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Public Service Commission

April 14, 2003

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: 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 referenced docket with regard to the review of the definition of Universal Service.

Should you have additional questions, please contact Greg Fogleman, the primary staff person in this docket at (850) 413-6574.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tys
cc: Brad Ramsay, NARUC

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
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COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
REGARDING THE REVIEW OF THE DEFINITION OF UNIVERSAL SERVICE

I. Introduction

The Florida Public Service Commission (FPSC) submits these comments to the Federal Communications Commission (FCC) regarding the review of the definition of universal service. Our analysis is guided by the general principles relating to: technological neutrality, minimizing unnecessary growth in the fund, and having a positive or neutral effect on competition. In this matter, the FPSC:

- Supports the conclusion of the Federal-State Universal Service Joint Board (Joint Board) in its Recommended Decision to maintain the current list of supported services;
- Believes the services currently supported meet the criteria established in the Telecommunications Act of 1996 (the Act);
- Concurs with the conclusion of the Joint Board to reject adding or modifying existing services already supported;
- Continues to take the position that the services eligible for Universal Service funding should not be expanded to include broadband Internet access at this time; and
- Urges the FCC to not include equal access as a supported service.

II. Background

Section 254(c)(1) of the Act states that "[u]niversal service [is] an evolving level of telecommunications services" and directs the FCC to periodically consider "advances in

telecommunications and information technologies and services."[1] Section 254(c)(2) states that "[t]he Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms."[2] Section 254(c)(1)(A)-(D) requires the Joint Board and the Commission to "consider the extent to which . . . telecommunications services" to be included in the definition of universal service:

(1) are essential to education, public health, or public safety;

(2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(3) are being deployed in public telecommunications networks by telecommunications carriers; and

(4) are consistent with the public interest, convenience, and necessity.[3]

As noted in the FCC's First Report and Order in this docket, the legislative history of this section instructs that "[t]he definition . . . should be based on a consideration of the four criteria set forth in the subsection."[4]

Section 254(b) goes on to establish the principle that "consumers in all regions of the Nation . . . should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas . . . ."[5]

The FCC had previously designated eight "core" services that are eligible for universal service support. This decision was based on consideration of the Joint Board's recommendations made in November 1996. These services include:

(1) single-party service;

(2) voice grade access to the public switched telephone network;

(3) Dual Tone Multifrequency signaling or its functional equivalent;

(4) access to emergency services;

(5) access to operator services;

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[1] 47 U.S.C. § 254(c)(1).
[2] 47 U.S.C. § 254(c)(2).
[3] 47 U.S.C. § 254(c)(1)(A)-(D).
[4] First Report and Order, FCC 97-157, May 8, 1997.
[5] 47 U.S.C. § 254(b).

(6) access to interexchange service;

(7) access to directory assistance; and

(8) toll limitation services for qualifying low-income consumers.

The FCC asked the Joint Board to review this list and, if warranted, recommend modifications.[6] On July 10, 2002, the FCC released the Joint Board's Recommended Decision regarding the definition of supported services. Generally, it concluded that no new service satisfies the statutory criteria contained in Section 254(c) of the Act, and the public interest would not be served by expanding the scope of universal service at this time. However, the Joint Board was unable to reach agreement on whether equal access satisfies the statutory criteria.

III. Flexibility in Expanding the Definition

Because Section 254(c)(1) uses the verb "consider," we continue to believe that the Act affords the FCC and the Joint Board flexibility in expanding the definition of supported services to include services that do not meet all four criteria.[7] The Joint Board has been given fairly wide latitude in this area, subject primarily to a service being available from a carrier and providing that federal universal service support for the service is deemed to be in the public interest.

During the Joint Board's comment cycle, the FPSC asked all of the carriers currently eligible to receive universal service support in Florida (i.e., eligible telecommunications carriers or ETCs) whether any services, beyond those currently being supported, have been subscribed to by 70 percent of residential customers. Based on the results, the FPSC was not able to conclude that any additional service has met this standard to justify being included as a supported service. The FPSC believes that even though the FCC and the Joint Board have been granted significant flexibility over what to include in the definition, no expansion in the list of supported services is warranted at this time.

In addition, the FPSC would note that simply making a service eligible for support may have unintended consequences in some rural, high-cost areas that need support the most. Specifically, if an ETC has not upgraded its network to provide a newly supported service, it would not receive any support. If the FCC chooses to ignore the Joint Board's recommendation not to expand the definition

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[6] Order, FCC 00-440, December 21, 2000.

[7] Comments of the FPSC to the FCC in CC Docket 96-45, filed on April 11, 1996, and October 22, 2001.

at this time, extreme care should be exercised not to create unintended consequences that may adversely affect consumers.

Expanding the list of supported services does not necessarily mean that new services will be included in a carrier's basic service offering. We are concerned that consumers would see no real change in the retail prices charged for these newly supported services, only the availability (depending on the service).

IV. Advanced Services

The FPSC has consistently taken the position that the services eligible for Universal Service funding should not be expanded to include broadband Internet access at this time. The logical extension of collecting contributions from broadband service providers, regardless of platform, is that at some future date those providers would seek to receive funding for the purpose of addressing broadband deployment issues. Florida has already encouraged initiatives to deploy broadband infrastructure and we do not believe our consumers should be asked to contribute to fund similar infrastructure investment for consumers in other states. The FPSC believes public/private partnerships and economic incentives are a far better and more sustainable method to ensure broadband availability to under-served markets than an elaborate and inflated subsidy mechanism. Moreover, the competitive market appears to be adequately dealing with issues of availability and demand for broadband services. According to findings of the 706 Joint Conference "Take Rate Study,"[8] it took just five years for the marketplace to make broadband available to 80% of American households. This qualifies broadband as one of the fastest new technology rollouts in history.

These efforts have been accomplished without universal service support. According to the previously mentioned Take Rate Study, somewhere between 10 percent and 15 percent of total U.S. households had subscribed to broadband at the end of 2001 (see Consumer Technology Adoption Chart on the next page). Recent estimates show that there were 18.6 million broadband subscribers at the end of 2002.[9] Assuming that all of these subscribers were residential, this would represent only 17 percent of total U.S. households. While these adoption rates appear to be low when compared to broadband's

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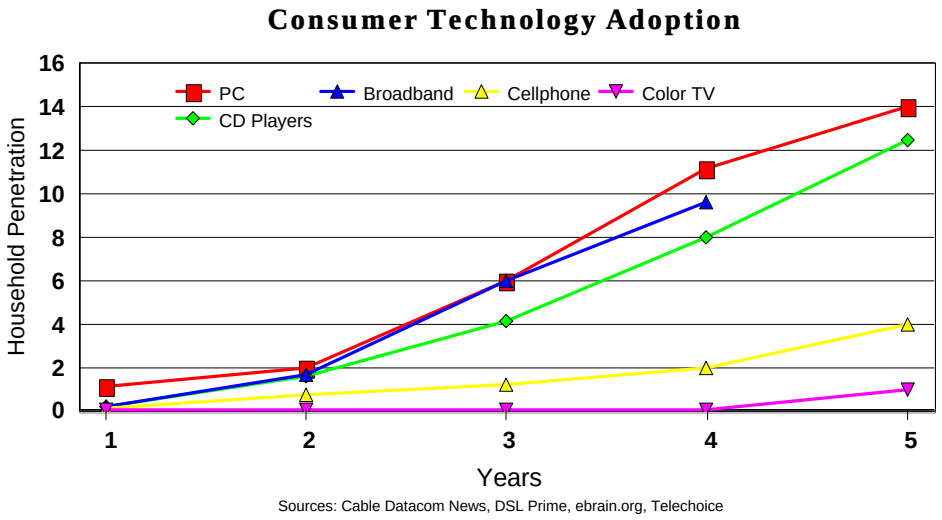
[8] *Broadband Services in the United States: An Analysis of Availability and Demand,* October 2002, prepared by The Florida Public Service Commission Office of Market Monitoring and Strategic Analysis on Behalf of The Federal-State Joint Conference on Advanced Telecommunications Services.

[9] Legg Mason estimates.

availability, the Take Rate Study points out that broadband has experienced one of the fastest consumer adoption rates in history. These results have all been accomplished without universal service support. Additionally, competitors are experimenting with different pricing and service options in order to stimulate demand. Demand may be further stimulated as new technology platforms, such as wireless, become more prevalent, thereby providing consumers a greater choice of providers. However, even in the face of these very positive aspects of demand, it does not appear that a substantial majority of residential customers will subscribe to broadband service for several more years.



While the FPSC has not completed an independent analysis of the financial impact of expanding the definition of supported services to include advanced services, several other parties have. For example, one estimate for the cost of advanced services support was provided by the National Exchange Carrier Association (NECA), which estimates that the cost of upgrading rural networks to provide

advanced services would be approximately $11 billion.[10] Other experts estimate that it would cost Regional Bell Operating Companies $80 billion to rehabilitate "last-mile" facilities for broadband capability.[11] Given that the FCC has recently had to take interim measures to maintain the viability of universal service in the near term, while it considers further long-term reforms, such a potentially large expansion is unwarranted.[12]

In addition, the FPSC has concerns about the effect of providing support only to carriers that provide all of the supported services and whether it would impede development of the broadband market. While the voice telecommunications and broadband markets are converging, many broadband providers do not provide the current list of supported services. This is important since it appears that new technologies, such as Internet access via wireless, have the potential of providing high-speed access in rural, high-cost areas at lower costs than wireline local exchange companies. Any proposal that seeks to expand supported services in such a significant way must be technologically neutral. For all of these reasons, the FPSC supports the recommendation of the Joint Board to reject support for advanced services at this time.

V. Equal Access

The FPSC supports the conclusion of the Joint Board members opposing the addition of equal access to the list of supported services. We believe doing so would be inconsistent with Section 332(c)(8) which states that CMRS providers "shall not be required to provide equal access."[13] CMRS carriers may provide a lower cost source of competition for local service in some rural and high-cost areas given the cost associated with deploying loops. While there are currently no wireless ETCs in Florida, we believe that the addition of equal access as a required service for all ETCs would not serve the public interest because it would likely reduce competition in rural and high-cost areas.

CMRS services may also provide benefits to consumers, such as buckets of minutes that may be used for local or long distance calling, that more than offset the lack of 1 + dialing to a presubscribed IXC. If equal access were added to the definition of supported services, CMRS carriers would be

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[10] NECA Rural Broadband Cost Study: Summary of Results, June 21, 2000.

[11] "Facilitating the Business Case for Rural Upgrades: Presentation to Broadband Summit," Michael Balhoff, Legg Mason, Oct. 26, 2001. To view presentation, see www.adminmonitor.com.

[12] FCC, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, Released December 13, 2002.

[13] 47 U.S.C. § 332(c)(8).

ineligible to receive universal service support unless they provided equal access; as a result, they might choose not to provide services competitive with wireline local exchange service in rural and high-cost areas. Thus, including equal access on the list of supported services might reduce consumer choice in rural and high-cost areas, while excluding equal access would not jeopardize consumers' continued access to their presubscribed long distance carrier of choice, because local exchange carriers are required to provide it.

While there may be some interim reduction to the size of the fund, CMRS providers will likely be able to provide equal access given enough time. Thus, any reduction in the size of the fund would only be temporary. Furthermore, merely requiring equal access does not mean that CMRS providers will have to unbundle their local and long distance services. Customers will be unlikely to purchase long distance services through another IXC given monthly rates that include both local and long distance minutes.

We also note that some local exchange carriers serving remote rural areas do not currently provide equal access. If equal access were added to the definition of supported services, such local exchange carriers would be ineligible for federal support unless they provided equal access, which could jeopardize the provision of services in these remote areas.

No ETC is currently required to provide equal access to receive federal support because the equal access requirements arose outside of the context of universal service. Equal access was imposed by the Modification of Final Judgement. Finally, the FPSC believes that equal access fails to satisfy the statutory criterion of being essential to education, public safety or public health. Consumers can call community services organizations outside of the calling area without equal access because access to interexchange service is already included within the definition of universal service.

VI. Conclusion

The FPSC supports the conclusions of the Joint Board and believes that the current services meet the criteria established in the Act. In general, we agree with the Joint Board's decision to reject adding or modifying existing services already supported. We urge the FCC to consider the effects any action it may take on the size of the fund given the current market conditions facing the industry. The FPSC believes that expanding the definition to include advanced services or high-speed Internet access is not warranted because support is conditioned on the ability of a carrier to provide all of the supported

services. As such, any proposal to expand the definition to include advanced services would not be technologically neutral. The FPSC opposes requiring all ETCs to provide equal access and believe that these recommendations are consistent with the principles identified within our comments.

Respectfully Submitted,

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Cynthia B. Miller, Esquire
Office of Federal & Legislative Liaison

DATED: April 14, 2003