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Subject: Electronic Filing in Docket No. 060677-TL
Attachments: AARP and Attorney General response to Embarq.pdf

ORIGINAL

Enclosed is AARP and the Attorney General's response to Embarq's motion for abeyance, for filing in Docket No. 060677-TL. Thank you for consideration of this matter.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition to implement practices and procedures with Department of Children and Families to automatically enroll eligible customers in Lifeline telephone program, by Citizens of Florida and AARP.

DOCKET NO. 060677-TL

FILED: December 20, 2006

JOINT RESPONSE OF AARP AND ATTORNEY GENERAL CHARLIE CRIST IN
OPPOSITION TO EMBARQ'S MOTION FOR ABEYANCE

AARP and Attorney General Charlie Crist, by and through their undersigned counsel, oppose Embarq's Motion for Abeyance because the motion is an untimely answer to the Joint Petition of AARP and the Public Counsel, which is supported by Attorney General Charlie Crist (the "Attorney General") and because the six months delay being sought can only serve to cause additional harm to the over one million Florida households eligible to receive Lifeline financial assistance but who are not receiving benefits under the current program. In support of their opposition, AARP and the Attorney General state as follows:

Procedural Background Resulting In Current Delay

1. On October 11, 2006, the Citizens of Florida, through Harold McLean, Public Counsel, and AARP jointly petitioned ("Joint Petition") the Florida Public Service Commission ("Commission") to order local exchange telecommunications companies in Florida to implement practices and procedures with the Department of Children and Families to automatically enroll eligible customers in the Lifeline telephone program. Subsequently, on October 26, 2006, by Order No. PSC-06-0897-PCO-TL, Charles J. Crist, Jr., Attorney General, State of Florida, was granted permission to intervene in this proceeding "on behalf of the citizens of the State of Florida, whose substantial interests may be affected by this proceeding."

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2. On October 31, 2006, the date its response to the Joint Petition was due, BellSouth filed its initial Motion for Extension of Time stating that it required more time to review and prepare a response to the Joint Petition. It stated that Public Counsel and the Attorney General did not object to the extension and that AARP had not responded prior to the filing of the motion. On November 7, 2006, by Order No. PSC-06-0935-PCO-TL, Chairman Edgar granted BellSouth's initial motion extending the time for it to respond from October 31, 2006 to November 17, 2006.

3. Subsequently Windstream Florida, Inc.'s and TracFone, Inc.'s earlier-filed petitions to intervene were granted by Commission orders on November 7 and November 17, 2006, respectively.

4. On November 17, 2006, the filing deadline provided by Chairman Edgar's order granting the first request for extension, two things occurred. First, the Florida Telecommunication Industry Association, Inc. (the "Telephone Association") filed its Motion to Intervene and for Abeyance. In addition to alleging a non-specific basis for party standing, the Telephone Association argued that the Commission should grant it a six month delay in considering the merits of the Joint Petition in order to give the Commission an opportunity to "review the results of its newly initiated On-Line Automated Lifeline and Link-Up Application Process and allow interested parties to better understand the new process by participating in the upcoming industry workshops scheduled for February 2007. The Telephone Association reported that Windstream and Public Counsel did not object to the filing of the motion, that AARP and the Attorney General objected to the motion.

5. The second event that occurred in this docket on November 17, 2006 was that BellSouth filed its Second Motion for Extension of Time, again alleging that it required

additional time to prepare an appropriate response to the Joint Petition. It asked for an additional extension until November 28, 2006 to respond. Furthermore, it alleged that the Attorney General, Public Counsel and AARP did not object to the extension. Thereafter, on November 27, 2006, by Order No. PSC-06-0977-PCO-TL, Commissioner Tew granted BellSouth until November 28, 2006 to respond to the Joint Petition.

6. Also on November 27, 2006, AARP, Public Counsel and the Attorney General filed their joint response in opposition to the Telephone Association's petition to intervene alleging: (1) The Telephone Association had failed to allege any "substantial interest" entitling it to party status; (2) that the Telephone Association had failed to allege that it met the requirements of "associational standing" in order to collectively represent its members in the docket; and (3) that its petition to delay the Commission's consideration of the Joint Petition was premature since it was not yet a party to the docket.

7. On November 28, 2006, the date it was required to file a response to the Joint Petition as a result of the grant of its second motion for extension of time, BellSouth filed its Third Motion for Extension of Time and a pleading titled, Motion for Abeyance. The new request for additional time noted that BellSouth had on the same date filed its Motion for Abeyance, which requested the same relief as the Telephone Association's motion. BellSouth asked, assuming the abeyance was granted, that it have until ten days after the end of the abeyance period to respond to the Joint Petition. On the other hand, in the event the motion for abeyance was denied, BellSouth asked for an additional ten days after the date of the order denying the abeyance within which to respond to the Joint Petition. BellSouth reported that Windstream did not object to its filing of the motion, but, importantly, stated that "AARP and the Attorney General's Office objected to the Motion."

8. BellSouth's November 28, 2006 Motion for Abeyance was a virtual verbatim copy of the Telephone Association's motion arguing that consideration of the relief sought by Public Counsel, AARP and the Attorney General should be delayed by at least six months in order to review the results of the On-Line Automated Lifeline and Link-Up Application Process. BellSouth noted that Windstream did not object to the motion but that "AARP and the Attorney General's Office objected to the Motion."

9. Thereafter, on December 1, 2006, the Telephone Association withdrew its Motion to Intervene and for Abeyance.

10. Now, Embarq has filed its untimely motion for abeyance.

Embarq should not be granted additional time to respond

11. AARP and the Attorney General believe Embarq should not be granted additional time to respond in light of their untimely motion.

12. As noted above, the Joint Petition was filed October 11, 2006 and Embarq's response thereto was due on October 31, 2006. Embarq failed to file a timely response of any kind and has waited almost two months beyond the time their response was due to now seek an additional six-month extension. By failing to timely seek and extension of time, Embarq has waived its opportunity to respond. Such dilatory tactics are inappropriate and the motion for abeyance unnecessarily delays these important proceedings, disserves the public and should be denied.

12.6% Participation Rate Is So Low That The Time For Delay Should Be At An End

13. As noted at page 10 of this Commission's Draft 2006 Lifeline Report¹, only 145,256 Florida households of the 1,150,483 households eligible to receive Lifeline financial

¹ Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, (Draft) December 2006.

assistance were, in fact, receiving it, which resulted in a participation rate of just 12.6 percent. While up just 0.2 percent over the September 2005 rate of 12.4 percent, the 12.6 percent participation is otherwise the lowest rate experienced by Florida since December 1998. While this rate is down from a nine year high of 18.0 percent in December 2003, the inadequacy of an 18.0 percent rate and a truer appreciation for how few of our eligible households are receiving financial assistance can be had by comparing Florida's participation rate to that of other states. For example, the most recent national averages obtainable from the Federal Communications Commission ("FCC") show that the national average Lifeline participation rate for all states was 33.7 percent in 2002.² See table of 2002 subscription information from the FCC, attached as Exhibit A. This Commission's draft report shows Florida's participation rate in 2002 was 17.4 percent, while the FCC's data shows it at 13.5 percent for that year. The difference in Florida's participation rate for 2002 in the two reports is apparently due to the state and national reports using different levels of the households eligible for assistance, different levels of the households actually receiving benefits, or both. However, whether you use the FCC's or this Commission's numbers for 2002, Florida's participation rate, at best, is only half the national average. As reflected in the FCC's 2002 table showing all states' participation rates, the rates for many states are substantially better than Florida's, including the states that use a form of automatic enrollment, such as California, New York, Massachusetts, North Dakota and Texas.

14. AARP and the Attorney General do not deny that the Commission's automated process of streamlining the Lifeline enrollment process by simplifying the forms and placing them on the Internet is an improvement over the current process. However, any anticipated level of increases in subscription rates from this new process can only be minimal, especially when it

² Report and Order and Further Notice of Proposed Rulemaking, In the matter of Lifeline and Link-Up, WC Docket No. 03-109, released April 29, 2004, at page K-34.

is recalled that the applicant must not only know of the existence of the program – one of the greatest current inhibitions to its success – they must also have access to both a computer and the Internet. That the Lifeline participation rate is unacceptable and that there is an inherent limitation to computer-based subscription processes were both recently recognized by BellSouth's senior Florida executive. Marshall Criser III, president of BellSouth's Florida territory, was quoted as saying in a recent Palm Beach Post article on Lifeline, "I think we've improved," Criser said. "I won't tell you the number is where we'd like it to be, but I think it's better than some people like to tell you it is." He went on to note in the article that the fact that Lifeline candidates were less likely than other consumers to have a computer to access the automated system was an "obvious shortcoming."³

15. Whatever the eventual successes of the Commission's automated enrollment process, they clearly cannot be sufficient to adequately address a situation where just over 1 million Florida households are deemed eligible to receive Lifeline assistance but are not receiving it.

The Financial Costs Of Such A Low Participation Rate Are Staggering

16. According to the Palm Beach Post article, Florida is considered a "net donor" state because our telephone customers recently contributed \$51.3 million into the national Universal Service Fund but got back only \$18.4 million for our Lifeline program, for a net loss of \$32.9 million that went to support Lifeline programs in other states. It is a form of Lifeline

³ "Federal plan to give poor, elderly phones lags as firms balk," Palm Beach Post, December 10, 2006

“trade deficit” with the FCC whereby we get back roughly only one in three dollars we send to Washington, D.C.

17. However, the financial loss to Florida and its Lifeline eligible households is substantially greater than just our \$32.9 million annual net loss to the national program. Rather, each additional Florida household that receives Lifeline assistance will benefit by \$162 per year (\$13.50 per month x 12 months). If every one of the 1 million Florida households eligible for Lifeline assistance, but not receiving it, were to receive these benefits, collectively they would receive an additional \$162 million a year. Even if we are unsuccessful in becoming a net beneficiary state, Florida will have to more than double its current participation rate (203,086 new subscribers) just to break even on our contributions to the Lifeline portion of the national Universal Service Fund.

18. The economic benefits to Florida’s eligible households are not, however, the only economic consequences that will be felt within the state. A number that may help explain the telecommunication companies’ reluctance to more aggressively enroll their customers in the Lifeline program is the fact that they have to contribute \$3.50 per month or \$42 per year as their portion of the \$13.50 of monthly assistance. So, if Florida were to obtain just the additional 203,086 new Lifeline subscribers necessary to make us a breakeven state on contributions to the national fund, the cost to the companies’ bottom lines would be \$8.53 million a year. That may seem like a great deal of money, but would a financially well run business invest \$8.53 million to obtain the return of \$32.9 million? It would and so should Florida’s Lifeline program!

19. The telecommunications companies, including BellSouth, have not publicly complained, at least loudly, about their contribution to providing Lifeline assistance to those eligible for it. They should not be heard to complain because the promised increase in Lifeline

eligibility and participation rates was the industry's quid pro quo to the Florida legislature, this Commission and their customers for passage of the telephone rebalancing legislation in 2002 and 2003 and for the subsequent basic service rate increases granted by this Commission in the rebalancing cases. Florida's consumers and this Commission were promised higher Lifeline participation rates by the telephone companies, but the fact is that participation rates have actually fallen. This is analogous to companies offering great sales when in fact they do not offer the advertised reduction but reduce the price by a small amount and use rebates to match the advertised reduction. The company profits greatly using rebates, instead of the full reduction, because they know that many customers will never send in the rebate or will fail to comply with some term of the rebate. Here, the reduced standards for Lifeline qualification was used to help justify the rate increases, but the embarrassing participation rate has had little impact on the companies.

Conclusion

20. Embarq's efforts to further unnecessarily delay these proceedings with such dilatory tactics should be denied. Florida's current Lifeline participation rate of 12.6 percent is one of the lowest in the nation and is, at best, only half the national average. The economic costs to the over 1 million Florida households eligible for Lifeline assistance, but not receiving it, are staggering – as much as a loss of \$162 million a year. The Commission's new automated computer system allowing eligible persons to enroll through the Internet can only result in minimal increases in the state's participation rate and cannot be expected to meaningfully address the 1 million households eligible for assistance, but not currently receiving it. Further, it ignores the obvious problem that many eligible persons either do not know about the program or do not have access to a computer. Delaying another six months cannot change this reality and

will only delay the implementation of an obvious improvement to the program: automatic enrollment of those eligible for assistance through their participation in the qualifying assistance programs. Any further delay will only serve to make an already bad situation worse. The Commission should consider the merits of the Joint Petition without further delay.

WHEREFORE, in view of the above, AARP and Attorney General Charlie Crist urge the Commission to deny, with prejudice, Embarq's Motion for Abeyance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S.

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Section 1: Baseline Information
Table 1.A
Baseline Lifeline subscription information (Year 2002)

	a (CPSH data)	b (CPSH data)	c=a*b	d (USAC data)	e=d/c
State	Households in 2002	Percentage of HH that would qualify for Lifeline (LL) under existing rules	Households that would qualify for Lifeline under existing rules	Households that took Lifeline in 2002	Percentage of households that took Lifeline in 2002
Alabama	1,752,018	17.0%	297,228	25,403	8.5%
Alaska	224,499	23.2%	52,146	23,302	44.7%
Arizona	1,939,473	14.4%	279,334	73,186	26.2%
Arkansas	1,059,049	23.0%	243,997	10,100	4.1%
California	11,935,960	20.5%	2,451,057	3,232,732	131.9%
Colorado	1,690,526	2.7%	45,808	29,709	64.9%
Connecticut	1,381,915	13.7%	188,857	58,056	30.7%
Delaware	310,968	10.9%	33,946	2,100	6.2%
DC	269,356	23.5%	63,327	13,645	21.5%
Florida	6,683,618	15.8%	1,052,902	142,521	13.5%
Georgia	3,172,213	14.3%	452,827	68,266	15.1%
Hawaii	418,526	8.6%	36,185	14,124	39.0%
Idaho	495,397	25.3%	125,089	27,660	22.1%
Illinois	4,836,881	16.4%	793,394	87,188	11.0%
Indiana	2,501,325	12.4%	309,568	40,326	13.0%
Iowa	1,163,128	14.6%	170,241	17,800	10.5%
Kansas	1,088,752	12.3%	133,747	13,775	10.3%
Kentucky	1,583,371	21.0%	332,295	60,739	18.3%
Louisiana	1,668,964	17.2%	287,759	21,265	7.4%
Maine	571,277	22.5%	128,698	85,587	66.5%
Maryland	2,083,956	2.8%	57,849	4,022	7.0%
Massachusetts	2,584,626	16.4%	423,706	164,600	38.8%
Michigan	3,947,084	26.2%	1,032,526	118,794	11.5%
Minnesota	1,994,754	14.0%	278,453	47,554	17.1%
Mississippi	1,097,592	29.7%	326,524	22,566	6.9%
Missouri	2,217,997	14.6%	324,392	33,322	10.3%
Montana	379,228	14.2%	53,704	15,815	29.4%
Nebraska	678,736	13.1%	89,251	15,241	17.1%
Nevada	809,411	19.8%	160,611	37,204	23.2%
New Hampshire	523,968	12.3%	64,338	7,253	11.3%
New Jersey	3,262,561	13.3%	435,283	46,687	10.7%
New Mexico	698,282	21.7%	151,749	47,356	31.2%
New York	7,294,127	21.6%	1,578,737	500,671	31.7%
North Carolina	3,217,678	19.2%	616,817	99,510	16.1%
North Dakota	275,725	13.7%	37,712	19,226	51.0%
Ohio	4,595,674	15.8%	726,907	279,591	38.5%
Oklahoma	1,366,274	17.7%	241,259	117,297	48.6%
Oregon	1,366,819	25.0%	341,162	36,402	10.7%
Pennsylvania	4,863,997	12.0%	584,754	94,846	16.2%
Rhode Island	428,672	18.2%	78,185	46,189	59.1%
South Carolina	1,574,457	18.4%	289,051	21,809	7.5%
South Dakota	308,026	17.6%	54,211	27,117	50.0%
Tennessee	2,307,548	33.1%	764,595	49,050	6.4%
Texas	7,493,242	25.4%	1,901,378	429,970	22.6%
Utah	716,224	22.2%	159,072	19,652	12.4%
Vermont	259,765	32.9%	85,439	29,911	35.0%
Virginia	2,759,677	11.3%	312,574	20,730	6.6%
Washington	2,397,497	16.4%	393,513	83,327	21.2%
West Virginia	759,332	19.8%	150,381	4,905	3.3%
Wisconsin	2,181,649	11.5%	250,155	68,333	27.3%
Wyoming	196,973	15.0%	29,449	2,126	7.2%
Nationwide	109,388,768	17.8%	19,472,000	6,558,560	33.7%

Note: Some numbers in this table have been rounded.
Source: Current Population Survey of Households (CPSH) March 2002 data.