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**Public Service Commission**

December 15, 2008

**VIA ELECTRONIC FILING**

The Honorable Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: WC Docket No. 05-195 – Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight**

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket with regard to Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight.

Bob Casey at (850) 413-6974 is the primary staff contact on these comments.

Sincerely,

/ s /

Cindy B. Miller  
Senior Attorney

CBM:wlt  
cc: James Bradford Ramsay, NARUC

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of: )  
 )  
Comprehensive Review of the ) WC Docket No. 05-195  
Universal Service Fund Management, )  
Administration, and Oversight )

**REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION  
REGARDING THE COMPREHENSIVE REVIEW OF THE UNIVERSAL SERVICE  
FUND MANAGEMENT, ADMINISTRATION, AND OVERSIGHT**

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Notice of Inquiry (NOI) released on September 12, 2008. In this NOI (FCC 08-189), the Federal Communications Commission (FCC) seeks comment on ways to strengthen the management, administration, and oversight of the Universal Service Fund (“USF” or “Fund”). The FPSC applauds the efforts of the FCC and the Universal Service Administrative Company (USAC) to safeguard the universal service program from waste, fraud, and abuse. As we discussed in our June 21, 2007, comments to the Joint Board<sup>1</sup>, the escalation of the fund’s size threatens the affordability that the program is intended to safeguard. Florida has consistently been the number one net contributor to the universal service fund. For the year 2006, Florida contributed over \$317 million more to the USF than it received back in reimbursements. In order to strengthen management, administration, and oversight of the USF, we encourage the FCC to:

1. Include low-income beneficiary audits in each round of future audits of the universal service program;

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<sup>1</sup> In the Matter of High-Cost Universal Service support, Federal-State Joint Board on Universal Service, WC docket No. 05-337, CC docket No. 96-45.

2. Inform state commissions of eligible telecommunications carrier (ETC) oversight audits so state and federal efforts are not duplicated;
3. Require ETCs to provide additional supporting information with their Form 497s;
4. Specify that Line 9 of Form 497 must be used by carriers to adjust their support claim if they lose or gain subscribers during the month;
5. Clarify that leased network elements which have replaced UNEs, fulfill the definition of facilities as defined in 47 C.F.R. 54.201;
6. Identify what percentage of lines provided to customers through an ETC's "own facilities" and what percentage of lines provided to customers through resale constitute "a combination of its own facilities and resale of another carrier's services" to comply with the intent of 47 C.F.R. 54.201;
7. Acknowledge that states can enforce state and federal Lifeline requirements for wireless ETCs once a state has asserted jurisdiction for designating such carriers;
8. Acknowledge that wireless ETCs must file for annual certification with the state once a state assumes jurisdiction regarding ETC designation of wireless carriers;
9. Define "limited ETC" including the federal requirements and obligations "limited ETCs" have regarding universal service and carrier of last resort;
10. Confirm that state commissions may request USAC to suspend support disbursements for failure of an ETC to comply with state and/or federal requirements of universal service; and
11. Determine that a Lifeline customer's personal identifying information is confidential before considering a national database to enforce federal rules that limit the Lifeline credit to one per household. If a national database of Lifeline participants is created, it should be maintained by the USF administrator under strict confidentiality provisions.

### **Independent Audit Requirement for Program Beneficiaries**

In its semiannual report,<sup>2</sup> the FCC Inspector General found as a result of its audits that the universal service low-income program is at risk with a 9.5 percent error rate and estimated erroneous payments of \$75.5 million.<sup>3</sup> As stated in the USAC comments<sup>4</sup> in response to the NOI, 460 universal service first-round audits were conducted in 2006-2007, and only 61 involved the low-income program. The second round of 650 universal service audits in 2007 and 2008 included no audits of the low-income program beneficiaries. We encourage the FCC to include ETC low-income beneficiary audits in each round of future audits of the universal service program. In addition, we also encourage the FCC and USAC to inform state commissions of ETC oversight audits so state and federal efforts are not duplicated.

Some of the erroneous improper payments made from the low-income program appear to be caused by wireline competitive eligible telecommunications carriers (CETCs)<sup>5</sup> “double-dipping” from the universal service fund. As noted in the USAC’s comments on page six, wireline CETCs can improperly benefit twice for providing a single Lifeline connection: once by purchasing a resold line from the CETC’s underlying wholesale ETC for a price that includes a Lifeline discount and a second time by claiming support for that line from the USF. When this happens, the underlying wholesale ETC then also claims Lifeline support to be reimbursed for the discount it passed on to the wireline CETC reseller.

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<sup>2</sup> Semiannual Report of FCC Inspector General, October 1, 2007, to March 31, 2008.

<sup>3</sup> Under the Improper Payments Information Act, a program is at risk if the erroneous payment rate exceeds 2.5 percent and the total amount of erroneous payment is greater than \$10 million.

<sup>4</sup> In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Comments of the Universal Service Administrative Company, WC Docket No. 05-195, November 13, 2008, page 6.

<sup>5</sup> Because wireless wholesale providers are not subject to section 251(c)(4) resale obligations, the resold services do not reflect a reduction in price due to Lifeline support, and double recovery is not possible for wireless CETCs.

In order for an ETC to receive reimbursement for providing Lifeline and Link-Up discounts to eligible consumers, it must submit a Form 497 to USAC. According to the USAC website, the ETC “must provide information to USAC demonstrating that the ETC is complying with the rules set out in 47 C.F.R. §54.400.” The FCC should require that additional supporting information be submitted with the Form 497s. Presently, nothing is keeping an unscrupulous actor from inputting bogus line numbers on Form 497 other than a slim chance it may get audited.

The FPSC agrees with USAC comments on page 106 which state that the current version of FCC Form 497 does not allow USAC to collect sufficient information to perform validations to prevent mistakes and abuse of the low-income fund. Wireline CETCs should be required to provide USAC with the number of resale Lifeline and Link-up lines purchased and number of UNE lines leased for Lifeline and Link-Up from its underlying carrier. In turn, the wireline CETC’s underlying carrier should provide USAC with the number of resale Lifeline and Link-Up lines purchased by each wireline CETC.

In addition, the FCC should clarify that Line 9 of Form 497 must be used by carriers to adjust their support claim if they lose or gain subscribers during the month. Line 9 of Form 497 states, “Check box to the right if partials or pro rata amounts are used.” The FPSC agrees with USAC that the word “if” does not provide an ETC with an option of whether or not to claim pro rated amounts for customers lost or gained during the month. Rather, “if” means that if an ETC does not have any gain or loss of Lifeline customers during a month, it does not provide an amount on Line 9.<sup>6</sup> Having ETCs provide partial discounts on customer monthly bills for

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<sup>6</sup> USAC Management Response, Improper Payment Improvement Act Audit of Low Income Program of Southwestern Bell-Texas (LI-2006-209), July 5, 2007.

customers gained or lost during the month, and subsequently claiming a full month's support from USAC is unacceptable and contrary to 47 C.F.R. §54.407(a), which states that ETCs can receive support based on the number of qualifying low-income consumers **it serves**. (emphasis added)

### **Definition of Eligible Telecommunications Carriers**

In accordance with 47 C.F.R. 54.201, ETCs are required to offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services. The FCC rules state that the term "facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support, and explains that the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements (UNEs).<sup>7</sup>

The FCC should clarify that leased network elements, which have replaced UNEs, fulfill the requirement of "own facilities" as defined in C.F.R. 54.201. Although many carriers, as of March 11, 2006, no longer are using UNEs to meet the facilities requirement under Section 54.201(d), they often are using the same physical components of the network for the transmission and routing of services. The FPSC believes that the leasing of the physical components of the ILEC's network for the transmission or routing of services, whether as UNEs or through commercial agreements, meet the statutory definition of "own facilities" for universal service purposes.

The FCC should also clarify what constitutes "a combination of its own facilities and resale of another carrier's services." The FCC should clarify whether the intent of the law is

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<sup>7</sup> C.F.R. §54.201(e) and (f).

fulfilled when wireline CETCs lease one network element in an effort to comply with the law and have thousands of resold Lifeline lines. The potential for double recovery is then created for wireline CETCs to claim reimbursement of Lifeline and Link-Up from USAC for all their lines whether they be Lifeline and Link-Up resold lines or leased network element lines. The FPSC believes that a wireline CETC should have a minimum of 20 percent of its lines served through leased network elements to comply with the requirements of C.F.R. 54.201. We believe that this represents a reasonable level of network investment to comply with this requirement.

### **Wireless ETCs designated by the FCC**

On page 122 of the USAC's comments, it states that "[t]he Commission should also consider clarifying how companies that are operating in states that mandate support but are not subject to state regulation should comply with the verification requirements. Many states do not have jurisdiction over wireless carriers, and, in many instances, carriers serving tribal lands are not subject to state regulation. The Commission's rules do not address how companies in these situations should comply with the verification requirement." Although the FPSC has now determined that it has jurisdiction to designate wireless providers as ETCs, the FCC previously designated three wireless carriers as ETCs in Florida. In each of the FCC orders, a footnote was included that stated "[w]e note that ETCs must comply with state requirements in states that have Lifeline programs."<sup>8</sup> The FCC should expand on that statement and acknowledge that states have jurisdiction if a wireless ETC is not complying with state or federal Lifeline requirements. The FCC should also clarify that wireless ETCs must file annual certification with the state once a state assumes jurisdiction regarding ETC designation of wireless carriers.

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<sup>8</sup> In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a/ Nextel Partners, DA 04-2667, Footnote 30, released August 25, 2004; In the Matter of Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc., DA 04-3046, Footnote 29, released September 24, 2004; In the Matter of Federal-State Joint Board on Universal Service, Sprint Corporation, DA 04-3617, Footnote 27, released November 18, 2004.

### **Limited ETC**

On page 107 of the USAC's comments, it discusses the possibility of increased "double-dipping" of USF funds as more competitors are designated as ETCs solely to provide low-income support. The FCC should define the term "Limited ETC." Paragraph 1 of FCC 08-100<sup>9</sup> states, "As discussed below, we now conclude that TracFone has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support (limited ETC)." The FCC should define "limited ETC" including the federal requirements and obligations "limited ETCs" have regarding universal service and carrier of last resort.

### **Ability of State Commissions to Suspend Support Disbursements**

The USAC comments also note that the FPSC rescinded the ETC status of a CETC after making a finding that the ETC was obtaining double compensation by receiving resale Link-Up and Lifeline credits from its underlying carrier, while at the same time receiving Link-Up, Lifeline, and Toll Limitation Service monies from the USF for the same customers. The FPSC found that it was no longer in the public interest to allow the ETC to retain ETC designation or competitive local exchange carrier status in Florida. The FPSC believes that the FCC should confirm that state commissions may request USAC to suspend support disbursements for failure of the ETC to comply with state and/or federal requirements of universal service. Paragraph 72 of FCC 05-46<sup>10</sup> states that "*If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission*

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<sup>9</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, TracFone Wireless, Inc.'s Petitions for Designation as an Eligible Telecommunications Carrier in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, FCC 08-100, Released April 11, 2008.

<sup>10</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46, Released March 17, 2005.



*may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.*"<sup>11</sup>

### **National Lifeline Database**

On page eight of TracFone Wireless, Inc.'s comments to the NOI, TracFone recommends that the FCC, "as part of its inquiry into USF management, administration and oversight, consider establishment of a data base which ETCs could use to determine whether applicants for Lifeline are in compliance with the one per household requirement, and that ETCs be required to access that data base to determine whether applicants for Lifeline service (or anyone within the applicant's household) receives Lifeline benefits from another ETC." The FPSC applauds TracFone's effort to limit Lifeline credits to one per household, but has concerns regarding its proposed vehicle.

Allowing all ETCs to view Lifeline customer information raises competitive concerns and consumer privacy issues. Protecting the privacy of a Lifeline customer's personal identifying information is of utmost importance. The Florida Legislature passed a law in 2007 which requires that all personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan remain confidential. A national database of Lifeline participants accessible by all ETCs would contradict the intent of this state law. However, a

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<sup>11</sup>Rural Telecommunications Associations Comments at 48-50, US Cellular Comments at 20-23. In addition, carriers must submit their reports on a timely basis. In order to encourage timely filings, if a carrier files its annual reports late, it will not receive the entire amount of funding for the year. Instead, it will lose funding for the quarter of the funding year, consistent with how late it files. For example, if a carrier files its report on December 10, it will lose funding for the first quarter of the next year. If the carrier does not file until the second quarter after the due date, for example, on February 4, it will not receive funding for the first two quarters.

national database of Lifeline participants maintained by the USF administrator under strict confidentiality provisions may be an acceptable alternative.

**Conclusion**

The FPSC continues to support the original intent of Lifeline and Link-Up, which is to help low-income households obtain and maintain telephone service. The need for Lifeline assistance continues to grow in Florida. According to a recent U.S. Department of Agriculture Report, Florida had the largest nationwide increase in households participating in the Supplemental Nutrition Assistance (formerly Food Stamp) Program (SNAP) at 22.2 percent from August 2007 to July 2008.<sup>12</sup> The SNAP program is the number one qualifying program used by applicants for Lifeline eligibility in Florida. Notwithstanding our support for the program, in order to strengthen the management, administration, and oversight of the Universal Service Fund, we recommend the FCC consider implementation of the proposed changes to the program administration noted in these comments.

Respectfully submitted,

/ s /

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<sup>12</sup> <http://www.fns.usda.gov/pd>