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To: Filings@psc.state.fl.us
Cc: Susan Masterton
Subject: Embarq's Post-Workshop ETC Rulemaking Comments
Attachments: Embarq's Post Workshop Comments 9-14-09.pdf

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September 14, 2009

FILED ELECTRONICALLY

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Undocketed
Eligible Telecommunications Carrier Designation

Dear Ms. Cole:

Enclosed for filing please find Embarq Florida Inc.'s Post-Workshop Comments on Proposed Rule 25-4.066x, Florida Administrative Code in the above referenced matter. If you have any questions, please contact me at 850-599-1560.

Sincerely,

s/Susan S. Masterton
Susan S. Masterton

Enclosure(s)

cc: Sandra Khazraee
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Eligible Telecommunications Carrier Designation	Undocketed Filed: September 14, 2009
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**EMBARQ FLORIDA, INC.'S POST-WORKSHOP COMMENTS ON PROPOSED
RULE 25-4.066x, FLORIDA ADMINISTRATIVE CODE**

As requested by staff at the workshop held on August 11, 2009 Embarq Florida, Inc. ("Embarq") submits the following post-workshop comments regarding the proposed rules relating to Eligible Telecommunications Carrier Designation.¹

Introduction

Embarq supports the Commission efforts to ensure that the carriers it certifies as eligible to receive federal universal service funds meet criteria sufficient to demonstrate their certification fulfills universal service goals as set forth in the 1996 Telecommunications Act (47 U.S.C. §§ 214 and 254). In reviewing the proposed rules, it appears that they largely tracked the federal regulations relating to the certification of eligible telecommunications carriers (ETCs) and found at 47 C.F.R. §§ 54.1-54.209. To the extent the Commission has the authority to implement and enforce the federal rules, Embarq questions whether it is necessary or efficient for the Commission's rules to replicate in detail the federal rules, or whether it might be more efficient and effective to incorporate the federal rules by reference, as it does when implementing other federal standards (such as the National Electric Safety Code, see Rule 25-4.038.) To the extent the Commission decides to pursue the detailed replication of the rules provided in the

¹ In response to Embarq's request, staff granted Embarq an extension until September 14, 2009 to file these comments.

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Preliminary Draft attached to the July 28, 2009 Notice of Staff Workshop, Embarq submits the following suggested revisions.

Specific Rule Comments

Rule 25-4.066x, Subsection (1)

Embarq understands that the criteria set forth in subsection (1) are intended to apply to carriers who are requesting ETC status. Embarq recommends that the introductory paragraph to subsection (1) be amended to clarify this intent, as follows:

(1) A common carrier that requests ~~desires~~ designation as an eligible telecommunications carrier shall file a petition for such designation with the Commission. The petition shall include the following:

In addition, the reference in subsection (1)(m)3. appears to be incorrect. Embarq suggests that it should read:

3. Notify this Commission if a determination is made that it is unable to provide service to requesting customers within 30 days using one or more of the methods listed in (1)(m)2.i ~~a-~~through ~~vi-f~~ of this rule.

Rule 25-4.066x, Subsection (2)

Consistent with the revision to subsection (1), Embarq recommends that the application of subsection (2) to carriers requesting designation as ETCs be clarified as follows:

(2) To qualify as an eligible telecommunications carrier, a common carrier requesting designation as an eligible telecommunications carrier shall provide the following nine services:

Rule 25-4.066x, subsection (3)

Embarq understands that subsection (3) is intended to apply to carriers receiving high cost loop support from the federal Universal Service Fund (USF). To clarify this intent, Embarq recommends that subsection (3) be amended as follows:

(3) An applicant seeking designation as an eligible telecommunications carrier and planning to request high cost loop support ~~from funds~~ shall provide a statement that all federal high-cost loop support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended in Florida.

(a) An annual certification shall be filed with the Commission by June 15 prior to the year for which federal high-cost loop support is sought. The annual certification shall include the following:

Rule 25-4.066x, subsection (5)

Embarq believes that requiring eligible telecommunications carriers to notify new customers in writing of the availability of the Federal Lifeline program will introduce additional cost to the carriers with no or very little real benefit. Additionally, sending a notice to customers regarding a discount program that many of them are not qualified to participate in may irritate those customers. If this language remains in the proposed rule,

then Embarq believes the language requiring eligible telecommunications carriers to notify new customers of “any other assistance program” (other than Lifeline or Link-Up) is too broad and, therefore, ambiguous. Embarq suggests that the proposed rule be revised to more clearly identify the assistance programs that must be noticed, as follows:

(5) An eligible telecommunications carrier shall notify each of its new customers in writing of the availability of the Federal Lifeline, Link-Up for wireline customers, activation fee assistance for wireless customers, or any other similar assistance program being offered by the Company, within 30 days after receiving telecommunications services. An eligible telecommunications carrier shall advertise the availability of Lifeline and Link-Up services in media of general distribution throughout its service areas.

Rule 25-4.066x (8)

While subsection (8) appears intended to reflect existing federal requirements found in 47 C.F.R. § 54.205, regarding relinquishment of ETC status, it goes beyond the requirements of the federal rule. The federal rule requires only that a carrier provide “advance notice” of relinquishment and then allows a maximum of 12 months to effectuate the withdrawal of the ETC designation. In contrast, the proposed rule appears to require exactly 12 months advance notice of relinquishment. Embarq recommends that the rule be revised to track the federal requirements, as follows:

(8) An eligible telecommunications carrier may relinquish its designation for an area served by more than one eligible

telecommunications carrier by providing a ~~12-month~~ advance notice to the Commission, in writing, of its intention. The relinquishing eligible telecommunications carrier shall ensure that all customers served by it will continue to be served, and will provide sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. Any such purchase or construction shall be completed within one year after the Commission approves such relinquishment.

In addition, paragraph (b) of subsection (8) also appears to be overly broad regarding the discontinued services for which an ETC must provide notice to affected customers and the Commission. Consistent with the intended scope of the rule to address those services supported by the federal USF, Embarq recommends that the rule be revised to clarify the intended scope, as follows:

(b) If an eligible telecommunications carrier seeks to discontinue any supported service, it shall notify affected customers and the Commission 60 days prior to discontinuance of service.

Rule 25-4.066X (9)

This subsection appears to provide a list of alternative actions that the Commission may take if it finds that a company no longer qualifies as an eligible telecommunications carrier. To be consistent with the alternative nature of the list of actions, Embarq recommends that the rule be revised as follows:

(9) If the Commission finds, after notice and opportunity for hearing, that a company designated as an eligible telecommunications carrier no longer qualifies as an eligible telecommunications carrier, the Commission may ~~shall~~ impose penalties, revoke the telecommunications company's eligible telecommunications carrier designation, or require that appropriate remedial actions be taken to bring the company into compliance with this rule.

Respectfully submitted this 14th day of September 2009.

s/ Susan S. Masterton
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