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ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA

GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

April 14, 2011

VIA ELECTRONIC FILING

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

Re: Comments of the Florida Public Service Commission in CC Docket No. 01-92, Developing an Unified Intercarrier Compensation Regime, WC Docket No. 11-42, Connect American Fund; WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 05-337, High-Cost Universal Service Support; GN Docket No. 09-51, A National Broadband Plan for Our Future; CC Docket No. 96-45, Federal-State Joint Board on Universal Service; and WC Docket No. 03-109, Lifeline and Link-Up

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above dockets regarding High-Cost Universal Service Support.

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	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE
FLORIDA PUBLIC SERVICE COMMISSION

CHAIRMAN ART GRAHAM

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER RONALD A. BRISÉ

COMMISSIONER EDUARDO E. BALBIS

COMMISSIONER JULIE I. BROWN

April 14, 2011

INTRODUCTION

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) released by the Federal Communications Commission (FCC) on February 9, 2011.[1] The FCC seeks comment on reforms to both the high-cost universal service programs (USF) and intercarrier compensation (ICC) regimes. The proposed Connect America Fund (CAF) would ultimately replace the current high-cost funds. The FCC proposes transition paths that it believes will facilitate adoption of reforms. The FPSC commends the FCC for embarking on this comprehensive list of reforms.

As stated in prior comments, 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 is supportive of many of the proposed near-term reforms to the existing high-cost support mechanisms. Our support of the CAF is conditioned on retargeting reclaimed support from other programs and not increasing the overall size of the fund. The FPSC supports the proposed cap on the total size of the CAF; we believe, however, that the FCC should look to reduce the size of the fund where efficiencies derived from universal service reform allow. We believe that prior to distributing universal service support through the CAF, 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 broadband services.[2] The FPSC does not support the FCC's proposal to base CAF support on intrastate USF and ICC reform.

[1] FCC, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, released: February 9, 2011.
[2] 47 U.S.C. § 254(c)(1).

FCC AUTHORITY TO SUPPORT BROADBAND

We agree that the FCC has statutory authority to expand the scope of services supported by federal universal service funds. 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 the FCC should consider when determining whether a service should be included within the definition of supported services. The criteria that the FCC must consider include that the services:

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

(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]

The FPSC believes that prior to distributing support for broadband networks, the FCC should formally define broadband as a supported service. We recognize that some universal service support has been provided under the FCC's "no barriers to advanced services" policy, which permits rate-of-return carriers to upgrade their facilities to modern networks. However, simply expanding this policy to all carriers would not necessarily provide the FCC with the ability to establish minimum broadband characteristics such as speeds or latency. In order to establish such minimum standards, we believe that the FCC will have to explicitly consider each of the criteria in section 254(c)(1).

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[3] Ibid.

[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.

The FCC also invites comment on whether it should consider classifying interconnected voice over Internet protocol (VoIP) as a telecommunications service or an information service. We agree with the FCC that classifying interconnected VoIP as a telecommunications service would enable it to explicitly support networks that provide interconnected VoIP, including broadband networks. Yet we do not believe such a move, absent an explicit expansion in the list of supported services, would allow the FCC to establish minimum broadband requirements such as speed and deployment.

ENCOURAGING STATE ACTION

In general, the FCC seeks comment on how it can most effectively encourage additional commitments from states to support universal service in partnership with the federal government. The FCC notes that some states have established intrastate universal service support mechanisms that fund voice services, established broadband grant programs, or reformed intrastate access charges and rebalanced local rates. In the first phase of the CAF, the FCC seeks comment on whether CAF support should be based on states' progress on access charge reform, establishment of an intrastate high-cost universal service fund, or implementation of a broadband support mechanism. The FPSC opposes conditioning CAF support as proposed. The FCC's stated goal during this first phase is to make available non-recurring support for broadband in unserved areas and to test the use of reverse auctions more generally as a longer-term means of disbursing ongoing CAF support. Specifically, the FCC's stated goal is to "expand broadband to as many unserved housing units . . . as soon as possible."[5] We support the FCC in this effort but believe that limiting eligibility for CAF funding as proposed is not appropriate. Limiting or prioritizing funding based on whether individual states have addressed the identified issues fails to recognize the unique circumstances of individual states. For

[5] FCC 11-13, ¶267.

example, the FPSC does not have explicit legislative authority to address intrastate access charge reform. Moreover, such conditions may undermine realization of the FCC's broadband deployment goals by making funds unavailable to some areas of need.

BROADBAND SPEED

In November 2007, the Universal Service Joint Board recommended expanding the definition of supported services to include broadband services.[6] It did not, however, specify what speed constitutes broadband.[7] By comparison, the National Broadband Plan recommended that the FCC set an initial target of 4 Mbps (Megabits per second) actual download speed and 1 Mbps actual upload for broadband universal service.[8] The FCC seeks comment on this recommendation, as it could affect either the size of the fund or the extent to which universal broadband can be made available.

The FPSC believes there are several reasons that the FCC should consider a slightly lower threshold at this time. First, several incumbent carriers have indicated that current technologies could deliver broadband services with significantly lower deployment costs if a 768 kbps upload speed threshold is used instead of the proposed 1 Mbps upload speed threshold.[9] Second, the FCC already requires broadband providers to report the number of their subscribers at several speed levels, including at the 3 Mbps/768 kbps level.[10] Using the same broadband upload threshold should make the process of tracking deployment easier for all parties. Finally, the FCC itself noted in the NPRM that "the basic (media) user requires actual download speeds of approximately 500 kbps, while

[6] FCC-07J-4, ¶¶ 55-62.
[7] Ibid. ¶ 72.
[8] National Broadband Plan at 135.
[9] CenturyLink July 12, 2010 Comments at 19, n.54; Qwest Comments at 11; Windstream July 12, 2010 Comments at 10; AT&T Dec. 6, 2010 Ex Parte Letter at 1.
[10] The FCC currently categorizes connections reported through its FCC Form 477 at 72 speed tiers defined by eight ranges of downstream speed and nine ranges of upstream speed.

emerging multimedia and full media users require actual download speeds of 1–4 Mbps . . ..” Given this, it seems that a 3 Mbps download threshold is more than sufficient to provide “basic” broadband service and ample service for many multimedia applications. The FCC stated that one of its goals is to maximize the number of unserved households passed with broadband services within the current size of the fund. The FPSC believes that a 3 Mbps/768 kbps is the more reasonable speed at this time. We also believe the FCC should regularly reevaluate this benchmark speed going forward.

NEAR-TERM REFORMS

Beginning in 2012, the FCC proposes to transition funds from less efficient support programs to more efficient uses, including the creation of the CAF. The FCC seeks comment on several measures to reduce inefficiencies, expand availability of broadband, and increase the accountability of companies receiving support during the transition. In 2010, the high-cost fund disbursed $4.3 billion through five separate mechanisms designed to support different kinds of costs and different types of carriers.

High-Cost Loop Support

The FCC proposes to reduce the reimbursement percentages for high-cost loop support (HCLS) to promote a more equitable distribution of limited funds. HCLS provides local loop support in rural areas that exceed 115 percent of the national average loop cost. The FCC expresses concern that the current structure of HCLS may provide inadequate incentive for recipients to operate as efficiently as possible, based on data from the National Exchange Carrier Association. The data suggest that companies continue to invest and upgrade their networks more than would otherwise be considered reasonable where reductions in customers served is occurring. The FCC proposes to decrease the current 65 percent and 75 percent support percentages, for incumbent LECs serving

200,000 or fewer loops, to 55 percent and 65 percent, respectively. This action results in a reduction in the amount of support these carriers would be eligible to receive. The FPSC supports this recommendation to increase incentives for carriers to operate efficiently.

The FCC also proposes that rules for providing HCLS to carriers with more than 200,000 working loops be eliminated, making those carriers ineligible to receive HCLS. Currently, there are only five rural incumbent LECs with more than 200,000 working loops. All five incumbent LECs have costs per loop that are well below the national average cost per loop. The FPSC is not opposed to this change.

Finally, the FCC proposes to eliminate the safety net additive component of high-cost loop support. The safety net additive was designed to provide additional loop support to an incumbent LEC, above its capped support amount, where significant additional loop investment had been made. Once an incumbent LEC qualifies, it receives support for the qualifying year plus the four subsequent years. The safety net additive has increased significantly from $9.1 million to $78.9 million from 2003 to 2010. The FCC projects it to be $90.1 million for 2011. The FPSC supports the immediate elimination of the safety net additive component.

Local Switching Support

The FCC proposes to eliminate local switching support (LSS) or, alternatively, to combine this program with high-cost loop support. Historically, LSS was appropriate because the cost of circuit switches were relatively more expensive for small carriers. However, technology has been evolving from circuit-switched to an IP-based environment and, as the FCC has noted, many smaller rate-of-return carriers now are purchasing soft switches. These soft switches and routers tend to be less expensive and more efficiently scaled to smaller operating sizes than circuit switches. The FCC asserts that LSS in its current form may not appropriately target funding to high-cost areas. For these reasons, the FCC proposes to eliminate LSS and utilize those savings to direct support through the CAF to areas that are unserved. The FPSC agrees with the FCC that LSS has become outdated and should be eliminated.

Corporate Operations Expenses

The FCC proposes to reduce or eliminate universal service support for corporate overhead expenses. Corporate operations expenses are general expenses that include expenses for overall management, accounting, legal services, and public relations. These expenses are currently eligible for recovery through the several high-cost support mechanisms.[11] The FCC estimates that approximately 13 percent of HCLS support (or $117 million) is related to corporate operations expenses. To focus finite universal service funds more directly on investments in network build-out, maintenance, and upgrades, the FCC proposes to eliminate the recovery of corporate operations expenses through HCLS, LSS, and ICLS. The FPSC supports this proposal.

Limits on Total per Line High-Cost Support

The FCC proposes to adopt a cap on total support per line for all companies operating in the continental United States. The FCC notes that some companies with fewer than 500 lines have received high-cost support ranging from roughly $700 to nearly $2,000 per line per month. The FCC seeks comment on capping high-cost support at $250 per month per line. The FCC asks whether an incumbent LEC whose current per-line support is above this cap should be able to make a showing

[11] Those high-cost support programs are high-cost loop support (HCLS), local switching support (LSS), and interstate common line support (ICLS). The FCC has limited the amount of recovery for these expenses through HCLS (but not through LSS and ICLS).

that additional support is in the public interest. For 2010, such a cap would affect fewer than 20 incumbent local exchange companies.[12] The FPSC supports a cap of $250 per month per line support, absent a compelling demonstration that additional support is in the public interest. The FPSC endorses establishment of a default per line cap. We recognize, however, that some situations may warrant higher per line support and carriers should have an opportunity to demonstrate that need.

Transitioning Interstate Access Support to the Connect America Fund

The FCC seeks comment on whether it would be appropriate to transition amounts from Interstate Access Support (IAS) for price cap carriers to the CAF beginning in 2012. The FCC created IAS as part of the CALLS Order in May 2000. It was intended to be a five-year transitional interstate access and universal service reform plan for price cap carriers. The FCC did not take further action to re-examine whether this was an appropriate level of support after five years. According to the FCC, IAS no longer appears necessary to provide voice service at affordable and reasonably comparable rates. The FCC proposes to transition IAS monies to Connect America Fund support. Alternatively, the FCC asks for comment regarding whether such funding should be used to reduce the size of the fund.

The FPSC believes that the elimination of the IAS program should be used to reduce the overall size of the fund. Consumers, who fund the universal service program, should see some relief. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of the

[12] NPRM, ¶ 209.

telecommunications services, thus violating the principle in §254(b)(1)."[13] If, however, the FCC is unwilling to reduce the fund size, transitioning support to the CAF is the next best solution.

Elimination of the Identical Support Rule

The FCC seeks comment on approaches to rationalize funding for competitive ETCs, which are mainly mobile providers. Both approaches being considered involve eliminating the existing identical support rule, which fails to efficiently promote deployment of mobile voice services, fixed broadband, or mobile broadband. The FCC seeks comment on redirecting all available competitive ETC funding, over five years, to the CAF for redistribution through reverse auctions in order to provide support for mobile and fixed broadband. The initial 20 percent reduction under this plan would begin in 2012. Alternatively, the FCC could allow individual mobile providers to demonstrate that some level of continuing support is necessary, on a transitional basis.

The FPSC supports the elimination of the identical support rule. This position has been urged by the FPSC in prior comments, as well as by the Joint Board. The FCC determined, in the First Report and Order,[14] that it was appropriate to provide per-line portable universal service support for competitive ETCs based on the support that the ILEC would receive for the same line (the identical support rule). The rule arose from the competitive neutrality criterion that the Joint Board recommended the FCC adopt as an additional principle relating to universal service.[15] However, it was not envisioned that multiple carriers could receive support for the same customer.

[13] Qwest Communications International v. FCC, 398 F.3d 1222, 1234 (2005).
[14] Report and Order, FCC 97-157, Released May 8, 1997, Appendix I - Final rules, § 54.307(a).
[15] Id., ¶¶ 46-51.

We believe that the identical support rule is not competitively neutral. To the extent that the incumbent carrier's costs are significantly greater than a CETC's costs, basing the available support to the CETC on the incumbent's higher cost network would result in a revenue windfall for the competitive ETC. Furthermore, competitive neutrality should be looked at in conjunction with the other principles found in Section 254(b) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act), especially the principle of "specific, predictable, and sufficient" support.[16] The Joint Board has repeatedly found that "sufficient" also means "no more than sufficient."[17] Competitive neutrality should not be interpreted as requiring that all carriers receive the same amount of support, but only that all eligible carriers have an equal opportunity to compete for support. The proposed CAF allows for carriers to compete for support.

Non-Regulated Revenues

Several parties, including the FPSC, have suggested that when calculating universal service support levels, the FCC should take into account unregulated as well as regulated revenues.[18] The National Association of State Utility Consumer Advocates (NASUCA), the National Cable & Telecommunications Association (NCTA), and Sprint also urged the FCC to recognize that USF recipients derive revenues from other services such as broadband and video services over the same network. The FCC seeks comment on how to ensure that universal service funding is not subsidizing non-regulated services or excessively subsidizing carriers that have the ability to generate non-regulated revenues as a result of their deployment of subsidized local loops. The FPSC supports

[16] 47 U.S.C. § 254(b).
[17] Recommended Decision, FCC 98J-7, Released November 25, 1998. ¶ 3; Recommended Decision, FCC 02J-2, Released October 16, 2002. ¶¶ 14, 16.
[18] Ex Parte Comments of the FPSC – NBP Public Notice #19 – CC Docket No. 96-45; WC Docket No. 05-337; WC Docket No 03-109; GN Docket Nos 09-47, 09-51, and 09-137, p. 3, filed on December 15, 2009.

including all revenues (including broadband revenues) when evaluating the interstate rate of return revenue requirement of a high-cost carrier. If the FCC moves forward with the CAF as proposed, carriers bidding on the minimum amount of support they would accept to provide service would likely factor into their bids their non-regulated revenues anticipated to be received.

SIZING THE FEDERAL COMMITMENT TO HIGH-COST SUPPORT

The FCC seeks comment on setting an overall budget for the CAF. For phase one, when CAF support is non-recurring and availability is concurrent with other high-cost support reforms, the FCC proposes that the size of the fund would be no greater than projected for the current high-cost program. In phase two, the CAF would provide all high-cost funding and would be recurring in nature. The FCC also proposes to set an overall budget equal to the size of the current high-cost program in 2010 (or roughly $4.3 billion). The FCC recognizes that it can impose cost controls to avoid excessive expenditures that detract from the goals of universal service. While the FPSC is supportive of these proposed caps, we believe that the FCC should look to reduce the size of the fund where efficiencies derived from universal service reform allow. Several states, including Florida, continue to shoulder a disproportionate burden of funding the program.

CONCLUSION

The FPSC is encouraged by many of the proposed reforms suggested within this Notice. We believe that the FCC must expand the definition of supported service under universal service if it wishes to specify the broadband characteristics (such as speed) that it will fund through universal service. The elimination of the identical support rule is long overdue and we believe this action is still consistent with the FCC's competitive neutrality principle. We support the establishment of funding caps, both on the aggregate size of the CAF and on the amount of per line support any carrier may receive. We do not support the FCC proposal to condition support of CAF on intrastate USF and ICC reform; however, we do support eliminating various legacy support mechanisms such as the interstate access support and local switching support. Finally, we believe that the FCC should look to reduce the size of the fund where efficiencies derived from universal service reform allow.

Respectfully submitted,

/ s /

Cindy B. Miller, Senior Attorney
Office of the General Counsel
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6082

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