

State of Florida



Public Service Commission

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COMMISSION
CLERK

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DATE: June 17, 2004

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

FROM: Office of the General Counsel (Cibula) *S.M.C. Des*
Division of Competitive Markets & Enforcement (C. Williams) *CSH* *CRB* *[Signature]*

RE: Docket No. 040451-TP – Petition by Citizens of Florida to initiate rulemaking that would require local exchange telecommunications companies to provide Lifeline service within 30 days of certification.

AGENDA: 06/29/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: 06/29/04 – 30-day statutory deadline waived until this date

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040451.RCM.DOC

Case Background

On May 13, 2004, the Citizens of the State of Florida, through Harold McLean, Public Counsel (OPC), filed a petition to initiate rulemaking. OPC proposes that the Commission adopt a rule requiring local exchange telecommunications companies to begin providing Lifeline service to customers within a specified time period once OPC certifies the customers' eligibility for Lifeline service under section 364.10(3)(a), Florida Statutes.

Pursuant to section 120.54(7), Florida Statutes, the Commission has 30 days following the date of filing the petition to initiate rulemaking proceedings, otherwise comply with the requested action, or deny the petition with a statement of its reasons for the denial. OPC agreed to waive the statutory deadline until June 29, 2004.

On June 3, 2004, the Florida Telecommunications Industry Association (FTIA) submitted a letter in response to OPC's petition. In this letter, FTIA states that the Commission should decline to initiate rulemaking at this time pending the outcome of fact gathering, or in the alternative, "convene a staff workshop to explore the administrative process and procedures in

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place for the OPC Lifeline enrollment program to help understand whether the proposed rulemaking is necessary, and to investigate practical ways to enhance the current process.”

This recommendation addresses whether the Commission should grant OPC’s rulemaking petition, and includes FTIA’s response to OPC’s petition. The Commission has jurisdiction pursuant to sections 120.54 and 364.10, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant OPC's petition to initiate rulemaking?

Recommendation: Yes. The Commission should grant the petition to initiate rulemaking. (Cibula, C. Williams)

Staff Analysis: OPC requests that the Commission adopt the following rule:

Provision of Lifeline Service After Certification of Eligibility. Each local exchange telecommunications company providing Lifeline service under an income test shall provide Lifeline service to the customer within 30 days of receiving certification of eligibility from the Office of Public Counsel.

In its petition, OPC states that section 364.10(3), Florida Statutes, requires local exchange telecommunications companies who are authorized by the Commission to reduce their switched network access rates pursuant to section 364.164, Florida Statutes, to provide Lifeline service to any eligible customer or potential customer who meets an income eligibility test at 125 percent or less of the federal poverty guidelines. OPC states that section 364.10(3) requires that it certify and maintain claims submitted by a customer for eligibility under the income test set forth in the statute. OPC further states that, while it certifies the eligibility of a customer for Lifeline service under section 364.10(3), there is currently no date by which local exchange telecommunications companies must begin providing Lifeline service after receiving the notice of eligibility from OPC. Thus, OPC states that the purpose of section 364.10(3) would be "best served if the Commission requires the companies to actually begin providing Lifeline service within a reasonable time (such as 30 days) after receiving notice of eligibility from the Public Counsel."

As stated in the case background, FTIA submitted a letter in response to OPC's petition to initiate rulemaking. In this letter, FTIA asserts that OPC's petition fails to provide any factual basis for such a rule nor does it show that local exchange providers are "deliberately attempting to delay enrolling customers on Lifeline." FTIA states that the process of enrolling customers in the Lifeline program contains "time-consuming practical realities" such as incorrect or incomplete information submitted to the ILECs by OPC, the necessity to contact customers to establish the service, and the cyclical nature of the ILEC's billing practices. FTIA further states that any delays in the current process could be removed if OPC verified that the information submitted to the companies by OPC is accurate and complete. FTIA also states that OPC's petition may be inconsistent with existing rules governing availability of service, for example Rule 25-4.066, Florida Administrative Code, and that section 364.10 does not require a rulemaking proceeding or specify a timeframe for providing Lifeline service. FTIA concludes that the Commission should decline to grant OPC's petition pending the outcome of fact gathering, or in the alternative, "convene a staff workshop to explore the administrative process and procedures in place for the OPC Lifeline enrollment program to help understand whether the proposed rulemaking is necessary, and to investigate practical ways to enhance the current process."

Staff agrees with OPC that section 364.10(3) is silent as to when a company must begin providing Lifeline service after receiving the notice of eligibility from OPC. Staff recommends

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that the Commission grant the petition to initiate rulemaking. Staff notes that a Commission decision to grant OPC's petition merely begins the rulemaking process. It does not mean that the Commission has proposed or adopted any rule. All the issues raised by FTIA in its response letter can be discussed during the rulemaking process, which will include a staff rule development workshop that will allow all interested persons to participate and discuss the potential rule. Staff will return at a later date with a recommendation for the Commission on whether or not to propose adoption of a rule.

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Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open to proceed with the rulemaking process. (Cibula)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should remain open to proceed with the rulemaking process.