

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-06-0680-PAA-TL
ISSUED: August 7, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER EXPANDING THE LIFELINE ASSISTANCE PROGRAM
TO INCLUDE SIMPLIFIED CERTIFICATION ENROLLMENT AND THE NATIONAL
SCHOOL LUNCH 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.

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, and the Low-Income Home Energy Assistance Program (LIHEAP).¹

On June 9, 2003, the Federal Communications 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, Issued February 24, 1998, In Docket No. 970744-TP.

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programs.² In comments filed with the FCC on August 18, 2003, we supported adding the TANF and the National School Lunch Program (NSLP) - Free Lunch 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 NSLP - Free Lunch programs may increase participation.

We also commented that "The Commission supports the application of an income-based standard in general; however, we believe additional data and analysis are needed before any specific standard can be endorsed beyond that which is set forth in our state statute. In accordance with Section 364.10, Florida Statutes, the FPSC currently applies an income-based eligibility standard of 125% in certain circumstances."

On April 29, 2004, the FCC released its Report and Order (Order), and Further Notice of Proposed Rulemaking (FNPRM) regarding Lifeline and Link-Up.³ To improve the Lifeline and Link-Up programs and to increase subscribership, the FCC's Order, in part: 1) added TANF and NSLP - Free Lunch to the program-based eligibility criteria; and, 2) added an income-based eligibility criterion of 135% of the Federal Poverty Guidelines (FPG).

In light of the FCC's Order adopting the additional program eligibility criteria and the 135% of the FPG income eligibility criterion, by Order No. PSC-04-0781-PAA-TL, issued August 10, 2004,⁴ we found that it was beneficial for Florida to also adopt the new criteria. We also determined that a streamlined certification process would get needed assistance to consumers quicker.

On August 31, 2004, seven parties protested Order No. PSC-04-0781-PAA-TL. In their December 17, 2004, Prehearing Statements, BellSouth, Embarq Florida, Inc.,⁵ and Verizon questioned our authority to order the Lifeline enhancements contained in the order.

- BellSouth stated that "The Commission has no authority under Chapter 364, Florida Statutes to mandate additions to eligibility tests for Lifeline and Link-Up."
- Embarq Florida, Inc. stated that "The Commission does not have the authority under governing Florida law to order the actions set forth in Order No. PSC-04-0781-PAA-TL."

² 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.)

³ 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, (Re. April 29, 2004.)

⁴ 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.

⁵ Embarq Florida, Inc. f/k/a Sprint-Florida, Incorporated.

- Verizon stated that “There is nothing in Chapter 364 that gives the Commission the power to expand the Lifeline eligibility criteria, create a self-certification process and impose these unfunded mandates on incumbents. Indeed, the PAA Order does not cite any authority, nor is there any statute in Chapter 364 that even suggests – let alone expressly states – that the Commission has the power to expand the Lifeline eligibility criteria or create a self-certification process.”

In their December 17, 2004, Prehearing Statements, the Office of Public Counsel and the AARP agreed that we are authorized to order the actions set forth in Order No. PSC-04-0781-PAA-TL.

On February 8, 2005, by Order No. PSC-05-0153-AS-TL, we approved settlement proposals filed by BellSouth, Embarq Florida, Inc., and Verizon to implement a simplified Lifeline and Link-Up certification process. The proposals did not include the NSLP – Free Lunch or the 135% of the FPG income-based criterion as additional eligibility criteria.

Subsequently, BellSouth, Embarq Florida, Inc., and Verizon voluntarily adopted the NSLP – Free Lunch as an additional eligibility criterion. In addition, the Florida Legislature, through Senate Bill 1322, increased the Lifeline and Link-Up income-based eligibility criterion to 135% of the FPG for local exchange companies that receive our approval to reduce their switched access rates pursuant to Chapter 364.164, Florida Statutes. BellSouth, Embarq Florida, Inc., and Verizon are the only Florida local exchange companies that have received approval to reduce their switched access rates.

The simplified certification process allows eligible Lifeline and Link-Up customers to enroll in the programs by simply signing a document certifying, under penalty of perjury, that the customer participates in one of the Florida Lifeline and Link-Up qualifying programs. BellSouth, Embarq Florida, Inc., and Verizon were concerned about possible fraud occurring with the simplified certification process. To address these concerns, a one-year period was established to allow parties to assess the impact of the program and any evidence of fraud.

Upon expiration of the one-year period, no complaints or evidence of fraud has been communicated to staff by BellSouth, Embarq Florida, Inc., or Verizon regarding implementation of the simplified certification process or the NSLP – Free Lunch. This Order addresses the expansion of the simplified certification process and the NSLP – Free Lunch to all ETCs in Florida.⁶

⁶ ALLTEL, ALLTEL Wireless, American Dial Tone, Budget Phone, Frontier Communications, GTC, ITS Telecom, Knology, Nextel Partners, Nexus Communications, Northeast Telephone, Smart City, Sprint PCS, TDS Telecom, and Vilaire Communications have also been granted ETC status in the State of Florida.

Simplified Certification Process

Eligibility for both Lifeline and Link-Up in Florida is determined by customer enrollment in one of the following programs:

- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income (SSI)
- Food Stamps
- Medicaid
- Federal Public Housing Assistance
- Low-Income Home Energy Assistance Plan (LIHEAP)
- National School Lunch Program (NSLP) – Free Lunch⁷
- Bureau of Indian Affairs programs

A customer of BellSouth, Embarq Florida, Inc., or Verizon can enroll in the Lifeline and Link-Up programs by simply signing a document certifying, under penalty of perjury, that the customer participates in one of the Florida Lifeline and Link-Up qualifying programs. However, customers of other ETCs providing Lifeline and Link-Up service in Florida provide initial proof of eligibility prior to enrollment in the programs. This creates an additional step in the enrollment process, and fragments the Florida Lifeline and Link-Up programs.

Under the FCC's rules, states that do not have a state Lifeline program must follow federal default rules, which require ETCs to allow consumers to self-certify their eligibility, subject to penalty of perjury. States that have their own Lifeline programs may impose more stringent enrollment requirements, including proof of eligibility prior to initial enrollment.

Both the Joint Board on Universal Service and the FCC agree that self-certification for program-based qualification encourages eligible consumers to participate in Lifeline and Link-Up, and imposes minimal requirements on consumers. They also agreed that participation in need-based programs is easily verified, and that certification of qualified program participation, under penalty of perjury, serves as an effective disincentive to abuse the system.⁸ (FCC 04-87, ¶ 27)

Consistent with the federal self-certification process, BellSouth, Embarq Florida, Inc., and Verizon's streamlined certification process allows consumers to self-certify that they are receiving benefits from one or more of the Florida approved programs identified earlier. Lifeline and Link-Up applications for BellSouth, Embarq Florida, Inc., and Verizon list the Florida-approved need-based programs, and have a place for the consumer to check which program(s) qualifies them for Lifeline and Link-Up. The form also includes notification that the consumer is signing the form under penalty of perjury.

⁷ Currently applies to BellSouth, Embarq Florida, Inc., and Verizon only.

⁸ 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, (Re. April 29, 2004.)

In order to minimize fraud by self-certified participants, we have adopted FCC guidelines which require the ETCs to conduct verification audits using a statistically valid sample of their Lifeline customers.

The current program-based enrollment process used by most ETCs requires additional steps to determine eligibility and to complete the enrollment process. Expanding the simplified certification process to include all ETCs will reduce steps that may be obstacles to participation.

In summary, the current simplified certification process improves efficiencies and helps get needed assistance to consumers sooner. In addition, no evidence has been presented to indicate that the simplified certification process contributes to an increase in fraudulent activity. Therefore, we hereby expand the application of the simplified certification enrollment process by requiring all ETCs to adopt this method of enrollment for the Lifeline and Link-Up programs. This action will make the programs more uniform, and allow all qualified consumers an opportunity to benefit.

National School Lunch Program

In its April 29, 2004, Order, the FCC adopted the Joint Board's recommendation to add the TANF and NSLP – Free Lunch programs to the federal default eligibility criteria. The FCC further explained that low-income consumers that come into contact with state agencies while enrolling in one public assistance program are often made aware of their eligibility to participate in another public assistance program.

The FCC also acknowledged that it is difficult to project the number of additional persons that may become eligible for Lifeline and Link-Up by adopting the TANF and NSLP – Free Lunch programs because many low-income households typically participate in more than one assistance program once they meet the qualifying criteria. However, the FCC expressed support that adoption of the criteria could improve the programs.

To be eligible for the NSLP – Free Lunch, a consumer's household income must be at or below 130% of the FPG, which is presently \$26,000 for a family of four.⁹ In addition, children are automatically eligible to participate in the NSLP - Free Lunch if their household receives Food Stamps, benefits under the Food Distribution Program on Indian Reservations or, in most cases, benefits under the TANF program.¹⁰ As discussed in the Case Background, BellSouth, Embarq Florida, Inc., and Verizon have voluntarily adopted the NSLP – Free Lunch as additional eligibility criteria.

Expanding the NSLP – Free Lunch to all ETCs will enhance the effectiveness of the Lifeline and Link-Up programs by offering all consumers the convenience of an additional method of enrollment, and make the programs more uniform. Therefore, all ETCs shall adopt

⁹ 2006 FPG

¹⁰ <<http://www.fns.usda.gov/cnd/About/faqs.htm>>.

the NSLP – Free Lunch for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida.

If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that all ETCs shall adopt the simplified certification enrollment process for the Lifeline and Link-Up programs. It is further,

ORDERED all ETCs shall adopt the NSLP – Free Lunch for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of August, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

AJT/KS

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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 28, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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