STATE OF FLORIDA

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
MATTHEW M. CARTER II
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6189

Public Service Commission

March 24, 2008

VIA ELECTRONIC FILING

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

Re: Florida Public Service Commission Comments in WC Docket No. 05-337, High-Cost Universal Service Support; 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 docket with regard to High-Cost Universal Service Support and Federal-State Joint Board on Universal Service.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:wt
cc: Brad Ramsay, NARUC
Best Copy and Printing, Inc.
Antoinette Stevens, Telecommunications
Access Policy Division

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

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

CHAIRMAN MATTHEW M. CARTER II

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER KATRINA J. MCMURRIAN

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COMMISSIONER NATHAN A. SKOP

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INTRODUCTION AND SUMMARY

The Florida Public Service Commission (FPSC) submits these comments in response to the three Notices of Proposed Rulemaking (NPRMs) released on January 29, 2008, relating to the reform of universal service high-cost support. The first NPRM addresses the Federal Communications Commission's (FCC's) identical support rule (FCC 08-4). This rule allows competitive eligible telecommunications carriers (CETCs) to receive support based on the costs of the incumbent carrier. The second NPRM addresses the use of reverse auctions to award high-cost support (FCC 08-5). The final NPRM seeks comment on the Federal-State Universal Service Joint Board's (Joint Board's) November 2007 Recommended Decision (FCC 08-22).

The FPSC supports the FCC's tentative conclusion to eliminate its own identical support rules that currently allow competitive carriers to receive support based on the incumbent's costs. The competitive neutrality objective adopted by the FCC should be interpreted such that all ETCs should have the opportunity to compete for support, not that all ETCs should receive the same amount of support. The growth in the number of CETCs, and the support they receive, has strained the universal service program. Current high-cost distribution methods have failed to balance the needs of those receiving support with those that ultimately have to pay for such support. The escalation of the fund's size threatens the affordability for all consumers.

The FPSC also supports the FCC's tentative conclusions that CETCs should no longer be able to receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS). Regarding Local Switching Support (LSS) for CETCs, the FPSC recommends that CETCs should no longer be eligible to receive LSS. The costs these programs address do not relate to the costs faced by CETCs.

If the FCC moves to implement a reverse auction process to distribute high-cost support, the FPSC supports a single auction winner design over a "winner gets more" design. Providing support to one carrier based on the bid of another carrier, is at odds with the FCC's tentative conclusion to eliminate the identical support rule and would cost more than an auction designed with only a single winner.

The FPSC notes that state laws regarding carrier-of-last-resort (COLR) may require an incumbent local exchange telecommunications company to furnish basic local exchange service, irrespective of support available to it, should the FCC decide to distribute high-cost support though a reverse auction process. To the extent that the incumbent carrier does not win the auction, the FPSC believes that it would be appropriate to provide federal transitional support to the incumbent in order to minimize the risk of rate shock.

The FPSC believes the high-cost fund should be capped, preferably at the $4.5 billion level recommend by the Joint Board. We urge the FCC to act quickly on this measure. The recent Recommended Decision of the Joint Board also seeks to expand the definition of supported services to include both mobility and broadband. In prior comments before the FCC, the FPSC has expressly opposed expanding the definition of supported services to include broadband. Nevertheless, the FPSC's opposition to expanding the definition of supported services could be tempered with the adoption of an overall fund cap in conjunction with the other reforms noted in our comments.

We are encouraged at the recent progress to reform the high-cost program. The FPSC is supportive of many of the proposed reforms that seek to distribute support more efficiently and rationally. However, further examination and reform of the high-cost program is warranted. The FPSC is concerned that universal service fund growth may ultimately affect the affordability of telecommunications services to consumers.

IDENTICAL SUPPORT RULE

Support based on carrier's own costs

The FPSC agrees with and supports the FCC's tentative conclusion that it should eliminate the current identical support rule, which provides CETCs with the same per-line high-cost support that incumbent local exchange carriers receive. 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,[1] that it was appropriate to calculate 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

[1] Report and Order, FCC 97-157, Released May 8, 1997, Appendix I - Final rules, § 54.307(a).

competitive neutrality criterion that the Joint Board recommended the FCC adopt as an additional principle relating to universal service.[2]

The FPSC agrees with the Joint Board and the FCC's tentative conclusion that the identical support rule should be abandoned. It could be argued that the identical support rule is not competitively neutral. That is, to the extent that one carrier's cost is significantly different, basing the support on the higher cost carrier's network results in a revenue windfall for the second carrier. Thus, one carrier is advantaged, while the other is disadvantaged.

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, especially the principle of "specific, predictable, and sufficient" support.[3] The Joint Board has repeatedly found that "sufficient" also means "no more than sufficient."[4] Competitive neutrality should not be interpreted as requiring that all carriers receive the same amount of support, but rather that all eligible carriers have an equal opportunity to compete for support.

Ceiling on CETC per-line support

Competitive neutrality can and should be implemented by providing an opportunity for all carriers, regardless of technology, to receive support based on their own costs. As we have stated in prior comments, however, such support should be capped at the ILEC's per-line cost.[5] Capping support would allow CETCs to receive reasonable per-line support. This would provide support in recognition of more efficient, least-cost, technologies.

Discontinue IAS / ICLS / LSS support for CETCs

The FPSC supports the FCC's tentative conclusion that competitive ETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS). Both IAS and ICLS were created by the FCC in order to maintain its cap on subscriber line charge (SLC) rates that incumbent LECs may charge end users, while eliminating the implicit

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[2] Id., ¶¶ 46-51.
[3] 47 U.S.C. § 254(b)
[4] Recommended Decision, FCC 98J-7, Released November 25, 1998. ¶3; Recommended Decision, FCC 02J-2, Released October 16, 2002. ¶¶14, 16.
[5] Ex Parte Comments of the FPSC in CC Docket No. 96-45. Filed on November 20, 2006, at p.10; Reply Comments of the FPSC in CC Docket No. 96-45. Filed on June 21, 2007, at p. 11.

support found in access charges that previously preserved the lower SLC rates. Generally, CETCs' rates are not regulated and they are not subject to SLC caps. Thus, CETCs are able to recover their costs from their end users and have no need to recover additional interstate revenues from access charges or from universal service. Furthermore, the FCC concluded that wireless carriers (which make up the majority of CETCs) have no right to impose access charges.[6] The FPSC agrees with the tentative conclusion of the FCC that CETCs should no longer be eligible to receive these forms of support.

The FCC also requested comment on whether CETCs should continue to be able to receive Local Switching Support (LSS). The FCC created LSS in the First Report and Order by converting the Dial Equipment Minutes weighting subsidy into explicit support from the universal service fund. Thus, LSS includes assumptions regarding switching costs that are not likely to be accurate for CETCs. The FPSC agrees with barring CETCs from receiving this support.

REVERSE AUCTIONS

Single winner auctions

The FCC seeks comment on whether universal service support auctions should award high-cost support to a single winner (the Verizon proposal) or to multiple winners (the CTIA proposal). The "winner-gets-more" proposal by CTIA would structure a reverse auction in such a way that both wireline and wireless ETCs would compete in the same auction. Under this proposal, the winning bidder would receive the level of support it bid, and other auction participants would receive some lesser level of support. The FPSC opposes CTIA's proposal because it would perpetuate the existing problem of providing support to multiple carriers at the expense of consumers. The idea of a single winner, as proposed by Verizon, is preferable because the winner would receive a lump sum of support that would result in a smaller fund. Providing support to one carrier based on the bid of another carrier, is at odds with the FCC's tentative conclusion to eliminate the identical support rule. Further, both the Joint Board and the FPSC have previously recommended that support should only be for primary lines. A "lump

[6] Declaratory Ruling, Petition of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges, WT Docket No. 01-316, Released: July 3, 2002, at ¶¶ 1, 8-9.

sum" support amount would have the added benefit of avoiding the need to identify primary lines. By virtue of a carrier submitting a bid, the carrier has stated that the amount bid would be sufficient, thus addressing one of the requirements of the Act.

Auction eligibility

The FCC requests comments on eligibility requirements for bidders participating in reverse auctions. Section 254(e) of the Act states, in relevant part, that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." The FCC tentatively concluded that a bidder must hold ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area. The FPSC supports this conclusion. If the FCC moves forward with implementation of the Joint Board's recommendation to create separate mobility and broadband funds, separate designations for these new programs may be necessary prior to implementing an auction process. It may be desirable to establish recommended guidelines, similar to what the FCC has done for the current ETC designation process.

Geographic area for auctions

Within the NPRM, the FCC seeks comments on how an auction should be designed to appropriately target support to areas in need of funding. We note that ILEC study areas do not necessarily conform to those of their competitors. As noted by the FCC, in defining an area to be auctioned, one party (either competitor or incumbent) could receive an undue competitive advantage by specifying the area to be auctioned in such a way that it matches only one provider's service territory. Conducting an auction over too large an area could erect barriers to participation in the auction. This would tend to undermine the process, since a generally accepted criterion of a successful auction is maximizing the number of available bidders. The most appropriate or practical level at which to conduct an auction is the wire center level. CETCs are currently required to identify the wire centers in which they have sought and received ETC designation. While in principle it may be desirable to develop a non-ILEC based geographic level to auction, the FPSC does not believe that use of wire centers would unduly bias the reverse auction process.

Auction pilot program

In prior comments, the FPSC has acknowledged that conducting a reverse auction nationwide on a wire center basis would be exceedingly difficult. In Florida, AT&T alone has approximately 200 wire centers, serving approximately half of the state's 10 million access lines. The FPSC suggests that the areas where auctions are to be conducted should initially be limited. The FPSC proposes that the FCC limit the initial rounds of auctions to those wire centers which receive the most high-cost support and in which there are already more than three ETCs designated. These wire centers should have the conditions needed to conduct a successful auction. Moreover, such a pilot program would afford the FCC the opportunity to subsequently refine its auction processes as it learns from successive auctions.

Auction reserve price

The FCC seeks comment on establishing a reserve price should it conclude to move forward to implement reverse auctions. A reserve price would be the maximum subsidy level that participants in the auction would be allowed to place as an opening bid. As the auction progressed, ETCs would reduce their bids in order to win the auction and receive the associated support. The FPSC supports the establishment of a reserve price based at the level of support currently available to carriers. The appropriate reserve price should not exceed the amount of support available to ETCs.

The FPSC acknowledges that the ability to apply current support amounts as the reserve prices at the wire center level varies by the type of study area under consideration. For non-rural study areas, support is already calculated at the wire center level; thus, the FPSC suggests that this would be an appropriate reserve price. However, for rural study areas support is not calculated at the wire center level. The FCC has proposed two alternatives to establish a reserve price. The first option would set reserve prices by allocating a study area's embedded cost to wire centers using the FCC's Synthesis Model. The second option would estimate wire center costs based on observable factors such as customer density. Given that there has been significantly more review and analysis of the FCC's high-cost Synthesis Model, the FPSC supports use of this model to allocate embedded costs at this time.

Service quality

The FPSC is concerned that a competitive bidding program could adversely affect service quality. Our level of concern depends on how the FCC seeks to move forward. If the FCC allows both wireless and wireline carriers to compete for support within an area without adequate precautions, consumers could experience reduced service quality. This is due in large part because CETCs generally rely on use of the network of the incumbent wireline provider. For example, the incumbent's wireline network supports services offered through resale, terminates calls that originate on a wireless network and terminate on the wireline network, connects cell towers, and transports wireless long distance traffic. Clearly, the ILEC network is an essential element to most competitive providers. Therefore, if exclusive support is awarded to a carrier other than the incumbent, the FCC and the state would have to carefully ensure that the winning carrier is able to meet its service quality obligations. Should the funded ETC be unable to sustain service quality standards, the FCC or the state should either revoke the carrier's designation as the funded ETC and hold a new auction, or impose significant penalties and prescribe remedial actions required of the bid winner.

Federal carrier-of-last-resort obligations

The FCC asked for comments on the extent to which it should define the universal service obligations of the winners of the auctions. Historically, only incumbent LECs received universal service support and had the obligation to serve customers subject to rates and terms specified by state regulatory authorities (e.g., "carrier-of-last-resort" (COLR) obligations). The FCC seeks comment on how to ensure the universal availability of services under a reverse auction mechanism. Specifically, how should the COLR obligations be defined, and on whom should they be imposed?

One possibility noted by the FCC would be for an ILEC to retain both the COLR obligation and the full right to the subsidy over its entire study or service area unless lower bids were submitted by rival bidders in each of the geographic units up for auction within its overall service area. The FCC envisions that if lower bids were submitted by rival bidders in all of the geographic units up for auction, the winning bidders would inherit the COLR obligations.

The FPSC notes that this scenario is problematic in states, such as Florida, that have COLR requirements that are statutorily imposed. Florida law currently requires each incumbent local exchange telecommunications company to furnish basic local exchange service to any person requesting service within the ILEC's service territory. Thus, it could be possible that an FCC auction results in the selection of a provider other than the ILEC, while the state COLR requirements nevertheless force the ILEC to continue to provide service without the benefit of any federal support. To alleviate this concern, the FCC should select the auction winner in consultation with the state commission to ensure consideration of state-specific factors, including COLR obligations and service quality requirements existing under state law. We stress the need to carefully weigh COLR obligations regardless of the particular reverse auction proposal that may be adopted.

To the extent that the incumbent carrier does not win the auction, the FPSC believes that it would be appropriate to provide federal transitional support to the incumbent in order to minimize the risk of rate shock. The FCC has provided such transitional support in the past. The FPSC believes that a similar transition would be needed for the incumbent carrier should it lose in a competitive bidding mechanism.

UNIVERSAL SERVICE JOINT BOARD RECOMMENDED DECISION

Capping the size of the high-cost fund

The essence of the Joint Board recommendation is to cap the existing high-cost support amount and retarget that support for three distinctive purposes: 1) continued support of the wireline telecommunication network, 2) provision of wireless telecommunications services, and 3) broadband infrastructure deployment. The high-cost fund should be capped at the funding level proposed by the Joint Board. Capping the fund will allow time for additional reform designed to address such issues as waste, redundancy, and affordability. The continued escalation of the size of the fund threatens the affordability that the program was intended to safeguard. As the Tenth Circuit recognized, "excessive subsidization may affect the affordability of telecommunications services, thus violating the principle in §254(b)(1)."[7] The FPSC urges

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

the FCC to take action quickly and cap the high-cost fund in order to limit further excessive growth.

Expanding the definition of supported services

In prior comments before the FCC, the FPSC has expressly opposed expanding the definition of supported services to include broadband. To date, there has been no determination by the FCC that either wireless service or broadband access satisfies the statutory requirements to be deemed "supported services" eligible for universal service funding. In prior comments, the FPSC has enumerated why we believe that these conditions have not been met.

The market has addressed broadband deployment in large part without the need of another funding mechanism. Other universal service programs, such as the Schools and Libraries program, and the Rural Healthcare program, have done well to meet the requirement found within Telecommunications Act to provide "access to advanced telecommunications and information services . . . in all regions of the Nation."[8] Such support has been further augmented by Rural Utilities Service low interest loans and grants. Data on the adoption rate of broadband from the Pew Internet & American Life Project indicate that the percentage of households that subscribe to broadband has increased five percentage points from early 2006, but represents only 47% of all households. Hence, it does not satisfy the "substantial majority" criterion enumerated within the Act.

Currently, wireless carriers can and do receive support from both the high-cost and low-income universal service programs. Their eligibility to become an ETC and receive such support is not because their service is wireless, but because their service is able to meet the existing definition of supported services. Given the vast amount of wireless network deployment that has already occurred, much of which without receiving universal service support, the FPSC questions if expanding the definition now is advisable given the size and the growth in the high-cost fund.

Nevertheless, the FPSC's opposition to expanding the definition of supported services to include broadband could be tempered with the adoption of an overall fund cap in conjunction with the other reforms noted in our comments. However, support should not be perceived as a

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[8] 47 U.S.C. § 254(b)(2)

source of long-term recurring entitlement. To the extent that the FCC moves forward to expand the definition of supported services to include broadband and mobility services, the FPSC believes that such funds should only be used to deploy network facilities in unserved areas. Without a cap, the FPSC is concerned that expanding the definition of supported services would cause the size of the fund to increase significantly, at the expense of consumers.

Separate auctions for wireline, wireless, and broadband services

The FPSC is concerned that attempting separate auctions for each new category of supported service (e.g., wireline, wireless, and broadband) would likely limit the number of participants in each auction. This could result in areas where viable auctions are not possible or result in higher than expected bids due to a relative shortage of bidders. This may be more problematic relating to the broadband and wireline auctions than in wireless auctions, given the number of existing wireless CETCs that are already providing service in the same area.

CONCLUSION

The FPSC supports the FCC's tentative conclusion to base the amount of federal high-cost support available to carriers on their own costs, and not on the costs of another carrier. We believe that discontinuing the eligibility of CETCs to receive any support from IAS, ICLS, and LSS would be consistent with this position. These rules would continue to be competitively neutral because basing the support on a high-cost carrier's network results in a revenue windfall for the second carrier, at the expense of consumers nationwide.

Should the FCC elect to implement a reverse auction process as a part of its ongoing reform of high-cost support distribution, the FPSC urges the FCC to limit the initial rounds to those wire centers that have characteristics that would lend themselves to a successful auction. In such areas, state COLR requirements may force incumbent carriers to continue to provide COLR services, even without support. The FPSC urges the FCC to work with states to minimize any potential conflicts in jurisdiction and to allow a transition period for ILECs who may lose support via the auction process.

The FPSC agrees with the recommendation of the Joint Board to cap the size of the high-cost fund. Capping the fund will allow time for additional reform designed to address such issues as waste, redundancy, and affordability. Continued escalation of the high-cost fund necessitates implementing the proposed cap.

The FPSC has expressed continued opposition to expanding the definition of supported services. However, our opposition would be tempered should the FCC implement a cap that would contain the size of the fund at the level recommended by the Joint Board and provide an opportunity to implement the other reforms previously noted in our comments. Such support should not be the source of recurring funding. To the extent that support would be targeted to advance broadband and mobility services, we believe that it should only be used to aid in the deployment of network facilities in unserved areas.

The FPSC is encouraged that meaningful reform of the federal universal service high-cost fund is moving forward. The proposed reforms supported by the FPSC bring more efficiency and rationality to the distribution mechanisms of the fund. The FPSC is supportive of many of the reforms proposed and believes that further examination and reform of the high-cost program is warranted. Further reforms of the high-cost programs are necessary to better balance the needs of those that receive support with those consumers that ultimately have to pay for such support. The growth in the universal service fund may ultimately affect the affordability of telecommunications services to consumers that universal service was intended to safeguard. The FPSC appreciates the opportunity to provide comments and looks forward to continued participation.

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

DATED: March 24, 2008