

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



GENERAL COUNSEL
PATRICK L. "BOOTER" IMHOF
(850) 413-6199

Public Service Commission

July 21, 2009

VIA ELECTRONIC FILING

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

Re: GN Docket No. 09-51

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket in response to the FCC Notice of Inquiry seeking comments on a national broadband plan for our future.

Greg Fogleman at (850) 413-6574 is the primary staff contact on these comments.

Sincerely,

/s/

Cindy B. Miller
Senior Attorney

CBM

cc: James Bradford Ramsay, NARUC
Competition Policy Division, Wireline
Competition Bureau, FCC
Best Copy and Printing, Inc.

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

In the Matter of)	
)	
A National Broadband Plan for our Future)	GN Docket No. 09-51
)	

**REPLY COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN MATTHEW M. CARTER II

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER KATRINA J. MCMURRIAN

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INTRODUCTION AND SUMMARY

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Notice of Inquiry (NOI) released by the Federal Communications Commission (FCC) on April 8, 2009, to inform the development of a national broadband plan.¹ Our comments are focused on issues raised within the NOI regarding the interrelationship between the development of a national broadband plan and the federal universal service program.²

The FPSC believes that initiatives to foster ubiquitous broadband availability, especially to unserved and underserved areas, are in the public interest. We have serious concerns, however, about the wisdom of using the existing universal service fund as a funding mechanism to achieve this objective. The FCC and the Universal Service Joint Board (Joint Board) have worked to implement reform of the high-cost programs for a number of years. While some progress has been made, additional reform is necessary to ensure the sustainability of the program and the intended benefits to all consumers. Given the size and growth of the high-cost fund, the FPSC has significant concerns about the possibility of expanding the definition of supported services.

In prior comments before the FCC, the FPSC has expressly opposed expanding the definition of supported services to include broadband.³ Nevertheless, the FPSC's opposition to expanding the definition of supported services could be tempered with the adoption of an overall fund cap in conjunction with the other reforms noted in our past comments.⁴ This position is also applicable to Lifeline broadband proposals.⁵

¹ FCC Notice of Inquiry, FCC 09-31, GN Docket No.09-51; released April 8, 2009.

² Ibid, ¶¶ 39-41.

³ Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed on June 21, 2007, November 20, 2006, and May 19, 2006.

⁴ Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed on March 24, 2008.

⁵ Reply Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed December 2, 2008, p. 10.

EXPANDING THE DEFINITION

The FCC's notice asks if universal service should be modified to include broadband in its definition.⁶ We agree with the comments of Verizon that the FCC should first implement a cap on the excessive growth of the high-cost fund.⁷ For the third quarter of 2009, the contribution factor was increased to a historical high of 12.9 percent.⁸ Such unrestrained growth in the fund and the increasing contribution factor threatens the affordability and sustainability of the universal service programs. As we have noted in prior comments, the FPSC believes such a cap should be established at the \$4.5 billion level recommended by the Joint Board.⁹ This is approximately the amount of support distributed in 2007.

The continued escalation of the size of the fund threatens the "affordability" that the program was intended to safeguard. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of telecommunications services, thus violating the principle in §254(b)(1)."¹⁰ Expanding the definition at this time would likely place a significant strain on the current high-cost program absent a corresponding cap on the fund.

The FPSC's opposition to expanding the definition of supported services to include broadband could be tempered by the adoption of an overall fund cap in conjunction with the other reforms noted in our comments.¹¹ We believe universal service support for broadband should not be perceived as a

⁶ FCC Notice of Inquiry, FCC 09-31, GN Docket No.09-51; released April 8, 2009, ¶41.

⁷ Comments of Verizon and Verizon Wireless on a National Broadband Plan, GN Docket No. 09-51, June 8, 2009, p. 112.

⁸ FCC Public Notice, DA 09-1322, Proposed Third Quarter 2009 Universal Service Contribution Factor, CC Docket No. 96-45, released June 12, 2009.

⁹ Reply Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed December 2, 2008, p. 7.

¹⁰ *Qwest Communications International v. FCC*, 398 F.3d 1222, 1234 (2005).

¹¹ Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed March 24, 2008, p. 9; other reforms recommended by the FPSC included: elimination of the identical support rule, establishing a ceiling on CETCs per line support, and discontinuing IAS, ICLS, and LSS support for CETCs.

long-term recurring entitlement.¹² To the extent that the FCC moves forward to expand the definition of supported services to include broadband, funds should only be used to deploy network facilities in unserved areas.¹³ Without a cap, the FPSC is concerned that expanding the definition of supported services would cause the size of the fund to increase significantly, adding additional expense and burden to consumers across the country.

The FCC's notice also asks if it should modify its low-income programs to support broadband.¹⁴ The FCC had previously sought comment regarding the establishment of a pilot program to provide discounts to broadband services in a manner similar to the current Lifeline and Link Up programs for low-income consumers.¹⁵ The proposal would make \$300 million available each year for the next three years to enable ETCs to support broadband Internet access service and the necessary access devices. The FPSC reiterates its opposition to the adoption of such a pilot program unless the funding comes from existing support within the proposed \$4.5 billion cap recommended by the Joint Board.¹⁶

CONCLUSION

Should the FCC consider expanding the definition of supported services to include broadband, it should do so within the context of additional universal service reform. The FPSC would not oppose such an expansion if it were part of an overall cap. The FPSC supports capping the high-cost fund, preferably at the \$4.5 billion level recommended by the Joint Board. This position is also applicable to any new Lifeline broadband proposal. Unless action is taken by the FCC, further growth in the

¹² Ibid, pp. 9-10.

¹³ Ibid, p.10.

¹⁴ FCC Notice of Inquiry, FCC 09-31, GN Docket No.09-51; released April 8, 2009, ¶41.

¹⁵ FCC Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, CC Docket No. 96-45, WC Docket No. 05-337, et al, released November 5, 2008.

¹⁶ Reply Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337, filed December 2, 2008, p. 10.

high-cost universal service fund may ultimately affect the affordability of telecommunications services to consumers.

Respectfully submitted,

/ s /

Cindy B. Miller, Senior Attorney
Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6082

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