I. Meeting Packet

State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday – October 12, 2010
Following Commission Conference
Room 140 - Betty Easley Conference Center

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1. Approve September 28, 2010 Internal Affairs Meeting Minutes. (Attachment 1)

2. Draft Reply Comments to FCC regarding proposed rulemaking reform to address high-cost support relinquished by competitive ETCs. Approval of comments is sought. Reply comments are due October 22nd. (Attachment 2)

3. Other matters, if any.

TD/sa

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.

Attachment 1

State of Florida

Public Service Commission

INTERNAL AFFAIRS MINUTES

Tuesday – September 28, 2010
10:59 am – 11:05 am
Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Commissioner Edgar
Commissioner Skop
Commissioner Graham
Commissioner Brisé

STAFF PARTICIPATING: Devlin, Kiser, Lynn

1. Approve September 14, 2010 Internal Affairs Meeting Minutes.

   The minutes were approved.

   Commissioners participating: Edgar, Skop, Graham, Brisé

2. Consideration of Legislative Budget Request for Fiscal Year 2011-12.

   The Commissioners approved the proposed Legislative Budget Request for Fiscal Year 2011-12.

   Commissioners participating: Edgar, Skop, Graham, Brisé

3. Other matters, if any.

   There were no other matters discussed.

Attachment 2

Attachment 2

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 4, 2010

TO: Tim Devlin, Executive Director

FROM: Division of Regulatory Analysis (Fogleman, Hunter, Shafer)
Division of Economic Regulation (Dowds)
Office of the General Counsel (Miller)

RE: Draft Reply Comments to FCC regarding proposed rulemaking reform to address high-cost support relinquished by competitive ETCs.
Critical Information: Please place on October 12th Internal Affairs. Approval of Comments is sought. Reply comments are due October 22nd.

On September 3, 2010, the Federal Communications Commission (FCC) released an Order and Notice of Proposed Rulemaking (NPRM) addressing how high-cost support for competitive eligible telecommunications carriers (CETCs) in a state should be allocated when the support for one or more competitive carriers is phased out or eliminated. Staff circulated a memo summarizing this Order and NPRM on September 20th. In general, the Order addresses two specific merger requirements pertaining to the five-year phase out of high-cost support for Verizon Wireless/ALLTEL and Sprint Nextel/Clearwire.

The NPRM asks for comments on amending the interim cap rules that determine high-cost universal service funding that CETCs receive. As proposed, the new rules would reduce a state's total interim cap amount if a CETC serving a state relinquishes its ETC status. Under current rules, the total capped high-cost support available for remaining CETCs will not change even if a carrier relinquishes its ETC designation. Thus, the total available support in the state could be reallocated to the remaining CETCs within the state. The FCC proposes amending the interim cap rules so that the cap amount for that state is reduced by the amount of support the CETC was eligible to receive in its final month of eligibility, annualized, when a CETC relinquishes its ETC designation.

The FCC also seeks comment on permanently amending the rules to allow use of reclaimed high-cost support. Under the current rules, if collected support is not distributed fully within a quarter, it is used to reduce the amount of support that will need to be collected in the next quarter. The FCC's Order has established an 18-month waiver of this rule (§ 54.709(b)) for high-cost support phased down from Verizon Wireless and Sprint Nextel. The waiver will allow Universal Service Administrative Company (USAC) to retain undistributed high-cost support as opposed to forcing a reduction in the contribution factor the subsequent quarter. The FCC will direct USAC on how these funds should be distributed. The FCC has instructed the USAC to continue to project ETC support at the interim cap without regard to the merger stipulations to phase out support for those carriers. The FCC seeks comment on revisions to its rules that would have the effect of making the waiver permanent for those carriers that relinquish their ETC status. The effect of this change would be that the FCC could continue to save support (or use it for other universal service programs) in instances where an ETC either surrendered its ETC status or was not recertified by a state commission.

Staff seeks approval of the attached draft reply comments (Attachment A). While the proposed comments generally support the FCC reclaiming support from ETCs that relinquish their ETC designation, it also expresses concern over the direction the FCC has taken in the Order and NRPM. Specifically, the draft comments do not support redistributing reclaimed high-cost support to other existing universal service programs. In some instances, this could result in providing support that exceeds the cap established for a program. The proposed comments oppose continued collection and retention of forgone support given that the rules for neither the Connect America Fund nor the Mobility Fund have been adopted. At this time, the Connect America Fund and the Mobility Fund are only recommendations from the National Broadband Plan, and have not been implemented. These funds are ultimately paid by consumers and we oppose keeping the assessment factor artificially higher than needed. Instead, staff believe that the assessment factor should be allowed to decline until final rules to implement the new programs are adopted by the FCC.

Attachment
cc: Charles Hill

Attachment A

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

DRAFT

REPLY COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION

COMMISSIONER NANCY ARGENZIANO

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER NATHAN A. SKOP

COMMISSIONER ART GRAHAM

COMMISSIONER RONALD A. BRISÉ

October 12, 2010

INTRODUCTION

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Order and Notice of Proposed Rulemaking (NPRM) released by the Federal Communications Commission (FCC) on September 3, 2010.[1] In general, the Federal Communications Commission (FCC) seeks comment on modifying its rules to better enable it to reclaim certain high-cost support, and to use that support to help fund broadband universal service programs, consistent with the recommendations of the National Broadband Plan. While the FPSC is sympathetic to these goals, we respectfully contend that a better use of reclaimed support would be to reduce the contribution factor, even if only temporarily. The FPSC supports reallocation of reclaimed high-cost support towards expansion of broadband service in areas where there are none or where such services are deemed to be inadequate. However, we do not support redistributing reclaimed high-cost support towards other existing universal service programs. We believe that by artificially maintaining the current contribution factor, the FCC threatens the affordability of the services it seeks to support.

RELINQUISHMENT OF ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS

The FCC seeks comment on amending the interim cap rule where a competitive Eligible Telecommunications Carrier (CETC) providing service within a state relinquishes its ETC status. Under current rules, high-cost support for CETCs is capped at the total amount of support all CETCs within a state received in March 2008, on an annualized basis. This capped amount of support does not change even if the number of CETCs serving in a state changes. Instead, this total support amount is effectively divided among all the CETCs. The FCC proposes amending the interim cap rule so that if a CETC relinquishes its ETC status in a state, the capped amount for that state will be reduced by

[1] FCC, Order and Notice of Proposed Rulemaking, FCC 10-155, WC Docket No. 05-337, CC Docket No. 96-45, released: September 3, 2010.

the annualized amount of support that the CETC was eligible to receive in its final month of eligibility. According to the FCC, reducing the total amount of support available to CETCs when another CETC relinquishes its ETC status will not reduce support flowing to individual CETCs. The FPSC is generally supportive of reclaiming high-cost support from carriers that relinquish their ETC status. We also agree that it would be reasonable to use these funds to begin implementing the Connect America Fund and the Mobility Fund, as proposed in the National Broadband Plan. However, we disagree that it is appropriate to retain forgone support that is paid ultimately by consumers while no rules to govern these new programs have been adopted by the FCC. Instead, we believe that the assessment factor should be allowed to be reduced until final rules to implement these new programs are adopted by the FCC. Artificially maintaining the current contribution factor could threaten the affordability of the services it seeks to support. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of the telecommunications services, thus violating the principle in §254(b)(1)."[2]

RECLAIMED SUPPORT

The FCC also seeks comment on amending section 54.709(b) to permit it to provide the Universal Service Administrative Company (USAC) alternative instructions for implementing prior period adjustments. This rule requires that USAC carry forward any "excess payments" from contributors to the next quarter. The "next quarter" refers to USAC's next quarterly demand filing. The effect of this rule is to reduce the contribution factor in the subsequent quarter, which reduces consumers' assessments.

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

However, the Order accompanying the NPRM implements an 18-month waiver of this rule to enable the USAC to reserve reclaimed funds arising from the merger agreements of Sprint Nextel and Verizon Wireless. These amounts result from the reduction in high-cost disbursements to Sprint Nextel and Verizon Wireless due to their agreements to phase out all high-cost support received over a five-year period. The FCC seeks comment on amending the rule to give it the flexibility to require USAC to carry forward reclaimed support for other purposes. The FCC reasons that absent continued collection of high-cost support, the contribution factor would fluctuate more than it has in the past. If the associated Order is any indication, however, the continued collection of support could instead be reallocated to existing universal service programs other than the high-cost program.[3] Moreover, it is possible that redistributing high-cost support to programs with a cap, such as schools and libraries and rural healthcare, may result in exceeding the established cap. Currently, both the E-rate and rural health care programs are capped the by Commission rule at $2.25 billion annually,[4] and $400 million per funding year, respectively.[5] The FPSC finds these prospects troubling and believes that reallocation of support from one program to another is not sustainable or appropriate.

In response to the FCC's concern about the fluctuations in the assessment factor, we believe that fluctuations can be mitigated. Assuming the FCC decides to establish the Connect America Fund and the Mobility Fund, support could be transitioned from legacy support into these new programs. It is not necessary to fully fund these new programs as soon as the FCC creates the Connect America Fund and the Mobility Fund. Instead, the support for these new programs should be ramped-up as the legacy support is ramped-down in order to mitigate such fluctuations in support. It would be

[3] FCC, Order and Notice of Proposed Rulemaking, FCC 10-155, WC Docket No. 05-337, CC Docket No. 96-45, released: September 3, 2010, ¶ 20.

[4] 47 C.F.R. §54.507(a); We recognize that the FCC has recently adopted an Order (FCC 10-175) that has indexed the annual funding for the schools and library program to inflation. For the 2010, funding for schools and library program will increase from $2.25 billion to $2.27 billion.

[5] 47 C.F.R. §54.623(a).

reasonable to begin providing support for these new programs once rules are adopted; however, any reclaimed support should only be used for new high-cost support programs such as the Connect America Fund or the Mobility Fund. Until rules for new programs are adopted, however, excess funds should continue to be used to reduce the contribution factor or in the alternative, held by USAC until such rules are implemented.

CONCLUSION

The FPSC believes that the FCC should reclaim high-cost support from ETCs that give up their designation, rather than redistributing it to other CETCs. We do not support redistributing reclaimed high-cost support to other existing universal service programs. We believe that the assessment factor should be allowed to decline until the new Connect America Fund and Mobility Fund are established by the FCC. These funds are ultimately paid by consumers and we oppose keeping the assessment factor artificially higher than needed which threatens affordability.

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

<u>NOTE</u>: The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials for Internal Affairs

<u>NOTE</u>: The following material pertains to Item 2 of this agenda.

Attachment A

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

DRAFT

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSIONER NANCY ARGENZIANO

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COMMISSIONER ART GRAHAM

COMMISSIONER RONALD A. BRISÉ

October 12, 2010

Parties/Staff Handout
Internal Affairs/Agenda
on 10/12/10
Item No. 2

INTRODUCTION

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[1] FCC, Order and Notice of Proposed Rulemaking, FCC 10-155, WC Docket No. 05-337, CC Docket No. 96-45, released: September 3, 2010.

the annualized amount of support that the CETC was eligible to receive in its final month of eligibility. According to the FCC, reducing the total amount of support available to CETCs when another CETC relinquishes its ETC status will not reduce support flowing to individual CETCs. The FPSC is generally supportive of reclaiming high-cost support from carriers that relinquish their ETC status. We also agree that it would be reasonable to use these funds to begin implementing the Connect America Fund and the Mobility Fund, as proposed in the National Broadband Plan. However, we disagree that it is appropriate to retain forgone support that is paid ultimately by consumers while no rules to govern these new programs have been adopted by the FCC. Instead, we believe that the assessment factor should be allowed to be reduced until final rules to implement these new programs are adopted by the FCC. Artificially maintaining the current contribution factor could threaten the affordability of the services it seeks to support. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of the telecommunications services, thus violating the principle in §254(b)(1)."[2]

RECLAIMED SUPPORT

The FCC also seeks comment on amending section 54.709(b) to permit it to provide the Universal Service Administrative Company (USAC) alternative instructions for implementing prior period adjustments. This rule requires that USAC carry forward any "excess payments" from contributors to the next quarter. The "next quarter" refers to USAC's next quarterly demand filing. The effect of this rule is to reduce the contribution factor in the subsequent quarter, which reduces consumers' assessments.

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In response to the FCC's concern about the fluctuations in the assessment factor, we believe that fluctuations can be mitigated. Assuming the FCC decides to establish the Connect America Fund and the Mobility Fund, support could be transitioned from legacy support into these new programs. It

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[3] FCC, Order and Notice of Proposed Rulemaking, FCC 10-155, WC Docket No. 05-337, CC Docket No. 96-45, released: September 3, 2010, ¶ 20.

[4] 47 C.F.R. §54.507(a). We recognize that the FCC has recently adopted an Order (FCC 10-175) that has indexed the annual funding for the schools and library program to inflation. For the 2010, funding for schools and library program will increase from $2.25 billion to $2.27 billion.

[5] 47 C.F.R. §54.623(a).

[6] Comments of CenturyLink, WC Docket No. 05-337, CC Docket No. 96-45, filed October 7, 2010, pp 1-2.

is not necessary to fully fund these new programs as soon as the FCC creates the Connect America Fund and the Mobility Fund. Instead, the support for these new programs should be ramped-up as the legacy support is ramped-down in order to mitigate such fluctuations in support. It would be reasonable to begin providing support for these new programs once rules are adopted; however, any reclaimed support should only be used for new high-cost support programs such as the Connect America Fund or the Mobility Fund. Until rules for new programs are adopted, however, excess funds should continue to be used to reduce the contribution factor or in the alternative, held by USAC until such rules are implemented. This position is consistent with comments filed by Verizon and Verizon Wireless. In those comments, the companies noted that if there must be a short lag between when the FCC begins reducing legacy voice support and when the new broadband programs are running, the FCC should use the savings to reduce the contribution factor.[7]

CONCLUSION

The FPSC believes that the FCC should reclaim high-cost support from ETCs that give up their designation, rather than redistributing it to other CETCs. We do not support redistributing reclaimed high-cost support to other existing universal service programs. We believe that the assessment factor should be allowed to decline until the new Connect America Fund and Mobility Fund are established by the FCC. These funds are ultimately paid by consumers and we oppose keeping the assessment factor artificially higher than needed which threatens affordability.

[7] Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, filed October 7, 2010, p 5.