

STATE OF FLORIDA

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Public Service Commission

February 10, 2010

VIA ELECTRONIC FILING

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

Re: WC Docket No. 05-337

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above docket with regard to Partner Communications Cooperative's petition for forbearance from section 54.305(b) and (d) of the Federal Communications Commission's universal service high-cost support rules.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:wt

cc: Brad Ramsay, NARUC
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
)
Petition of Partner Communications Cooperative for) WC Docket No. 05-337
Forbearance Pursuant to 47 U.S.C. § 160 (c) in Iowa)
)

**COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN NANCY ARGENZIANO

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Introduction

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Public Notice (Notice) released on January 12, 2010. In this Notice (DA 10-50), the Federal Communications Commission (FCC) seeks comment on the petition of Partner Communications Cooperative (Partner) for forbearance from sections 54.305(b) and (d) of the FCC's rules. Specifically, Partner requests that the FCC forbear from enforcing sections 54.305(b) and (d) of the FCC's rules so that Partner may receive additional universal service high-cost support and local switching support for four exchanges it acquired in 2006. Partner states that granting its petition will allow Partner to upgrade its telephone network and provide the platform for eventual ubiquitous broadband coverage in the four acquired high-cost exchanges, as well as in its two original exchanges. While the FPSC is sympathetic to the conditions faced by Partner, the FPSC believes that granting its forbearance petition is not the appropriate solution. Furthermore, the FPSC does not believe that the petition meets the forbearance criteria established within the Telecommunications Act.

Existing Transfer Rules

In 1997, the FCC concluded that universal service support payments potentially may unduly influence a carrier's decision to purchase exchanges from other carriers.¹ In order to discourage carriers from placing unreasonable reliance upon the availability of universal service support in deciding whether to purchase exchanges from other carriers, the FCC concluded that a carrier making a binding commitment on or after May 7, 1997 to purchase a high-cost exchange should receive the same level of support per line as the seller received prior to the sale. This decision predates Partner's interest in purchasing exchanges in 2004.

The FPSC believes that Partner should have taken into consideration the amount of federal universal service support that would be available to it and the condition of the network it was purchasing before completing the acquisition of the four exchanges. Partner should have factored in the need for network improvements into the acquisition negotiations. The FPSC is troubled by this request for additional support from a carrier that should have understood the business ramifications of its acquisition, but now seeks to change the rules to its advantage. The

¹ Report and Order, CC Docket No. 96-45, FCC 97-157, Released May 8, 1997, ¶ 308.

FPSC believes that approval of this petition would set a dangerous precedent that would encourage other carriers to seek out additional support at a time when the universal service fund has been growing significantly.

Furthermore, according to its own petition, there appears to have been opportunity for Partner to not consummate the acquisition, had it determined that the purchase of these exchanges was not in its members' best interests. The conclusion of the acquisition was not completed until 2006. The FPSC believes that requesting the FCC now to waive its rules to shelter this firm, while major reform to the program is being considered, is both unreasonable and unwarranted. While Partner is planning to upgrade its network to eventually deploy fiber-to-the home network, it is not unique. The FCC continues to work to understand and reduce the barriers that carriers face to make such investments to further the deployment of broadband ubiquitously throughout the United States. Moreover, Congress has allocated support for such investments through the American Recovery and Reinvestment Act of 2009.

Joint Federal / State Responsibility

The solution proposed by Partner only focuses on granting it additional federal high-cost support. It does so without accounting for the complementary responsibility of the state to promote and advance universal service. The Telecommunications Act itself notes this joint responsibility.² There is no evidence within the petition to indicate that Partner has sought out any intrastate high-cost support to aid in improving its network. It would be premature for the FCC to grant the relief requested by Partner until Iowa has an opportunity to assess such needs and determine what actions, if any, are necessary and prudent in meeting its responsibilities to advancing universal service.

Ongoing Reform

The FCC has several open proceedings before it pertaining to reform of the high-cost support mechanisms.³ The FPSC is concerned that, if granted, Partner's forbearance petition

² 47 U.S.C. § 254(b)(5).

³ FNRPM, WC Docket No. 05-337, CC Docket No. 96-45, FCC 09-112, Released: December 15, 2009; Public Notice, GN Docket No. 09-51, WC Docket No. 05-337, DA 09-2558, Released: December 8, 2009; Public Notice, GN Docket Nos. 09-47,09-51, 09-137, DA 09-2419, Released: November 13, 2009.

would set a precedent that may lead to additional petitions seeking similar piecemeal relief, as opposed to genuine reform. Fundamental reform of the high-cost mechanisms is the subject of those NPRMs for which the FCC is currently seeking comments; therefore, it may be desirable to determine the impact of such reforms before considering granting the petition. We encourage the FCC to move forward expeditiously with USF reform, rather than entertaining entity-specific piecemeal solutions.

Forbearance Criteria

Section 10 of the 1996 Telecommunications Act allows a telecommunications carrier to petition the FCC to refrain, or forbear, from applying any statutory provision or regulation if the FCC determines the forbearance petition meets three criteria. To approve a forbearance petition, the FCC must find:

- The regulation is not necessary to ensure that the carrier's service charges, practices, classification, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory;
- Enforcement of the regulation is not necessary for consumer protection; and
- Forbearance is consistent with the public interest.

While Partner has attempted to address each of these issues, the FPSC believes that the petition overlooks several key factors that should be considered by the FCC while evaluating this petition.

Regulation is Not Necessary

Partner asserts that Section 54.305 is not necessary to ensure that Partner's charges, practices, or classifications are just and reasonable and not unjustly or unreasonably discriminatory. Specifically, Partner states that it is subject to competition from numerous wireless, cable, and satellite providers, as well as broadband-based content providers of voice "applications." This growing number of competitors will serve to keep Partner's rates just, reasonable, and non-discriminatory. However, even if this is true, the FPSC is concerned that granting the requested forbearance may unreasonably discriminate against other providers of

services in these exchanges. If competition is so robust from competitors who lack access to such high-cost funds within these exchanges, we question why it is necessary for government to subsidize one class of provider.

Enforcement is Not Necessary

Partner argues that not only will forbearance not harm consumers, but also that continued enforcement of Section 54.305 might actually harm consumers in Partner's four acquired exchanges. Specifically, by limiting the amount of high-cost support it can receive, Partner contends that its consumers are harmed because Partner will have access to less capital needed to invest in those exchanges. Partner states that its local exchange upgrades and fiber build-out plans are contingent upon its receipt of High-Cost Loop Support and Local Switching Support in the purchased exchanges. Partner should have known it was not eligible for this support at the time it completed the acquisition.

Regarding the impact on the federal universal service program, Partner claims that the incremental increase in the fund due to its forbearance petition, if granted, will not substantially affect what consumers pay into the federal fund. The FPSC disagrees with this assertion. The federal universal service fund has continued to grow, while the assessable revenues have declined. As a result, the assessment factor has increased to a record high of 14.1 percent. From 2000 to 2008, the overall size of the federal universal service program has grown from \$4.5 billion to \$7.6 billion. The continued escalation of the size of the fund threatens the "affordability" criterion 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)."⁴

Public Interest

Because additional high-cost funding would enable Partner to upgrade its network and allow for a fiber-to-the home deployment, it asserts that forbearance is in the public interest. Partner also states that its improvements will promote more competition among voice and broadband providers, giving the public more voice and broadband choices accompanied with

⁴ Qwest Communications International v. FCC, 398 F.3d 1222, 1234 (2005).

lower prices. What is missing from this discussion is the effect such continued increases in the size of the federal universal service fund have on the public in areas other than these four exchanges and overall affordability of rates elsewhere in this country.

Partner suggests that because TracFone's forbearance petition from certain Section 54 rules was granted by the FCC, it should be granted similar relief. While TracFone's forbearance petition was granted, forbearance was granted for completely different rules and for different reasons than the circumstances before Partner. The TracFone petition dealt with rules relating to the "own facilities" requirement to receive universal service support. Furthermore, TracFone's access to federal universal service support is limited to low-income support, not the high-cost support sought by Partner.

Conclusion

The FPSC does not believe the forbearance petition filed by Partner should be granted. Partner knew, or should have known, of the need for network improvements when it purchased the network from Iowa Telecommunications Services and how much federal universal service support would be available. Partner should first look to the state commission to seek out any intrastate remedies available before looking to the federal jurisdiction for additional support. The FPSC believes that the criteria needed for the FCC to grant Partner's forbearance petition have not been met. Partner fails to recognize the systemic growth that the fund continues to exhibit and its relationship to affordability. While increased subsidies may be in the public interest of all consumers in those exchanges, we believe that the FCC should also consider the public interest of consumers that have to pay into the program. The analysis must be balanced. Furthermore, it is not clear why additional support is necessary if there are a sufficient number of unsubsidized competitors offering service, where the existence of such providers will force Partner to maintain reasonable rates. Finally, the FPSC believes that granting Partner's petition is premature since fundamental reform measures regarding high-cost support are pending before the FCC. The FPSC appreciates the opportunity to provide comments and looks forward to continued participation.

Respectfully submitted,

/ s /

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DATED: February 10, 2010