

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: May 20, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Dowds)
Office of Federal & Legislative Liaison (Fogleman)
Office of the General Counsel (Keating)

RE: Docket No. 010977-TL – State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.

AGENDA: 06/01/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010977-05funding.RCM.DOC

Case Background

Section 254(e) of the Telecommunications Act of 1996 provides that a carrier that receives universal service support “. . . shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” In its Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 00-256 (the Rural Task Force Order; hereafter, the RTF Order) the Federal Communications Commission (FCC) modified its rules pertaining to the provision of high-cost support for rural telephone companies. The FCC adopted a rule requiring that states who wish for rural carriers in their territory to receive federal high-cost support must file a certification annually with the FCC and with the Universal Service Administrative Company (USAC). This certification is to affirm that the federal high-cost funds flowing to rural carriers in the state, or to any competitive eligible telecommunications carriers seeking support for serving customers within a rural carrier’s service area, will be used in a manner that comports with Section 254(e). The rule provisions are:

§54.314. State certification of support for rural carriers.

- (a) *State certification.* States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.301, 54.305, and/or 54.307 of this part and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. . . .
- (c) *Certification format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and shall be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth below in subsection (d). . . .

The FCC requires that certifications for the next calendar funding year must be submitted by the preceding October 1; thus, in order for a rural carrier to be eligible for high-cost universal service support for all of calendar year 2005, certification must be submitted by October 1, 2004.

This recommendation pertains to the Commission's certification of Florida's rural LECs for 2005.¹

¹ Staff notes that there is a companion FCC rule, §54.313, associated with state certification for non-rural carriers in order for them to receive high-cost model support or interim hold-harmless support. Since Florida's non-rural carriers (BellSouth, Verizon and Sprint) are ineligible to receive such support, this Commission has never been called on to certify them.

Discussion of Issues

Issue 1: Should the Commission certify to the FCC and to USAC that for the year 2005 ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., Indiantown Telecommunications Systems, Inc., Northeast Florida Telephone Company, TDS Telecom, and Smart City Telecom will only use the federal high-cost support they receive for the provision, maintenance and upgrading of facilities and services for which the support is intended?

Recommendation: Yes. (DOWDS, FOGLEMAN)

Staff Analysis: Unless the Commission submits certifications to the FCC and to USAC by October 1, 2004, Florida's seven rural carriers will receive no interstate high-cost universal service funds during the first quarter of 2005, and would forego all federal support if certification from the FPSC is not eventually submitted. Other than Frontier, these rural LECs are under intrastate price regulation; thus, this Commission's regulatory oversight over their operations is somewhat limited. However, the FCC anticipated that certain state commissions may have restricted authority:

In the case of non-rural carriers, we concluded that states nonetheless may certify to the Commission that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support will be "used only for the provision, maintenance and upgrading of facilities and services for which the support is intended." We determined that, in states in which the state commission has limited jurisdiction over such carriers, the state need not initiate the certification process itself. . . . We conclude that this approach is equally appropriate here with regard to rural carriers and competitive eligible telecommunications carriers serving lines in the service area of a rural local exchange carrier. (RTF Order, ¶188)

Staff notes that on February 27, 2004, the Federal-State Joint Board on Universal Service (Joint Board) recommended that the FCC encourage states to use the annual ETC certification process to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs.² It made this recommendation in order to ensure the accountability of all ETCs for the proper use of funds received. Annual review affords states the opportunity for a periodic review of ETC fund use.³ The Joint Board asserted that states should examine compliance with any build-out plans. Where an ETC fails to comply with the requirements in section 214(e) and any additional requirements proposed by the state commission, the Joint Board noted that the state commission may decline to grant an annual

² See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, pars. 46-48 (2004).

³ See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, par. 95 (1999) (*Ninth Report and Order*) (stating that accountability for the use of federal funds in the state ratemaking process is an appropriate mechanism to ensure that non-rural carriers use high-cost support for the provision, maintenance and upgrading of facilities and services for which the support is intended); see also *Rural Task Force Order*, CC Docket 96-45, FCC 01-157, par. 187 (2001) (anticipating that states would take the appropriate steps to account for the receipt of high-cost support and ensure that federal support is being applied in a manner consistent with section 254).

certification or may rescind a certification granted previously.⁴ To date, only incumbent local exchange carriers have ETC status in Florida, and there have been no indications that the rural ILECs are in violation of any of the provisions of Section 214(e); thus, staff sees no need to conduct, e.g., an audit at this time. However, should the need arise prospectively, we would recommend to the Commission that it take the necessary steps to ensure that all ETCs in Florida are in compliance, as a condition of recertification.

Similarly, the FCC has noted that it may institute an inquiry on its own motion for companies for which it, rather than state commissions, has conducted ETC designations.⁵ Such an inquiry could include an examination of the ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services." The FCC stated that failure to fulfill the requirements of the statute, its rules and the terms of its designation order, could result in the loss of the carrier's ETC designation.

As has been done in prior years, each of the seven Florida rural LECs has provided the Commission with an affidavit (see Attachments A through G) in which they have certified that their use of interstate high-cost universal service support received during 2005 will comport with Section 254(e) of the Act and applicable FCC rules. Given these LECs' certifications, staff again recommends that the Commission certify to the FCC and to the USAC that these LECs will be using interstate high-cost universal service support in 2005 in a manner that complies with Section 254(e).

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open in order to deal with future certification of rural telephone companies. **(B.KEATING)**

Staff Analysis: Under the FCC's rule 54.314, state commission certification that their rural LECs will use interstate high-cost universal service support in a manner that comports with Section 254(e) will need to be addressed once a year. We anticipate that in subsequent years, Florida's rural LECs who continue to desire to receive interstate high-cost universal service support will again submit affidavits to this Commission; such affidavits would need to be received on a schedule that allows for an order to be issued and forwarded with a letter to the FCC and the USAC prior to October 1. Accordingly, staff believes it is appropriate for this docket to remain open to handle subsequent certifications.

⁴ *Federal-State Joint Board on Universal Service*; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, (2000), recon. pending (Section 214(e) Declaratory Ruling), par. 15.

⁵ *See Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37, par. 43, (2004).