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BEFORE THE PUBLIC SERVICE COMMISSION

In re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.	DOCKET NO. 010977-TL ORDER NO. PSC-04-0566-FOF-TL ISSUED: June 3, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

FINAL ORDER REGARDING
RURAL LOCAL EXCHANGE COMPANY CERTIFICATION

BY THE COMMISSION:

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 that requires states to file a certification annually with the FCC and with the Universal Service Administrative Company (USAC) if they want rural carriers in their jurisdiction to receive federal high-cost support. 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:

47 C.F.R. §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.

Unless we submit 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 this Commission is not eventually submitted. Other than Frontier, these rural LECs are under intrastate price regulation; thus, our 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, supra, at ¶188.

We note 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.[1] It made this recommendation in order to ensure the

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

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.[2] 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 certification or may rescind a certification granted previously.[3] 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, we see no need to initiate any action at this time. However, should the need arise prospectively, we will 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.[4] 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 us with an affidavit, Attachments A through G to this Order, which are attached and incorporated by reference herein, 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, we hereby 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).

Furthermore, pursuant to FCC Rule 54.314, state commissions must certify yearly that their rural LECs will use interstate high-cost universal service support in a manner that comports with Section 254(e) in order for the carriers to obtain high-cost support. We anticipate that in subsequent years Florida's rural LECs will continue to seek interstate high-cost universal service

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[2] *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).

[3] *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.

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

support and will again submit affidavits to this Commission. Such affidavits must be received on a schedule that allows this Commission to issue an Order and, thereafter, forward a letter to the FCC and the USAC prior to October 1. Accordingly, this docket shall remain open to handle certifications for the coming year.

It is therefore

ORDERED by the Florida Public Service Commission, and we hereby certify that ALLTEL Florida, Inc., Frontier Communications of the South, Inc., Quincy Telephone Company d/b/a TDS Telecom/Quincy, Smart City Telecommunications LLC d/b/a Smart City Telecom, Northeast Florida Telephone Company, Inc., Indiantown Telecommunications Systems, Inc., and GTC, Inc. d/b/a GT Com will be using interstate high-cost universal service support in 2005 in a manner that complies with Section 254(e) of the federal Telecommunications Act of 1996. It is further

ORDERED that Attachments A through G to this Order are incorporated by reference herein. It is further

ORDERED that this Docket shall remain open to handle the next year's certifications for Florida's rural local exchange companies.

By ORDER of the Florida Public Service Commission this 3rd day of June, 2004.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.