

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-04-1066-PCO-TL
ISSUED: November 1, 2004

ORDER ESTABLISHING PROCEDURE

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 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

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

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 reduced 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.

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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 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.

Governing Provisions

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

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.)

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

Tentative Issues

Attached to this Order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. For purposes of clarity and simplification, the numbering of the issues attached hereto correspond to the numbering used in the petitions and responses. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A". Parties are encouraged to continue discussions in an effort to further eliminate issues in this proceeding.

Filing Procedures

In accordance with Rule 25-22.028, Florida Administrative Code, parties shall submit the original document and the appropriate number of copies to the Division of the Commission Clerk and Administrative Services for filing in the Commission's docket file. Filing may be made by mail, hand delivery, or courier service. See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Director, Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Discovery Procedures

Discovery shall be conducted in accordance with the provisions of Chapters 120 and 364, Florida Statutes, Rules 25-22, 25-40, and 28-106, Florida Administrative Code, and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

When discovery requests are served and the respondent intends to seek clarification of the discovery request, the request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for Thursday, January 20, 2005 through Friday, January 21, 2005. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by January 10, 2005. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and any subsequent discovery

requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100. All discovery responses shall be due 20 days after service of the request, with no additional time for mailing. All discovery requests shall be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories, and to the extent possible requests for documents, shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment pending a formal ruling by the Commission. 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 made a part of the evidentiary record 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 period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Unless authorized by the Presiding Officer for good cause shown, parties shall not conduct discovery during cross-examination at the hearing.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the

hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;

- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this Order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on January 6, 2005 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Use of Confidential Information At Hearing

It is the policy of this 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. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), 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. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

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. 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. 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 Services' confidential files.

Post-Hearing Procedure

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 in conformance with the rule, 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.

Controlling Dates

The following dates have been established to govern the key activities of this case.

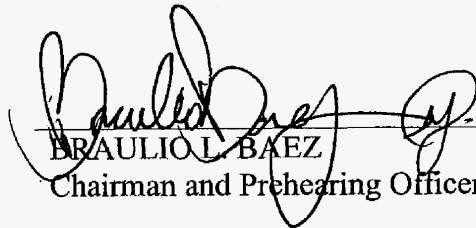
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| 1) Direct testimony and exhibits (All) | November 17, 2004 |
| 2) Rebuttal testimony and exhibits (All) | December 17, 2004 |
| 3) Prehearing Statements | December 17, 2004 |
| 4) Prehearing Conference | January 6, 2005 |
| 5) Hearing | January 20-21, 2005 |
| 6) Briefs | February 21, 2005 |

Based upon the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 1st day of
November, 2004


BRAULIO L. BAEZ
Chairman and Prehearing Officer

(SEAL)

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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.

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.

APPENDIX "A"

The tentative list of issues which have been identified in this proceeding are set forth below.

- 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?
- ISSUE 2:** Are the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL reasonable and non-discriminatory?
- ISSUE 3:** Should the Commission address the Lifeline and Link-Up issues in rulemaking pursuant to Section 120.54, Florida Statutes?
- 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?
- ISSUE 5A:** Should consumers be allowed to self certify for program-based Lifeline and Link-Up eligibility?
- ISSUE 5B:** If so, how much assistance should be provided for customers using self-certification?
- ISSUE 6:** Is the Commission authorized under state or federal law to establish a state lifeline funding mechanism? If so;
- ISSUE 6A:** What is the appropriate state lifeline funding mechanism and how should it be implemented and administered?