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VIA HAND DELIVERY AND ELECTRONIC MAIL

Adam Teitzman, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Eligible Telecommunications Carrier Workshop
Post-Workshop Comments of Northeast Florida Telephone Company and FairPoint Communications

Dear Mr. Teitzman:

Northeast Florida Telephone Company ("NEFCOM") and GTC, Inc. d/b/a FairPoint Communications ("FairPoint") appreciate the opportunity to provide these Post-Workshop Comments and look forward to further participation on the issues concerning Eligible Telecommunications Carriers ("ETCs") in Florida.

INTRODUCTORY STATEMENT

In February of 2007, the chairman of the Federal Communications Commission ("FCC") spoke to the ever increasing growth in the federal, high cost Universal Service Fund ("USF") and reminded the members of the Federal-State Joint Board on Universal Service ("Joint Board") and the telecommunications industry that the purpose of universal service is not to promote competition, but to ensure the availability of affordable quality service in all areas, including rural areas, where it otherwise might not be available.[1] The words of FCC Chairman Martin mirrored those of this Commission in comments filed with the FCC on November 20, 2006 in CC 96-45 and WC 05-337, where this Commission stated:

[1] Opening Remarks of Chairman Kevin Martin, Federal-State Joint Board on Universal Service En Banc Meeting ("Chairman Martin's En Banc Statement"), at 5 (Feb. 20. 2007).

> The universal service program was not intended to be a vehicle within the Act to promote competition. Rather, it was intended to offset any potentially adverse effects of competition to ensure that consumers in rural and high-cost areas continue to have access to telecommunications and information services that are reasonably comparable to those service provided in urban areas at reasonably comparable rates.

NEFCOM and FairPoint urge the Florida Public Service Commission ("FPSC" or "Commission") to take a leadership role before the Joint Board and the FCC in advocating that the FCC and all states impose a moratorium on the designation of new ETCs until comprehensive federal rules are established on the designation of multiple ETCs and the development of a funding mechanism that curbs the spiraling growth in the federal universal service fund. The FCC is currently reviewing the Joint Board's recommendation to impose an interim, emergency cap on Competitive ETC ("CETC") funding pending a decision on the appropriate long-term, comprehensive universal service reform. The Joint Board plans to make recommendations for comprehensive high-cost universal service reform within six months and wants the FCC to act on their further recommendations within one year from the date of the Joint Board's further recommended decision. Clearly, solutions concerning such issues that could significantly impact the federal high-cost support fund are nationwide issues which cannot and should not be approached through a patchwork of inconsistent actions taken at the state level. Florida's consumers represent the largest net payor into the USF compared with any state in the United States. That burden must be aggressively addressed by this Commission. NEFCOM and FairPoint urge this Commission to aggressively advocate the imposition by the FCC of a moratorium on the designation of ETCs by the FCC and all states until these issues are resolved by the Joint Board and the FCC on a comprehensive, nationwide basis.

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

<u>Response</u>: It is the position of FairPoint and NEFCOM that the FPSC has authority to determine ETC designation. However we feel it is incumbent that with this authority the FPSC <u>must</u> insure competitive neutrality so that any and all requirements of incumbent ETCs should also apply to CETCs and vice versa.

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

<u>Response</u>: NEFCOM and Fairpoint question whether it would ever make economic sense to subsidize multiple ETCs in high-cost areas which FCC Chairman Kevin Martin has described as "prohibitively expensive for even one carrier" to provide service.[2] The incumbent local exchange carrier that has already made extensive investments in infrastructure to meet the public policy of providing the supported services to any customer that wants them should always be the primary ETC. As emphasized by FCC Chairman Martin, the goal of universal service is not to advance competition or proliferate new ETCs. A second ETC should only be designated in rural wire centers if a showing can be made as to how that designation will enhance or provide access to supported services that are not available through the primary ETC's service offerings.

3. How many ETCs should be designated in a non-rural wire center?

Response: No position at this time.

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?)

Response: As stated above, the incumbent wireline LEC should automatically be designated as the primary ETC. As the carrier of last resort ("COLR"), the incumbent LEC has already made extensive investments in infrastructure to meet both its COLR obligations and to achieve the goals of universal service. Any additional ETC designation should then be based on how the competitive ETC would enhance or provide access to supported services that are not available through the incumbent LEC. In those instances where a CETC's service area may not cover all of the incumbent's wire center, the CETC should be required to commit to matching the wireline service area within a year of receiving ETC designation.

5. How should "Public Interest" be determined for ETC designation in a rural area?

Response: A carrier seeking competitive ETC status should be required to show that consumers in a particular study area will receive a net benefit from having multiple ETCs designated to provide the supported services. Consumers ultimately pay to support each carrier receiving ETC designation that seeks high-cost support from the federal fund. Providing federal high-cost support to a carrier that is already serving a study area without that support is not in the public interest. If, however, it is determined that consumers would receive a net benefit by having a second carrier designated as an ETC, then the CETC should be required to meet all of the same universal service obligations as the incumbent LEC.

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?

Response: No comment at this time.

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[2] Chairman Martin's En Banc Statement, at 3.

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?)

Response: It should be a requirement that all funds received should be invested in the service area for which the funds are associated. As an example, if a CETC receives funds based on FairPoint's USF filings, then the funds should be invested within that service area.

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?

Response: Yes.

9. In Order No. PSC-07-0288-PAA-TP, the FPSC concluded "...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(c)(6) of the Telecommunications Act of 1996 is premised on a state commission not having jurisdiction, can the FCC designate any additional carrier within Florida?

Response: Either the FCC or FPSC may designate ETCs within a given state but in order to avoid "venue shopping," once the FPSC has asserted jurisdiction, then the FCC should be notified and removed as an alternative venue.

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

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?

Response: Yes.

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?

Response: If the decision on Issue No. 11 above is no, then any ETC not providing the full range of supported services should be required to request a waiver.

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

Response: It is inevitable that there will be net "receivers" and net "payers" in any plan. Florida consumers are paying for decisions made in other states and by the FCC that have effectively "rubber stamped" applications for competitive ETC status. Therefore, the FPSC should take a leadership role in actively supporting a uniform, nationwide solution to the effective management of the growth of the USF.

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

    a. The benefits of increase customer choice?

    Response: The goals of universal service can only be sustained if the size of the fund supporting those services is kept under control. In most cases, the carriers seeking designation for CETC status are already providing services within the requested study areas. Consumers have a number of choices, at rate plans that they can afford, without having multiple ETCs designated in a particular study area. A carrier already serving a study area for which it is seeking ETC status should be required to show how all consumers in the study area will receive additional benefits or choices as the result of the CETC receiving universal service support.

    b. The impact of the designation on the universal service fund?

    Response: As mentioned above, the size of the universal service fund must be kept under control or the entire public policy goals of universal service are at risk. This should be of primary consideration of any public interest standard for designating additional ETCs.

    c. The unique advantages and disadvantages of the competitor's service offering?

    Response: As stated above, most carriers seeking ETC designation in the service area of an incumbent LEC are already providing services in those study area. Consumers already have the ability to make choices and decisions based on whatever their particular needs happen to be. NEFCOM and Fairpoint are not aware of any studies that show that consumers benefit due to multiple designation of ETCs in rural areas.

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

Response: The comparable local usage offered by an applicant for ETC designation should be considered as one factor in whether ETC designation is granted, together with all other relevant factors, including price, service availability, quality of service, service area (rural or non-rural), costs, consumer benefits and the public interest.

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

Response: No.

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

Response: It appears that the FPSC currently does not have the authority to limit USF support to one line per household. Therefore, this issue is best addressed in the pending reform proceeding before the FCC.

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?

Response: Yes, the ETCs should be required to provide plans for expenditure of USF funds but only on a two year basis. In today's evolving market, a five year plan is not feasible due to both funding changes and technological advancements. Any project that is "in progress" for longer than 12 months should be explained. In addition the projects that are specifically dependent upon USF funding should be identified in the plans. In addition, and as part of the FCC's comprehensive review of prospective rules, criteria and guidelines governing USF issues, the FCC should develop a strict and comprehensive monitoring and reporting plan for CETCs which will allow the FCC to annually ensure that commitments made by CETCs regarding construction projects, build out plans, scope of services, and net benefits promised to customers, are fulfilled. Such an oversight, monitoring and reporting plan should include trigger events that would authorize the designating body (the FCC or a particular state) to suspend or revoke ETC funding as appropriate.

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?)

Response: Once a carrier receives ETC designation, universal service support must be used for the "provision, maintenance and upgrading of facilities and services for which such support is intended." As noted in response to Issue 7, all funds received by a CETC should be invested in the service area for which the funds are provided. The determination of the benefits to consumers and to advancing the goals of universal service should be addressed before a new ETC receives an ETC designation.

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

Response: An ETC should be required to provide evidence that it has advertised the availability of Lifeline and Link Up services in a publication or other media designed to reach all household in a particular serving area.

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

Response: There is no requirement that a carrier serve as an ETC. That is a business decision of that particular carrier. That carrier may also decide, for business reasons, to relinquish its ETC status. Thus, it would appear to be inappropriate to develop criteria if a carrier were to make a decision to relinquish its ETC status.

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

Response: COLR requirements are applicable only to ILECs and not all ETCs. An ETC that is not the ILEC such as a wireless carrier does not have to provide service to meet every customer request. The ILEC has COLR obligations under Florida law and must build the facilities necessary to provide service and provide service throughout its service territory unless the COLR obligation is released for a specific customer or groups of customers under Section 364.025(6)(d), F.S.

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?

Response: See response to Issue No. 22 above.

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

Response: Yes.

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

Response: As discussed in Issue No. 7 above, if the funds are received based on providing service in a specific study area or wire center, then those funds should be used in upgrading or expanding the service in that study area/wire center. This requirement should not be limited to new tower construction only.

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

Response: NEFCOM and FairPoint have no other issues at this time regarding ETC policy.

CONCLUDING REMARKS

NEFCOM and FairPoint appreciate the opportunity to participate and provide input on a matter of ever increasing importance to Florida's telecommunications consumers. Florida consumers, including consumers in rural areas, need the Florida Public Service Commission to take a leadership role in addressing and curbing the unsustainable growth in the USF. The FPSC should advocate for the imposition of a moratorium on the designation of new ETCs at the state and federal level pending comprehensive USF reform. Such reform must occur at the federal level to ensure a consistent set of rules on a nationwide basis and to ensure that Florida's consumers are not further adversely impacted by new ETC designation decisions made by other states and the FCC.

NEFCOM and FairPoint look forward to further participation on these issues before the Commission.

Respectfully submitted,

Kenneth A. Hoffman

KAH/rl
Cc: Ms. Deborah Nobles
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