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Public Service Commission

March 5, 2008

VIA ELECTRONIC FILING

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

Re: WC Docket No. 08-4

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket with regard to Petition for Waiver of High-Cost Universal Service Support Rules by Hawaiian Telecom, Inc.

Greg Fogleman at (850) 413-6574 is the primary staff contact on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:wlt
cc: Brad Ramsay, NARUC
Best Copy and Printing, Inc.
Jennifer McKee, Telecommunications Access Policy Division
David Duarte, Telecommunications Access Policy Division

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

In the Matter of	)	
	)	
Petition for Waiver of High-Cost Universal Service Support Rules by Hawaiian Telecom, Inc.	)	WC Docket No. 08-4
	)	

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

CHAIRMAN MATTHEW M. CARTER II

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER KATRINA J. MCMURRIAN

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March 5, 2008

Introduction

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Public Notice (Notice) released on January 18, 2008. In this Notice (DA 08-131), the Federal Communications Commission's (FCC's) Wireline Competition Bureau seeks comment on the petition of Hawaiian Telcom, Inc. (HT) for waiver of certain FCC rules regarding high-cost universal service support.[1] Specifically, HT seeks a five-year waiver of section 54.309 of the FCC's rules to allow it to receive high-cost model support by averaging its line costs on a wire center by wire center basis, instead of on a statewide basis.[2] HT also requests a one-time waiver of section 54.314(d)(6) of the FCC's rules to allow HT to receive high-cost model support immediately upon grant of its petition.[3] HT estimates that grant of its waiver request would allow it to receive approximately $6 million per year in high-cost model support.[4]

While the FPSC is sympathetic to the conditions faced by HT, the FPSC believes that granting its petition for waiver of the rules is not the appropriate solution.

Issues Regarding the FCC's Synthesis Model

The FCC's rules establish the methodology for determining eligibility to receive high-cost model support funding for non-rural carriers, such as HT. First, line costs for each non-rural wire center in a state are estimated using a forward-looking economic cost model.[5] These line costs are then summed and averaged on a statewide basis.[6] If the statewide average (for non-rural carriers) exceeds the national average by two standard deviations or more (the "national cost benchmark"), the non-rural carriers in that state qualify for support.[7] Support is then allocated to the highest cost non-rural wire centers in the qualifying state.[8] As to HT's assertion that its costs are significantly higher than those generated by the FCC's Synthesis Model, the

[1] Hawaiian Telcom, Inc. Petition for Waiver of Sections 54.309 and 54.313(d)(6) of the Commission's Rules (filed Dec. 31, 2007) (Petition).
[2] Petition at 1.
[3] *Id.*
[4] *Id.* at 4, 23.
[5] 47 C.F.R. § 54.309(a)(1).
[6] *Id.*
[7] 47 C.F.R. § 54.309(a)(4).
[8] 47 C.F.R. § 54.309(a)

FPSC contends that a more appropriate solution would be to revisit and adjust those inputs or engineering assumptions that do not accurately reflect the environment faced by the petitioner.

Joint Federal / State Responsibility

The solution proposed by HT, to simply compare modeled wire center costs of individual wire centers to the national average benchmark, only focuses on granting the petitioner additional support. It does so without accounting for the complementary responsibility of the state to promote and advance universal service. The Telecommunications Act itself notes this joint responsibility.[9] Averaging a carrier's costs at the statewide level inherently recognizes this joint responsibility. This point is also noted by the comments of Verizon[10] and the joint comments filed by the Vermont Public Service Board, et al.[11] As noted in the Petition, the Hawaii Public Utilities Commission (HPUC) has put in place a framework to govern intrastate universal service support;[12] however, no funds have been collected or distributed using this mechanism.

Existing Support Rules

HT, which acquired the assets of Verizon Hawaii in 2005, presumably was aware of the amount of federal universal service support available to it and the condition of the network it was purchasing.[13] Currently, federal rules do not allow a carrier to purchase a non-rural study area and seek support under the rural mechanism. This prohibition was explicitly decided by the FCC to limit the potential gaming of carriers seeking to maximize their receipts of universal service support. While HT's petition does not seek treatment as a rural carrier for purposes of universal service support, it does seek a change of the existing rules for the same reason, to receive additional universal service support. HT should have factored in the need for network improvements into the acquisition negotiations. The FPSC is troubled by this request for

[9] 47 U.S.C. § 254(b)(5)
[10] Comments of Verizon at pages 2-4.
[11] Comments in opposition of the Vermont Public Service Board, the Maine Public Utilities Commission, the Nebraska Public Service Commission, the South Dakota Public Utilities Commission, and the Consumer Advocate Division of the West Virginia Public Service Commission at pages 6-8.
[12] See Hawaii Administrative Rule 6-81.
[13] Verizon sold Verizon Hawaii and other assets to the Carlyle Group in March 2005, which renamed the operating company as Hawaiian Telcom.

additional support to a carrier that should have understood the ramifications of its acquisition, and now seeks to change the rules to its advantage. The FPSC believes that approval of this petition would set a dangerous precedent that would encourage other carriers to seek out additional support at a time when the universal service fund has been growing significantly.

Transfer of Assets Conditions

One of the points made by HT was that it lacks funding sources to improve its network.[14] While outside forces, such as the rules of the Rural Utilities Service, have imposed some of these limitations, HT agreed to others. Specifically, the HPUC placed conditions on the merger and sale to which HT agreed to abide. Among those conditions to which it agreed during the HPUC proceedings to acquire Verizon's assets, was not to submit a general rate increase application before 2009 and to provide a "customer appreciation bill credit" that totaled about $13 million.[15] This sale of Verizon's network to HT was deemed to be in the "public interest" by the HPUC.[16] The FPSC contends that given the expertise, experience, and proximity of the HPUC, HT should first look to the state commission to address intrastate remedies before looking to the FCC for additional support. Another potential source of funding that may be available to HT would be an equity infusion from its parent company. Such investment would be at the discretion of the parent company.

Ongoing Reform

On January 29, 2008, the FCC released three separate Notices of Proposed Rulemaking (NPRMs) pertaining to reform of the high-cost support mechanisms.[17] The FPSC is concerned that, if granted, HT's petition would set a precedent that may lead to additional petitions seeking similar piecemeal relief, as opposed to genuine reform. The FPSC has concerns that if the FCC

[14] Petition at 15-16.
[15] 2004-05Annual Report of the Hawaii Public Utilities Commission, page 17, November 2005. http://hawaii.gov/budget/LegReports/puc/2005_AnnualReport.pdf
[16] Decision and Order No. 21696 before the Public Utilities Commission of the State of Hawaii, Docket No. 04-0140, in the matter of the application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc., Bell Atlantic Communications, Inc. and Verizon Select Service Inc. for the approval of a merger transaction and related matters, filed March 16, 2005, at page 25.
[17] NRPM, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4; FCC 08-5; FCC 08-22.

adopts the Joint Board's recommendation to cap the overall size of the fund,[18] granting HT's petition would effectively take money from existing recipients and transfer their support to HT without considering the consequences. Fundamental reform of the high-cost mechanisms is the subject of those NPRMs for which the FCC is currently seeking comments; therefore, it may be desirable to determine the impact of such reforms before considering granting the petition.

Conclusion

The FPSC does not believe the petition filed by HT should be granted at this time for several reasons. To the extent that the existing inputs and engineering assumptions used in the FCC's Synthesis Model do not adequately result in sufficient support for HT's service territory, changes should be made within the model, not to the rules on how costs are averaged. HT knew, or should have known, the need for network improvements when it purchased the network from Verizon and how much federal universal service support would be available. Furthermore, it appears that HT agreed to a rate freeze. The FPSC contends that given the expertise, experience, and proximity of the HPUC, HT should first look to the state commission to address intrastate remedies before looking to the federal jurisdiction for additional support. Finally, the FPSC believes that granting HT's petition is premature since fundamental reform measures regarding high-cost support are pending before the FCC. The FPSC appreciates the opportunity to provide reply comments and looks forward to continued participation.

Respectfully submitted,

/ s /
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DATED: March 5, 2008

[18] Recommended Decision, WC Docket No. 05-337, CC Docket No 96-45, FCC 07J-4, Released November 20, 2007; par 26.