COMMISSIONERS:
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**STATE OF FLORIDA**

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# Public Service Commission

October 21, 2010

**VIA ELECTRONIC FILING**

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

**Re: Reply Comments of the Florida Public Service Commission in WC Docket No. 05-337, High-Cost Universal Service Support and CC Docket No. 96-45, Federal-State Joint Board on Universal Service**

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission in the above dockets regarding the universal service program.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf
Cc: Charles Tyler, FCC
James Bradford Ramsay, NARUC

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

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| 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 |
| | ) | |

**REPLY COMMENTS OF THE**

**FLORIDA PUBLIC SERVICE COMMISSION**

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER NATHAN A. SKOP

COMMISSIONER ART GRAHAM

COMMISSIONER RONALD A. BRISÉ

October 21, 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 services 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

[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.

if a CETC relinquishes its ETC status in a state, the capped amount for that state will be reduced by 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.

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

The effect of this rule is to reduce the contribution factor in the subsequent quarter, which reduces consumers' assessments.

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 by Commission rule at $2.25 billion annually,[4] and $400 million per funding year, respectively.[5] The FPSC strenuously objects to the reallocation of support from one program to another. We agree with the comments of CenturyLink that reclaimed high-cost support

[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).

should not be diverted to other universal service programs.[6] The FPSC believes that such action is neither sustainable nor 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 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

[6] Comments of CenturyLink, WC Docket No. 05-337, CC Docket No. 96-45, filed October 7, 2010, pp 1-2.
[7] Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, filed October 7, 2010, p 5.

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.

Respectfully submitted,

/ s /

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Office of the General Counsel

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