

State of Florida



Public Service Commission

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

DATE: June 9, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Brown, Bulecza-Banks, Casey)
Office of Federal & Legislative Liaison (Fogleman)
Office of the General Counsel (B. Keating)

RE: Docket No. 010977-TL – State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.

AGENDA: 06/21/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010977.RCM.DOC

Case Background

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 in their territory 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:

§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 2006, certification must be submitted by October 1, 2005.

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. These additional requirements will be addressed in Issue 2 of this recommendation.

This recommendation pertains to the Commission's certification of Florida's rural LECs for 2006.¹

¹ Staff notes 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.

Discussion of Issues

Issue 1: Should the Florida Public Service Commission (FPSC or Commission) certify to the FCC and to USAC that for the year 2006, ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, TDS Telecom, and Smart City Telecom will only use the federal high-cost support they receive for the provision, maintenance and upgrading of facilities and services for which the support is intended?

Recommendation: Yes. **(BROWN, CASEY, BULECZA-BANKS)**

Staff Analysis: Unless the Commission submits certifications to the FCC and to USAC by October 1, 2005, Florida's rural carriers will receive no interstate high-cost universal service funds during the first quarter of 2006, 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)

As has been done in prior years, each of the seven Florida rural ETCs has provided the Commission with an affidavit (see Attachments A through G) in which they have certified that their use of interstate high-cost universal service support received during 2006 will comport with Section 254(e) of the Act and applicable FCC rules. Given these ETC certifications, staff again recommends that the Commission certify to the FCC and to the USAC that these ETCs will be using interstate high-cost universal service support in 2006 in a manner that complies with Section 254(e).

Issue 2: Should the FPSC adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs?

Recommendation: Yes. The FPSC should adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support. **(BROWN, CASEY, BULECZA-BANKS)**

Staff Analysis: FCC rules currently require all ETCs to make an annual certification, on or before October 1, that high-cost universal service support will be used for its intended purposes.² By Order No. FCC 05-46, the FCC maintained and augmented this requirement. This newly required information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.³ Every ETC designated by the FCC who desires high cost support must now submit the following information on an annual basis starting October 1, 2006:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.⁴ The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).⁵ An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.⁶ Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic

²47 C.F.R. §§ 54.313, 54.314.

³See e.g., 47 C.F.R. § 54.313; 54.314.

⁴If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

⁵See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

⁶See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

- areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;⁷
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
 - (4) the number of complaints per 1,000 handsets or lines;
 - (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules;
 - (6) certification that the ETC is able to function in emergency situations;⁸
 - (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
 - (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC believes that these reporting requirements are 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.⁹ It believes that the administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended, and will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.¹⁰

The FCC is requiring these new additional reporting requirements be submitted by October 1, 2006. In paragraphs 71 and 72 of Order FCC 05-46, the FCC suggests state commissions adopt these additional reporting requirements:

⁷The FCC did not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. *See Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, it believes that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, it instead requires that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, it requires these reports annually instead of shortly after the outage occurs.

⁸If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

⁹In addition, the FCC may institute an inquiry on its own motion to examine any 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" in the areas where it is designated as an ETC. 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁰*See* 47 U.S.C. § 254(b)(3).

State commissions should apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the FCC may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.

Staff believes that the new high cost annual certification and reporting requirements will assist staff in monitoring FPSC designated ETCs to ensure that universal service funds are being used appropriately. Therefore staff recommends that the FPSC adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support.

Docket No. 010977-TL

Date: June 9, 2005

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open in order to address future certification of rural telephone companies. **(B.KEATING)**

Staff Analysis: 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 who 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, staff believes it is appropriate for this docket to remain open to handle subsequent certifications.