BEFORE THE PUBLIC SERVICE COMMISSION

In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs.	DOCKET NO. 040604-TL ORDER NO. PSC-05-0036-PHO-TL ISSUED: January 11, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 5, 2005, in Tallahassee, Florida, before Chairman Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

NANCY B. WHITE, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; and R. DOUGLAS LACKEY, Esquire, 675 West Peachtree Street, Northeast, Suite 4300, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc. ("BST").

SUSAN S. MASTERTON, Esquire, and CHARLES J. REHWINKEL, Esquire, 1313 Blair Stone Road, Tallahassee, Florida 32316
On behalf of Sprint-Florida, Inc. ("SPRINT").

RICHARD A. CHAPKIS, Esquire, 201 North Franklin Street, FLTC0717, Tampa, Florida 33602
On behalf of Verizon Florida, Inc. ("VERIZON").

KENNETH A. HOFFMAN, Esquire, J. STEPHEN MENTON, Esquire, and MARSHA RULE, Esquire, Rutledge, Ecenia, Purnell & Hoffman, P.A., Post Office Box 551, Tallahassee, Florida 32302
On behalf of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, Alltel Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, and GTC, Inc. d/b/a GT Com ("SMALL LECS").

CHARLES J. BECK, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399
On behalf of the Citizens of Florida ("OPC").

MICHAEL B. TWOMEY, Esquire, Post Office Box 5256, Tallahassee, Florida 32314
On behalf of AARP ("AARP").

MICHAEL A. GROSS, Esquire, 246 East 6th Avenue, Tallahassee, Florida 32303
On behalf of Florida Cable Telecommunications Association ("FCTA").

TRACY W. HATCH, Esquire, 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States ("AT&T")*.

DONNA CANZANO MCNULTY, Esquire, 1203 Governors Square Boulevard, Suite 201, Tallahassee, Florida 32301; DE O'ROARK, Esquire, 6 Concourse Parkway, Suite 600, Atlanta, Georgia 30328; and FLOYD SELF, Esquire, Messer Caparello & Self, P.A., 215 South Monroe Street, Suite 701, Tallahassee, Florida 32302
On behalf of MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. ("MCI")*.

VICKI GORDON KAUFMAN, Esquire, McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Competitive Carrier Association/Competitive Carriers of the South ("FCCA/CompSouth")*.

ADAM J. TEITZMAN, Esquire, and KIRA SCOTT, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission ("STAFF").

*Collectively referred to as the "JOINT CLECs".

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On February 24, 1998, we adopted initial eligibility criteria for Lifeline and Link-Up and required Eligible Telecommunications Carriers (ETCs) to file tariffs including the program-based eligibility criteria to become effective April 1, 1998. The initial criteria included: the Temporary Assistance to Needy Families program (TANF), Medicaid, Supplementary Security Income (SSI), Food Stamps, Federal Public Housing Assistance (Section 8), and Low-Income Home Energy Assistance program (LIHEAP).[1]

A tangential expansion of Lifeline and Link-Up eligibility occurred as a result of the Florida Legislature's passage of "The Tele-Competition Innovation and Infrastructure Enhancement Act of 2003" (the 2003 Act). The 2003 Act specifies that any local exchange telecommunications company (LEC) authorized by us to reduce its switched network access

[1] Order No. PSC-98-0328-FOF-TP, Approving Changes to the Lifeline Program.

rates pursuant to Section 364.164, Florida Statutes, shall provide Lifeline and Link-Up service to customers who meet an income eligibility test at 125% or less of the Federal Poverty Guidelines (FPG)[2].

On June 9, 2003, the Federal Communication Commission (FCC) released its Notice of Proposed Rulemaking (NPRM) seeking comment on the Universal Service Joint Board's (Joint Board) Recommended Decision that addressed modifications to the Lifeline and Link-Up programs.[3] We filed comments in response to the FCC's NPRM on August 18, 2003. Therein, we supported adding the TANF and the National School Lunch program (NSL) programs to the federal default eligibility criteria. We explained that Florida has already adopted TANF as an eligibility criterion, and commented that adding the TANF and NSL programs may increase participation.

On April 29, 2004, the FCC released its Report and Order (Order), and Further Notice of Proposed Rulemaking (FNPRM) regarding Lifeline and Link-Up.[4] To improve the Lifeline and Link-Up programs and to increase subscribership, the FCC's Order, in part: 1) added TANF and NSL to the program-based eligibility criteria; and 2) added an income-based eligibility criterion of 135% of the FPG.

On August 10, 2004, Proposed Agency Action Order No. PSC-04-0781-PAA-TL was issued for the purpose of adopting the National School Lunch program and an income-based eligibility criterion for consumers with incomes at or below 135% of the Federal Poverty Guidelines. Additionally, the Order allows Florida consumers, who qualify for Lifeline assistance, the option of electing a self-certification process. The Order requires ETCs to disclose to consumers both Lifeline certification processes available, along with the Lifeline credits available under each process. Additionally, ETCs are required, on an annual basis, to file reports identifying the number of applicants applying for Lifeline and Link-up, the number of applicants approved for Lifeline/Link-up, the method of certification the applicant used, and whether the approved applicant received $8.25 or $13.50 in assistance.

On August 31, 2004, BellSouth Telecommunications, Inc., Verizon Florida, Inc., the Florida Office of the Public Counsel on behalf of the Citizens of Florida, Quincy Telephone

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[2]Previously, we have not adopted an income-based criteria. However, a 125% income eligibility criterion addressed in the 2003 Act is mandatory after a LEC has taken action to reduce its switched network access rates pursuant to Section 364.164, Florida Statutes. Also, BellSouth Telecommunications, Inc. (BellSouth) has been enrolling customers under the 125% income-based criterion as a result of a settlement agreement with the Office of Public Counsel (OPC) that was approved by the Commission by Order No. PSC-01-1643-AS-TL, issued August 13, 2001, in Docket No. 991378. In addition to BellSouth, Verizon Florida Inc. (Verizon) and Sprint-Florida Incorporated (Sprint) are also currently enrolling customers under the 125% income-based criterion. The OPC was designated as the entity responsible for certifying eligibility claims for Lifeline and Link-Up under the 2003 Act.

[3] Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 03-120, (Rel. June 9, 2003.)

[4] Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 04-87, (Rel. April 29, 2004.)

Company d/b/a TDS Telecom, GTC, Inc. d/b/a GT COM and ALLTEL Florida, Inc., and Sprint-Florida, Inc. filed protests in response to Order No. PSC-04-0781-PAA-TL requesting a formal hearing pursuant to Section 120.57, Florida Statutes. Pursuant to the above-listed entities' protests, this matter is currently scheduled for an administrative hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in

envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Service's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
Direct & Rebuttal		
Carlos Morillo*	BST	1, 2, 3, 6
James R. DeYonker	BST	4, 5
Sandra A. Khazraee	SPRINT	1, 2, 3, 4, 5A, 5B, 6, 6A
Harold E. West, III	VERIZON	2, 4, 5A, 5B
Carl R. Danner	VERIZON	4, 5A, 6A
Thomas M. McCabe	SMALL LECS	2, 4, 5A, 6, 6A
Mark N. Cooper**	AARP	1, 2, 3, 5A, 6, 6A
Don J. Wood**	FCTA	6, 6A
David L. Kaserman**	JOINT CLECS	4, 6A
John E. Mann IV*	STAFF	2, 5A, 5B

* Direct Only
** Rebuttal Only

VII. BASIC POSITIONS

BST: The Commission has no authority under Chapter 364, Florida Statues to mandate additions to eligibility tests for Lifeline and Link-up. Moreover, there is no authorization for the Commission to mandate certification processes beyond that contained in the statute or to mandate whether eligible end users receive partial or full benefits from Lifeline and Link-up. The Commission is a creature of statute and, as such, the Commission's powers, duties, and authority are only those that are conferred expressly or impliedly by state statute. City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493 (Fla. 1973). "Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof." Id.

As noted, there is no express authority on which the Commission can base this Order. Any implied authority must be derived from "fair implication and intendment incident to" any express authority. See Atlantic Coast Line R.R. Co. v. State, 74 So. 595, 601 (Fla.

1917) and State v. Louisville N.R. Co., 49 So. 39 (Fla. 1909). In order to determine the scope of any implied power that may have been given to the Commission, the intent of the legislature must be ascertained. See State Dep't Transp. v. Mayo, 354 So. 2d 359, 360 (Fla. 1978). A review of Section 364.10, Florida Statutes established that the legislature did not intend to give the Commission the power to mandate new eligibility standards (other that the 125% income eligibility test) or to discriminate between Lifeline and Link-Up eligible customers based on certification processes.

Nor was the Commission granted such authority by Order No. 03-109, adopted April 2, 2004 by the Federal Communications Commission ("FCC"). In this Order, the FCC added eligibility standards to the federal level of support, not the state.

By its Order, the Commission is unreasonably discriminating in the amount of benefits received by Lifeline and Link-Up customers based on the certification process.

The Commission has not requested nor has BellSouth been afforded an opportunity to fully discuss and provide cost and implementation information. This is information that would assist the Commission in determining whether there are alternatives to its Order to achieve its goals at a lesser regulatory cost.

Finally, BellSouth submits that the Commission erred in adopting the Order without rulemaking. Section 120, Florida Statutes requires that rulemaking should occur.

SPRINT: Sprint supports Lifeline and believes it is a valuable service that, when effectively implemented, enhances universal service. However, Lifeline is not without costs and those costs are recovered directly or indirectly from Florida telecommunications services users. Sprint's objective is to implement an effective plan which minimizes costs to consumers but provides a safety net to maintain local telephone service for those who are economically disadvantaged. Thus, Sprint believes that the existing programs, already implemented in Florida, best serve the needs of all customers, that is, Lifeline, future Lifeline and non-Lifeline customers that ultimately bear the costs of the Lifeline program.

VERIZON: The Commission should not adopt the Proposed Agency Action (PAA) Order.

The proposed unfunded expansion of the Lifeline program does not satisfy the basic principle that the Commission's actions must be grounded in statutory authority. There is nothing in Chapter 364 that gives the Commission the power to expand the Lifeline eligibility criteria, create a self-certification process and impose these unfunded mandates on incumbents. Indeed, the PAA Order does not cite any authority, nor is there any statute in Chapter 364 that even suggests – let alone expressly states – that the Commission has the power to expand the Lifeline eligibility criteria or create a self-certification process. Accordingly, the Commission cannot adopt the proposed rules set

forth in the PAA Order because the Legislature has not granted the Commission that power.

If the Commission nevertheless chooses to conduct a proceeding to consider whether to expand the Lifeline eligibility criteria and create a self-certification process, even though it lacks the power to do so, the Commission should initiate a rulemaking. The proposals adopted by the Commission in the PAA Order constitute a rule as defined in Section 120.52(15), and therefore require these proposals to be addressed in a rulemaking. Moreover, it would be beneficial to address these proposals in a rulemaking. The Commission and the parties would benefit from receiving and analyzing a Statement of Estimated Regulatory Costs. Moreover, the Commission and the parties would benefit from being able to discuss and negotiate issues more openly in a workshop environment.

If the Commission nevertheless considers the proposals at issue – either in the context of a rulemaking or in the instant proceeding – it should not adopt them.

The self-certification proposal has the very real potential to harm consumers and the industry. First, it creates a very real potential for waste, fraud and abuse. Second, it is very likely to lead to customer confusion and misunderstandings. Third, it will impose additional costs on the industry, which may ultimately be borne by consumers. Fourth, it will not hasten or simplify the Lifeline application process for *legitimate* Lifeline applicants.

Moreover, the proposals to expand the Lifeline eligibility criteria will do little to accomplish the Commission's objective of increasing telephone subscribership because most customers who would qualify through the proposed expanded criteria already qualify through one of the other existing eligibility criteria. That said, Verizon remains committed to expanding the income-based Lifeline eligibility criterion from 125% to 135% of the Federal Poverty Guidelines coincident with the implementation of its rate rebalancing plan and it stands by that commitment.

If the Commission ultimately decides to adopt the proposals at issue here, notwithstanding that it lacks the power to do so and these proposals will do more harm than good, the Commission should address the issue of cost recovery. In today's competitive environment, Eligible Telephone Carriers should be allowed to recover Lifeline-related costs if there is a rapid and dramatic expansion to Lifeline enrollment, particularly one related to program changes. In furtherance of this goal, the Commission should encourage carriers to petition the Commission when and if they believe the circumstances warrant the implementation of a limited and targeted cost recovery mechanism.

SMALL LECs: The Commission should establish a statewide mechanism that would require all carriers subject to the Commission's jurisdiction under Chapter 364, including carriers subject to the Commission's jurisdiction for purposes of universal service contributions under Section 364.025, Florida Statutes, to contribute to the fund on a

competitively neutral and equitable basis. The Commission should not expand Lifeline eligibility criteria as proposed in Order No. PSC-04-0781-PAA-TL, without establishing an interim state universal service fund, and should establish such a fund even if the Commission decides not to expand Lifeline eligibility criteria. The Small LECs believe that Lifeline service is an important component in the provision of universal service for low-income consumers. Nonetheless, the time has come for the Commission to establish a competitively neutral interim state universal service fund or state Lifeline funding mechanism to recover the State $3.50 credit for Lifeline customers. The Small LECs maintain that the Commission has the specific authority to establish a state interim universal service fund to ensure that universal service objectives are maintained under Section 364.025(2), Florida Statutes.

The Small LECs oppose self-certification for Lifeline service on the grounds that self-certification will enhance the prospect of fraud and increase administrative burdens on the Small LECs. At least with respect to the Small LECs' service areas, there is no evidence that the current process of requiring customers to certify eligibility up front is negatively impacting Lifeline subscribership.

OPC: Adoption of income eligibility based on 135% of the federal poverty guidelines, adoption of eligibility based on participation in the National School Lunch program, and adoption of the self-certification process proposed by BellSouth will have a positive effect on the Lifeline and Link-Up programs and should be adopted by the Commission.

AARP: Adoption of income eligibility based on 135% of the federal poverty guidelines, adoption of eligibility based on participation in the National School Lunch program, and adoption of the self-certification process proposed by BellSouth will have a positive effect on the Lifeline and Link-Up programs. However, the Commission should consider, and require, the automatic enrollment of all persons participating in one or more of the programs providing Lifeline eligibility. Participants in these programs are per se entitled to Lifeline assistance by virtue of their qualifying program participation would be unjustifiably inefficient. The use of expensive, individualized methods of enrolling eligible customers into the Lifeline program should be focused on those non-qualifying program participants who are hardest to reach. Automatic enrollment would provide benefits to most of the 86.3% -- over 949,000 households -- of Floridians eligible for Lifeline assistance as of March 31, 2004, but who are not currently receiving assistance. Additionally, automatic enrollment would significantly increase Florida's extremely low 13.7% subscribership level, which is less than half the national average of 38%. Lastly, automatic enrollment would reverse Florida's current status as a net contributor to the national program, whereby it currently contributes over $44.7 million annually into the Low Income Support Mechanism, while taking back only $15.5 million in assistance payments to its residents.

FCTA: In this docket, the Commission is poised to address whether to expand eligibility criteria for Lifeline and Link-Up assistance. The Commission is also expected

to address whether Florida Incumbent Local Exchange Companies (ILECs) should be required to offer Lifeline credits to customers based on the newly expanded eligibility criteria and whether to adopt a new self-certification process to be implemented by Florida ILECs to determine eligibility for Lifeline and Link-Up assistance.

In the various petitions for hearing and protests of the Proposed Agency Action, Verizon has requested a funding mechanism to recover its costs of the proposed expanded Lifeline program through a surcharge on its own customers. A petition filed by a coalition of Small ILECs, TDS Telecom, GTCom, and ALLTel Florida, Inc., joined by Intervenor, NEFCOM, has requested the establishment of a state universal service fund to be assessed on all telecommunications companies, as well as wireless and VoIP providers.[1]

In direct testimony filed by the parties, TDS, GTCom, ALLTel, and NEFCOM again state a need for a state universal service fund or alternative cost recovery mechanism to recover the cost of the $3.50 state discount for Lifeline customers. Testimony filed by Verizon poses several alternate cost recovery and other mechanisms, including recovery through tax revenue, through a per-line surcharge on its customers, an industry-wide pool or fund requiring all carriers to contribute, or to require all certificated wireline carriers to offer Lifeline service if they provide any basic service, with the ability to collect the costs through a surcharge on their own customers. BellSouth states in its testimony that the Commission is not authorized to implement changes in the assistance programs or eligibility criteria and likewise is not authorized to establish cost recovery mechanisms associated with changes in the Lifeline program. However, if the Commission chooses to order changes to the programs as proposed, BellSouth believes individual ETCs should have the option to implement a recovery mechanism. Sprint, in its testimony, asserts that the Commission does not have the authority to establish a Lifeline funding mechanism beyond the current mechanism in which the ILECs provide $3.50 per customer in monthly Lifeline support. Sprint further states that even if the Commission had the authority, Sprint believes that the Commission should not establish a separate funding mechanism.

During its 1995 Session, the Florida Legislature modified a number of provisions of Chapter 364, Florida Statutes. In addition to allowing ILECs to opt for price regulation and authorizing competition by CLECs, the Legislature created Section 364.025, Florida Statutes, Universal Service. In Section 364.025(2), Florida Statutes, the Legislature provided:

> For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be implemented by no later than January 1, 1996....

[1] VoIP providers are not telecommunications providers. See s. 364.02(12), Florida Statutes, exempting VoIP service from the definition of telecommunications service.

Moreover, under Section 364.025(4), Florida Statutes, the Legislature directed the Commission to research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature what the Commission determines to be a reasonable and fair mechanism for a permanent universal service funding mechanism. The legislation required the Commission to provide a recommendation to the Governor, the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the Senate and the House of Representatives no later than January 1, 1997.

In anticipation of the January 1, 1996, effective date of this new legislation, the Commission, on December 27, 1995, issued a Final Order Determining Appropriate Interim Universal Service/Carrier of Last Resort Mechanism, Order No. PSC-95-1592-FOF-TP, *In Re: Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities*, Docket No. 95-0696-TP. In this Order, the Commission found that the record did not support the establishment of a funded interim universal service mechanism at that time. Accordingly, the Commission found that the appropriate interim universal service mechanism should consist of two parts. First, the Commission found that the ILECs should continue to fund their universal service obligations through markups on the services they offer. Order No. PSC-95-1592-FOF-TP, page 32. The Commission further determined:

> However, if a LEC finds that its ability to sustain US as a COLR has, in fact, been eroded due to competitive pressures, it may file a petition for company-specific US relief. Its petition would be handled on an expedited basis. The petition must specifically demonstrate that competitive entry has eroded its ability to sustain US as a COLR, and specifically quantify the alleged shortfall that is due to competitive entry. The LEC will need to submit incremental cost data to identify the amount of its US subsidy, as well as calculations of the amount of net contribution lost that had been supporting the US subsidy. In no case will a LEC receive US/COLR funding in excess of the amount of its identified US subsidy. It is the LECs' burden to demonstrate the appropriateness of any amount requested and reasonableness of the proposed method to recover that amount.

Id. The Commission expressly refrained from implementing a funded interim mechanism. Id.

The new legislation also provided in Section 364.025(3), Florida Statutes, that if "any party, prior to January 1, 2000, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances...." The current enactment of Section 364.025(3), Florida Statutes, extends the duration of the interim mechanism to January 1, 2009.

No Florida ILEC has ever availed itself of the aforementioned mechanisms for obtaining universal service relief from the interim mechanism established by the Commission. Moreover, none of the petitions filed in this docket even comes close to complying with the existing requirements and burden of proof for universal service funding or other universal service relief under the controlling procedure described above.

Significantly, in the Annual Report to the Florida Legislature on the Status of Competition in the Telecommunications Industry in Florida, as of May 31, 2004, the Commission found that, "[L]ocal exchange wireline competition has had little discernable impact on the continued availability of universal service." *Competition Report*, at page 73. Further, in accordance with Section 364.025(4)(a), Florida Statutes, only the Florida Legislature has authority to establish a permanent universal service fund, and the time for establishing such permanent universal service fund has been extended to January 1, 2009. Accordingly, the interim mechanism, shall remain the sole mechanism for obtaining universal service relief until the earlier of either the time the Legislature establishes a permanent universal service mechanism or January 1, 2009. As stated above, none of the parties to this proceeding who are seeking universal service relief has attempted to comply with the requirements set forth in the Commission's 1995 Universal Service Order and the corresponding statutory provisions.

The 1996 Legislation required the Commission to establish an interim mechanism and file a report to the Legislature recommending a permanent universal service mechanism. Certain parties in this docket have quoted from the December 1996 *Report to the Governor and Legislature, Universal Service in Florida*, providing a recommendation as to an appropriate permanent universal service mechanism. As previously stated, only the Legislature has authority to adopt any provision of the Commission's recommendation as to a permanent universal service mechanism. Consequently, any reliance by any of the parties to this docket on the 1997 Commission recommendation as to a permanent universal service mechanism is irrelevant and inapplicable to the relief they are purportedly seeking in this docket. The sole and exclusive mechanism for seeking universal service relief is that provided in the interim mechanism until the Legislature decides otherwise.

Accordingly, the Commission is without authority in this docket to create a universal service funding mechanism, impose an alternative cost recovery mechanism, or require all providers to provide Lifeline service. The only authority lies in the Commission's 1996 Universal Service Order in conjunction with the 1996 Universal Service Statute which presently remain in full force and effect. Additionally, the Commission is without authority to impose any requirements upon VoIP providers that are exempt from regulation by the Commission in accordance with Section 364.02(12), Florida Statutes.

JOINT CLECs: The Commission should not adopt an intrastate USF fund in this proceeding. The Commission has the statutory authority to create an intrastate USF fund. Indeed, the Commission has already established an interim USF mechanism. The existing USF mechanism has been in place since 1995 and was premised on the finding that all

carriers were already paying a fair share to support universal service through existing rates paid for ILEC services. (Order No. PSC-95-1592-FOF-TP, issued December 27, 1995). In addition, the interim mechanism contains a specific process for requesting changes. The interim mechanism provides that any time an ILEC believes that competition has eroded its ability to provide for universal service, it may petition the Commission for modification of the interim mechanism. Those advocating a USF fund in this proceeding have failed to comply with the Commission's process for altering the existing USF mechanism and have failed to make any showing that any circumstances have changed such that the Commission's existing interim mechanism should be modified.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

STAFF WITNESS: It is in the best interest of Florida for this Commission to: 1) adopt the National School Lunch free lunch program for purposes of determining eligibility in Florida's Lifeline and Link-Up programs; 2) adopt an income-based eligibility criterion of 135% of the Federal Poverty Guideline; 3) modify Florida's Lifeline program to incorporate a self-certification option.

VIII. ISSUES AND POSITIONS

ISSUE 1: **Is the Commission authorized under state or federal law to order the actions set forth in Order No. PSC-04-0781-PAA-TL?**

POSITIONS:

BST: No. Nothing in current federal or state laws provides this Commission with the authority to require unilateral changes to the Lifeline and Link-Up programs.

SPRINT: No. The Commission does not have the authority under governing Florida law to order the actions set forth in Order No. PSC-04-0781-PAA-TL

VERIZON: No. The Commission derives its power from the Legislature, and the Legislature has not authorized the Commission to expand the Lifeline eligibility criteria or implement self-certification.

SMALL LECs: No position at this time.

OPC: Yes.

AARP: Yes.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: The Joint CLECs take no position on this issue at this time.

STAFF: Staff has no position at this time.

ISSUE 2: Are the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL reasonable and non-discriminatory?

POSITIONS:

BST: No. There is no basis upon which the Commission can reasonably determine that the method of certification allows for different amounts of benefits for the Lifeline and Link-Up programs.

SPRINT: No. The actions taken by the Commission are not reasonable in that they have not been demonstrated to be the most effective way to achieve the stated goal of increasing Lifeline participation and they may impose significant and unnecessary costs on Sprint. In addition, the proposal for a two-tiered level of support based on the manner of qualification is discriminatory.

VERIZON: The proposed actions are unreasonable, but not discriminatory. The proposed actions are unreasonable because the vast majority of people who would receive Lifeline support under the proposed criteria are people who already have telephone service, and thus the Commission's proposals will do little, if anything, to advance the Commission's goal of increasing telephone subscribership. The proposed agency actions, however, are not discriminatory. Although self-certifying customers would receive $8.25 in support, and customers certified by third parties would receive $13.50 in support, each applicant has the opportunity to apply for the full $13.50 Lifeline credit. The difference in support amounts is justified because the customers certified through third parties will participate in a verification process that substantially reduces the potential for waste, fraud and abuse.

SMALL LECs: No. The Small LECs recognize the importance of the Lifeline program and support the current level of customer support. Nonetheless, the proposed expansion of the Lifeline program will exacerbate the financial challenges faced by the Small LECs without implementation of a competitively neutral cost recovery mechanism for the $3.50 state discount. (McCabe)

OPC: Except for the portion of the order providing a lesser benefit for those persons using self certification, the actions taken by the Commission in the PAA order are reasonable.

AARP: Except for the portion of the order providing a lesser benefit for those persons using self-certification, the actions taken by the Commission in the PAA order are reasonable.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: The Joint CLECs take no position on this issue at this time.

STAFF: Staff has no position at this time.

STAFF WITNESS: Yes. Adoption by this Commission of the National School Lunch free lunch program, adoption of an income-based eligibility criterion of 135% of the Federal Poverty Guideline, and the incorporation of a self-certification option are reasonable, non-discriminatory, and in the best interest of Florida.

ISSUE 3: Should the Commission address the Lifeline and Link-Up issues in rulemaking pursuant to Section 120.54, Florida Statutes?

POSITIONS:

BST: Yes. The Commission is putting a permanent process in place that will govern all affected carriers. As such, rulemaking is required by statute.

SPRINT: Yes. The actions proposed by the Commission meet the definition of a rule in s. 120.52(15), Florida Statutes. Therefore, pursuant to chapter 120, Florida Statutes, the Commission is required to implement these changes through a 120.54, Florida Statutes, rulemaking proceeding. Importantly, the rulemaking process provides an opportunity for the affected parties to analyze and provide a Statement of Estimated Regulatory Costs for the proposed rules.

VERIZON: Yes. If the Commission chooses to conduct a proceeding to consider whether to expand the Lifeline eligibility criteria and create a self-certification process, even though it lacks the power to do so, the Commission should initiate a rulemaking. As stated above, the proposals adopted by the Commission in the PAA Order constitute a rule as defined in Section 120.52(15), and therefore require these proposals to be addressed in a rulemaking.

SMALL LECs: No position at this time.

OPC: No position.

AARP: No position.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: The Joint CLECs take no position on this issue at this time.

STAFF: Staff has no position at this time.

ISSUE 4: What are the economic and regulatory impacts of implementing the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL?

POSITIONS:

BST: There are significant economic and administrative costs associated with implementing the Commission's Order. BellSouth would be required to modify its billing systems at a cost of approximately $1 million. This modification would take approximately nine months to implement. In addition, BellSouth would be required to immediately apply benefits based upon a customer's verbal certification and implement new verification and recertification processes, all of which would impose an economic burden.

SPRINT: Sprint will likely incur costs to implement the National School Lunch free lunch criterion because it will require interfacing with multiple school districts throughout Florida. Sprint also will incur an estimated $800,000 in costs to implement the self-certification program set forth in the PAA Order, as well as estimated costs of $4 to $5 per customer related to the customer contact protocols. In addition, Sprint will incur as yet undetermined costs associated with the additional reporting requirements set forth in the Order.

VERIZON: Implementing the proposed agency actions will have several deleterious effects. First, the proposed self-certification process creates the very real potential for waste, fraud and abuse. Because the cost of the federal fund is ultimately borne by consumers, such fraud, waste and abuse could threaten the sustainability of the fund, and the affordability of telecommunications services for all Americans. Second, the proposed self-certification process has the very real potential to lead to customer confusion and misunderstandings. Third, the proposed additions will certainly impose additional costs

on the industry, which may ultimately be borne by consumers, without significantly advancing the Commission's goal of increasing telephone penetration.

SMALL LECs: Small LECs are already experiencing an increase in Lifeline subscribership thereby exacerbating the competitive disadvantage that Small LECs face in today's marketplace. Expansion of Lifeline eligibility criteria without an appropriate cost recovery mechanism will cause small LECs to bear a disproportionate share of the expense of providing Lifeline service in Florida and exacerbate the Small LECs' existing competitive disadvantage. (McCabe)

OPC: Adoption of income eligibility based on 135% of the federal poverty guidelines, adoption of eligibility based on participation in the National School Lunch program, and adoption of the self-certification process proposed by BellSouth would have a positive effect on the Lifeline and Link-Up programs.

AARP: Adoption of income eligibility based on 135% of the federal poverty guidelines, adoption of eligibility based on participation in the National School Lunch program, and adoption of the self-certification process proposed by BellSouth would have a positive effect on the Lifeline and Link-Up programs. Adopting automatic enrollment based on qualifying program participation would have a substantially greater positive effect on these programs.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: The modest changes proposed for the program's eligibility requirements appear unlikely to create a need for a state-level universal service fund. Creation of such a fund would not be justified on cost/benefit grounds. Moreover, proposals to institute such a fund and to require all telecommunications carriers to contribute to it is a distinctly bad idea on economic grounds.

STAFF: Staff has no position at this time.

ISSUE 5A: Should consumers be allowed to self certify for program-based Lifeline and Link-Up eligibility?

POSITIONS:

BST: BellSouth supports self-certification only in the event all eligible customers receive the full benefit payment.

SPRINT: The self-certification plan proposed by the Commission is susceptible to fraud and abuse. In addition, the annual re-certification and customer contact protocol requirements would impose significant financial and administrative burdens on Sprint. In contrast, Sprint believes that its current processes are a suitable facsimile of the self-certification process, are not unduly burdensome or time consuming and do not present a barrier to Lifeline enrollment.

VERIZON: No. As stated above, the self-certification proposal has the very real potential to harm consumers and the industry. First, it creates a very real potential for waste, fraud and abuse. Second, it is very likely to lead to customer confusion and misunderstandings. Third, it will impose additional costs on the industry, which may ultimately be borne by consumers. Fourth, it will not hasten or simplify the Lifeline application process for *legitimate* Lifeline applicants. Accordingly, the problems and costs associated with this proposal significantly outweigh the purported benefits.

SMALL LECs: No. Self-certification will create additional administrative burdens and provide an avenue for fraud. The verification process proposed by Staff Witness Mann based on statistical sampling will create incremental work load and expense for Small LECs and will not ensure verification for all Lifeline customers utilizing self-certification. Additional problems may arise in form of customer relations and backbilling customers when verification establishes that eligibility was fraudulently procured. (McCabe)

OPC: Yes, the Commission should adopt the self-certification program proposed by BellSouth.

AARP: Consumers that are participating in qualifying programs should automatically be enrolled for Lifeline and Link-Up assistance. Absent automatic enrollment, the Commission should adopt the self-certification program proposed by BellSouth.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: No (except FDN takes no position).

STAFF: Staff has no position at this time.

STAFF WITNESS: A streamlined certification process would ease the burden on consumers, expedite needed assistance to the consumer, and result in increased subscribership for the State of Florida. To accomplish this, a self-certification process for Lifeline programs should be made available.

ISSUE 5B: **If so, how much assistance should be provided for customers using self-certification?**

POSITIONS:

BST: BellSouth supports self-certification only in the event all eligible customers receive the full benefit payment.

SPRINT: Sprint believes that bifurcating support is discriminatory and would also impose significant administrative and economic burdens on Sprint.

VERIZON: The Commission should not adopt the self-certification proposal and therefore should not provide Lifeline assistance in the absence of third-party verification.

SMALL LECs: None.

OPC: Customers using self-certification should receive the same amount of assistance that is provided to customers using other methods to certify eligibility.

AARP: $13.50 per month.

FCTA: The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

JOINT CLECs: The Joint CLECs take no position on this issue at this time.

STAFF: Staff has no position at this time.

STAFF WITNESS: Under the FCC rules, there are four tiers of monthly federal Lifeline support in Florida. The first tier of federal support is a credit ($6.45-$6.50) for the federal subscriber line charge, which is available to all eligible subscribers. The second tier of federal support is a $1.75 credit that is available to subscribers in those states that have approved the credit. The third tier of federal support is one-half the amount of additional state support up to a maximum of $1.75. The fourth tier of support, available only to eligible subscribers living on tribal lands, provides an additional credit up to $25.00 per month, limited to the extent that the credit does not bring the basic local residential rate below $1.00 per month.

Consistent with the federal self-certification process, a streamlined certification process could be initiated whereby consumers could elect to self-certify that their eligibility , and receive the $8.20 or $8.25 tier one and tier two support immediately.

ISSUE 6: **Is the Commission authorized under state or federal law to establish a state lifeline funding mechanism? If so;**

POSITIONS:

BST: The Commission has no authority to establish a cost recovery mechanism associated with changes in the Lifeline and Link-Up programs.

SPRINT: The Commission does not have the authority to establish a state Lifeline funding mechanism other than the current funding mechanism. Even if the Commission determined that it had such authority, Sprint believes that the Commission should not establish a separate funding mechanism, as it would impose administrative burdens and costs that likely would outweigh the value of a fund.

VERIZON: Yes. Section 364.025, Florida Statutes, authorizes the Commission to establish a state Lifeline funding mechanism. That section provides that: "each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism."

SMALL LECs: Yes. Section 364.025(1) and (2), Florida Statutes, specifically grants the Commission authority to establish an interim state universal service fund to ensure that universal service objectives are maintained. (McCabe)

OPC: No.

AARP: No.

FCTA: The Commission is without authority in this docket to create a universal service funding mechanism, establish a state lifeline funding mechanism, impose an alternative cost recovery mechanism, or require all providers to provide Lifeline service. The only authority lies in the Commission's 1996 Universal Service Order in conjunction with the 1996 Universal Service Statute which presently remain in full force and effect. Additionally, the Commission is without authority to impose any requirements upon VoIP providers that are exempt from regulation by the Commission in accordance with Section 364.02(12), Florida Statutes.

The establishment of a state funding mechanism was not addressed in the Commission's PAA regarding Lifeline services, and therefore appears to be beyond the scope of proceeding whose purpose is to evaluate the merits of the various elements of the PAA. A subsequent proceeding to address issues related to a potential funding mechanism should be undertaken if, but only if, one or more ETCs later come forward to demonstrate a substantial change of circumstances pursuant to Section 364.025(3), and it is

determined that the Commission has the authority to establish a state fund. The opportunity for ETCs to petition the Commission for relief has been addressed by both the Legislature (Section 364.025(3) and the Commission (Order No. PSC-95-1592-FOF-TP).

Pursuant to these requirements, ETCs bear the burden of petitioning the Commission for relief and of providing sufficient information to the Commission in order to demonstrate the cause of the substantially changed circumstances, the appropriateness of any funding requested, and the reasonableness of the proposed method of recovery. Order No. PSC-95-1592-FOF-TP contains specific requirements regarding the quantification of both the subsidy and alleged funding shortfall.

To date, no ETC has provided a quantification of its existing subsidy, a quantification of the amount of net contribution lost as a direct result of competitive entry, or a calculation of any resulting shortfall. No ETC has proposed a specific method of funding or has attempted to demonstrate the reasonableness of any such proposal.

JOINT CLECs: The Commission has the statutory authority to establish a state Universal Service Fund. However, the Commission should not establish such a fund in this proceeding. The ILECs that have proposed a USF fund have failed to comply with the Commission's requirements to justify the establishment of a state USF fund.

STAFF: Staff has no position at this time.

ISSUE 6A: What is the appropriate state lifeline funding mechanism and how should it be implemented and administered?

POSITIONS:

BST: The Commission has no authority to establish a cost recovery mechanism associated with changes in the Lifeline and Link-Up programs.

SPRINT: The Commission does not have the authority to establish a state Lifeline funding mechanism other than the current funding mechanism. Even if the Commission determined that it had such authority, Sprint believes that the Commission should not establish a separate funding mechanism, as it would impose administrative burdens and costs that likely would outweigh the value of a fund.

VERIZON: ETCs should be allowed to recover Lifeline-related costs if there is a rapid and dramatic expansion to Lifeline enrollment, particularly one related to program changes. Carriers should be permitted to petition the Commission when and if they believe the circumstances warrant a limited and targeted cost recovery mechanism to be implemented. Once circumstances warrant, the best approach to Lifeline funding would be with general tax revenues. This would avoid the administrative expense and

inefficiency of layering another program to fund Lifeline on top of existing systems of taxation (with their existing administrative infrastructure). Absent a mechanism based on general tax revenues, the most efficient funding mechanism would be for each carrier that offers Lifeline service to surcharge the basic rates of its own customers for the costs of providing that service (including relevant administrative costs).

SMALL LECs: The Commission should establish an interim universal service fund. The size of the fund should be determined by the number of Lifeline subscribers multiplied by $3.50, and should be adjusted annually or semi-annually. Contributions should be assessed against all telecommunications service providers subject to the Commission's jurisdiction for purposes of universal service assessments, including wireless carriers and those using VoIP technology who are otherwise certificated by the Commission, on a quarterly or semi-annual basis, with payments distributed the following month. The Commission could administer the fund or contract administration to a third party provider. (McCabe)

OPC: The Commission is not authorized to set up a state lifeline funding mechanism.

AARP: The Commission is not authorized to set up a state lifeline funding mechanism.

FCTA: See FCTA's position of Issue 6 above.

JOINT CLECs: The existing interim USF mechanism is the most appropriate lifeline funding mechanism. The modest changes proposed for the program's eligibility requirements appear unlikely to create a need for a state-level universal service fund. Creation of such a fund would not be justified on cost/benefit grounds. Requiring all telecommunications carriers to contribute to a USF fund is a distinctly bad idea on economic grounds.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Danner	VERIZON	(CRD-1)	Resume
Rebuttal			
Danner	VERIZON	(CRD-2)	California PUC Order Instituting Rulemaking

Witness	Proffered By	I.D. No.	Description
Wood	FCTA	(DJW-1)	Qualifications
Kaserman	JOINT CLECS	(DLK-1)	Resume

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

None. AARP has withdrawn its Motion for Reconsideration/Rescheduling/and Removal of Funding Mechanism Issue.

XII. PENDING CONFIDENTIALITY MATTERS

None.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

SPRINT: **Report and Order and Further Notice of Proposed Rulemaking, WC Docket** 03-109, In the Matter of Lifeline and Link-up, Release No. FCC 04-87, released April 29, 2004.

XIV. RULINGS

Opening statements, if any, shall not exceed five minutes per party.

It is therefore,

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 11th day of January, 2005.

BRAULIO L. BAEZ
Chairman and Prehearing Officer

(SEAL)

AJT/KS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.