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Public Service Commission

December 15, 2009

VIA ELECTRONIC FILING

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

Re: Ex Parte Comments of the Florida Public Service Commission - NBP Public Notice #19 - CC Docket No. 96-45; WC Docket No. 05-337; WC Docket No. 03-109; GN Docket Nos. 09-47, 09-51, and 09-137

Dear Ms. Dortch:

Pursuant to FCC Rule 1.1206(b)(1), forwarded herewith are ex parte comments of the Florida Public Service Commission in the above dockets with regard to the role of the universal service fund and intercarrier compensation (ICC) in the national broadband plan.

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

Sincerely,

/s/

Cindy B. Miller
Senior Attorney

CBM:wlt

cc: James Bradford Ramsay, NARUC

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
National Broadband Plan Public Notice #19)	GN Docket Nos. 09-47, 09-51, 09-137

**EX PARTE COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN MATTHEW M. CARTER II

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER NANCY ARGENZIANO

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COMMISSIONER DAVID E. KLEMENT

December 15, 2009

INTRODUCTION

The Florida Public Service Commission (FPSC) submits these ex parte comments in response to the Public Notice released by the Federal Communications Commission (FCC) on November 13, 2009, relating to the role of the universal service fund and intercarrier compensation (ICC) in the national broadband plan.¹ While the FPSC supports reform of the high-cost program, we are also concerned that unrestricted growth in the fund will threaten the affordability to consumers.

SIZE OF THE UNIVERSAL SERVICE FUND

While the Federal-State Universal Service Joint Board (Joint Board) recommended expanding the definition of supported services to include broadband, it conditioned this recommendation on providing funding within the confines of the existing high-cost program support amount. The FPSC supports this position. As the Joint Board stated:

Despite our strong interest in providing adequate funding for broadband deployment, we also want to avoid significantly increasing the burden on those consumers. Therefore, we also recommend methods of transitioning from existing support mechanisms to the new funding structure, at approximately the current fund size. In addition, we recommend caps on the total amount of money distributed by the high-cost support mechanism and recommend measures that should lead to more efficient uses of existing funding.²

Currently, USAC estimates the contribution factor for the first quarter of 2010 will have to be increased to a record high of 14.2 percent in order to collect sufficient funding for all of the universal service programs. Expansion of the programs to include broadband support without additional reform of the high-cost program will only further increase the contribution factor. The continued escalation of the size of the fund threatens the “affordability” criterion that the program was intended to

¹ FCC, Public Notice, DA 09-2419, GN Docket Nos. 09-47, 09-51, 09-137, released: November 13, 2009.

² FCC, Recommended Decision of the Universal Service Joint Board, FCC 07J-4, WC Docket No. 05-337, CC Docket No. 96-45, Released: November 20, 2007.

safeguard. As the Tenth Circuit recognized, “excessive subsidization may affect the affordability of telecommunications services, thus violating the principle in §254(b)(1).”³

The growth in the number of CETCs, and the support they receive, has strained the universal service program. While the FCC has taken some incremental steps to address reform of the high-cost program, additional reforms must be implemented in order to ensure the sustainability of the program. The FCC and the Joint Board have previously sought comment on various ideas to reform the high-cost program while advancing broadband deployment. The Joint Board has made a number of recommendations, such as the elimination of the identical support rule. If such support is redirected, it could provide support to targeted broadband deployment. The FPSC urges the FCC to consider the reforms recommended by the Joint Board.

TRANSITION TO SUPPORT ADVANCED BROADBAND DEPLOYMENT

The FCC raises a number of interesting questions regarding the transition from the current voice-centric universal service high-cost support mechanisms to one that explicitly supports advanced broadband deployment. Of particular interest is how revenues from unsupported services should be factored into the amount of support a provider receives. That is, if a provider accepts new high-cost broadband support from the universal service program, how should revenues from services other than broadband or telecommunications services be treated? As broadband networks are deployed due to the availability of new funding, there will likely be also additional revenues from new services other than broadband, such as video. If a new broadband mechanism were to consider revenues associated from all services that can now be provided due to the upgraded plant, we would expect the amount of support needed to meet the obligations of universal service to be less than if all relevant revenues were not acknowledged. The FPSC contends that considering all such revenue, to reduce the amount of support necessary, is reasonable and prudent.

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

Under the American Recovery and Reinvestment Act of 2009, the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) are providing carriers broadband grants to upgrade their networks to provide broadband services in unserved and underserved areas. The FCC seeks comment on whether it should consider the availability of these grants when determining potential disbursements for proposed high-cost broadband support. The FCC should ensure that any new universal service program not support carriers that have already been funded through existing federal grant programs. Carriers should not be able to double dip from different federal agencies for the same broadband project absent a detailed showing of just cause.

COMPETITION AND CARRIER OF LAST RESORT OBLIGATIONS

Within the proposed notice, the FCC recognized that virtually all incumbent local exchange companies (ILECs) operating in rural high-cost areas have carrier-of-last-resort (COLR) obligations for the provision of voice service, while other providers that are offering voice, video or broadband in such areas do not. The FCC specifically asks how COLR obligations vary by state. Florida Statutes provide that:

Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange service within the company's service territory.⁴

However, the 2008 Florida Legislature adjourned without taking action to extend the expiration date, and the COLR obligation has sunset as of January 1, 2009. ILECs in the state are no longer obligated by state law to serve any person requesting service. Federal law, however, requires carriers designated as ETCs to offer services that are supported by the federal universal service support mechanisms.⁵ Designated ETCs are not, however, required to be able to serve immediately all customers in their

⁴ Section 364.025, F.S.

⁵ 47 U.S.C. Section 214(e)(1)(A).

designated territory in order to secure ETC designation. Instead, they are allowed substantial time to build-out their facilities. In the interim, ETCs are required to file a report with the FCC every 12 months indicating the number of requests for service that the carrier was unable to fulfill.

LIFELINE / LINK UP

The FCC has previously sought comment on extending low-income support to establish a Broadband Lifeline/Link Up program. The FPSC responded in that proceeding that we are not opposed to such an expansion, as long as such support does not result in further growth of the universal service fund. In this Public Notice, the FCC seeks additional detailed comments on how and whether any devices necessary for a low-income broadband program, such as a laptop card or other device should be supported. The FPSC notes that such devices are not currently supported under the current Lifeline program for telecommunication services.

Given the current strain on the program, we urge the FCC to, at a minimum, limit initial support to services and connection costs. This would better mirror the existing Lifeline and Link Up programs. Furthermore, we believe that moving forward with direct support for such end-user equipment would expand the risk of waste, fraud, and abuse if equipment such as cable modems, smart phones, or computers were to be subsidized. We are concerned that the program could create incentives for consumers to subscribe to a broadband lifeline service in order to capitalize on equipment discounts. Should a consumer sell equipment purchased through this program, we expect it would be difficult to recover. By comparison, services are harder to resell and can be discontinued. Should the FCC still wish to move forward to fund equipment, the FPSC recommends that the FCC seek comment on establishing a maximum funding limit per household and limits the frequency for which additional or replacement equipment can be purchased.

CONCLUSION

The FPSC believes that any expansion of the universal service programs must balance both the increased availability of broadband services with the additional costs that will ultimately be borne by consumers. We oppose further growth in the size of the fund, but we believe that reform of existing programs can free up monies. These monies could be redirected to support an expanded role for the high-cost and low-income programs in the deployment of broadband services. Absent such reform, the additional growth in the fund size will threaten affordability of telecommunications services.

Improvements in infrastructure necessary to provide broadband ubiquitously will, in many instances, be able to provide additional services in addition to those for which the universal service funding was intended. It is reasonable for the FCC to consider these revenues when determining the necessary amount of support a carrier may need to provide broadband services in high-cost areas.

The FPSC does not endorse using new low-income broadband program funds to provide support for equipment. Given the current strain on the program, we urge the FCC to, at a minimum, limit initial support to services and connection costs. This would better mirror the existing Lifeline and Link Up programs.

The FPSC is pleased to provide COLR information as requested within the public notice. The provisions relating to COLR obligations under Florida Statutes have sunsetted. ILECs in Florida are no longer obligated by state law to serve any person requesting service. Federal law, however, requires carriers designated as ETCs to offer services that are supported by the federal universal service support mechanisms.

Respectfully submitted,

/s/

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