



# PUBLIC NOTICE

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DA 10-1169

Released: June 25, 2010

## APPLICATIONS OF FAIRPOINT COMMUNICATIONS, INC., DEBTOR-IN-POSSESSION, AND FAIRPOINT COMMUNICATIONS, INC. FOR ASSIGNMENT AND TRANSFER OF CONTROL OF SECTION 214 AUTHORITY

### PLEADING CYCLE ESTABLISHED

WC Docket No. 10-126

**Comments Due: July 26, 2010**

**Reply Comments Due: August 10, 2010**

FairPoint Communications, Inc. (FairPoint), Debtor-in-Possession before the United States Bankruptcy Court (Court), filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), seeking approval for various assignments and transfers of control of licenses and authorizations,<sup>1</sup> as well as a petition for declaratory ruling pursuant to section 310(b)(4) of the Communications Act.

FairPoint, a widely-held, publicly-traded Delaware corporation, operates 33 local exchange companies in 18 states<sup>2</sup> through its direct and wholly-owned subsidiaries,<sup>3</sup> and provides service to approximately 1.6 million access line equivalents. FairPoint provides local, long distance, international and wireless communications services to residential and business customers.

On October 26, 2009, FairPoint and all of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. This resulted in the involuntary, *pro forma* assignment of the Commission licenses and authorizations held by each of FairPoint's direct and indirect subsidiaries to those subsidiaries as debtors-in-possession. The Company continues to operate its business with FairPoint and each subsidiary operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Under the Plan of Reorganization, substantially approved by the Court on May

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<sup>1</sup> 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).

<sup>2</sup> The 18 states are: Alabama, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Maine, Massachusetts, Missouri, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Vermont, Virginia, and Washington.

<sup>3</sup> FairPoint lists 51 subsidiaries organized under the laws of Delaware, Idaho, Florida, Illinois, Kansas, Maine, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Virginia, and Washington. FairPoint does not wholly own one subsidiary, Sunflower Telephone Company, Inc. Two shares, accounting for less than 0.5 percent of the ownership interests in that entity, are held by a third party.

14, 2010,<sup>4</sup> 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. The secured lenders will collectively receive approximately 92 percent of this stock. FairPoint’s common stock will be listed on a national securities exchange as of the effective date of FairPoint’s emergence from bankruptcy, which will require that FairPoint have at least 400 shareholders.

FairPoint states that only a single investor group will own or control a 10 percent or greater ownership interest in FairPoint after the reorganization. Specifically, investment fund vehicles directly or indirectly controlled by AG Funds, L.P. will hold “an aggregate beneficial equity interest in FairPoint of approximately 15 percent.”<sup>5</sup> Applicants assert that none of these investment fund vehicles, nor any other subsidiary of AG Funds, L.P., will individually hold a 10 percent or greater ownership interest in FairPoint. A.G. Funds, L.P., a management company organized under Delaware law, has one limited partner<sup>6</sup> and one general partner, AG Funds GP, L.P, also a management company organized under Delaware law. The sole general partner of AG Funds GP, L.P. is JM Funds LLC, a management company organized under Delaware law. The two members of JM Funds LLC, each of which may be deemed to control that entity, are John M. Angelo and Michael L. Gordon, both of whom are U.S. citizens. FairPoint reports that, with the exception of Mssrs. Angelo and Gordon, no limited partner of AG Funds GP, LP will hold a 10 percent or greater ownership interest in FairPoint.

Following consummation of the proposed transactions, FairPoint will have no interlocking directorates. FairPoint’s current Chief Executive Officer, Chief Financial Officer, President, and Chairman of the Board will continue to serve in those capacities. Additionally, FairPoint’s interest in each subsidiary may be held through one or more wholly-owned holding companies directly or indirectly owning 100 percent of the equity of that subsidiary. FairPoint reports that each such holding company is formed under the laws of the United States and, as its principal business, serves as a holding company for a wireline telecommunications and/or information services provider.

## SECTION 214 AUTHORIZATIONS

### A. International

The following applications for consent to the assignment of certain international section 214 authorizations have been assigned the file numbers listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20100614-00234	FairPoint Carrier Services, Inc., Debtor-In-Possession	ITC-214-19980610-00403
ITC-ASG-20100614-00235	B E Mobile Communications Inc, Debtor-In-Possession	ITC-214-19970710-00391
ITC-ASG-20100614-00236	Berkshire Cable Corp., Debtor-In-	ITC-214-19970416-00213

<sup>4</sup> *FairPoint Communications, Inc., et al.*, Ch. 11, Case No. 09-16335, Order Confirming the Joint Chapter 11 Plan of Reorganization of FairPoint Communications, Inc. and its Debtor Affiliates (Bank. S.D.N.Y. May 14, 2010) (Plan of Reorganization).

<sup>5</sup> These investment vehicles “will include: (i) thirteen investment funds (‘AG Funds’) that are structured as limited partnerships and ultimately are managed and controlled by [Mssrs. Angelo and Gordon] and (ii) one unaffiliated investment vehicle, GAM Arbitrage Investments, Inc., that ultimately is managed by [Mssrs. Angelo and Gordon], and that will hold an interest in FairPoint of less than one-half of one percent.” See Application at 5.

<sup>6</sup> Applicants state that this limited partner is insulated and holds only a *de minimis* equity interest in AG Funds, L.P.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20100614-00237	Possession Taconic Telecom Corp., Debtor-In-Possession	ITC-214-19970219-00095
ITC-ASG-20100614-00238	UI Long Distance, Inc., Debtor-In-Possession	ITC-214-20030206-00049
ITC-ASG-20100614-00239	St. Joe Communications, Inc., Debtor-In-Possession	ITC-214-19950920-00045
ITC-ASG-20100614-00240	Chautauqua & Erie Communications, Inc., Debtor-In-Possession	ITC-214-19940509-00155
ITC-ASG-20100614-00241	Comerco, Inc., Debtor-In-Possession	ITC-214-20030521-00254
ITC-ASG-20100614-00242	C-R Long Distance, Inc., Debtor-In-Possession	ITC-214-19960404-00139
ITC-ASG-20100614-00243	Elltel Long Distance Corp., Debtor-In-Possession	ITC-214-20000320-00156
ITC-ASG-20100614-00244	Enhanced Communications of Northern New England Inc., Debtor-In-Possession	ITC-214-19981228-00891
ITC-ASG-20100614-00245	El Paso Long Distance Company, Debtor-In-Possession	ITC-214-20070206-00437
ITC-ASG-20100614-00246	Germantown Long Distance Company, Debtor-In-Possession	ITC-214-19960626-00271
ITC-ASG-20100614-00247	GTC, Inc., Debtor-In-Possession	ITC-214-19970113-00018
ITC-ASG-20100614-00248	Fretel Communications, LLC, Debtor-In-Possession	ITC-214-20011019-00531
ITC-ASG-20100614-00249	Northern New England Telephone Operations LLC, Debtor-In-Possession	ITC-214-19990125-00037
ITC-ASG-20100614-00250	Orwell Communications, Inc., Debtor-In-Possession	ITC-214-20030516-00243
ITC-ASG-20100614-00251	Marianna Tel, Inc., Debtor-In-Possession	ITC-214-20001019-00628
ITC-ASG-20100614-00252	Quality One Technologies, Inc., Debtor-In-Possession	ITC-214-20011025-00599
ITC-ASG-20100614-00253	ST Long Distance, Debtor-In-Possession	ITC-214-19990713-00464
ITC-ASG-20100614-00254	Peoples Mutual Long Distance, Debtor-In-Possession	ITC-214-19961118-00578
		ITC-214-20001207-00717

## **B. Domestic**

The applicants filed an application for consent to assign and transfer control of domestic section 214 authority in connection with the proposed transaction.<sup>7</sup> In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, this domestic assignment/transfer of control application is not subject to streamlined treatment.<sup>8</sup>

<sup>7</sup> 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).

<sup>8</sup> See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5535, para. 34 (2002).

## SECTION 310(d) APPLICATION

The following applications for consent to the assignment of licenses under section 310(d) have been assigned the file numbers listed below.

<u>File Number</u>	<u>Licensee</u> <sup>9</sup>	<u>Lead Call Sign</u>
0004260050 <sup>10</sup>	Northern New England Telephone Operations LLC	KCK72
0004265946	Berkshire Cable Corporation	KPE254
0004265965	Berkshire Telephone Corp.	WPPA850
0004265999	Columbine Acquisition Corp.	KNCY636
0004266008	Community Service Telephone Co.	WXH844
0004266011	Ellensburg Telephone Company	KTW706
0004266014	FairPoint Communications, Inc.	WQIM469
0004266028	Fremont Telcom	KPW88
0004266064	GTC, Inc.	WPEZ784
0004266229	Odin Telephone Exchange, Inc.	KXQ365
0004266258	Peoples Mutual Telephone Company	WYK256
0004266264	Sunflower Telephone Company, Inc.	KNDR226
0004266268	Taconic Telephone Corp.	KCQ829
0004266273	Telephone Operating Company of Vermont LLC	WQJB443
0004266279	YCOM Networks, Inc.	KAX660

## PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

Applicants have filed a petition, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, and the Commission's *Foreign Participation Order*,<sup>11</sup> for a declaratory ruling that it is in the public interest to allow up to 100 percent indirect foreign ownership of FairPoint and its subsidiary common carrier license holders, as a result of share purchases in FairPoint, as long as less than 25 percent of its ownership is attributable to countries that are not Members of the World Trade Organization (WTO). According to Applicants, the anticipated approximate allocation of the ownership interests in FairPoint upon emergence of bankruptcy will be among: banks, insurance companies, pension plans, foundations, and endowments organized in the U.S. and controlled by U.S. citizens (26.79%), private equity funds and management investment companies organized in the U.S. and with their principal places of business in the U.S. (6.65%); banks, insurance companies, pension plans, foundations, and endowments organized outside the U.S. or controlled by foreign citizens (6.27%, attributable to WTO member country jurisdictions Germany, Japan, Switzerland, United Kingdom), private equity funds and management investment companies organized outside the U.S. or with their principal places of business outside the U.S. (44.45%, attributable to WTO member country jurisdictions Australia, Bermuda, British Virgin Islands, Cayman Islands, Ireland, Japan, Luxembourg, Sweden, Switzerland,

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<sup>9</sup> All of the licensees are currently debtors-in-possession.

<sup>10</sup> This is the lead wireless application.

<sup>11</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

United Kingdom) and entities of unknown nationality and thus attributed non-WTO country status for the purpose of the Petition (15.83%).<sup>12</sup>

The Petition for Declaratory Ruling has been assigned File No. ISP-PDR-20100603-00010.

### **EX PARTE STATUS OF THIS PROCEEDING**

Pursuant to section 1.1200(a) of the Commission's rules,<sup>13</sup> the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.<sup>14</sup>

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>15</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>16</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.<sup>17</sup> We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

### **GENERAL INFORMATION**

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.<sup>18</sup>

Interested parties must file comments or petitions to deny no later than **July 26, 2010**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding. Replies or oppositions to comments and petitions must be filed no later than **August 10, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-1169** and **WC Docket No. 10-126**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

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<sup>12</sup> Claims against the bankruptcy estate may be traded among the claimholders and with third parties during the pendency of the bankruptcy proceeding; the percentages set forth herein are based on information available as of May 28, 2010.

<sup>13</sup> 47 C.F.R. § 1.1200(a).

<sup>14</sup> *Id.* § 1.1206.

<sup>15</sup> *See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000).

<sup>16</sup> *See* 47 C.F.R. § 1.1206(b)(2).

<sup>17</sup> *Id.* § 1.1206(b).

<sup>18</sup> *See* 47 U.S.C. § 309(b).

- Paper Filers: Parties who choose to file by paper must file an original and four copies 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.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 12<sup>th</sup> Street, SW, Washington DC 20554.

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- 1) Alex Johns, Competition Policy Division, Wireline Competition Bureau, at alexis.johns@fcc.gov or (202) 418-1413 (facsimile);
- 2) Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at jeff.tobias@fcc.gov or (202) 418-7224 (facsimile);
- 3) David Krech, Policy Division, International Bureau, at david.krech@fcc.gov or (202) 418-2824 (facsimile); and
- 4) Neil Dellar, Office of General Counsel, at neil.dellar@fcc.gov or (202) 418-1234 (facsimile).

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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Alex Johns, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1167; Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-1617; or David Krech, Policy Division, International Bureau, at (202) 418-7443.

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