

**ELIGIBLE TELECOMMUNICATIONS CARRIER WORKSHOP
EMBARQ FLORIDA, INC. POST-WORKSHOP COMMENTS
August 31, 2007**

Embarq hereby files its post-workshop comments in this matter, in accordance with staff's instructions. These comments take the form of responses to the 26 questions staff posed in the August 2, 2007 Notice of the Workshop. As Embarq's counsel advised at the workshop, due to the short timeframe for preparing the comments, the responses represent Embarq's best efforts to fully express positions on the identified issues; however, Embarq reserves the right to revise, expand or supplement its positions and issues in the proper forum and at the appropriate time.

1) What is the role and authority of the FPSC in the USF process?

Embarq's Response:

- First, the FPSC has ruled that it has the authority to designate any carrier, including a wireless carrier, an ETC in Order No. PSC-07-0288-PAA-TP, issued April 3, 2007 in Docket Nos. 060581 and 060582 (Alltel ETC Petitions).
- Second, under this authority, the FPSC may impose obligations and requirements that go beyond the obligations/requirements the FCC has chosen to impose, as long as those obligations and requirements are not inconsistent with the federal requirements. This authority stems from the FCC's findings that state commissions are best suited to determine what is in the public interest and that state commissions have independence regarding how they determine what is in the public interest (See, In the Matter of Federal-State Joint Board on Universal Service, FCC Order 05-46 in Docket No. 96-45, 20 FCC Rcd 6371, released March 17 2005 ("ETC Designation Order"), ¶43).
- Third, following from the bullet point above, the FPSC has the authority to ensure that USF dollars that ETCs receive—particularly competitive ETCs, who do not have decades-long proven track records with the FPSC—are spent in ways (and in areas) that will ensure the public interest is served. This means that, to ensure the public interest is served, the FPSC can, if it chooses, require the dollars be spent in certain areas (i.e. unserved areas) as recommended by Embarq in the paragraphs below (ETC Designation Order, ¶62).

2) How many ETCs should be designated in a rural wire center?

- 3) **How many ETCs should be designated in a non-rural wire center?**
- 4) **If a limit is set on the number of ETCs designated in a wire center, how should it be decided which ETC(s) serve it? (e.g., one wireline & one wireless?)**

Embarq’s Response:

This is a collective answer to Questions 2, 3 and 4. There is not some pre-defined quantity of ETCs in any area—rural or non-rural—that is the correct number. Rather, it is what each and all of the ETCs in any area are *doing* that determines whether the public interest is being served.

For example, it is possible for a competitive ETC to enter a rural wire center and serve that rural wire center using a combination of its own facilities and resale. In such a case the C-ETC may be using its own facilities only in the low-cost, downtown portions of the wire center and using resale in the outlying, higher-cost areas, thereby effectively “dodging” the costs of actually serving the high-cost areas.

It is also possible that a *second* competitive ETC might enter the same wire center and serve the entire wire center with its own facilities. In this case, it is the *second* CETC that is actually serving the public interest better than the first, because the second CETC is actually providing a true alternative to customers in the high-cost part of the wire center (the first CETC is simply re-selling customers the same service they already have). In this case it is also the *second* CETC that is actually doing what universal service is intended to support: Incurring the costs of providing service in high-cost areas.

Accordingly, it is not the number of ETCs or CETCs that determine whether the public interest is being served, it is what each ETC is doing to provide service and expand customer choices in the truly high-cost areas of Florida that determines the public interest. Therefore Embarq is not able to put forth a specific “number” of ETCs in an area—rural or non-rural—that will serve the public interest.

- 5) **How should “Public Interest” be determined for ETC designation in a rural area?**
- 6) **Can a state apply a “Public Interest” standard found in § 214(e)(2) of the Telecommunications Act of 1996, to carriers seeking ETC status in non-rural study areas? If so, how should “Public Interest” be determined for ETC designation in a non-rural area?**

Embarq’s Response:

This is a combined answer to Questions 5 and 6. First, the FCC has made it clear that a public interest determination is needed BOTH for applications for CETCs in rural areas and applications for CETCs in non-rural areas. “We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.” (ETC Designation Order, ¶42.) Second, the FCC has also suggested that the public interest analysis for applications in areas served by rural carriers should be more rigorous than the analysis for applications in areas served by non-rural carriers. (“ETC Designation Order” ¶59.)

In the process of determining public interest it is important to keep in mind that, unlike incumbent providers that are obligated to provide service in all areas, competitive carriers in Florida only serve areas that are profitable to serve. It is also important to keep in mind that all USF dollars come out of the pockets of consumers. Putting these two facts together, it is not in the public interest to pay a company USF dollars for serving the areas it has already decided to serve, that is, areas that it has already determined are profitable to serve. Therefore the public interest for any CETC in Florida should be determined by examining whether the CETC is serving (or will provide service) where it is not profitable. And, in a related sense, the public interest for any CETC in Florida should be determined by examining whether the CETC is serving (or will provide service) where it is not already serving.

To the extent that one of the perceived benefits (for consumers) of designating a carrier a CETC is “increased customer choice” it is vitally important not to simply *assume* this increased choice is occurring. When a CETC asks to be designated an ETC in the areas it is already serving (as many CETC petitions do), the designation does nothing to increase customer choice. In such a petition, the petitioning carriers are already offering service within their coverage area, with no help from USF. Customers in that coverage area already have the choice of using that carrier, again with no help from USF. Unless the carrier commits to building out into new territory, there is no new choice being offered to any customer as a result of ETC designation. That is why the build-out requirements discussed below are so vitally important to ensuring that the public interest is served in Florida.

7) What additional criteria should be required to obtain ETC status for high-cost funds? (e.g., USF funds must be invested in Florida? USF funds must be used in unserved areas?)

Embarq’s Response:

There should be two additional criteria: First, a competitive ETC should commit to using its USF dollars first and foremost to expand its network and extend its coverage into un-served and under-served areas. Secondly, and consistent with the first criteria, to the extent that a CETC is relying on *resale* to meet its service obligations it should use its USF dollars to construct plant in un-served areas and reduce its reliance on resale.

Current rules allow a competitive ETC to take USF dollars and use them for many purposes, many of which have nothing to do with serving high-cost areas. For example, current rules allow USF dollars to be used to expand the capacity of wireless carriers’ towers in urban areas. The FPSC must go further than the existing rules toward ensuring that customers living in the highest cost, most uneconomic areas of Florida are the ones who benefit from USF.

The Embarq-proposed requirement to reduce a CETC’s reliance on resale is particularly important. When a carrier relies on re-sale to meet the service obligations of “serving” the higher-cost portions of its designated service area it is avoiding the actual costs of serving those high-cost areas just as surely as if it had never entered them at all. It is, by definition,

cream-skimming: Avoiding the costs of serving high-cost areas and incurring the costs of serving only in those areas where the costs are low.

It is sometimes argued that, because a carrier does not (theoretically) receive support for resold lines, a CETC's use of resale does not rise to a level of concern for regulators. This is not correct; the use of resale to meet CETC obligation is and should continue to be an issue for regulators, because it is antithetical to what universal service is supposed to be about: helping carriers recover the costs they incur when they serve high-cost, uneconomic areas.

For example, consider an incumbent carrier that receives IAS support (often referred to as "CALLS" support.) The incumbent receives an average dollar amount of support for every line in a wire center, the downtown lines as well as the outlying lines, and this per-line amount is also what is available to CETCs. In reality, in most cases the lines in the downtown area are low-cost and may not justify any support, while the outlying lines are high-cost and justify a per-line amount that is higher than the average. But each line receives the average amount.

Now assume that a CETC serves the downtown areas of that wire center with its own network, and uses re-sale to "serve" the outlying portions of the wire center (a situation we often see in real-life). The CETC receives the average amount of support per line in those downtown areas but, in fact, it is the outlying areas—the ones the CETC is not really serving except through resale—that have caused that wire center to have any support at all. In short, the CETC is receiving support dollars that are available only because of the existence of the outlying areas that the CETC isn't even serving.

CETCs that receive dollars in the above-described situation often argue that this is not a concern, because the incumbent LEC has had the option of disaggregating its support and targeting it to those outlying areas. In essence these parties will argue something like "If the incumbent carrier didn't bother to disaggregate their support it's "fair game" for a CETC." The FCC has dismissed this retort as not holding water. The FCC has specifically stated that the fact that an incumbent carrier has not disaggregated does not alleviate concerns about cream-skimming. In its Highlands Cellular Order the FCC wrote "We therefore reject arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high cost support to the highest cost portions of the incumbent's study area." (Memorandum Opinion and Order in CC Docket 96-45 released April 12, 2004). And, as stated above, the use of resale is simply another vehicle for CETCs to cream-skin; they avoid the actual costs of serving high-cost areas, and only incur costs in the lowest-cost areas.

8) Pursuant to § 214(e)(1), should an entity be required to establish its ability to serve all customers of the current ETC, if the incumbent ETC relinquishes its designation?

Embarq's Response:

Yes. To ensure competitive neutrality and to ensure that the applicant does not intend to serve just the lowest-cost customers and markets, an ETC applicant should demonstrate its

ability to provide service throughout the proposed designated service area to all customers, including those in high-cost areas. Once a provider has been granted ETC status, the new ETC should assume the same obligations to serve requesting customers as the ILEC is required to meet. As described above, the new ETC should be allowed to meet this obligation through resale only in limited situations and for a limited period of time. Otherwise the ETC would have an ongoing incentive to avoid investing in high-cost areas where an ILEC has already done so.

9) In Order No. PSC-07-0288-PAA-TP, the FPSC concluded that “. . . we now have jurisdiction to consider CMRS applications for ETC designation.” Given that the FCC’s jurisdiction to designate a carrier as an ETC, in § 214(e)(6) of the Telecommunications Act of 1996, is premised on a state commission not having jurisdiction, can the FCC designate any additional carriers within Florida?

Embarq’s Response:

No. The FCC only has jurisdiction over the designation of wireless carriers if a state commission chooses not to exercise its jurisdiction to certify the applicant.

10) Can the FCC continue to perform annual certification of carriers that it has designated if it no longer has jurisdiction under § 214(e)(6) of the Telecommunications Act of 1996?

Embarq’s Response:

No.

11) Should an ETC be required to offer all supported services pursuant to 47 C.F.R. § 54.101(a)(1), not just, e.g., Lifeline and Link-Up?

Embarq’s Response:

Embarq has not formulated a position on this issue at this time. However, Embarq believes there is merit in the Commission continuing to explore whether a carrier may seek ETC status for the purposes of providing Lifeline and Link-up services only..

12) If an ETC uses its ETC designation only for the purposes of providing Lifeline service, should a waiver be sought of other requirements to offer services? What is the extent of the FPSC’s authority to grant such waivers?

Embarq’s Response:

See Response to Question No. 11.

13) What can Florida do to relinquish its role as being the number one net contributor to the USF fund?

Embarq’s Response:

The most beneficial thing Florida can do to relinquish its role as a net contributor is to work to reform the way universal service support is calculated. Particularly, the need for support must be determined at a more granular level. The use of study areas averaging, under the current system, assumes that implicit subsidies can be used to offset the costs of serving customers in the highest-cost areas. This assumption is incorrect in today's competitive environment.

Florida contains some of the highest-cost areas in the nation yet many of these areas receive zero high cost loop support because their costs are averaged with the state's more urban areas. When costs are averaged in that manner to determine support an assumption is being made that revenues earned in the urban areas are available to cover the costs in the rural areas. This is a false assumption. Accordingly, if the universal service mechanism was reformed in such a way to determine the need for support at a more granular level—at a wire center or sub-wire center level—many areas in Florida that receive zero support dollars today would start receiving support dollars.

14) In considering the “Public Interest” standard for ETC designation, to what degree should the following aspects be considered:

- a. The benefits of increased customer choice?**
- b. The impact of the designation on the universal service fund?**
- c. The unique advantages and disadvantages of the competitor's service offering?**

Embarq's Response:

This is addressed above in response to questions 5, 6 and 7.

15) How should the comparable local usage requirement of ETC designation be considered?

Embarq's Response:

An ETC applicant should demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation.

16) Should the amount of per-line support received by the incumbent LEC be a consideration in ETC designation?

Embarq's Response:

No.

17) Should a requirement of one line per household for USF be imposed? Does the FPSC have the authority to take such action?

Embarq's Response:

Embarq has not formulated a position on this issue at this time.

18) Should ETCs be required to list the projects and locations of all projects for which USF funds will be used in their five-year plans? Should ETCs be required to provide an explanation if a project isn't completed by the time of the next annual recertification?

Embarq's Response:

Embarq supports the requirement of a five-year plan to be filed only by new ETC applicants, including listing the projects and locations of all projects for which USF funds will be used. The plan should describe proposed improvements or upgrades to the applicant's network on a wire center by wire center basis throughout its proposed designated service area. Requiring a network plan and progress reports would go a long way toward ensuring an applicant or a newly designated ETC is making a genuine effort to serve all its territory, especially the high cost areas already being served by the ILEC.

In addition, the plan should provide a detailed description of the projects and capital deployment that would take place *absent* USF support, so the Commission can evaluate the net impact of receiving USF dollars.

19) How should the benefit be measured of adding plant in a wire center using USF funds? (e.g., more customers? more handsets? better coverage?)

Embarq's Response:

Embarq has not developed a position on a proper metric to use at this time.

20) What criteria should be used to determine if an ETC is meeting the Lifeline and Link-Up advertising requirements?

Embarq's Response:

ILECs provide Lifeline / Link-up advertising information annually in response to a Commission data request. All ETCs should be required to do the same.

21) What criteria should be met if an ETC decides it wishes to relinquish its ETC designation?

Embarq's Response:

The ETC wishing to relinquish its ETC designation should be required to ensure that all customers will continue to be served, and should give sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETCs.

22) What are the differences in the requirements to be an ETC versus the requirements of a carrier of last resort (COLR)?

Embarq's Response:

COLR Requirements: Florida Statute 364.025 provides that each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory. Universal service means access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.

ETC Requirements: An ETC is required to offer the supported services designated in 47 C.F.R. § 54.101(a), using its own facilities or a combination of its facilities and resale of another carrier's services, and to advertise the availability of those services and the charges for those services. An ETC must commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service.

The key difference here is that competitive ETCs can avoid providing service even within their service areas whereas COLRs cannot. COLRs are obligated to provide service regardless of the conditions surrounding the request, whereas competitive ETCs are allowed to avoid providing service, even within their designated service area, if the request is not considered "reasonable". It is important to note that there is no precedent in Florida law or Florida rules as to what constitutes a "reasonable" request or even what party has the responsibility of determining the "reasonableness" of requests.

23) Do the responsibilities associated with ETC designation differ from those afforded a COLR under state law? If so, what are the differences and similarities?

Embarq's Response:

See Response to Question No. 22.

24) Should a company which is a reseller and who also leases network elements be required to have a certain percentage of customers served by the leasing of network elements to meet the "own facilities" requirement?

Embarq's Response:

A new ETC should be allowed to meet its obligation to serve requesting customers through resale only in limited situations and for a limited period of time. Otherwise the ETC would have an incentive to avoid investing in high-cost areas where an ILEC has already done so. This question also is addressed in response to the Public Interest questions above.

25) What percentage of wireless CETC support should go to new towers in unserved areas?

Embarq's Response:

Embarq has not developed a position on this issue at this time.

26) What other issues need to be addressed when considering ETC policy?

Embarq's Response:

Embarq has not developed an explicit list of additional issues at this time

Respectfully submitted this 31st day of August 2007.

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