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July 14, 2008 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 080234-TP
Implementation of Florida lifeline program involving bundled service packages
and placement of additional enrollment requirements on customers

Dear Ms. Cole:

Enclosed for filing is Verizon Florida LLC’s Request to Initiate Formal Proceedings in the above-referenced matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,

s/ Dulaney L. O’Roark III

Dulaney L. O’Roark III

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Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program) Docket No. 080234-TP
involving bundled service packages and) Filed: July 14, 2008
placement of additional enrollment requirements)
on customers)
_____)

VERIZON FLORIDA LLC'S REQUEST TO INITIATE FORMAL PROCEEDINGS

Pursuant to Rule 28-106.201, Florida Administrative Code, and Section 120.57, Florida Statutes, Petitioner Verizon Florida LLC ("Verizon") protests Commission Order No. PSC-08-0417-PAA-TP (the "Order") in this docket and requests a formal, evidentiary proceeding. In support of its request, Verizon states as follows:

1. The name and address of the affected agency and the docket number in this case are as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 080234-TP

2. The petitioner is Verizon and its counsel is Dulaney L. O'Roark III. Their address and telephone number are as follows:

Verizon Florida LLC
P. O. Box 110, 37th Floor
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Tampa, Florida 33601-0110
678-259-1449

Verizon's substantial interests will be affected by the Order because it would require Verizon to apply the Lifeline discount to service packages, which is not Verizon's current practice.

3. Verizon received an electronic copy of the Order on June 23, 2008.

4. Disputed issues of material fact include whether a requirement that the Lifeline discount be applied to service packages would discriminate between eligible telecommunications carriers ("ETCs") and other voice service providers.

5. The Order would require ETCs “to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service.” The Commission imposed this requirement based on its conclusions that (a) under Florida law a service package consists of basic and nonbasic components and is not simply nonbasic service; and (b) that under applicable Lifeline rules ETCs are required to apply the Lifeline discount to all generally available residential services. Verizon respectfully submits that these conclusions are wrong and that the requirement the Commission seeks to impose would violate Florida law. The requirement also should be rejected because it would discriminate between ETCs and other voice service providers.

6. The Order concludes that a service package – a service offering that includes the components of basic service and other services such as vertical features or long distance service – is not a single nonbasic service, but a combination of basic service and nonbasic service. Under Florida law, however, a service must either be a basic service or a nonbasic service; it cannot be both. Florida law provides that basic service consists of the following elements:

voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.¹

Nonbasic service is defined as “any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access

¹ Fl. Stat. § 364.02(1).

service described in s. 364.163.”² In other words, a nonbasic service is any retail service consisting of a different set of elements than basic service. Thus, by definition, when a telecommunications service offered as a package consists of the basic service elements and additional elements, that service is nonbasic.

7. Florida’s statutory scheme confirms that a local carrier’s retail service offering must either be a basic service or a nonbasic service and cannot be a combination of the two. Under Florida law, a local carrier electing alternative regulation may adjust its basic service rates 1% less than the rate of inflation only once in any 12 month period, after giving 30 days notice of its intention to do so.³ For a nonbasic service, the carrier may change its rates on one day’s notice and it may increase its rates up to 6% or 20% within a 12-month period, depending on whether it faces competition in an exchange area.⁴ This dichotomy requires that a service fall into one category or the other. Otherwise, most service packages would be hybrids subject to both basic and nonbasic regulation, requiring them to be broken down into basic and nonbasic components and priced and tariffed under different rules. The legislature obviously did not intend the statute to be applied in such an unworkable and irrational manner and, not surprisingly, the Commission has not interpreted it that way.

8. The Commission consistently has interpreted “nonbasic service” to include service packages comprised of the basic service elements and other elements. The Commission has approved price cap plans with nonbasic service categories that include packages combining basic service elements and other elements such as vertical features, voice mail and intrastate long distance service. The Commission has not required that such service packages be divided into basic and nonbasic components that

² Fl. Stat. § 364.02 (10).

³ Fl. Stat. § 364.051(2)(c)(3).

⁴ Fl. Stat. § 364.051(5)(a).

are given different regulatory treatment. To the contrary, the Commission has treated these packages as nonbasic services for all purposes, and has applied the nonbasic pricing and tariffing rules to them in their entirety. This consistent interpretation by the Commission confirms that nonbasic service packages may not be treated as basic service for some purposes and nonbasic service for others.

9. The Order would require that the Lifeline discount be applied to “the basic local service rate portion of any service offering which combines both basic and nonbasic service.” Contrary to Florida law, the Order conceives of a service package as a combination of basic and nonbasic service that may be divided into component parts for regulatory purposes. Because this approach contradicts the legislative definitions of basic and nonbasic service, the statutory scheme for telecommunications regulation, and the Commission’s consistent interpretation of Florida law, the Order cannot withstand scrutiny.

10. In an attempt to address this issue, the Order points to section 364.10(3)(d), Florida Statutes, which prohibits an ETC from disconnecting a Lifeline customer’s basic service because of the customer’s failure to pay for nonbasic service.⁵ Likewise, the Order cites an FCC Lifeline order providing that Lifeline and Linkup customers are not prohibited from buying vertical services.⁶ The Commission concludes that the ability to buy additional nonbasic services “necessarily assumes that a Lifeline customer will have access to nonbasic services, which may be offered in a bundled service package.”⁷ To the contrary, neither of the cited authorities states that basic service may be considered a component of a service package or that the Lifeline discount must be offered to customers who buy service packages. Rather, they both are consistent

⁵ Order, p. 8.

⁶ *Id.* at 9. *In re: Lifeline and Link-up*, Report and Order and Notice of Proposed Rulemaking, 19 F.C.C.R. 8302, 8330 (2004).

⁷ Order at 8.

with Verizon's practice of permitting a Lifeline customer to buy nonbasic services *separate from and in addition to* the customer's discounted basic service.

11. The Order also would require ETCs to apply the Lifeline discount to service packages on the mistaken theory that under applicable Lifeline rules ETCs are required to apply the Lifeline discount to all generally available residential services. This theory conflicts with federal and Florida law.

12. Florida law provides that an ETC is required to "provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff or price list."⁸ As the Order appears to acknowledge, as used in the Florida Lifeline statute,⁹ the terms "Lifeline" and "Lifeline Assistance Plan" have the same meanings as under federal law. Federal regulations define "Lifeline" to mean "a retail local service offering" that is (i) available only to qualifying low-income consumers, (ii) provides the applicable discount, and (iii) includes the services or functionalities enumerated in C.F.R. § 54.101, which substantially corresponds to the functionalities of basic service in Florida.¹⁰ Under those regulations, state commissions are required to file or require ETCs to file information with the federal universal service fund administrator "demonstrating that the carrier's *Lifeline plan* meets the criteria set forth" in federal law.¹¹ The Lifeline Assistance Plan under the Florida statute is obviously the Lifeline plan required under federal regulations, and thus a Lifeline Assistance Plan must meet the federal Lifeline criteria. The Florida requirement that ETCs provide a Lifeline Assistance Plan

⁸ Fl. Stat. § 364.10(2)(a).

⁹ Fl. Stat. § 364.10(2)-(3).

¹⁰ See 47 C.F.R. § 54.401(a). Similarly, ETCs that do not charge federal End-User Common Line charges or equivalent federal charges are required to apply the Lifeline discount "to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in C.F.R. § 54.101 (a)(1) through (a)(9)." 47 C.F.R. § 54.403(b).

¹¹ 47 C.F.R. § 54.401(d)(emphasis added).

therefore means that they must specify a retail local service offering that meets the federal standard to which they will apply the Lifeline discount.

13. The Order seeks to nullify these Florida and federal requirements by interpreting 47 C.F.R. § 54.403(b) to mean that the Lifeline discount must be applied to any generally available rates offered by an ETC. Section 54.403(b) provides in pertinent part as follows:

Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in Sec. 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

The interpretation adopted in the Order misses the mark for several reasons. *First*, section 54.403(b) addresses two categories of ETCs – traditional carriers (like Verizon) that charge federal End User Common Line charges and “other” ETCs, such as wireless carriers. The Order relies on the phrase “or otherwise generally available” rates to support the expansion of the Lifeline discount, but this phrase applies only to Lifeline discounts offered by the *second* category of “other” ETCs. Thus, nothing in section 54.403(b) supports expansion of the Lifeline discount for carriers like Verizon. *Second*, section 54.403(b) refers to the “lowest tariffed (or otherwise generally available) residential rate.” The only reasonable interpretation of this language is that for “other” ETCs the discount must be applied to the lowest tariffed residential rate or the lowest nontariffed residential rate otherwise generally available – not to all generally available rates as the Order would have it. This interpretation is confirmed by the further qualification in section 54.403(b) that the residential rate to which the discount applies must be for the

services enumerated in section 54.101(a)(1) through (a)(9), which substantially correspond to the components of *basic* service in Florida. *Third*, as already noted, federal regulations define “Lifeline” to mean “a retail local service offering” that, among other things, includes the services or functionalities that correspond to basic service in Florida.¹² The Order disregards this definition and interprets section 54.403(b) as being in conflict with it, when in fact the two provisions are entirely consistent with one another. In short, the Order’s interpretation of section 54.403(b) has no rational basis.

14. The requirement that wireline ETCs provide the Lifeline discount on basic service to eligible consumers does not, of course, prevent ETCs from voluntarily applying a discount to any or all of their nonbasic services. Some carriers in Florida choose to apply a Lifeline-like discount to nonbasic services, while others do not. Under Florida law, this decision must be left to a carrier’s business judgment.

15. The Order is deficient for the additional reason that it fails to take into account the competitive environment in Florida today. The Commission has long recognized that requiring ETCs to fund the \$3.50 portion of the Lifeline discount through their rates has the potential to cause competitive harm to wireline carriers, especially incumbent local exchange carriers (“ILECs”). In 1997, the FCC noted that “[t]he Florida PSC points out that this method of generating Lifeline support from the intrastate jurisdiction could result in some carriers (*i.e.*, ILECs) bearing an unreasonable share of the program’s cost.”¹³ In 1999, the Commission again recognized the problem, stating:

Although the absence of explicit state level funding of Lifeline may have been appropriate under rate of return regulation, where a LEC could apply for rate increases if needed, we believe that in the long term this policy is likely not sustainable in a competitive environment. Local exchange companies with qualifying customers could provide a disproportionate share of the state matching funds for those customers, while providers with no Lifeline customers would contribute nothing. The provider serving the most

¹² 47 C.F.R. § 54.401(a).

¹³ FCC Universal Service Order ¶ 361.

low-income customers thus would be disadvantaged.¹⁴

Although the Commission's concern about ILECs bearing a disproportionate share of Lifeline's cost may have seemed theoretical in the late 1990s, it certainly is not today.

16. ILECs today face vigorous competition from providers such as cable companies, CLECs and wireless carriers that are not required to spend a penny on Lifeline service. Because of this intense competition, ILECs may not simply spread the cost of Lifeline to their customer bases without losing customers. Imposing a requirement on wireline ETCs that they provide Lifeline discounts on service packages would exacerbate the competitive disadvantage they already face.

17. For the foregoing reasons, Verizon requests that the Commission initiate formal, evidentiary proceedings in this case and that it reject the requirement that the Lifeline discount be applied to service packages.

Respectfully submitted on July 14, 2008.

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Attorney for Verizon Florida LLC

¹⁴ Florida Public Service Commission Report on Universal Service and Lifeline Funding Issues, p. 26 (February 1999).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on July 14, 2008 to the parties on the attached list.

s/ Dulaney L. O'Roark III

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