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Public Service Commission

October 22, 2001

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW - TW-A325
Washington, DC 20554

Re: CC Docket No. 96-45, Federal-State Joint Board on Universal Service, Review of
the Definition of Universal Service

Dear Ms. Salas:

Forwarded herewith are comments of the Florida Public Service Commission regarding the
definition of Universal Service in the above-captioned docket.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

CBM:tf

cc: Brad Ramsay, NARUC

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

In the Matters of)
)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)
Review of the Definition of)
Universal Service)
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_____)

Florida Public Service Commission
Comments to the Federal-State Joint Board on Universal Service
on its Review of the Definition of Universal Service

On August 21, 2001, the Federal-State Joint Board on Universal Service (Joint Board) issued a Public Notice seeking comment regarding its review of the definition of supported services to receive universal service support. In general, the Florida Public Service Commission (FPSC) believes that the current list of supported services meets the criteria established in the Telecommunications Act of 1996 (the Act) and recommends not modifying the list at this time. Specifically, the FPSC believes that expanding the definition to include advanced services is not warranted at this time because section 254(c)(1)(B) of the Act directs the Federal Communications Commission (FCC) to consider the extent to which a substantial majority of residential customers have subscribed to such telecommunications services. Furthermore, the FPSC is concerned that the effect of providing support only to carriers who provide all of the supported services would impede development of the broadband market. If the Joint Board and the FCC were to move

forward with supporting some level of broadband deployment at this time, the FPSC would recommend that it do so through a new separate mechanism that does not tie support to the provision of both broadband and voice services.

I. Background

Section 254(c)(1) of the Act states that "[u]niversal service [is] an evolving level of telecommunications services" and directs the FCC to periodically consider "advances in telecommunications and information technologies and services."¹ Section 254(c)(2) states that "[t]he Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms."² Section 254(c)(1)(A)-(D) requires the Joint Board and the Commission to "consider the extent to which . . . telecommunications services" to be included in the definition of universal service:

- (1) are essential to education, public health, or public safety;
- (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (3) are being deployed in public telecommunications networks by telecommunications carriers; and
- (4) are consistent with the public interest, convenience and necessity.³

¹ 47 U.S.C. § 254(c)(1).

² 47 U.S.C. § 254(c)(2).

³ 47 U.S.C. § 254(c)(1)(A)-(D).

As noted in the FCC's First Report and Order in this docket, the legislative history of this section instructs that "[t]he definition . . . should be based on a consideration of the four criteria set forth in the subsection."⁴

Section 254(b) goes on to establish the principle that "consumers in all regions of the Nation . . . should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas. . . ."⁵

The FCC had previously designated eight "core" services that are eligible for universal service support. This decision was based on consideration of the Joint Board's recommendations made in November 1996. These services include:

- (1) single-party service;
- (2) voice grade access to the public switched telephone network;
- (3) Dual Tone Multifrequency signaling or its functional equivalent;
- (4) access to emergency services;
- (5) access to operator services;
- (6) access to interexchange service;
- (7) access to directory assistance; and
- (8) toll limitation services for qualifying low-income consumers.

⁴ First Report and Order, FCC 97-157, May 8, 1997.

⁵ 47 U.S.C. § 254(b).

The FCC recently asked the Joint Board to review this list and, if warranted, recommend modifications.⁶

II. Flexibility in Expanding the Definition

Because section 254(c)(1) uses the verb "consider," we continue to believe that the Act affords the FCC and the Joint Board flexibility in expanding the definition of supported services to include services that do not meet all four criteria.⁷ The Joint Board has been given fairly wide latitude in this area, subject primarily to a service being available from a provider and providing that federal universal service support for it is deemed to be in the public interest.

The FPSC has asked all of the carriers currently eligible to receive universal service support in Florida (i.e., eligible telecommunications carriers or ETCs) whether any services, beyond those currently being supported, have been subscribed to by 70 percent of residential customers. Based on the results to date, the FPSC has not been able to conclude that any additional service has met this standard to justify being included as a supported service.

The FPSC believes that even though the FCC and the Joint Board have been granted significant flexibility over what to include in the definition, no expansion in the list of supported services is warranted at this time. Instead, the FPSC recommends that renewed efforts be exerted to promote the effective and targeted use of the low income and rural health care programs. Based on data provided by the FCC's own reports, we are concerned

⁶ Order, FCC 00-440, December 21, 2000.

⁷ Comments of the FPSC to the FCC in CC Docket 96-45, Filed on April 11, 1996.

that these programs may not be meeting the goals set forth by Congress. We believe that focusing on existing support mechanisms serves the public interest more than adding additional services that a clear majority of the public has not selected when given the opportunity.

In addition, the FPSC would note that simply making a service eligible for support may have unintended consequences in some rural, high-cost areas that need support the most. Specifically, if an ETC has not upgraded its network to provide a newly supported service, it would not receive any support. If the Joint Board and the FCC choose to ignore our primary recommendation not to expand the definition at this time, extreme care should be exercised not to create unintended consequences that may adversely affect consumers.

Expanding the list of supported services does not mean that new services will be included in a carrier's basic service offering. We are concerned that consumers would see no real change in the retail prices charged for these newly supported services, only the availability (depending on the service).

III. Advanced Services

The Joint Board sought comments on whether any advanced or high-speed services should be included within the list of supported services.⁸ The FPSC would oppose such a proposal based on the level of consumer demand for these services at current market rates. A recent U.S. General Accounting Office (GAO) report suggests that many consumers are unwilling to pay more for

⁸ High-speed service is defined by the FCC as over 200 kbps in one direction, while advanced service is defined as at least 200 kbps in both directions.

faster Internet access than what they are paying now.⁹ Specifically, 37.8 percent of those polled indicated they were unwilling to pay more than what they were currently paying for conventional dial-up Internet access. While the largest percentage of respondents were willing to pay a little more than they currently pay, the market rate for DSL is higher than most consumers are willing to pay.¹⁰ This suggests that high-speed Internet access is not a service that a substantial majority of residential consumers are willing to purchase at this time.

In addition, the FPSC has concerns about the effect of providing support only to carriers that provide all of the supported services and whether it would impede development of the broadband market. While the voice telecommunications and broadband markets are converging, many broadband providers do not provide the current list of supported services. This is important since it appears that new technologies, such as Internet access via satellite, have the potential of providing high-speed access in rural, high-cost areas at lower costs than local exchange companies. Any proposal that seeks to expand the fund in such a significant way must be technologically neutral. If the Joint Board and the FCC were to move forward with supporting some level of broadband deployment at this time, the FPSC would recommend that it do so through a new separate

⁹ United States General Accounting Office, Report to the Ranking Minority Member, Subcommittee on Telecommunications, Committee on Energy and Commerce, House of Representatives, Characteristics and Choices of Internet Users, GAO-01-345, February 2001; Question 15.

¹⁰ 14.3 percent stated they would be willing to pay less than \$5.00 more than what they were paying for conventional dial-up service, while 27.3 percent were willing to pay between \$5.00 and \$10.00 more. The monthly rate for America Online, a conventional dial-up ISP, is \$23.90 per month, while DSL rates range from about \$40 to \$50 per month.

mechanism that does not tie support to the provision of both broadband and voice services.

IV. Voice Grade Service

As part of this public notice, the FCC and the Joint Board also invited comment to update the record on the definition of voice grade access, including whether support for a network transmission component of Internet access beyond the existing definition of voice grade access is warranted at this time. The FPSC reiterates its previous comments.¹¹

Specifically, there is pervasive apprehension among queried company representatives in Florida that additional investment is currently not recoverable under price cap regulation. It is their opinion that a change in voice grade bandwidth now would not only disrupt current business plans, but would also disrupt market developments among competitors by dictating immediate investment in one technology over any other. Telephone companies throughout Florida, as well as the nation, are in the process of reconditioning lines in an effort to improve network quality. They are also preparing for the certain market challenge of cable and wireless provision of Internet access. To force expedited change in the timing of these network upgrades could prove to be premature and unnecessary.

The FPSC respectfully submits that the intent of improving Internet access to rural communities, like the original proposal, may well be accomplished through other means, thus making any changes to the definition of voice grade access redundant. Be it through Rural Utilities Service loan covenants, through the

¹¹ Comments of the FPSC to the FCC in CC Docket No. 96-45 , Filed February 2, 2000.

context of the Advanced Services proceeding, through expansion of the Schools and Libraries program, or through the efforts being made with the Joint Conference on 706, we believe this matter is being reviewed elsewhere and that the current proposal may unnecessarily duplicate other efforts. We agree with the FCC's own report on the deployment of broadband in America and the finding that the process is occurring at a reasonable and timely rate.¹² Until such time as this conclusion is found to be untrue, we believe additional regulation is untimely.

We also have technical concerns that if the intent of this proposal is to improve data transfer rates in the rural areas, the mere widening of the bandwidth specification, without concurrent standard setting for other specifications (i.e., signal-to-noise ratio), will not achieve the stated goals of improved transfer rates. The cost of requiring complex equipment to tweak the existing analog phone network could prove prohibitive and result in a misallocation of resources; resources that might be better deployed in a true digital system.

V. Conclusion

The FPSC believes that the current services meet the criteria established in the Act and recommends maintaining the current list of supported services at this time. In addition, the FPSC believes that expanding the definition to include advanced services or high-speed Internet access is not warranted in part because support is conditioned on the ability of a carrier to provide all of the supported services. As such, any proposal to expand the definition to include advanced services

¹² FCC Report on Deployment of Advanced Telecommunications, August 21, 2000.

would not be technologically neutral. While we wholeheartedly support the idea of quality Internet access for all Americans and understand its importance to our Nation, we do not believe that modification of the voice grade access is in the best interest of consumers.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
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Dated: October 22, 2001

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Public Service Commission will be furnished this date to the parties on the attached list.

/s/

Cynthia B. Miller, Esq.
Bureau of Intergovernmental Liaison

DATED: October 22, 2001

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