, nothing in the questionnaire responses indicates that any prospective shareholder in FairPoint will be controlled by citizens of non-WTO countries, or have its principal place of business in any such country. In fact, nothing in the questionnaire responses indicates that any prospective shareholder will have significant investment from citizens of or entities with their principal places of business in non-WTO countries.

<u>Institutional Type:</u>	<u>Approximate Aggregate Ownership Interest¹¹</u>	<u>Relevant Jurisdictions</u>
U.S. individuals	0.00%	N/A
Banks, insurance companies, pension plans, foundations, and endowments organized in the U.S. <i>and</i> controlled by U.S. citizens	26.79%	United States
Private equity funds and management investment companies organized in the U.S. <i>and</i> with their principal places of business in the U.S.	6.65%	United States
Non-U.S. individuals	0.00%	N/A
Banks, insurance companies, pension plans, foundations, and endowments organized outside of the U.S. <i>or</i> controlled by foreign citizens	6.27%	WTO (inc. Germany, Japan, Switzerland, United Kingdom)
Private equity funds and management investment companies organized outside of the U.S. <i>or</i> with their principal places of business outside of the U.S.	44.45%	WTO (inc. Australia, Bermuda, British Virgin Islands, Cayman Islands, Ireland, Japan, Luxembourg, Sweden, Switzerland, United Kingdom)
Individuals that <i>potentially</i> are citizens of non-WTO countries, and entities <i>potentially</i> formed in non-WTO countries, controlled by citizens of non-WTO countries, or with their principal places of business in non-WTO countries	15.83%	Unknown
Total	100.00 %	

¹¹ As noted above, post-emergence FairPoint will issue a single class of voting common stock, such that a given shareholder's equity and voting interests in FairPoint will be the same. FairPoint has not applied the multiplier to, or otherwise attempted to dilute, the interests stated herein.

III. PERMITTING INDIRECT FOREIGN OWNERSHIP IN FAIRPOINT IN EXCESS OF 25 PERCENT WOULD SERVE THE PUBLIC INTEREST

Section 310(b)(4) of the Act limits the ownership interests that foreign investors may hold in any corporation that controls a U.S. common carrier radio station licensee, including each Subsidiary. Under that section, no more than 25 percent of the capital stock of such a corporation may be owned or voted of record by aliens or their representatives. However, Section 310(b)(4) also provides that the Commission may permit foreign investment in excess of this limit if doing so would not be inconsistent with the public interest.

In the *Foreign Participation Order*, the Commission determined that it would promote competition in the United States and serve the public interest to allow indirect foreign investment in U.S. telecommunications markets beyond the 25 percent benchmark established by Section 310(b)(4). Since adopting the *Foreign Participation Order*, the Commission has permitted non-U.S. individuals and entities to hold up to 100 percent of the equity and voting interests in numerous holders of FCC common carrier authorizations.¹² In fact, consistent with U.S. WTO commitments, the Commission presumes that indirect foreign ownership in a common carrier licensee serves the public interest so long as at least 75 percent of the equity and voting interest are properly ascribed to individuals or entities that are citizens of or that principally conduct business in WTO Member States.¹³ This presumption is rebutted only if a proposed investment presents a “very high risk to competition” in the United States that the

¹² See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444 (2008); *Verizon Communications, Inc., Transferor and América Móvil, S.A. De C.V., Transferee*, 22 FCC Rcd 6195 (2007); *Intelsat, Ltd., Transferor, and Zeus Holdings Ltd., Transferee*, 19 FCC Rcd 24820 (2004); *Applications of Comsat General Corporation*, 19 FCC Rcd 21216 (2004); *Voicestream Wireless Corporation*, 16 FCC Rcd 9779 (2001).

¹³ See, e.g., *VIZADA Services LLC*, 25 FCC Rcd 2029, at ¶ 11 (2010).

Commission cannot address through conditions, or the Executive Branch raises national security, law enforcement, foreign policy or trade concerns.¹⁴

That standard is amply satisfied here. As demonstrated above, over 84 percent of the equity and voting interests in post-emergence FairPoint will be held by entities formed in the United States or other WTO Member States *and* either controlled by citizens of the United States or other WTO Member States (in the case of banks, insurance companies, pension plans, foundations and endowments) or with their principal places of business in the United States or other WTO Member States (in the case of private equity funds and management investment companies). Moreover, the less than 16 percent of the equity and voting interests in post-emergence FairPoint that have not been classified as U.S. or WTO in nature have been treated as such based upon the conservative assumption that interests for which ownership information is unavailable are non-WTO in nature, rather than any actual knowledge that this is the case. Even under this “worst-case” assumption, the level of foreign ownership that may be deemed non-WTO in nature for purposes of this petition is under 25 percent.

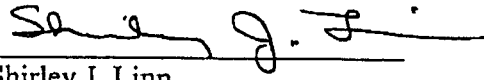
In short, there is no basis for upsetting the strong presumption established by the Commission in the *Foreign Participation Order*, as the ownership interests in post-emergence FairPoint will be predominantly U.S. or WTO in nature. While there has been no indication that any prospective shareholders *actually* will be non-WTO in nature, the equity and voting interests *assumed* to be non-WTO for purposes of this petition will be under 25 percent of the total equity and voting interests in post-emergence FairPoint. Further, the proposed transaction would not result in *any* consolidation in any U.S. telecommunications market. Therefore, the Commission should conclude that the proposed foreign investment will serve the public interest.

¹⁴ See *Foreign Participation Order* at ¶¶ 50-58.

IV. CONCLUSION

As of the Effective Date, control of FairPoint and the Subsidiaries will rest with FairPoint's directors and officers, each of whom is a citizen of the United States. FairPoint's equity and voting interests will be widely dispersed, and no foreign individual or entity will have any control over, or substantial interest in, FairPoint. Moreover, FairPoint is not aware of any prospective shareholder that is a citizen of, is controlled by, or has its principal place of business in a non-WTO country, and the interests conservatively presumed to be non-WTO in nature represent well under 25 percent of the total equity and voting interests in FairPoint upon its emergence from bankruptcy. Accordingly, the Petitioners respectfully request that the Commission issue a declaratory ruling that it is in the public interest for FairPoint to have indirect foreign ownership of up to 100 percent, in excess of the 25 percent benchmark under Section 310(b)(4) of the Act, as described above. Grant of this petition will serve the public interest, convenience, and necessity by allowing FairPoint and each Subsidiary to exit bankruptcy and restructure its operations to enable it to continue to provide superior communications services to consumers in an efficient and effective manner.

Respectfully submitted,



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Dated: June 3, 2010

Exhibit A:
FairPoint Common Carrier Radio Station Licenses

<u>Licensee (Each a Debtor-in-Possession)</u>	<u>State of Formation</u>	<u>Wireless Service</u>	<u>Call Signs</u>
Berkshire Cable Corp.	NY	Paging and Radiotelephone	KPE254
Columbine Telecom Company (f/k/a Columbine Acquisition Corp.)	DE	Basic Exchange Telephone Radio Service (BETRS)	KNKO928
Ellensburg Telephone Company	WA	Common Carrier Fixed Point to Point Microwave	WBA948, WHA481, WLA950, WLA951
FairPoint Communications, Inc.	DE	3650-3700 MHz ¹⁵	WQIM469
Fremont Telcom Co.	ID	Common Carrier Fixed Point to Point Microwave	KPW88, WAX77, WMT361
Northern New England Telephone Operations LLC	DE	Common Carrier Fixed Point to Point Microwave	KCK72, KCK73, WBB246, WCG332, WCG333, WHE285, WQIQ869
		3650-3700 MHz	WQJB442
Telephone Operating Company of Vermont LLC	DE	3650-3700 MHz	WQJB443

¹⁵ FairPoint has not yet determined whether the service provided using licenses in the 3650-3700 MHz band will be common carrier in nature. FairPoint is listing these licenses here out of an abundance of caution.

Exhibit B:
FairPoint Holding Companies

<u>Licensee (Each Currently a Debtor-in-Possession)</u>	<u>Intermediate Holding Companies (If Any) (Each Currently a Debtor-in-Possession)</u>	<u>State of Formation</u>
Berkshire Cable Corp.	Berkshire Telephone Corporation	NY
	MJD Ventures, Inc.	DE
Columbine Telecom Company (f/k/a Columbine Acquisition Corp.)	MJD Services Corp.	DE
Ellensburg Telephone Company	MJD Ventures, Inc.	DE
FairPoint Communications, Inc.	N/A	N/A
Fremont Telcom Co.	MJD Ventures, Inc.	DE
Northern New England Telephone Operations LLC	N/A	N/A
Telephone Operating Company of Vermont LLC	Northern New England Telephone Operations LLC	DE

Exhibit C:
Simplified Organizational Diagram

