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Public Service Commission

January 13, 2011

VIA ELECTRONIC FILING

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

**Re: Reply Comments of the Florida Public Service Commission in WT Docket No. 10-208,
Universal Service Mobility Fund**

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket regarding creation of a Universal Service Mobility Fund.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf

cc: James Bradford Ramsay, NARUC

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

In the Matter of)	
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	
)	

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

CHAIRMAN ART GRAHAM

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER RONALD A. BRISÉ

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January 13, 2010

INTRODUCTION

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Notice of Proposed Rulemaking (NPRM) released by the Federal Communications Commission (FCC) on October 14, 2010.¹ In general, the FCC seeks comment on creation of a Mobility Fund. The proposed Mobility Fund would provide non-recurring support to providers to deploy 3G (3rd generation wireless services) or better mobile networks to areas where it is not currently available, consistent with the recommendations of the National Broadband Plan. The FPSC supports reallocation of reclaimed high-cost support to expand the availability of broadband services in areas where there are none or where such services are deemed to be inadequate. The FPSC believes that the Mobility Fund has the potential to meet this objective. We support the creation of the Mobility Fund only under the conditions that it uses reclaimed support, is non-recurring in nature, and does not increase the overall size of the fund. However, we believe that prior to distributing universal service support through the Mobility Fund, the FCC must first make a determination of the extent to which the four statutory criteria established in the Telecommunications Act (Act) are satisfied by mobility services.²

DEFINITION OF SUPPORTED SERVICES

Section 254 of the Act defines universal service as “an evolving level of telecommunications services.”³ The Act specifies four criteria that the Universal Service Joint Board and FCC should consider when determining if a service should be included within the definition of supported services. Those criteria the FCC must consider include that the services:

(A) are essential to education, public health, or public safety;

¹ FCC, Notice of Proposed Rulemaking, FCC 10-182, WT Docket No. 10-208, released: October 14, 2010.

² 47 U.S.C. § 254(c)(1).

³ Ibid.

- (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (C) are being deployed in public telecommunications networks by telecommunications carriers; and
- (D) are consistent with the public interest, convenience, and necessity.⁴

In November 2007, the Universal Service Joint Board recommended expanding the definition of supported services to include mobile services.⁵ Its recommendation was focused on wireless voice services to unserved areas.⁶ The Joint Board also recommended that broadband services be supported but did not specify what speed constitutes broadband.⁷ For these reasons, we believe that the FCC must first formally conclude that 3G mobility broadband services also meet the required standards in the Act. Absent such a record-based finding, the FCC's authority to implement the proposed Mobility Fund may not be legally sustainable. This position is consistent with the comments of the National Association of State Utility Consumer Advocates.⁸

MOBILITY FUND STRUCTURE

As proposed, the Mobility Fund would utilize reverse auctions, in which the potential providers of service in identified unserved areas compete for support from the Mobility Fund. Only the winner of the auction would receive support for a given geographic area. According to the draft rules, support would be disbursed in three stages. In the first stage, one third of the total amount of

⁴ Because Section 254(c)(1) uses the verb "consider," the FPSC continues 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. Comments of the FPSC to the FCC in CC Docket 96-45, filed on April 11, 1996, October 22, 2001, and April 14, 2003.

⁵ FCC-07J-4, ¶¶ 63-67.

⁶ Ibid. ¶ 16.

⁷ Ibid. ¶ 72.

⁸ Comments of the National Association of State Utility Consumer Advocates, p. 3.

support would be awarded when a wireless carrier's long-form application for support is approved. The second stage would award one-third of the total support when the wireless carrier files a report demonstrating coverage of 50 percent of the area previously deemed unserved. The final stage would award the remaining one-third of the total support once a carrier demonstrates coverage of 100 percent of the area previously deemed unserved. The FPSC supports this funding structure because it places the burden on carriers seeking support to demonstrate progress towards achieving the program objectives. The FPSC also supports capping funding for a geographic area based on the amount of support the winning wireless carrier bids in the reverse auction. This one-time support is a significant improvement over other existing high-cost programs that have become a perpetual entitlement.

SUFFICIENCY OF THE MOBILITY FUND

Several commenters, including CTIA – The Wireless Association (CTIA), California Public Utility Commission, and the Ohio Public Utility Commission (PUC), have asserted that the proposed support amount is not sufficient to meet the goals of the program. The FPSC does not believe that the program needs to be funded at such a level as to provide support for all unserved areas simultaneously. Using reverse auctions to award universal service support is something the FCC has not previously tried. The FCC should use the initial implementation period to gain experience administering such an auction and ensure accountability and transparency. By transitioning funding from existing programs to the Mobility Fund over time, we believe that the FCC will afford itself time to minimize potential waste and fraud. The FPSC opposes recommendations to increase the overall size of the federal universal service program.

As noted in the comments of the Ohio PUC, the total amount of support surrendered by Sprint and Verizon Wireless exceeds the amount of support the FCC is considering allocating to the Mobility

Fund.⁹ The FCC has already directed the Universal Service Administrative Company (USAC) to hold in reserve any reclaimed support and has indicated that it may use those proceeds for any number of supplemental universal service funding applications, such as indexing the current cap on the schools and libraries program.¹⁰ Should the FCC be persuaded that the proposed amount of support is not sufficient, the FCC should look to use additional resources recovered from Sprint and Verizon Wireless. As the FPSC has stated in prior comments, we do not believe that funds reclaimed from the high-cost programs should be reallocated to non-high-cost universal service programs.¹¹

Currently, the contribution factor for the first quarter of 2011 is set at 15.5 percent in order to collect sufficient funding for all of the universal service programs.¹² This represents a new record high assessment factor that is ultimately paid for by consumers. Any increase in the size of the Mobility Fund without a corresponding decrease within the universal service program is likely to further increase the contribution factor. 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).”¹³

REALLOCATION OF SUPPORT

Should the FCC believe that it is necessary to expand the size of the Mobility Fund, the FPSC believes that the FCC should look to reallocate funding from existing high-cost programs. Given that most of the support received by competitive eligible telecommunications carriers (CETCs) is directed

⁹ Comments of the Public Utilities Commission of Ohio, WT Docket No. 10-208, December 15, 2010.

¹⁰ FCC Order and Notice of Proposed Rulemaking, FCC 10-155, Released: September 3, 2010.

¹¹ Comments of the Florida Public Service Commission, WC Docket No. 05-337 and CC Docket No. 96-45, October 21, 2010.

¹² The assessment factor is applied to carriers’ interstate and international revenues. VoIP and wireless carriers generally are assessed based upon a safe harbor contribution factor.

¹³ *Qwest Communications International v. FCC*, 398 F.3d 1222, 1234 (2005).

to wireless carriers, we believe that phasing down support provided to CETCs is reasonable. The National Broadband Plan also recommends the phase out of high-cost support for CETCs over a five-year period. We agree with Verizon that the phase down of CETC support should be expedited.¹⁴ The FPSC has previously proposed that the phase down of support that CETCs receive from Interstate Common Line Support (ICLS) and Interstate Access Support (IAS) should be in the first year of the five-year plan.¹⁵ Both IAS and ICLS were created in order to offset a portion of a mandated interstate access charge reduction considered to be an implicit universal service fund subsidy. However, CETC interstate access rates are not regulated and CETCs were never subject to mandatory access reductions. Thus, CETCs have no need to receive access replacement-related universal service monies. Furthermore, the FCC concluded that wireless carriers (which make up the majority of CETCs) have no right to impose access charges.¹⁶

CONCLUSION

The FPSC supports the general structure that the FCC has proposed for the Mobility Fund. We believe that the proposed funding structure is reasonable because it places the burden on carriers seeking support to demonstrate progress towards achieving the program objectives. The FPSC also supports limiting the amount of funds that carriers receive based on the winning carrier's bid. We believe that this structure achieves an equitable balance between the goals of the program and the burden of funding the program. We believe that before the FCC can move forward, however, it must address its statutory responsibilities to define the services it wishes to fund through this program as a

¹⁴ Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 and CC Docket No. 96-45, October 21, 2010.

¹⁵ Comments of the Florida Public Service Commission, WC Docket No. 10-90, GN Docket No. 09-51, and WC Docket No. 05-337, August 11, 2010.

¹⁶ Declaratory Ruling, Petition of Sprint PCS and AT&T Corp. for Declaratory Ruling CMRS Access Charges, WT Docket No. 01-316, released July 3, 2002, at ¶¶ 1, 8-9.

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“supported service.” Prior to distributing universal service support through the Mobility Fund, the FCC must first make a determination of the extent to which the four statutory criteria established in the Telecommunications Act (Act) are satisfied by mobility services. The FPSC opposes further growth in the universal service fund. Should the FCC conclude that additional support is needed to meet the objectives of the Mobility Fund, it should first look toward additional reclaimed support from Sprint and Verizon Wireless. Only after that should the FCC look to reallocate support from existing high-cost programs.

Respectfully submitted,
/ s /
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