

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of eligible telecommunications carriers pursuant to Section 214(e) of the Telecommunications Act of 1996.

DOCKET NO. 970644-TP

In re: Implementation of changes in the Federal Lifeline Assistance Plan currently provided by telecommunications carriers of last resort.

DOCKET NO. 970744-TP
ORDER NO. PSC-97-1262-FOF-TP
ISSUED: October 14, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER
DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS
AND APPROVING CHANGES TO LIFELINE ASSISTANCE PLAN
FOR FEDERAL UNIVERSAL SERVICE PROGRAM

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

The Telecommunications Act of 1996 (the Act) initiated sweeping changes in the telecommunications industry. Among those changes was the introduction of Eligible Telecommunications

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Carriers (ETCs) and a new federal universal service program. ETCs are defined in 47 U.S.C. §214(e):

(1) A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal support . . . and shall, throughout the service area for which the designation is received-

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

The Act provides that state commissions may designate ETCs either on their own motion or upon request.

The FCC determined in its Report and Order on Universal Service, CC Docket No. 96-45, FCC Order No. 97-157, released May 8, 1997 (FCC Order), that the supported services provided by all ETCs must include voice grade access to the public switched network, a certain amount of free local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service, access to emergency services, access to operator services, access to interexchange service, and access to directory assistance. In addition, ETCs must provide Lifeline and Link Up to eligible subscribers. As part of their Lifeline plans, ETCs must offer voluntary toll limitation services in exchange for reduced or zero deposits.

The FCC Order institutes several changes in the existing Lifeline program. Many of the changes were adopted to make the program consistent with the Act, particularly with regard to the competitive neutrality requirement. The current program is a function of jurisdictional separations and applies only to incumbent LECs; thus, it is not competitively neutral as required by the Act. Other changes were instituted in an attempt to increase subscribership levels among low-income consumers.

Beginning January 1, 1998, a baseline federal support amount of \$3.50 will be available in all states, the District of Columbia, and all territories and possessions, regardless of whether any intrastate support is provided. The baseline amount of federal support will increase from the current \$3.50 waiver of the Subscriber Line charge (SLC) to \$5.25, provided the state approves the additional support to be passed through in intrastate rates. The federal jurisdiction will also provide additional Lifeline support equal to one-half of any intrastate support, up to an additional \$1.75. A total of \$7.00 in federal universal support can be received for each Lifeline subscriber.

II. DESIGNATION OF ETCs

Only ETCs designated by state commissions pursuant to the criteria in the Act will be eligible to receive high cost and low income support. At present, the local exchange companies (LECs) serve in a similar role as carriers of last resort. Florida LECs can receive federal universal service support either through the current high cost fund or through Lifeline and Link Up.

The supported services, with the exception of certain toll limitation services, are already provided by LECs. Additionally, the provision of Lifeline is already required by Section 364.10, Florida Statutes. Since the LECs are largely meeting the requirements of the new federal rules, we believe it is appropriate to allow them to continue to receive federal universal service support.

Under the Act and the FCC Order, state commissions must also establish service areas for ETCs. A service area has been defined by the FCC as "a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." See 47 C.F.R. §54.207. LECs already have a certificated service area. That area should serve for purposes of federal universal service funding. Alternative Local Exchange Companies (ALECs), however, are certificated state-wide, although they may actually serve much smaller areas. We believe it would be appropriate to determine an ALEC's service area for purposes of federal universal service support at the time it may apply to be an ETC.

In the case of a rural LEC, the Act defines the service area as the study area that is used for jurisdictional separations. An ETC in the service area of a rural LEC must serve the entire study area, unless a different area is approved by both the state Commission and the FCC. Additionally, the Act requires:

[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. §214(2)

It should be noted that under Florida law, ALECs may not offer basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the price LEC has elected price regulation. However, mobile carriers may serve those areas, and may apply for ETC status.

We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECs (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status and should propose what they believe is an appropriate service area. Any carriers that wish to be designated as an ETC in the service area of a rural LEC must show why it is in the public interest to have more than one ETC in that service area. Further, if approved, such carriers must serve the entire service area of the rural LEC to be considered an ETC or make a showing as to why some other lesser area would better serve the public interest.

III. ETC ADVERTISEMENT OF SERVICES

One of the requirements for receipt of federal universal service funding under the Act is the advertisement of supported services in a media of general distribution. Presently, LECs work with various local welfare agencies who include Lifeline information in their client packages. Although this appears to be the most effective means of reaching eligible subscribers, we have no authority to mandate the participation of the local welfare agencies. However, we can require the ETCs to work with those agencies to the extent it is possible to do so. Although LECs

provided a bill stuffer regarding Lifeline when it was first offered, no ongoing advertising is required. We note that at least one company, Sprint, includes Lifeline information in its telephone directory.

We have analyzed the growth in Lifeline customers to evaluate the effectiveness of the current advertising methods. Florida's Lifeline statute became effective on July 1, 1995, for all companies other than BellSouth. By June 30, 1996, there were 120,499 Lifeline subscribers. Five companies reported no participants. By June 30, 1997, there were 155,302 Lifeline subscribers, with only one company, Vista-United, reporting no participants. Of a total 34,803 increase in Lifeline subscribers over a period of one year, 29,076 were added in the first six months of 1997. Based on this data, it appears that the growth in Lifeline subscribership is accelerating.

While Lifeline subscribership is increasing in Florida, Florida's participation level is still substantially below the national average of approximately five percent. Notably, small Florida LECs in rural areas have some of the lowest participation levels in the state. It is clear that more work needs to be done to increase Lifeline subscribership in Florida.

The advertising requirement imposed upon ETCs by the Act extends to all supported services, not just Lifeline. However, we believe that, until there is meaningful competition, requiring the LECs to advertise more than Lifeline and Link Up would serve no purpose. Customers already know that they can obtain service from the "phone company," as demonstrated by the high rate of growth in access lines in this state. What they do not know is what other companies can provide comparable service. Accordingly, we believe it would be appropriate to establish additional advertising requirements for supported services at such time as non-LEC companies apply to become ETCs.

Upon consideration, we hereby require that, on an interim basis, ETCs shall provide Lifeline and Link Up information in their telephone directories at the next possible publication date. This information shall include information on voluntary toll limitation services and the availability of reduced deposits. If the directory contains an index, Lifeline and Linkup shall be listed in the index. We recognize that directories have staggered closing dates and publication dates. Therefore, ETCs shall advertise this

information in the next possible publication of their directories following the issuance of this Order.

ETCs shall also provide a bill stuffer advertising the availability of these services on an annual basis. Further, we require ETCs to work with local welfare agencies, to the extent it is possible, to reach eligible subscribers. At such time as non-LECs apply to become ETCs, we shall establish additional advertising requirements for all supported services that will apply to both LECs and non-LECs.

IV. ETC DISCONNECTION OF LIFELINE CUSTOMERS' SERVICE
FOR NON-PAYMENT OF TOLL CHARGES

Under the FCC Order, an ETC may not disconnect a Lifeline customer's local telephone service for failure to pay toll charges. An ETC may disconnect long distance (toll) service for failure to pay toll charges. One new requirement for Lifeline is that ETCs must provide Lifeline consumers with toll limitation services at no charge. This requirement is premised on the belief that one of the primary reasons subscribers lose access to telecommunications services is disconnection for failure to pay toll bills.

With voluntary toll blocking, customers may have all toll calls blocked. With toll control services, customers may limit in advance the toll usage per billing cycle. The prohibition against disconnection, however, is not conditioned upon the acceptance of toll limitation services. Rather, a customer's deposit can be eliminated in exchange for participation in toll blocking. ETCs may not collect service deposits from customers who select toll blocking. ETCs should reduce the service deposit appropriately for those customers who selected toll control.

The FCC limited the disconnection prohibition to Lifeline subscribers because it believes only low-income consumers experience dramatically lower subscribership levels that can be attributed to toll charges. The FCC also stated that if it subsequently finds that subscribership levels among non-Lifeline subscribers begin to decrease, it will consider whether this rule should apply to all consumers. At present, the FCC has left the matter of disconnection of non-Lifeline customers to the states' discretion.

We note that this is an exception to our long-standing policy regarding discontinuance of local service for non-payment of toll charges. If a LEC provides billing service for an interexchange company (IXC), it has disconnect authority for nonpayment of the IXC bill. See Docket No. 820537-TP, Order No. 12765, p. 26. We have recently reaffirmed that policy. We believe, however, that we should adopt this new FCC policy for Lifeline customers because it is a mandatory part of the new federal Lifeline program. Companies cannot qualify as ETCs if they do not meet this requirement.

Even though the "no-disconnect" provision is required by the FCC Order, ETCs under the FCC Order may apply to their state commissions for a waiver of the "no-disconnect" requirement. The ETC must show that: 1) The ETC would incur substantial costs in complying with such a requirement; 2) the ETC offers toll-limitation services to its Lifeline subscribers; and 3) telephone subscribership among low-income consumers in its service area in the state from which it seeks the waiver is at least as high as the national subscribership level for low-income consumers. All of these requirements must be met for an ETC to receive a waiver.

States, however, may grant waivers to carriers that are technically incapable of providing toll limitation services while they upgrade their switches to provide such services. The FCC made it clear that it expects waivers to be granted very infrequently, as evidenced by the burden of proof it has placed on the carriers. If granted, waivers may be effective for no more than two years, but may be renewed.

Presently, toll limitation services can be provided only in certain areas of the state. Most carriers can provide toll blocking, but not toll control. We believe that carriers desirous of receiving federal support should provide the services upon which that support is contingent. Carriers who cannot provide full toll limitation services must provide a plan and time line to us for their provision. The FCC has agreed that carriers providing voluntary toll limitation should be compensated from universal service support mechanisms for the incremental cost of providing toll-limiting services. See FCC Order No. 97-157, ¶386. No intrastate funding is available in Florida.

Upon consideration, we find that ETCs shall not disconnect local service for Lifeline customers for non-payment of toll charges; however, ETCs may disconnect a customer's toll service for non-payment of toll service. ETCs should make toll limitation

services available to customers on a voluntary basis and at no charge, in exchange for reduced or zero deposits. ETCs unable to provide toll limitation services at this time should file implementation plans and a request for waiver with this Commission by October 23, 1997.

V. INCREASED FEDERAL SUPPORT FOR LIFELINE ASSISTANCE PLAN

Under the current Lifeline program, end-user charges are reduced for local service to low-income consumers. As implemented in Florida and in most other participating states, a subscriber's monthly bill is reduced by up to twice the \$3.50 Subscriber Line Charge (SLC). The federal jurisdiction allows for a waiver of the \$3.50 SLC, while the states contribute a matching amount of \$3.50. The state portion may be provided for through the ratemaking process, which is the case in Florida.

The new plan adopted by the FCC provides for federal baseline support of up to \$5.25 in all states, with no matching state support required. As stated in the FCC's Order:

Lifeline consumers will continue to receive the \$3.50 in federal support that is currently available. . . . For Lifeline consumers in a given state to receive the additional \$1.75 in federal support, that state need only approve the reduction in the portion of the intrastate rate paid by the end user; no state matching is required.

FCC Order 97-157, ¶ 351

The Florida legislature has expressed its intent that Florida LECs should participate in the federal Lifeline Assistance Plan as evidenced by Chapter 364.10, Florida Statutes. Florida consumers may receive an additional benefit with no further action on the part of the state beyond the adoption of the new discounted rate. We believe it is in the best interests of Florida's Lifeline subscribers to obtain this benefit.

Accordingly, we approve a reduction of \$1.75 in the amount paid by consumers participating in Lifeline. As discussed above, no matching state support is required.

VI. APPLICATION FOR ADDITIONAL FEDERAL SUPPORT FOR LIFELINE

In addition to the \$1.75 baseline support, the federal universal service fund will provide an additional amount equal to one half of any support generated from the intrastate jurisdiction, up to an additional \$1.75. Approval of this portion of the plan would bring total federal Lifeline support to \$7.00. In other words, if the state supports \$3.50 per lifeline consumer, the federal jurisdiction will provide another \$1.75 above the \$5.25 (\$3.50 + \$1.75) baseline amount.

Intrastate matching may be provided from any source. The Federal-State Joint Board noted in its Recommended Decision that many states currently generate matching amounts through the state rate-regulation process. Although the Joint Board suggested that states should explicitly fund such reductions, rather than recovering the amounts through rates paid by other customers, the FCC declined to implement a specific requirement, stating:

We see no reason at this time to intrude . . . on states' decisions about how to generate intrastate support for Lifeline. We do not currently prescribe the methods states must use to generate intrastate Lifeline support, nor does this Order contain any such prescriptions. Many methods exist, including competitively neutral surcharges on all carriers or the use of general revenues, that would not place the burden on any single group of carriers. We note, however, that states must meet the requirements of section 254(e) in providing equitable and non-discriminatory support for state universal service support mechanisms.

FCC Order 97-157, ¶ 361

In Florida, Lifeline has been implemented under Section 364.10(2), Florida Statutes. The statute states that ". . . a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff. . . ." However, there is no state funding for the program. Instead, the LECs provide a rate reduction of \$3.50 per month to Lifeline consumers. ALECs are not required to provide a Lifeline program, nor do other carriers contribute to the funding of the intrastate portion. While the FCC has not mandated the creation of a state fund for carriers to obtain the \$1.75 federal contribution above

the baseline, it appears that a rather broad hint has been given. We have filed a petition with the FCC seeking clarification of both this state matching funding issue and the default customer eligibility requirements for the Lifeline program.

We previously addressed the Lifeline issue in our report on "Universal Service in Florida" which was provided to the Governor and the Legislature in December 1996. The report states at page 47:

At present, no universal service funding at the state level is provided for Lifeline . . . assistance. While this lack of funding may have been appropriate under rate of return regulation, under which a LEC could apply for rate increases if needed, we believe it is less appropriate in a competitive climate. Those companies with qualifying customers could provide a disproportionate share of the funding for those customers, while companies with no customers would not contribute anything. . This would be a disadvantage to the company serving the most low-income customers. Therefore, we believe provisions should be made to allow future funding of these programs through the state universal service fund, to the extent not funded through federal programs.

If needed, a Lifeline fund could be established as part of a permanent state Universal Service mechanism. Lifeline could also be funded by other means, such as a surcharge like that used to fund the Telecommunications Relay System.

We have attempted to quantify the impact of the various possibilities on Florida. At present, the Lifeline participation level in Florida is approximately two percent of residential access lines. As previously stated, this is below the national average of about five percent. However, some Florida LECs only began to provide Lifeline in 1995, and thus have low participation levels. If we assume five percent participation, the federal funding level of \$5.25 per subscriber could provide funding of about \$22 million for Florida. With additional Lifeline support of \$3.50 per subscriber provided by the state, the federal portion would increase to \$7.00 per access line, for a total of \$10.50 in Lifeline support for each subscriber. The total amount under this scenario would be \$45 million. Of this amount, \$15 million would

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come from the state, and \$30 million would come from federal funding.

Upon consideration, we find that, due to the uncertainty regarding whether Florida's Lifeline Assistance Plan will meet federal requirements for state matching, Florida should not pursue the additional \$1.75 in federal funding at this time. Pursuant to Section 364.10(2), Florida Statutes, telecommunications carriers of last resort must provide a Lifeline Assistance Plan to their customers. However, it is not clear the statutory requirement meets the FCC's criteria that state Lifeline programs must be provided in an equitable and non-discriminatory manner. Until further guidance is received from the FCC or from the Florida Legislature, we will take no action on this issue.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the incumbent local exchange companies are hereby designated as eligible telecommunications carriers (ETCs) for purposes of the federal universal service program. It is further

ORDERED that, on an interim basis, ETCs shall provide Lifeline and Link Up information in their telephone directories and through bill stuffers as specified in the body of this Order. It is further

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If needed, a Lifeline fund could be established as part of a permanent state Universal Service mechanism. Lifeline could also be funded by other means, such as a surcharge like that used to fund the Telecommunications Relay System.

We have attempted to quantify the impact of the various possibilities on Florida. At present, the Lifeline participation level in Florida is approximately two percent of residential access lines. As previously stated, this is below the national average of about five percent. However, some Florida LECs only began to provide Lifeline in 1995, and thus have low participation levels. If we assume five percent participation, the federal funding level of \$5.25 per subscriber could provide funding of about \$22 million for Florida. With additional Lifeline support of \$3.50 per subscriber provided by the state, the federal portion would increase to \$7.00 per access line, for a total of \$10.50 in Lifeline support for each subscriber. The total amount under this scenario would be \$45 million. Of this amount, \$15 million would

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, these dockets shall be closed. A protest timely filed pertaining to a specific ETC shall not prevent this Order from becoming final with respect to the non-protested ETCs.

By ORDER of the Florida Public Service Commission this 14th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 4, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court.

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This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.