

BEFORE THE PUBLIC SERVICE COMMISSION

In re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.	DOCKET NO. 010977-TL ORDER NO. PSC-07-0685-FOF-TL ISSUED: August 22, 2007
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. TEW  
NANCY ARGENZIANO  
NATHAN A. SKOP

FINAL ORDER REGARDING  
RURAL LOCAL EXCHANGE COMPANY CERTIFICATION  
AND REPORTING REQUIREMENTS

BY THE COMMISSION:

**I. Case Background**

Seven local exchange telecommunication companies have submitted their respective annual affidavits certifying that for the year 2008 they will use for proper purposes the federal high-cost support they receive. The seven telecommunication companies are Windstream Florida, Inc., Frontier Communications of the South, LLC, GTC, Inc. d/b/a FairPoint Communications, ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, Quincy Telephone Company d/b/a TDS Telecom, and Smart City Telecommunications LLC d/b/a Smart City Telecom.

Section 254(e) of the Telecommunications Act of 1996 provides that a carrier that receives universal service support "...shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." In its Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 00-256 (the Rural Task Force Order; hereafter, the RTF Order) the Federal Communications Commission (FCC) modified its rules pertaining to the provision of high-cost support for rural telephone companies. The FCC adopted a rule requiring that states who wish for rural carriers within their jurisdiction to receive federal high-cost support must file a certification annually with the FCC and with the Universal Service Administrative Company (USAC). This certification is to affirm that the federal high-cost funds flowing to rural carriers in the state, or to any competitive eligible telecommunications carriers seeking support for serving customers within a rural carrier's service area, will be used in a manner that comports with Section 254(e). The rule provisions are:

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§54.314. State certification of support for rural carriers.

- (a) *State certification.* States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.30 (local switching support), 54.305 (sale or transfer of exchanges), and/or 54.307 (support to competitive ETC) of this part and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. .
- (c) *Certification format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and shall be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth below in subsection (d). . . .

The FCC requires that certifications for the next calendar funding year must be submitted by the preceding October 1; thus, in order for a rural carrier to be eligible for high-cost universal service support for all of calendar year 2008, certification must be submitted by October 1, 2007.

On March 17, 2005, the FCC released Order No. FCC 05-46 establishing new annual certification and reporting requirements to comply with the conditions of ETC designation and to ensure universal service funds are used for their intended purposes. In making its decision, the FCC believed that the new reporting requirements were reasonable and consistent with the public interest and the Act, and will further the FCC's goal of ensuring that ETCs satisfy their obligation under Section 214(e) of the Act to provide supported services throughout their designated service areas. The FCC also believed that the administrative burden placed on carriers would be outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it was intended, and would help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with the access to affordable telecommunications and information services.

By Order No. PSC-05-0824-FOF-TL issued August 15, 2005 and Order No. PSC-05-0824A-FOF-TL issued August 17, 2005, the Commission approved the establishment of the new annual certification and reporting requirements. Each of the rural carriers which are seeking state certification for 2008 have complied with the Commission's new reporting requirements.

This order addresses the Commission's certification of Florida's rural LECs for 2008.<sup>1</sup>

## II. Certification

Unless the Commission submits certifications to the FCC and to USAC by October 1, 2007, Florida's rural carriers will receive no interstate high-cost universal service funds during the first quarter of 2008, and would forego all federal support if certification from the FPSC is not eventually submitted. Other than Frontier, these rural ETCs are under intrastate price regulation; thus, this Commission's regulatory oversight over their operations is somewhat limited. However, the FCC anticipated that certain state commissions may have restricted authority:

In the case of non-rural carriers, we concluded that states nonetheless may certify to the FCC that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support will be "used only for the provision, maintenance and upgrading of facilities and services for which the support is intended." We determined that, in states in which the state commission has limited jurisdiction over such carriers, the state need not initiate the certification process itself. . . . We conclude that this approach is equally appropriate here with regard to rural carriers and competitive eligible telecommunications carriers serving lines in the service area of a rural local exchange carrier. (RTF Order, ¶188)

We note that on February 27, 2004, the Federal-State Joint Board on Universal Service (Joint Board) recommended that the FCC encourage states to use the annual ETC certification process to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs.<sup>2</sup> It made this recommendation in order to ensure the accountability of all ETCs for the proper use of funds received. Annual review affords states the opportunity for a periodic review of ETC fund use.<sup>3</sup> The Joint Board asserted that states should examine compliance with any build-out plans. Where an ETC fails to comply with the requirements in Section 214(e) and any additional requirements proposed by the state commission, the Joint Board noted that the state commission may decline to grant an annual

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<sup>1</sup> We note that there is a companion FCC rule, §54.313, associated with state certification for non-rural carriers in order for them to receive high-cost model support or interim hold-harmless support.

<sup>2</sup> See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, pars. 46-48 (2004).

<sup>3</sup> See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, par. 95 (1999) (*Ninth Report and Order*) (stating that accountability for the use of federal funds in the state ratemaking process is an appropriate mechanism to ensure that non-rural carriers use high-cost support for the provision, maintenance and upgrading of facilities and services for which the support is intended); see also *Rural Task Force Order*, CC Docket 96-45, FCC 01-157, par. 187 (2001) (anticipating that states would take the appropriate steps to account for the receipt of high-cost support and ensure that federal support is being applied in a manner consistent with section 254).

certification or may rescind a certification granted previously.<sup>4</sup> To date, there have been no indications that the rural ETCs are in violation of any of the provisions of Section 214(e); thus, we do not need to conduct any reviews at this time. However, should the need arise this Commission shall take the necessary steps to ensure that all ETCs in Florida are in compliance, as a condition of recertification.

Similarly, the FCC has noted that it may institute an inquiry on its own motion for companies for which it, rather than state commissions, has conducted ETC designations.<sup>5</sup> Such an inquiry could include an examination of the ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services." The FCC stated that failure to fulfill the requirements of the statute, its rules and the terms of its designation order, could result in the loss of the carrier's ETC designation.

As has been done in prior years, each of the seven Florida rural ETCs has provided the Commission with an affidavit in which they have certified that their use of interstate high-cost universal service support received during 2008 will comport with Section 254(e) of the Act and applicable FCC rules. Given these ETCs' certifications, we hereby certify to the FCC and to the USAC that these ETCs will be using interstate high-cost universal service support in 2008 in a manner that complies with Section 254(e).

#### **IV. Conclusion**

Under the FCC's rule 54.314, state commission certification that their rural LECs will use interstate high-cost universal service support in a manner that comports with Section 254(e) will need to be addressed once a year. We anticipate that in subsequent years, Florida's rural LECs that continue to desire to receive interstate high-cost universal service support will again submit affidavits to this Commission; such affidavits would need to be received on a schedule that allows for an order to be issued and forwarded with a letter to the FCC and the USAC prior to October 1. Accordingly, this docket to remain open to handle subsequent certifications.

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<sup>4</sup> *Federal-State Joint Board on Universal Service*; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, (2000), recon. pending (Section 214(e) Declaratory Ruling), par. 15.

<sup>5</sup> *See Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37, par. 43, (2004).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission, and we hereby certify that Windstream Florida, Inc., Frontier Communications of the South, LLC, GTC, Inc. d/b/a FairPoint Communications, ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, Quincy Telephone Company d/b/a TDS Telecom, and Smart City Telecommunications LLC d/b/a Smart City Telecom will be using interstate high-cost universal service support in 2008 in a manner that complies with Section 254(e) of the federal Telecommunications Act of 1996. It is further

ORDERED that this Docket shall remain open.

By ORDER of the Florida Public Service Commission this 22nd day of August, 2007.



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ANN COLE  
Commission Clerk

( S E A L )

PKW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.