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Public Service Commission

December 2, 2008

VIA ELECTRONIC FILING

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

Re: CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92 and WC Docket Nos. 03-109, 04-36, 05-337, and 06-122

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above dockets in response to the FCC Further Notice of Proposed Rulemaking seeking comment on universal service and intercarrier compensation reform.

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

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:wlt
cc: James Bradford Ramsay, NARUC

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
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

CHAIRMAN MATTHEW M. CARTER II

COMMISSIONER LISA POLAK EDGAR

COMMISSIONER KATRINA J. MCMURRIAN

COMMISSIONER NANCY ARGENZIANO

COMMISSIONER NATHAN A. SKOP

December 2, 2008

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INTRODUCTION AND SUMMARY

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Further Notices of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC) on November 5, 2008, relating to the reform of the universal service program and intercarrier compensation (ICC).[1] As we have stated in prior comments, the FPSC supports reform of the high-cost program[2] and intercarrier compensation.[3] The FPSC has supported many of the concepts relating to Universal Service Fund (USF) reform found within this notice. We are not able to support the broader measures regarding intercarrier compensation outlined within the various draft plans.

In general, we believe there is a growing consensus regarding specific reform proposals affecting the high-cost program. Eliminating the FCC's identical support rule and establishing a permanent cap on the size of the high-cost fund would stabilize program growth to ensure that the program does not adversely affect affordability. The FPSC believes that the FCC should cap the high-cost fund, preferably at the $4.5 billion level recommended by the Universal Service Joint Board (Joint Board). We urge the FCC to act quickly on this measure. One alternative proposal would not initiate a cap on interstate rate-of-return carriers until 2010. The FPSC does not see the benefit of delaying implementation of the cap for any specific group or class of carriers.

All of the proposals found in the Appendices of the FNPRM include provisions for the use of reverse auctions. The details of these proposals vary by either calling for the direct distribution of high-cost support through such auctions, or requiring the use of auctions when an Eligible Telecommunications Carrier (ETC) fails to meet a new broadband build-out requirement imposed by

[1] FCC, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92; WC Docket Nos. 03-109, 04-36, 05-337, 06-122; Adopted: November 5, 2008, released: November 5, 2008.
[2] Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337. Filed on March 24, 2008, June 21, 2007, November 20, 2006, and May 19, 2006.
[3] Comments of the FPSC in CC Docket No. 01-92. Filed on March 15, 2007, and October 25, 2006.

the FCC. If the FCC moves to implement a reverse auction process to distribute high-cost support, the FPSC continues to support a single auction winner design, as proposed in the Appendices, over a "winner gets more" design.

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 past comments. This position is also applicable to a new Lifeline broadband proposal found in Appendices A and C.

The FPSC recognizes the need for ICC reform, however, it cannot support the proposed reform at this time. The FCC's intercarrier compensation proposal reduces intrastate access charges to the interstate rate level. Such preemption is not authorized by Federal law. Section 152(b) of the Communications Act continues to prohibit the FCC from taking action on intrastate rates and charges, unless there is express authority to do so. In this case, no express authority exists. Furthermore, there is significant uncertainty and lack of detail pertaining to the ICC plan. There are too many unknown variables to permit meaningful analysis of the ICC proposals. For these reasons, the FPSC cannot support the proposed changes to ICC.

IDENTICAL SUPPORT RULE

Support based on carrier's own costs

The FPSC agrees with the FCC's prior tentative conclusion that it should eliminate the current identical support rule, which provides Competitive ETCs (CETCs) with the same per-line high-cost support that incumbent local exchange carriers receive.[4] 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,[5]

[4] FCC, Notice of Proposed Rulemaking, FCC 08-4, CC Docket No. 96-45, WC Docket No. 05-337; Adopted: January 9, 2008, released: January 29, 2008; ¶ 12.
[5] Report and Order, FCC 97-157, Released May 8, 1997, Appendix I - Final rules, § 54.307(a).

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.[6]

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.[7] The Joint Board has repeatedly found that "sufficient" also means "no more than sufficient."[8] 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.

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.[9] Capping support in this manner would allow CETCs to receive reasonable per-line support, but would prevent use of the high-cost fund to support unreasonable levels of cost. Conversely, this policy would provide some level of support in instances where a CETC uses more efficient, least-cost technologies.

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[6] Id., ¶¶ 46-51.
[7] 47 U.S.C. § 254(b).
[8] Recommended Decision, FCC 98J-7, Released November 25, 1998. ¶ 3; Recommended Decision, FCC 02J-2, Released October 16, 2002. ¶¶ 14, 16.
[9] Ex Parte Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337. Filed on November 20, 2006, at p.10; Reply Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337. Filed on June 21, 2007, at p.11.

Discontinue IAS / ICLS / LSS support for CETCs

The FPSC supports the FCC's prior tentative conclusion that CETCs should no longer receive Interstate Access Support (IAS) and Interstate Common Line Support (ICLS).[10] Both IAS and ICLS were created by the FCC in order to maintain caps on subscriber line charge (SLC) rates that incumbent LECs may charge end users, while eliminating the implicit support found in access charges that previously preserved lower SLC rates. Generally, CETC 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 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.[11] The FPSC agrees with the tentative conclusion of the FCC that CETCs should no longer be eligible to receive these forms of support. Regarding 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 USF. 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

To the extent to which reverse auctions are implemented in any reform of the high-cost support mechanisms, the FPSC supports awarding such support to a single winner. Under a "winner-gets-more" alternative, 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 this alternative because it

[10] FCC, Notice of Proposed Rulemaking, FCC 08-4, CC Docket No. 96-45, WC Docket No. 05-337; Adopted: January 9, 2008, released: January 29, 2008; ¶ 23.
[11] 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.

would perpetuate the existing problem of providing support to multiple carriers at the expense of consumers. The idea of a single winner 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 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.

Bidder qualifications

In the draft orders (Appendices A-C), the FCC concludes that the bidder in a reverse auction must be an ETC. This position is consistent with the FCC's prior tentative conclusion that a bidder must hold ETC designation covering the relevant geographic areas prior to participation in an auction to determine high-cost support in that area.[12] The FPSC supports this conclusion and believes that the Act supports this position. Specifically, 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."

Geographic area for auctions

As part of its draft orders, the FCC seeks comments on how an auction should be designed to appropriately target support to areas in need of funding. In those draft orders, the FCC concluded that the appropriate geographic level at which to conduct reverse auctions was the study area. The FPSC does not agree with this conclusion. We note that ILEC study areas do not necessarily conform to those of their competitors. As noted by the FCC in its prior NPRM, in defining an area to be auctioned, one party (either competitor or incumbent) could receive an undue competitive advantage

[12] FCC, Notice of Proposed Rulemaking, FCC 08-5, CC Docket No. 96-45, WC Docket No. 05-337; Adopted: January 9, 2008, released: January 29, 2008; ¶ 12.

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 to maximize the number of available bidders. The FPSC maintains that 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 reserve price

The FCC seeks comment on establishing a reserve price should it decide 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 at the level of support available to current ETCs. This position appears consistent with that taken in the FCC's draft orders.

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 previously proposed two alternatives to establish a reserve price. The first option would be to set reserve prices by allocating a study area's embedded cost to wire centers using results from the FCC's Synthesis Model. The second option would be to estimate wire center costs based on observable factors such as customer density. Given that there has been significantly greater

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.

UNIVERSAL SERVICE JOINT BOARD RECOMMENDED DECISION

Capping the size of the high-cost fund

The FPSC supports capping the fund, consistent with the Joint Board's Recommended Decision, at $4.5 billion (approximately the amount of support distributed in 2007). 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)."[13] This is consistent with the cap proposed in Appendix B.

By comparison, the cap proposed in Appendix A would allow the size of the fund to grow to the amount of support distributed at the end of 2008, and ensure that each incumbent would receive the same amount of support it received as of that date, so long as it commits to the FCC's broadband deployment. This latter proposal raises two questions. First, given that the FCC acknowledges that the high-cost support mechanism is in need of reform, why should consumers continue to pay increased support amounts for yet another year while the FCC contemplates action? Second, why should incumbent carriers be held harmless in the process? The FPSC contends that one of the premises of the Joint Board's Recommended Decision is that support currently is being inefficiently allocated. According to the Joint Board, capping the support amount and rethinking how support should be allocated would afford the FCC the flexibility to provide support for new services such as broadband and wireless services in unserved areas where need can be demonstrated.

The cap proposed in Appendix C compounds these issues by allowing interstate rate-of-return carriers to continue to receive support based on the existing methodology until 2010. At that point,

[13] *Qwest Communications International v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

support for these carriers would then be capped. While sympathetic to the concerns of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Western Telecommunications Alliance (WTA), the FPSC does not believe that an adequate basis has been established within their ex parte comments in Appendix D to justify such an extension. We believe that $4.5 billion (as recommended by the Joint Board), if allocated in a more efficient manner, should be more than sufficient to preserve the universal service mandate within the Telecommunications Act.

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 broadband Internet access satisfies the statutory requirements to be deemed "supported services" eligible for universal service funding. The FPSC has previously enumerated why we believe that these conditions have not been met.[14]

We believe the market has addressed broadband deployment in large part and there is no demonstrated need for a broadband funding mechanism. The FCC has concluded that most households in the United States have access to both DSL and cable modem services.[15] It has estimated that high-speed cable modem service is available to 96 percent of the households to which cable system operators could provide cable TV service.[16] High-speed DSL connections were estimated to be available to 82 percent of the households to whom incumbent LECs could provide local telephone service.[17]

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[14] Reply Comments of the FPSC in CC Docket No. 96-45, WC Docket No. 05-337. Filed June 21, 2007, at pp.11-15.

[15] FCC, Fifth Report, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, GN Docket No. 07-45 , FCC 08-88; released: June 12, 2008, ¶ 69.

[16] FCC, High-Speed Services for Internet Access: Status as of June 30, 2007, Wireline Competition Bureau, March 2008, Table 14.

[17] Id.

Furthermore, 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 the Telecommunications Act to provide "access to advanced telecommunications and information services . . . in all regions of the Nation."[18] 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 as of April 2008 represents only 55 percent of all households.[19] While this does represent an increase over prior years, it does not satisfy the "substantial majority" criterion enumerated within the Act.

We would note that Congress passed and the President signed into law the Broadband Data Improvement Act (S. 1492). In general, the Broadband Data Improvement Act requires the FCC to collect and report on the availability of broadband services. Having the results of these efforts would be useful in focusing new broadband deployment in unserved areas. It may be preferable to await the results of these studies prior to imposing a broadband build-out requirement on all ETCs throughout the country as proposed in Appendices A and C.

Nevertheless, the FPSC's opposition to expanding the definition of supported services to include broadband could be tempered by the adoption of an overall fund cap in conjunction with the other reforms noted in our comments. However, support for broadband should not be perceived as a long-term recurring entitlement. To the extent that the FCC moves forward to expand the definition of supported services to include broadband, the FPSC believes that 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.

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[18] 47 U.S.C. § 254(b)(2).

[19] Home Broadband Adoption 2008, Pew Internet & American Life Project, John B. Horrigan, Associate Director for Research, July 2, 2008, http://pewresearch.org/pubs/888/home-broadband-adoption-2008.

Two of the draft orders (Appendices A and C) seek to expand the current Lifeline/Link Up programs and establish a pilot program to provide discounts to broadband services in a manner similar to the current Lifeline and Link Up programs for low-income consumers. The FCC would make $300 million available each year for the next three years to enable ETCs to support broadband Internet access service and the necessary access devices. If an ETC provides Lifeline service to an eligible customer, the pilot program will support 50 percent of the cost of broadband Internet access installation, including a broadband Internet access device, up to a total $100. Additionally, if an ETC provides Lifeline service to an eligible household, the pilot program will double, up to an additional $10, the household's current monthly subsidy to offset the cost of broadband Internet access service. The FPSC opposes the adoption of such a pilot program unless the funding comes from existing support within the proposed $4.5 billion cap recommended by the Joint Board.

INTERCARRIER COMPENSATION

Preemption

In Florida, the legislature sets the intrastate access charges. Currently, Section 364.163, Florida Statutes, provides that each price-cap local exchange company's rates for access services in effect on July 1, 2007, must remain capped at that level until July 1, 2010. Yet the FCC's new initiative appears to trespass on State authority to establish intrastate access charges.

Any approach that eliminates state authority over intrastate access charges unlawfully constrains state retail rate design options. In *Louisiana PSC v. FCC*, the Supreme Court rejected an FCC attempt to prescribe depreciation rates for intrastate ratemaking.[20]

While Congress made major changes in 1996 to the Communications Act of 1934, the language remains clear in 47 U.S.C. Section 152 that, except for some express exemptions, nothing in the Act shall be construed to apply or give the FCC jurisdiction with respect to charges,

[20] 476 U.S. 355 (1986).

classifications, practices, services, facilities or regulations for or in connection with intrastate communication service. Here, the FCC appears to be trying to circumvent this express state authority by coming up with ever-changing legal theories as to why it may preempt states on intrastate access charges.

The FCC has attempted to assert jurisdiction over ISP-bound calls. In *Core Communications v. Level 3 Communications*,[21] the D.C. Circuit Court of Appeals expressed frustration about the changing legal basis for calling ISP-bound calls interstate traffic subject to FCC jurisdiction. In the most recent case, *In Re. Core Communications*,[22] the D.C. Circuit Court of Appeals stated that the FCC's delay in stating a valid legal basis for its rules governing intercarrier compensation for ISP-bound traffic is "egregious." The Court stated, 'It is now six years since we held, for the second time, that the FCC's legal justification for the rules was invalid and remanded for the agency to provide a valid justification." The Court added, "If the FCC believes it has authority, it should not take six years to put its rationale in writing. Even if the Commission ultimately decides to include ISP-bound traffic in a more comprehensive scheme, it still must have statutory authority to do so."

In Appendices A and C, the FCC states that it will adopt a new approach to intercarrier compensation and establish the "blueprint" for moving to new uniform termination rates that are economically efficient and sustainable in the increasingly competitive telecommunications markets. At the end of a transition period, all telecommunications traffic will be treated as falling within the reciprocal compensation provisions of Section 251(b)(5), and states will set default reciprocal compensation rates pursuant to the FCC's new methodology. One year from the effective date of the order, the FCC requires that all LECs reduce their terminating intrastate access rates by 50 percent of the difference between their intrastate switched access rates and their interstate switched access rates. Two years from the effective date of the order, the FCC requires that all LECs reduce their

[21] 455 F.3d 267 (D.C. Cir. 2006).
[22] 531 F.3d 849 (D.C. Cir. 2008).

terminating intrastate switched access rates by the remaining 50 percent of the difference between their intrastate switched access rates and their intrastate switched access rates so that their intrastate rates equal their interstate rates.[23]

In Appendices A and C, the FCC concludes that Section 251(b)(5) is not limited only to the transport and termination of certain types of traffic.[24] "Its scope is not limited geographically ("local," "intrastate," or "interstate") or to particular services…" The FCC concludes that its authority applies to the transport and termination of all telecommunications traffic exchanged with LECs.[25] Then, the FCC states, "By placing all traffic under the umbrella of one compensation scheme, we eliminate jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services." This FCC legal analysis falls short.

The FCC rejects the notion that, in order to implement this reform, it would be necessary for it to preempt state regulation of intrastate access charges.[26] The FCC believes that "such a significant step is not currently warranted," and instead elects to "allow" states to continue setting rates for intrastate traffic, "pursuant to our methodology." The FCC sidesteps the jurisdictional matter with this statement: "(S)ome parties contend that the Commission should leave matters of intrastate intercarrier compensation reform entirely to the states. These proposals evidence a pre-1996 Act worldview, however." Thus, the FCC dismisses this concern without full consideration of the issue.

Nowhere in the FCC's analysis is there a discussion of the state authority in Section 152(b) of the Communications Act, even though the D.C. Circuit Court of Appeals has concluded that the dual jurisdictional authority of the federal and state governments continues to exist post-1996 Act in *New England Public Communications Council v. FCC*.[27] The D.C Circuit stated:

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[23] Appendix A, ¶193 and Appendix C, ¶188.
[24] Appendix A, ¶218 and Appendix C, ¶ 213.
[25] Appendix A, ¶220 and Appendix C, ¶ 215.
[26] Appendix A, ¶228 and Appendix C, ¶223.
[27] 334 F.3d 69 (D.C. Cir. 2003).

> The Communications Act of 1934 establishes "a system of dual state and federal regulation over telephone service," under which the Commission has the power to regulate "interstate and foreign commerce in wire and radio communication," 47 U.S.C. Sec. 151, but is generally forbidden from entering the field of intrastate communication service, which remains the province of the states, *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 360…
>
> (W)hether the Commission may preempt state regulation of intrastate telephone service depends, as in "any preemption analysis," on "whether Congress intended that federal regulation supersede state law." In cases involving the Communications Act, that inquiry is guided by the language of section 152(b), which the Supreme Court has interpreted as "not only a substantive jurisdictional limitation on the FCC's power, but also a rule of statutory construction." *New England Public Communications Council v. FCC*, 334 F.3d 69 (D.C. Cir. 2003).

The FCC's draft orders neither address nor acknowledge that this jurisdictional divide is still intact in the post-1996 Act in Section 152(b). The draft order is silent on it. While the 1996 Federal Telecommunications Act did create a new regulatory paradigm in many ways, Section 152(b) preserves the division of authority between the FCC and the states on interstate and intrastate charges. Congress has not conferred power to the FCC to preempt state intrastate access charges; thus this preemption is unlawful.

Financial Impacts

Unlike the USF reform proposals, there is significant uncertainty and lack of detail as it pertains to the ICC plans. Whereas the Missoula plan provided information sufficient to evaluate the quantitative impacts of the plan, such detail is not provided in the ICC reform proposals in the FNPRM. For example, it is impossible from a review of the draft orders to begin to estimate the potential impact on the federal high-cost programs. The FPSC concludes that the many unknown variables and unresolved key implementation issues preclude us from offering meaningful comments

at this time. For these reasons, the FPSC cannot endorse the proposed ICC reforms as currently proposed.

CONCLUSION

In general, we support reform of the high-cost program and intercarrier compensation. The FPSC has previously supported and continues to support many of the concepts relating to USF reform found within this notice. We hope the FCC moves promptly to implement these reforms. Regarding the FCC's broader measures relating to intercarrier compensation, we are not able to support the proposals outlined within the various draft plans.

Eliminating the FCC's identical support rule and establishing a permanent cap on the size of the high-cost fund would stabilize program growth to ensure that the program does not adversely affect affordability. As noted by the joint comments of FCC Commissioners Copps, Adelstein, Tate, and McDowell, there appears to be a "growing consensus" on the elimination of the identical support rule, and other issues.[28]

We believe that the competitive neutrality objective adopted by the FCC can and should be interpreted 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 affordability for all consumers. In prior notices, the FCC had tentatively concluded that CETCs should no longer receive support for Interstate Access

[28] Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell; WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, and WC Docket No. 04-36. Released November 5, 2008.

Support (IAS), Interstate Common Line Support (ICLS), and Local Switching Support (LSS). We agree; the costs these programs address do not relate to costs faced by CETCs.

Several of the alterative proposals found in the Appendices of the FNPRM include provisions for the use of reverse auctions. The details of these proposals vary by either calling for the direct distribution of high-cost support through auctions, or requiring the use of auctions when an ETC fails to meet a new broadband build-out requirement imposed by the FCC. If the FCC moves to implement a reverse auction process to distribute high-cost support, the FPSC continues to support a single auction winner design, as proposed in the Appendices, 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 previously stated tentative conclusion to eliminate the identical support rule and would cost more than an auction designed with only a single winner.

The FPSC supports capping the high-cost fund, preferably at the $4.5 billion level recommended by the Joint Board. We urge the FCC to act quickly on this measure. One proposed alternative would not initiate a cap on interstate rate of return carriers until 2010. The FPSC does not see the benefit of delaying implementation of the cap for any specific group or class of carriers. A review of ex parte comments attached to the FNPRM does not show sufficient support for this extension.

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 past comments. This position is also applicable to a new Lifeline broadband proposal found in Appendices A and C. Unless action is taken by the FCC, further growth in the high-cost universal service fund may ultimately affect the affordability of telecommunications services to consumers.

While the FPSC is mindful of the need to move forward with ICC reform, we have serious concerns about the proposals offered in the FNPRM. The lack of sufficient detail to adequately access financial impacts to carriers in our state is troubling and prevents us from supporting any of the proposals at this time. In addition, it is equally troubling that the FCC appears to be overreaching its jurisdiction in order to fast-track a reform plan. For these reasons, we are unable to support the proposed ICC reforms at this time. If jurisdictional issues are resolved in a lawful manner and details of the plan emerge which permit adequate assessment of financial impacts, the FPSC may reconsider its position. 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

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DATED: December 2, 2008