

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040604-TL

In the Matter of:

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.



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PROCEEDINGS:           AGENDA CONFERENCE  
                              ITEM NO. 6\*\*PAA

BEFORE:                   CHAIRMAN BRAULIO L. BAEZ  
                              COMMISSIONER J. TERRY DEASON  
                              COMMISSIONER LILA A. JABER  
                              COMMISSIONER RUDOLPH "RUDY" BRADLEY  
                              COMMISSIONER CHARLES M. DAVIDSON

DATE:                     Tuesday, July 20, 2004

TIME:                     Commenced at 1:10 p.m.  
                              Concluded at 2:40 p.m.

PLACE:                    Betty Easley Conference Center  
                              Room 148  
                              4075 Esplanade Way  
                              Tallahassee, Florida

REPORTED BY:            JANE FAUROT, RPR  
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DOCUMENT NUMBER: D-040604-TL

FLORIDA PUBLIC SERVICE COMMISSION   07994 JUL 22 2004

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 CHARLES REHWINKEL, ESQUIRE, representing  
3 Sprint-Florida.

4 RICHARD CHAPKIS, ESQUIRE, representing Verizon.

5 NANCY SIMS, representing BellSouth.

6 TOM McCABE, representing TDS Telecom Quincy

7 HAROLD McLEAN, ESQUIRE, representing Office of Public  
8 Counsel.

9 MIKE TWOMEY, ESQUIRE, representing AARP Florida.

10 ADAM TEITZMAN, ESQUIRE, CHERYL BULECZA-BANKS, and  
11 CURTIS WILLIAMS, appearing on behalf of Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Call the agenda conference back to  
3 order.

4 Commissioners, we are on Item 6. Go ahead,  
5 Mr. Williams.

6 MR. WILLIAMS: Mr. Chairman, Commissioners, on April  
7 29th, the Federal Communications Commission released its report  
8 and order and further notice of proposed rulemaking regarding  
9 the Lifeline and Link-Up programs. The FCC's order in part  
10 maintained state flexibility in the implementation of Lifeline  
11 and Link-Up to states that have their own Lifeline and Link-Up  
12 programs, added the temporary assistance to needy families  
13 program, and the national school lunch free lunch program to  
14 the program-based eligibility criteria, and added an  
15 income-based eligibility criterion of 135 percent of the  
16 federal poverty guidelines.

17 In light of the FCC's order and to strengthen  
18 Florida's Lifeline and Link-Up programs, staff recommends that  
19 the Commission add the national school lunch program to  
20 Florida's current program-based eligibility criteria.  
21 Commissioners, as you are aware, Florida has already adopted  
22 the temporary assistance to needy families program. And for  
23 the Commission to adopt the FCC's income-based eligibility  
24 criterion of 135 percent, and expand Florida's current Lifeline  
25 certification process to include self-certification as an

1 option. And, finally, to establish Lifeline and Link-Up  
2 reporting requirements.

3 Staff would also like to point out that based on the  
4 FCC's order and our discussions with the FCC staff and staff  
5 with the universal service administrative company, you have  
6 considerable flexibility and latitude in implementing changes  
7 to the Lifeline and Link-Up programs.

8 Thank you, Commissioners. And we have parties here  
9 to speak on this item.

10 CHAIRMAN BAEZ: Thank you, Mr. Williams.

11 Mr. Rehwinkel.

12 MR. REHWINKEL: Thank you. My name is Charles  
13 Rehwinkel. I'm the state vice-president for Sprint here in  
14 Florida.

15 Mr. Chairman, Commissioners, Sprint is here to  
16 commend the creativity and the merits of the ideas contained in  
17 staff's recommendation. Our position in this matter here today  
18 is simple and straightforward. At the last agenda you opened a  
19 rulemaking docket on this very subject matter, Lifeline. Yes,  
20 it was a petition by the Public Counsel, but I think at some  
21 point late in that item the Public Counsel indicated he wanted  
22 to ask the Commission to expand that rulemaking docket to  
23 include other matters.

24 We believe that this matter should become part of  
25 that rulemaking. We have known about this docket, actually the

1 substance of this recommendation since Monday of last week. My  
2 company, and I believe other companies you will hear from today  
3 have had scant time to assess the costs and benefits of the  
4 ideas contained in this recommendation. Because of this and  
5 because we do see that there are merits and some promise to the  
6 ideas in here, we have more questions than we have answers to  
7 at this point in time.

8           We will commit to working with the staff, the Public  
9 Counsel, interested parties such as the AARP and the rest of  
10 the industry to implement workable, constructive, efficient and  
11 effective Lifeline subscription criteria relating to Lifeline.  
12 To date, our commitment -- since our commitment to the  
13 governor, Sprint has increased Lifeline subscribership for our  
14 customers in Florida by almost 40 percent.

15           We have an effective grassroots awareness campaign  
16 that is paying off dividends. We want to continue that process  
17 and work to address legitimate concerns about Lifeline  
18 subscription as we go forward. So, in that regard, we would  
19 urge the Commission to allow us to sit down with the parties  
20 and collaborate in a workshop environment like we are going to  
21 do on the existing rule.

22           There are processes, billing system and costs to  
23 consider, and we want those things to be taken into mind. We  
24 want to avoid customer confusion about multiple types of  
25 Lifeline programs that the Commission would expect us to

1 describe to our customers and our prospective customers.

2           There are some questions about your authority to  
3 promulgate criteria within the existing Chapter 364. These  
4 questions can be avoided by a collaborative process and  
5 rulemaking. There is precedent for the Commission resolving  
6 Lifeline subscription issues by collaboration. We do not think  
7 that a matter of public interest and public good is one that  
8 lends itself to resolution by an adversarial 120.57 proceeding.

9           The rulemaking issue that we raise is one that is a  
10 fundamental one. You have a pending docket before you. There  
11 is a presumption in 120, in Section 120 that rulemaking should  
12 occur unless there are presumptions against it occurring that  
13 the Commission meets. We believe that with a pending  
14 rulemaking docket at this time, proceeding by a PAA with a  
15 potential 120.57 hearing to resolve differences creates a very  
16 difficult scenario for the Commission, were you to receive a  
17 challenge that you had an unpromulgated rule out there.

18           We do not raise this question to introduce delay or  
19 obstruction into the process. We think that there already is  
20 -- just to reiterate why I think we ought to be doing  
21 rulemaking versus PAA, you already have a rule. The rulemaking  
22 process also traditionally has a SERC process, or statement of  
23 economic and regulatory cost process, where the Commission  
24 takes into account costs and benefits of the rule proposal that  
25 you are putting forth. The SERC process would allow the

1 companies to bring forward evidence about proposals that are  
2 out there and what the costs are perhaps, and the Commission is  
3 obligated to take the least costly effective approach.

4           We think that some of the proposals in here would  
5 impose costs inordinate to the amount of gain that you would  
6 hope to achieve in increasing Lifeline pool or Lifeline  
7 subscription efficiency.

8           We believe the rulemaking process is most conducive  
9 to that. So for those reasons, we would urge the Commission to  
10 basically roll this recommendation and the proposals into the  
11 rulemaking docket. Let the parties sit down, exchange ideas,  
12 talk about language that might be appropriate for the  
13 rulemaking, and go forward from there.

14           At this time there is a workshop scheduled for August  
15 19th in the existing Lifeline rulemaking docket. This matter  
16 could be added to that workshop, or another one could be added  
17 in a very timely fashion.

18           Commissioners, at this time I will reserve my  
19 comments on the specifics of the recommendation. I can go  
20 through them if you would like, but I would prefer not to have  
21 an adversarial criticism session here. I would prefer to work  
22 these issues out with the other parties in a collaborative way.

23           And I also must say that we have not had any official  
24 subject matter expert positions given to us by Kansas City.  
25 This was a late-filed recommendation. We got it on Monday. We

1 were only able to start talking about it on Tuesday. We have  
2 net several times on it, but there are still a lot of  
3 outstanding questions that we have. We would hope to be able  
4 to address those in a rulemaking docket that we could move  
5 forward with expeditiously. So with that, I will close my  
6 comments. Thank you.

7 CHAIRMAN BAEZ: Thank you, Mr. Rehwinkel.

8 Mr. Chapkis.

9 MR. CHAPKIS: Good afternoon. Richard Chapkis on  
10 behalf of Verizon.

11 I will try to keep my comments short. I agree with  
12 everything my colleague, Mr. Rehwinkel, just said. I, too,  
13 agree that the staff and the Commission should be commended for  
14 their continued efforts to ensure the availability of  
15 telecommunication services to low income customers. Verizon,  
16 like the staff, and like this Commission, firmly believe that  
17 it is important to ensure that no family drops off the network  
18 because they can't afford to have a telephone.

19 Although Verizon agrees with staff's intentions,  
20 which is to increase telephone penetration and subscribership  
21 in the State of Florida, Verizon, like Sprint, disagrees with  
22 staff's proposed approach. Rather than adopting staff's  
23 recommendation PAA, the Commission should open a rulemaking so  
24 that it can better understand the financial impact of adding  
25 the new eligibility criteria and what effect, if any, that



1 adding these criteria will have on subscribership levels.

2           Currently, Verizon doesn't believe that there is a  
3 sufficient record on which to base a Commission decision, and  
4 Verizon would like the opportunity to work these issues out in  
5 a constructive collaborative workshop process rather than in an  
6 adversarial proceeding involving hearings.

7           I, too, have presentations on each of the individual  
8 issues, but I would like to reserve my time to the extent that  
9 this Commission or other parties believe that we should also go  
10 to rulemaking. And so with that I will close my comments.

11           CHAIRMAN BAEZ: Thank you, Mr. Chapkis. Ms. Sims.

12           MS. SIMS: Nancy Sims with BellSouth. We at  
13 BellSouth would like to agree with the comments of Verizon and  
14 Sprint, and urge the Commission to go to rulemaking with this  
15 item. We do have some concerns with the staff recommendation.  
16 We want to understand the process more thoroughly, especially  
17 the self-certification proposal. We have some concerns about  
18 exactly how it would work, what the cost would be, what kind of  
19 administrative operations would have to be added in order to  
20 implement it. We would like to understand exactly how it would  
21 work.

22           And BellSouth has tried to work very, very closely  
23 with the Office of Public Counsel and with the Commission staff  
24 to try to find new ways to educate the public on the  
25 availability of Lifeline and Link-Up, and we really think that

1 what is a real key to getting subscribership up.

2 I don't know whether just increasing the base of  
3 eligible persons to take Lifeline is necessarily going to  
4 increase subscribership. We have got to work on getting the  
5 word out and getting these people educated in these areas where  
6 perhaps they don't concentrate on media and so forth. But that  
7 is something we can work through in a workshop and perhaps work  
8 through what processes does each company use in order to enroll  
9 people on Lifeline. Is there a glitch somewhere? Can we make  
10 something more streamlined? And I think that is where the  
11 staff is basically trying to go. So, we, in turn, probably  
12 would have some specific comments on some of the proposals, but  
13 if we go to rulemaking we can certainly work through these.

14 CHAIRMAN BAEZ: Thank you, Ms. Sims.

15 Mr. McCabe.

16 MR. McCABE: Tom McCabe with TDS Telecom Quincy.

17 My perspective is a little bit different. We  
18 certainly appreciate staff's recognition of the impact that  
19 this program could have on rural customers. The fact that this  
20 is -- we support the idea of going through a rulemaking  
21 proceeding. We indicated to staff when we saw the  
22 recommendation that we would end up having to protest the  
23 order. We think it -- on the flip side, we also look at it as  
24 an opportunity to start looking at this to ensure that the  
25 system we have in place is an equitable system.

1 I mean, the world is changing, and it is changing in  
2 rural markets as well. I mean, we are faced with competition  
3 just as the large companies are faced with competition. My  
4 concerns aren't so much on the administrative costs. I think  
5 we do things a little bit differently. But we have significant  
6 costs in that area as well. I mean, we have probably five to  
7 6,000 customers come through our office every month. It is  
8 over half of our customer base. We have six percent of our  
9 customers today that are on Lifeline. We have increased  
10 Lifeline, I guess, by 80 customers since January of this year.

11 The concern that I have is on the 3.50 side of it.  
12 The school and lunch program -- we serve Gadsden County. We  
13 have three exchanges within that county. Seventy-five percent  
14 of the school children in Gadsden County qualify for the school  
15 lunch program. We believe the three exchanges in which we  
16 serve it is 87 percent. So we certainly think that there is a  
17 need for these types of programs, for Lifeline and things of  
18 that nature; but we would also just like to see that we can  
19 look at how we can do this where it is not going to negatively  
20 impact companies as well.

21 You know, there is a need for us to provide broadband  
22 services and things of that nature that they want to see in  
23 rural markets. What we have been experiencing over the last  
24 couple of years is nothing but a decline in revenues. Based on  
25 our first quarter of this year, we are looking at -- for the

1 year we forecasted a half a million dollar reduction in our  
2 access revenues. So those are a lot of concerns. And so I  
3 don't think it is simply a matter of looking at the Lifeline  
4 program itself, it's what is happening out there and ensuring  
5 that if we are going to have these programs that the companies  
6 are still going to be able to provide high quality service  
7 going forward.

8 And so from that standpoint, we would be more than  
9 happy participating through workshops. That would probably be  
10 a least-cost way for us to go forward rather than going through  
11 a hearing process at this point in time. Thank you.

12 CHAIRMAN BAEZ: Thank you, Mr. McCabe.

13 Mr. McLean.

14 MR. McLEAN: Good afternoon, Commissioners. I have a  
15 handout I would like you folks to consider. I want to refer to  
16 it from time to time, so let me give Mr. Jenkins a moment or  
17 two to pass that out.

18 Thank you, Mike. Commissioners, I have arranged for  
19 you to be handed a four-page handout. I don't think there will  
20 be anything unfamiliar to you in the handout. The first sheet,  
21 the cover sheet is from an order which this Commission issued  
22 on October 14th, 1997. And I have just included that so you  
23 could see what order it came from. On your second page, which  
24 is numbered Page 5, look down to the second full paragraph,  
25 Line 6, and you will see the words that the Commission wrote.

1 "By June 30th, 1997, there were 155,302 Lifeline subscribers."  
2 Keep that number in mind just for a moment and turn to Page 3,  
3 which you may recognize as the cover of the staff  
4 recommendation which is up for your consideration today. And  
5 look to the fourth page of the handout, the paragraph at the  
6 very top. And I read starting down on the second line all the  
7 way toward the right, "With approximately 150,686 of the  
8 eligible households actually subscribing."

9           Compare the numbers, if you will. Our progress, at  
10 least it appears to me from the Commission numbers, are 155,302  
11 in 1997 and about 5,000 less today. I'm not good with  
12 arithmetic, but I think that, you know, a 65 to 70 percent  
13 penetration rate would be reasonable to expect, and losing  
14 5,000 over a period of eight years is going to take us a long  
15 time to get there, isn't it?

16           We are moving in the wrong direction, all of us. The  
17 Commission, the companies, my office, we all bear  
18 responsibility for this, and I think it needs to change. Even  
19 if those numbers are not an apples-to-apples comparison, and I  
20 have done the best I can to make them, it appears to me that  
21 they are.

22           But forget those numbers; consider a 13.7 percent  
23 take rate. We are not in the business of fine-tuning Lifeline  
24 for the state. We are not at 80 percent hoping to get to 82.  
25 We have less than two in ten. That's according to the staff

1 current data, 13.7. That is pathetic. Florida citizens send  
2 millions of dollars to Washington in their universal support  
3 fee, or whatever it is called, and we get pennies back on the  
4 dollar. California gets dollars back on the dollar; we get  
5 pennies back on the dollar.

6 I am telling you these things because I believe the  
7 staff recommendation is an excellent opportunity to reverse the  
8 trend. And, again, we are not into fine-tuning here. Staff's  
9 recommendation is strident. It's very welcomed from our point  
10 of view. It is quite strident. It is a PAA, and it is the  
11 first time I have seen it in the Lifeline area like this. This  
12 would move you in the correct direction.

13 Why should we move in that direction? Well, let me  
14 point out to you that the Senate committee, Florida Senate  
15 committee, telecommunications and utilities, has a stand-alone  
16 interim project coming up. Stand-alone addressed to Lifeline.  
17 It is 2005-116. I think it has been communicated to the  
18 Commission.

19 As I predicted a couple of weeks ago, people are  
20 beginning to have a keen interest in Lifeline and in our  
21 collective performance with respect to the implementation of  
22 Lifeline. And the numbers that we have to show them don't  
23 suggest a very good report card that many of us are going to  
24 get.

25 I would like to add, as gingerly as I might, that

1 during the rebalancing case that you heard here and during the  
2 adoption of the statute consideration of that statute, the  
3 companies placed this whole Lifeline program in front of you,  
4 in front of the legislature as an inducement to move forward  
5 with that bill.

6           You may remember Doctor Mayo talking about a hard  
7 head and soft heart. That mentality doesn't seem to be coming  
8 from my good friends at the ALECs this morning, or this  
9 afternoon. The fact is it was held as an inducement. We  
10 believed it was an inducement, and we set about implementing  
11 Lifeline as best we could.

12           Let me speak to the staff recommendation. It  
13 suggests a couple of things; the school lunch program which we  
14 unconditionally support, 135 percent, which the companies  
15 themselves placed before you in conjunction with that hard head  
16 and soft heart approach. So we support both of those  
17 unconditionally.

18           With respect to the staff recommendation on the  
19 self-certification, I read the staff recommendation very  
20 carefully. We certainly support it, but it goes to the notion  
21 that you should permit self-certification in program liability  
22 for Tiers 1 and 2. As I say, I read it as carefully as I  
23 could, and I could not find any rationale for omitting Tiers 3  
24 and 4. If self-certification works for 1 and 2, why not 3 and  
25 4? We support the staff recommendation. I hope that you will

1 support it with the modification that it include 3 and 4.

2 I will join my good friends in the ILEC community in  
3 not wanting to get too much into detail, but from my  
4 standpoint, the complaint of additional administrative costs is  
5 a hard one to take. Because Verizon at least, and I think the  
6 other two, to at least a limited extent, go to the  
7 administrative expense of recertifying every Lifeline customer  
8 every 90 days. It is absolutely unnecessary; it is inimical to  
9 the process; and I would review for you, if you will, that we  
10 are not in the business of fine-tuning.

11 We are not worried about the occasional person who  
12 may have somehow stretched their eligibility such that we are  
13 running at 82 percent instead of 80. We are running less than  
14 two in ten. That is the kind of take rate we are getting. You  
15 don't need to recertify people every 90 days.

16 On some occasions when they recertify they are  
17 somewhat overly broad because they recertify my folks, too.  
18 You may be aware that my office is the statutory certifying  
19 agency for the income side. And it is inadvertent, and Verizon  
20 has moved well to correct the problem, but it has happened not  
21 once, not twice, but three times.

22 So I say to you, if they have the administrative and  
23 the resources to meet the administrative expenses of  
24 essentially booting everybody off every 90 days, the additional  
25 administrative expenses occasioned by self-certification is



1 immaterial by comparison.

2           Again, we support the excellent staff recommendation.  
3 We think that it should go a little bit further. We think that  
4 you should vote it out with the modification that it apply to  
5 ~~pieces~~ 3 and 4. And I believe that would bring more money to  
6 the State of Florida, money that we now send away. And it  
7 would give us -- it is your opportunity to strike a blow here  
8 and now against the pathetic take rate that we now have.

9           Thank you.

10           CHAIRMAN BAEZ: Thank you, Mr. McLean. Is there  
11 anyone else that needs -- Mr. Twomey.

12           MR. TWOMEY: Mr. Chairman, Commissioners, good  
13 afternoon. Mike Twomey appearing on behalf of AARP Florida.

14           Let me say at the outset that AARP supports each and  
15 every thing that Public Counsel just told you by way of  
16 recommendations to include having the Tier 3 and 4  
17 self-certification.

18           AARP not only commends your staff's creativity  
19 contained in its recommendation, it fully supports your staff  
20 recommendation and urges you to adopt it and enact the  
21 revisions without delay. For whatever reasons, the Lifeline  
22 program in Florida, it has been a serious numeric failure for  
23 years. The flaws in this program have caused many hundreds of  
24 thousands of eligible Floridians to be deprived of financial  
25 benefits while causing Florida's telephone customers generally

1 do unnecessarily subsidize Lifeline services in other states.

2           Your staff is recommending a significant change to  
3 the existing Lifeline procedures. As is typical with these  
4 decisions, you should first ask yourself whether there is a  
5 problem or a situation that requires fixing. The answer is  
6 that there are significant problems and your staff have laid  
7 them out numerically in their recommendation.

8           I want to quickly review them with you and share with  
9 you AARP's view of their seriousness. AARP believes that the  
10 numbers tell the story. As of March 31st, 2004, approximately  
11 1.1 million Florida households were eligible for Lifeline and  
12 Link-Up, but only 150,686, or 13.7 percent, as Mr. McLean said,  
13 are actually subscribing. Stated another way, that means that  
14 36.3 percent, or almost 950,000 households eligible for  
15 assistance are not receiving it.

16           The national average -- and no one is suggesting that  
17 we should settle for just being average -- is 38 percent. At  
18 Page 5 of your staff recommendation it is reported that the FCC  
19 predicts 8 million more households will become eligible for  
20 Lifeline assistance nationally in the year 2005 if the income  
21 criterion is raised by all states to 135 percent.

22           This expected increase has at least two important  
23 ramifications for Floridians. First, roughly 938,000 more  
24 Florida households would become eligible for Lifeline and  
25 Link-Up financial assistance, bringing the Florida total to

1 over 2 million households. Note that newly eligible Florida  
2 households would constitute almost 12 percent of the national  
3 increase.

4           If Florida were able to maintain just the current  
5 13.7 percent take rate in 2005, which would require almost  
6 doubling overnight the current take rate numbers, then eligible  
7 households receiving assistance would rise to about 274,000,  
8 but the eligible households not receiving assistance would rise  
9 to about 1.7 million.

10           There is a clear financial downside to all Florida  
11 telephone customers if the 135 percent criterion is adopted  
12 nationally, and if Florida either, one, fails to adopt it, or,  
13 two, if it does adopt it, fails to significantly increase the  
14 state take rate above the current 13.7 percent level.

15           Factually, your staff shows at Page 5 that the  
16 federal/state joint board year-end 2003 report shows that  
17 Florida contributed \$44.7 million into the low income support  
18 mechanism, but only took out 15.5 million. That is a return  
19 rate of only 34.69 percent, which means that Florida gets back  
20 only about one dollar for every \$3 that we send north and west  
21 of here.

22           That is obviously a bad financial deal for Florida  
23 and not the kind of situation you try to correct through  
24 increased volumes, which is precisely, however, what is  
25 expected. That is a report by staff -- as reported by staff at

1 Page 5, Florida citizens could be faced with an additional  
2 contribution to the low income support mechanism of up to \$9.3  
3 million a year, which would translate to an additional annual  
4 net loss of about \$6 million unless our take rate is increased  
5 appreciably.

6 It seems reasonably clear that the federal government  
7 is going to compel greater contributions from Floridians and  
8 that Florida will suffer even greater net losses unless we do  
9 something and do it soon. Our current take rate as compared to  
10 the national average suggests, if it doesn't demonstrate, that  
11 our Lifeline and Link-Up system is broken.

12 Let me suggest that it would be wrong to even think  
13 that Floridians are less capable of understanding and applying  
14 for Lifeline benefits than citizens nationally, if the benefits  
15 availability is successfully communicated to them and if their  
16 applications are processed fairly and in a timely manner. The  
17 numbers would suggest that a comprehensive overhaul of the  
18 system is mandated with the goal of bringing Florida's take  
19 rate up to at least the national average.

20 Let me give you a nautical analogy of what we should  
21 be doing. If your boat is taking on water and your electric  
22 bilge pump is out, you may try to repair your pump, but you  
23 will also bail by hand in the interim trying to keep up with  
24 the rising water. Using a different analogy, if you are  
25 hungry, half a loaf now is better than waiting for the full

1 loaf down the road, especially if you can have the half loaf  
2 now and try and get the remainder later.

3           By its recommendation your staff proposes an  
4 immediate 61 percent of the loaf by self-certification for  
5 programs. That is the \$8.25 for the first tier and the second  
6 tier versus the total possible of 13.50. They also propose the  
7 possibility of getting the full loaf subsequently by the  
8 customers after program self-certifications, being able to  
9 apply for the remainder. We should work aggressively at fixing  
10 the bilge pump, but we should also start bailing immediately.

11           Approving your staff's recommendation on Issue 3 to  
12 allow the addition of a self-certification option will provide  
13 immediate and much needed relief to eligible households not  
14 currently receiving Lifeline assistance due, perhaps, to what  
15 your staff at Page 7 calls, quote, the time-consuming  
16 certification process, close quote.

17           AARP thinks that logically and equitably you should  
18 also approve staff's recommendation on Issue 1 and adopt the  
19 national school lunch program as the basis for  
20 self-certification and eligibility. As your staff tells you,  
21 such an adoption is consistent with the national program.

22           You should also approve Issue 2 and adopt the 135  
23 percent of federal poverty guidelines for income-based  
24 eligibility. If you do not, then you deprive over 900,000  
25 households of access to benefits and the opportunity for

1 reducing our level of net contributions to the federal pot.

2 Issue 4, to require the filing of reports to aid your  
3 ability to properly report to the governor and legislative  
4 leadership appears to be a no-brainer and should be approved,  
5 as well.

6 At one of the pages your staff --

7 COMMISSIONER DAVIDSON: What did you just say? What  
8 was that last term, no-brainer?

9 MR. TWOMEY: Yes, sir.

10 COMMISSIONER DAVIDSON: Thank you.

11 MR. TWOMEY: I apologize for the use of that legal  
12 term.

13 COMMISSIONER DAVIDSON: No, I like that.

14 CHAIRMAN BAEZ: To quote a famous Commissioner, is  
15 that --

16 MR. TWOMEY: Another point in aiding effective  
17 communications of the availability of benefits to consumers  
18 would be to require the ILECs, or in this case the ETCs to  
19 notify their customers, or their potential customers of the  
20 availability of Lifeline assistance every time they communicate  
21 with them.

22 They could say, for example, if somebody calls up for  
23 initial service, or renewal, or when they are called to ask  
24 them to sign up for vertical services, quote, we are required  
25 by the PSC to make you aware that you may be eligible for up to

1 \$13.50 per month in Lifeline assistance if you are  
2 participating in one of the following programs, or if your  
3 income is 135 percent or less of the federal poverty  
4 guidelines. We can sign you up immediately for \$8.25 per month  
5 in program self-certification assistance and tell you later how  
6 to apply for the balance of the \$13.50.

7           As Mr. McLean said, we have been addressing this  
8 problem unsuccessfully, I think it goes without saying, the  
9 13.7 percent speaks for itself vis-a-vis the success rates of  
10 the other states that are listed in the FCC's order that was  
11 issued April 29th, 2004. Necessarily, some of the other states  
12 are doing something right, or at least doing something better  
13 than the State of Florida collectively is doing. Mr. McLean  
14 cited your 1997 order. It is, in our view, far past time to  
15 start having rule hearings, workshops, and the like.

16           Your staff's excellent recommendation gives you the  
17 opportunity to start giving people, customers that are entitled  
18 to it, many hundreds of thousands that are entitled and not  
19 receiving it, immediate aid in the form of the \$8.25. If there  
20 are additional problems to work out, they can be addressed  
21 sequentially to starting the bailing of the boat out right now  
22 and helping consumers. There can be -- the adoption of this  
23 order, this staff recommendation and the publication of the PAA  
24 order immediately, there still can be a rule hearing down the  
25 road to fine-tune the items that need to be fine-tuned, if any

1 do.

2           So in closing, the AARP, Commissioners, Mr. Chairman,  
3 would urge that you fully adopt your staff's recommendation,  
4 issue the PAA, and let the telephone companies deal with it as  
5 they might. Thank you very much.

6           CHAIRMAN BAEZ: Thank you, Mr. Twomey. Are there any  
7 other interested parties?

8           Commissioners, questions. Commissioner Deason.

9           COMMISSIONER DEASON: I have a question for Mr.  
10 Twomey. Mr. Twomey, I hear your message loud and clear. And  
11 just to paraphrase, you know, I take it you want the changes to  
12 the program to be implemented as quickly as possible and that  
13 you endorse staff's recommendation.

14           My question to you is that if we were to approve  
15 staff's recommendation, it has been indicated by at least one  
16 company, and I don't know the positions of the others, that  
17 there would be a protest of the PAA, which would put us into  
18 the litigation phase or a mode with all of the discovery, and  
19 the prehearing process, and testimony filing. And you are  
20 eminently familiar with that process, you have been engaged in  
21 it.

22           My question is do you see merit in the argument of  
23 just taking this whole matter, putting it into rulemaking in a  
24 collaborative process that we may get to the end result  
25 quicker, or do you think it is beneficial to go ahead, issue



1 the PAA, realizing that it, in all likelihood, will be  
2 protested and we will find ourselves in that process. What are  
3 your thoughts on that?

4 MR. TWOMEY: Yes, sir, excellent question. I think  
5 the answer is go ahead and issue the PAA. If any of these  
6 companies wants to protest it, let them do it. That is their  
7 right and it becomes their obligation to go ahead and  
8 demonstrate the fears they expressed to you in their opening  
9 statements about costs or customer confusion.

10 The Public Counsel on that point, the Public Counsel  
11 represents all the consumers and my client represents millions  
12 in the State of Florida, is effectively telling you we don't  
13 think the issue of public or customer confusion about having  
14 one or two programs is an issue. It is not an issue. If these  
15 companies are ordered to tell their customers and potential  
16 customers what is available to them and what has been available  
17 to them for many years in the way of financial assistance as  
18 paid for by the rest of us, they can be made to understand that  
19 and there will be no confusion.

20 To answer your question, I would say go ahead, issue  
21 the order. If it is not appealed or protested, then we have  
22 got this \$8.25 that your staff says that when somebody calls  
23 up, and especially if you order them in your PAA to communicate  
24 to these customers that the 8.25 is available if they meet the  
25 criterion, they get, per your Staff, 8.25 when a person calls

1 up immediately, and then they have 60 days to confirm their  
2 eligibility by filling out the proper paperwork.

3 So, I would do the PAA now. Follow it up with the  
4 rule, or workshop, or the collaborative process, which the AARP  
5 is not opposed to, and do them sequentially or simultaneously.

6 COMMISSIONER DEASON: A follow up. But if we were to  
7 do that and we were to receive a protest then, as I understand,  
8 there would be no 8.25 or anything else that would be  
9 implemented in staff's recommendation. Everything would be  
10 stayed until there is a hearing. And only after that hearing  
11 process, which conceivably could be extensive, would there be a  
12 decision and implementation of 8.25 or some other remedy.

13 MR. TWOMEY: Well, Commissioner Deason, I see it this  
14 way. I think having your order, and if it is protested having  
15 a CASR filled out and definitive time lines set would put all  
16 of us under the gun to get something done. If that were to  
17 happen, there is nothing to say that we couldn't, as in any  
18 other case before you, and you all are well known for  
19 encouraging settlements, collaborative processes and the like,  
20 there is nothing to say during that time period simultaneously  
21 that the parties couldn't sit down and engage in their  
22 negotiations, their collaborations, and so forth. And that the  
23 end result could be reached even before the hearing process was  
24 carried through, in which case it could be dismissed, if you  
25 accepted a settlement.

1 CHAIRMAN BAEZ: Commissioner Deason, if I could  
2 interject a quick question, because I'm drawing a blank. Are  
3 PAA orders and all-or-nothing proposition, or, you know, are  
4 the terms, the different terms contained in the order severable  
5 for protest purposes?

6 MR. MELSON: I have to give you two answers to that.

7 CHAIRMAN BAEZ: Okay.

8 MR. MELSON: Under the statute only the portions of  
9 the PAA that get protested are set for hearing, the other  
10 portions can become final. Maybe in this case a relevant  
11 distinction is you could set an order up such that a protest by  
12 one company did not affect the application of the order to  
13 another company that did not protest. That is not something  
14 you ordinarily do, but it is something you have done in the  
15 past.

16 CHAIRMAN BAEZ: And I hadn't even thought of that,  
17 but even in terms of the separate issues, for instance --

18 MR. MELSON: I'm sorry, in terms of --

19 CHAIRMAN BAEZ: Even in terms of the separate, you  
20 know, Issues 1, 2, and 3, there may not -- I guess is a PAA  
21 protestable on a section-by-section basis?

22 MR. MELSON: Yes. And the statute suggests that is  
23 the proper way to do it. As a practical matter, a lot of  
24 parties are not as precise in their protests as they ought to  
25 be, and we end up with an entire order in dispute when there

1 may have only been particular issues that really warrant a  
2 hearing.

3 CHAIRMAN BAEZ: Thank you. I'm sorry, Commissioner,  
4 I had interrupted.

5 MR. REHWINKEL: Mr. Chairman.

6 CHAIRMAN BAEZ: I'm sorry.

7 MR. REHWINKEL: Would you indulge me to respond to  
8 some of the factual characterizations that I have heard today?

9 CHAIRMAN BAEZ: Which factual --

10 MR. REHWINKEL: Mr. McLean's about the statistics.  
11 There are some omissions that I think would be useful,  
12 especially if the Commission is considering issuing a PAA. I  
13 think the history of the PAA process over the many years that  
14 it has been used is that the Commission has to have a good  
15 faith, or the Commission usually has a good-faith basis for  
16 issuing the PAA. It is not throw a grenade and see if it  
17 explodes. So there are some issues that have been raised that  
18 I would like to address, if I could.

19 CHAIRMAN BAEZ: Give me a moment. Commissioner  
20 Jaber.

21 COMMISSIONER JABER: In the name of efficiency, I'm  
22 probably going to give Mr. Rehwinkel a lot more to address. I  
23 wonder if it would be good to get our questions out there and  
24 absolutely let folks respond.

25 CHAIRMAN BAEZ: I was going to suggest the very

1 thing. It is possible that Commissioners may have questions,  
2 and I will give you an opportunity -- thank you, Commissioner  
3 Jaber. And if you have your questions, you go right ahead.

4 COMMISSIONER JABER: The first set of questions  
5 really go to staff, and then working our way to the consumer  
6 advocates and to the parties. I couldn't help but go back, Ms.  
7 Banks, to the comments the PSC filed with the FCC during the  
8 NPRM process, and then during the joint board process. And  
9 just taking it issue-by-issue, I want to understand whether you  
10 are recommending we change our position going forward.

11 In the comments we filed with the FCC, we did suggest  
12 that the FCC adopt the school lunch program; so that is not a  
13 surprise to me. As it related to the 135 percent of the  
14 federal poverty level, I recall we used Florida as an example  
15 and said, it works for us. We have got through the settlement  
16 process, there were a couple of companies that at the time  
17 entered into settlement negotiations with Public Counsel and  
18 agreed to 125 percent. We pointed that out in the FCC comments  
19 and suggested that it is not appropriate for the FCC to mandate  
20 anything higher than that at that time.

21 Now, what I want to understand from you is this  
22 recommendation you are asking us to agree to obviously has 135  
23 percent. You have changed your position. Is it because of the  
24 rate rebalancing proceeding or anything else?

25 MS. BULECZA-BANKS: That was one aspect that we

1 considered. And we also considered that at the time the FCC,  
2 they supported the application, as you said, of an income-based  
3 standard, some of the reservations was we believed that more  
4 data and analysis was necessary. When we were doing the actual  
5 analysis of the impact this would have, knowing that they  
6 already had 125 out there, and they have been in place, Bell's  
7 has been in place since 2001, and Sprint and Verizon since the  
8 beginning of last August. We were looking at the impact and  
9 believed that it would not be as significant because we are not  
10 going, like, from zero. Now we have had some experience in  
11 that, and now we have a smaller incremental basis of which the  
12 impact will be felt.

13 COMMISSIONER JABER: Now, refresh my memory. Without  
14 getting into the merits of the case, all of the companies but  
15 for TDS have agreed to adopt the 135 percent going forward.

16 MS. BULECZA-BANKS: That are here today, is that what  
17 you are asking me?

18 COMMISSIONER JABER: Yes. Sprint, Verizon, and  
19 BellSouth.

20 MS. BULECZA-BANKS: Yes, ma'am.

21 COMMISSIONER JABER: Okay. Now, do you disagree with  
22 the notion put forward by, I think first by Mr. Rehwinkel and  
23 then by Mr. Chapkis that even going to the 125 percent has  
24 increased the penetration level for Lifeline?

25 MS. BULECZA-BANKS: In the report to the governor

1 that we had to prepare that was filed, what we saw for  
2 BellSouth since 2001, they had a 1 percent growth rate from  
3 2000 to 2001, a negative 1 percent rate from 2001 to 2002, and  
4 a negative 2 percent growth from 2002 to September of 2003. So  
5 I'm not sure in that aspect I can agree with that. They have  
6 had it in the longest.

7 I will agree that Sprint has had one of the highest  
8 growth rates that they had, as was presented earlier, was 40  
9 percent. Verizon, however, it had a growth rate that it  
10 increased from 2000 to 2001 of 35 percent, but the next two  
11 years each one declined 12 percent each year.

12 COMMISSIONER JABER: Now, those statistics you've got  
13 for the 125 percent?

14 MS. BULECZA-BANKS: It is hard to really say. I  
15 don't have anything so much for Verizon and Sprint because our  
16 data is not that current from the time their 125 went in.

17 COMMISSIONER JABER: Okay. But that begs the  
18 question. If we are not sure what the subscribership level has  
19 been for 125 percent, how can we be sure, absent a hearing,  
20 frankly, or some sort of fact gathering, whether it's a  
21 workshop, a rulemaking, or a hearing as a result of a PAA, I'm  
22 not there yet, but how can we be sure that going to 135 percent  
23 meets the objective you're trying to fulfill?

24 MS. BULECZA-BANKS: I think that that data would  
25 necessarily help us out. I think that when staff looked at it,

1 since Bell, its September 2003 participants was 102,000 versus  
2 Verizon at 20, and saw such a -- didn't see the impact on  
3 BellSouth. I think from that perspective, when we are looking  
4 at the whole picture, that is how we came to that conclusion.

5       COMMISSIONER JABER: Is that data that would help us  
6 out, or, Ms. Banks, is it data that we should have before we  
7 increase the criteria and create, frankly, a situation where we  
8 could have additional costs and increased rates to the  
9 consumer?

10       MS. BULECZA-BANKS: It certainly would be beneficial  
11 to have that before making the decision.

12       COMMISSIONER JABER: Okay. On Issue 3,  
13 self-certification. Again, going back to the comments we filed  
14 in front of the FCC, I thought we -- and I can find the  
15 reference to it -- we specifically said that we were cautious  
16 about self-certification, because we sort of danced around  
17 mentioning the states, California and New York that are  
18 receiving clearly a benefit from the Lifeline program.

19       It is my understanding that states like that have  
20 self-certification, automatic enrollment, and they don't  
21 necessarily have accountability on the back end. So, while I  
22 sympathize and most of the time agree with Mr. Twomey on what  
23 he just said as it relates to the Lifeline program, that states  
24 like those have done it right, today I take issue with that. I  
25 don't know that they have done it right.



1           They have been allowed to continue with a process  
2 that doesn't have accountability on the back end. And your  
3 Issue 3 talks about self-certification, but doesn't talk about  
4 verification or accountability in terms of taking customers off  
5 when they no longer qualify for the Lifeline program. Is that  
6 something you were hoping you could flesh out a little bit more  
7 if this were protested, or does it just not come into the  
8 equation at this point?

9           MS. BULECZA-BANKS: It certainly would. And I would  
10 like to say that we certainly were well aware of the comments.  
11 The Commission was clear that there should be caution in  
12 adopting self-certification because of the increased risk of  
13 fraud and abuse. In the California example, they only have an  
14 income-based criteria. And we were very cautious of not  
15 looking at that as self-certifying. That we thought,  
16 consistent with the FCC's order this year, that a program-based  
17 self-certification had much less risk involved, because those  
18 were easily verifiable.

19           In a prior Commission order that has been issued  
20 early on, and I'm afraid I don't have it at my fingertips, the  
21 order number, we actually have told the utilities that within  
22 their tariffs they should have something that says when  
23 customers are no longer eligible, they must come forward -- and  
24 those are in the tariffs -- that they must come forward and  
25 tell them they are no longer eligible for the program. And as

1 far as we said that there would be a sampling plan that we  
2 would recommend that they do annually to verify that the  
3 participants are still eligible, there is a lot of issues  
4 involved, and it would not be harmful to address those in a  
5 rulemaking. But I just wanted to point out that we did look at  
6 those, and that is why we limited that self-certification to  
7 the program base that we knew would be easily verified.

8 COMMISSIONER JABER: That's what Mr. McLean meant by  
9 Tier 1, Tier 2. Mr. McLean suggested to us that we take a look  
10 at including in that issue Tier 3 and Tier 4. Can you  
11 elaborate on what that means?

12 MS. BULECZA-BANKS: I believe what he is saying is  
13 that our proposal was that if you self-certify you get 8.25.  
14 And I think that what he was suggesting was that if you  
15 self-certify you get all 13.50. I think that was the  
16 distinction he was trying to make.

17 COMMISSIONER JABER: Okay. And then the final  
18 questions relate to there is a percentage included in the  
19 recommendation that suggests that Florida's penetration rate is  
20 13.27 percent, I think. And I wasn't going to ask that  
21 question, but Mr. McLean, I think, appropriately pointed to it.  
22 And while his point is well taken that the number is low,  
23 regardless of whether it is an apples-to-apples comparison, I  
24 feel like we need to clarify that the 13.27 percent, as I  
25 understand it, is based on FCC data, not in data that you have

1 compiled directly from the companies.

2           And here is where I'm going with that, Cheryl. I  
3 could have sworn last year and the year before you all told us  
4 that the penetration rate was close to 17 percent. And, again,  
5 those are both low numbers, so I don't want to diminish the  
6 point Mr. McLean is making. But where is the inconsistency?

7           MR. WILLIAMS: Commissioner Jaber, if I may. Part of  
8 the inconsistency is, of course, in terms of the actual number  
9 of customers that are participating, that number has increased  
10 to some degree, so that explains a higher participation level.

11           In terms of the eligibility number, the number of  
12 eligible households did increase based on the adoption of the  
13 125 percent. So in our report to the governor last year, the  
14 number of eligible households was basically presented using the  
15 program-based eligibility criteria. That number of households,  
16 eligible households increased after adding the 125 percent for  
17 the three largest local exchange companies.

18           COMMISSIONER JABER: Okay. And my final point,  
19 question goes to that, Mr. Williams. If you had -- if this  
20 agency had additional funding to address outreach efforts, not  
21 addressing how we would get that funding, but if we had  
22 additional funding to address outreach efforts, what would you  
23 recommend that we do with the parties, with the consumer  
24 advocates, or alone to increase the penetration level with the  
25 criteria that we currently have?

1 MR. WILLIAMS: Well, streamlining and improving the  
2 application process, making the actual process easier for  
3 consumers would address that.

4 COMMISSIONER JABER: That is something you are going  
5 to address in the rulemaking that was initiated by Public  
6 Counsel's petition?

7 MR. WILLIAMS: Yes, ma'am. And if I may respond to a  
8 couple of questions that you asked earlier specifically  
9 regarding the 135 percent income-based criterion, part of our  
10 rationale for recommending the 135 is based on the fact that  
11 the FCC has now adopted the 135 criterion.

12 You were correct, in our comments we did not support  
13 the 135, or you did not support the 135, and staff did not  
14 recommend that you adopt the 135. And we explained to the FCC  
15 in our comments that Florida uses the 125 criterion based on  
16 a directive from our legislature.

17 In light of the fact that the FCC has now adopted the  
18 135 criterion, and considering that other states most likely  
19 will, or a significant number of states will most likely adopt  
20 the 135 percent criterion, our rationale basically went back to  
21 the issue of Florida's status as a net contributor, and to  
22 address what impact not adopting the 135 percent would have on  
23 our status.

24 COMMISSIONER JABER: Don't misunderstand my  
25 questions. As you all know, this has been a project that has

1 always been high on my radar screen. And the one area that has  
2 been a source of frustration, this would be in terms of not  
3 being able to initiate a program that allows our state to get  
4 the money back that we contribute, but it is almost a no-win  
5 situation, because if you -- in my humble opinion, if I could  
6 just get this out in the record. If we expand the criteria,  
7 then you become part of the problem in the sense that we expand  
8 the universal service fund in scope, and you contribute to  
9 criticisms related to the sustainability of the fund, and you  
10 find yourselves in a posture, a very difficult posture of you  
11 don't want to act like the states that we have talked about and  
12 manipulate a program where you have got every college student  
13 on Lifeline, folks that aren't the ones that we are trying to  
14 target necessarily. You don't want to do that, but then you  
15 are almost incentivized -- I can never decide if that is a word  
16 or not -- you will have that perverse incentive of acting just  
17 like that to get your money back. . So it is a no-win situation.  
18 And I compliment you for thinking out of the box, I just don't  
19 know that this tells the complete picture.

20 MS. BULECZA-BANKS: And just one more aside is that  
21 staff also, I mean, we did some analysis, some regression  
22 analysis on the 125 to 135 and we have looked at that. But I  
23 think that from your perspective, getting the absolutely data  
24 from the companies would probably be helpful.

25 CHAIRMAN BAEZ: Commissioner Jaber, those are the end

1 of your questions? You did promise me you were going to let  
2 Mr. Rehwinkel have some response time. I've got you on the  
3 list.

4 Go ahead, Commissioner Davidson.

5 COMMISSIONER DAVIDSON: Thank you, Chairman.

6 This Commission just underwent last year a very  
7 lengthy and difficult case implementing Florida's rate  
8 rebalancing statute. And I frankly, as I indicated in comments  
9 during that hearing, that that was the right thing to do. I  
10 think our rates were a little bit skewed here. I think it was  
11 the economically rational thing to do.

12 I think an effective Lifeline program is the right  
13 thing to do from a policy standpoint. Expansion and effective  
14 implementation of the Lifeline program was critically important  
15 to the legislature and to the governor in enacting the bill.  
16 It wasn't just an afterthought, it was critically important.  
17 The program was, in fact, a selling point of the 2003  
18 legislation.

19 The program should be important to this Commission,  
20 and I believe it is. But the statistics demonstrate that  
21 whatever the Commission has tried to do in past years, it has  
22 failed. Not through lack of good intention, but the program  
23 hasn't been effective. Blame rests with the Commission, the  
24 companies, as Mr. McLean pointed, sort of all the actors in the  
25 state. There is plenty of blame to go around. But I think now

1 we have an opportunity to fix this.

2 We have collectively not served the most economically  
3 disadvantaged citizens of this state very well. We have an  
4 opportunity to change that, and I hope that we do. And it is  
5 in that spirit that I do put out a motion to move staff on all  
6 issues with the caveat that we have an opportunity to implement  
7 the provisions of staff's recommendations in a sound manner  
8 providing for accountability during a rulemaking, or a protest,  
9 or some other proceeding.

10 But I did want to get that on the table, because it  
11 is just time to fix the problem. We cannot drag this on for  
12 weeks, and weeks, and weeks, and months, and months. We are  
13 not performing well.

14 CHAIRMAN BAEZ: Commissioner Davidson, I appreciate  
15 the motion. But if we can delay the motion for a moment,  
16 because I know Commissioner Bradley had some comments or  
17 questions to make, and then we can double back for you, or are  
18 you --

19 COMMISSIONER DAVIDSON: Well, we can, but I want to  
20 avoid something that arose at a prior hearing where I sort of  
21 delayed the motion and something was thrown in on top. So  
22 let's keep the motion.

23 CHAIRMAN BAEZ: There is a motion on the floor.

24 Commissioner Bradley, you had some questions or  
25 comments.

1 COMMISSIONER BRADLEY: Well, is the motion still on  
2 the floor? I'm prepared to second it, but I have some  
3 comments.

4 CHAIRMAN BAEZ: If you have comments or questions,  
5 you can go ahead, sir.

6 COMMISSIONER BRADLEY: Well, as I said, I'm prepared  
7 to second the motion, because I do support staff's  
8 recommendation on this item. However, I do want to somewhat  
9 follow the same line as Commissioner Jaber and put some  
10 concerns on the record. And my concern is this: Right now  
11 Florida is exporting excessive dollars into the universal  
12 service fund, and those dollars come from every telephone  
13 customer in this state in the form of a bill surcharge every  
14 month. And I applaud staff for coming to us with these  
15 innovative ideas to help Florida keep more of this money in  
16 Florida.

17 However, I have said this many times, we have to be  
18 aware of unintended consequences of any actions that we may  
19 take. Commissioner Jaber somewhat alluded to this. One  
20 possible consequence I can foresee will be that all 50 states  
21 would be maybe following Florida's lead, therefore increasing  
22 the demands on the universal service fund, which could result  
23 in the amount of payments being made by Florida's citizens  
24 growing and we could end up exploiting -- I'm sorry, not  
25 exploiting, but exporting even more dollars than we do now.



1           So what I would like for us to think about is this:  
2 Are there any ways that we can quantify, or estimate, or even  
3 start the process of trying to think through the effects our  
4 vote today might have on the universal fund in general, and  
5 specifically what unintended consequences there might be? And  
6 other than that, I fully support staff's work, and I am  
7 prepared to second the motion if the chair so deems.

8           CHAIRMAN BAEZ: Commissioners, if there are any other  
9 questions, and then I would like to say something. But, you  
10 know, it is up to --

11           COMMISSIONER JABER: Let me ask Commissioner  
12 Davidson -- and I probably created this problem. I don't want  
13 to disrespect, you know, that there is a motion on the table,  
14 so I am willing to vote it out. I did represent that I wanted  
15 to hear feedback from Mr. Rehwinkel. What do you want to do --  
16 is that okay?

17           COMMISSIONER BRADLEY: That's fine.

18           COMMISSIONER JABER: All right. I just wanted to  
19 ask, because I did leave that hanging that he could respond to  
20 my questions.

21           COMMISSIONER DAVIDSON: And that is useful, and if I  
22 hear something -- but what I personally do not want to hear is  
23 an argument of my motion from the parties. They are free to  
24 address issues, but the motion is not up for the parties to  
25 debate.

1           CHAIRMAN BAEZ: Mr. Rehwinkel with that warning, you  
2 did have some clarifications, or some responses to some other  
3 comments that were made. You have your opportunity now, sir.

4           MR. REHWINKEL: Thank you, Mr. Chairman. And I fully  
5 intended to avoid commenting on Commissioner Davidson's motion.

6           One of the things I would ask the Commission to  
7 recognize when you hear statistics out there, these are broad  
8 FCC gathered statistics that are somewhat out of date. We are  
9 about to approach the 10 millionth Florida sitused wireless  
10 carrier in Florida. Many members of the target demographic use  
11 prepaid wireless as opposed to some sort of wireline  
12 alternative. You are creating a denominator that does not --  
13 that you will always be chasing it.

14           There are people in the denominator that will never  
15 be in the numerator no matter what you do. The 155 versus the  
16 150,000 ignores completely that there have probably been at  
17 least a million access lines lost. They do not, they are not  
18 adjusted for that phenomenon. Even though we are losing access  
19 lines, we are increasing Lifeline awareness in the aggregate.  
20 And so I think that is something to point out. It is not as  
21 much a failure as it might be portrayed to be by my colleagues  
22 down here.

23           Lifeline penetration, I mean, household penetration  
24 rates since 1997 have gone from 92.1 to 92.3 in 2001 to 94.7 in  
25 2001, to 95.1 in 2003 in Florida. I also wanted to respond

1 that the comparisons about what Florida's percentages are --  
2 and I would disagree that these subscription ratios are  
3 accurate. They ought to be based on Florida data gathered by  
4 someone who is familiar with the conditions in Florida. They  
5 should eliminate double-counting, which I think does exist in  
6 that numerator -- I mean, the denominator that we are talking  
7 about.

8           But to compare what Florida does to states like New  
9 York and California who may use different criteria and maybe  
10 suspect criteria for how they get these rates up looking so  
11 good is probably not a good thing to do to compare ourselves to  
12 those states. So I just wanted to contest the statistical  
13 presentations that were made on those points.

14           I would also like to note for the record, we do not  
15 have an authorized rebalancing petition in Florida. Our 125  
16 percent commitment in Florida was a voluntary one entered into  
17 with the Public Counsel's office. We do not have to be at 125  
18 percent today. I'm talking about Sprint. Not one rate has  
19 gone up based on rebalancing and will not be probably for  
20 another year. So all the efforts to go to 125 or to 135 were  
21 geared towards that issue about rates in general going up.

22           So, I just want to say that I think the companies  
23 have done a lot. It is not the numerical failure that it may  
24 be portrayed to be. And that is all I really wanted to do, to  
25 answer.

1 CHAIRMAN BAEZ: Mr. Chapkis.

2 MR. CHAPKIS: Thank you, Commissioner Baez. I

3 just --

4 CHAIRMAN BAEZ: Before you get started, I do want  
5 everyone to recognize that there is a motion and a second on  
6 the floor. So, this is out of courtesy, because I know that  
7 the conversation got out ahead of you. If you can keep your  
8 comments to the point and not to the motion, I would appreciate  
9 it. Thank you.

10 MR. CHAPKIS: I will try to be brief, and I will try  
11 to keep them to the motion. If I stray, I know you will  
12 correct me.

13 I think that Commissioner Davidson got it right when  
14 he said that an efficient and effective program for Lifeline is  
15 critically important to this state and to every other state. I  
16 think that with respect to Commissioner Jaber's question, she  
17 hit the nail on the head, as well. And she is saying how can  
18 we ensure that what staff is proposing is the best way to go.

19 And as you noted, with respect to the 135 percent  
20 eligibility criterion, this Commission's comments were we  
21 believe additional data and analyses are needed before any  
22 specific standard can be endorsed beyond that which is set  
23 forth in our statute.

24 And I think Commissioner Deason also got it right  
25 when he said that is PAA the most effective way to go, or would

1 his issue best be addressed in the context of a rulemaking.  
2 ou heard from Mr. Twomey on that point, and I think that what  
3 s incumbent upon you, where everybody is agreeing that we need  
4 o move forward on this, and the crux of the issue is how  
5 hould we move forward. Should we do it with a rulemaking;  
6 hould we do it with PAA? And I just think that a rulemaking  
7 s a collaborative process where it will be more effective  
8 ather than having kind of the battle of testimony and experts  
9 hat you are going to get if you issue this thing PAA and it is  
10 bjected to, as I think it inevitably will be. Thank you.

11 COMMISSIONER BRADLEY: Mr. Chairman.

12 CHAIRMAN BAEZ: Commissioner Bradley.

13 COMMISSIONER BRADLEY: Just a comment. I have been  
14 istening and thinking. You know, as a part of my -- just some  
15 ntent here. By all means I think that, if possible, what we  
16 ssue should send a strong, should send a message that -- or if  
17 e, in fact, can, that there should be some sanctions against  
18 nyone who commits fraud with respect to qualifying for the  
19 rogram.

20 And also, in my opinion, the program is not an  
21 entitlement. It should be a program that is transitional  
22 xcept in cases where maybe the disabled who cannot do anything  
23 o change their financial circumstances would be entitled to  
24 it, or the elderly who maybe cannot change their financial  
25 ircumstances would be entitled to stay on the program

1 ong-term.

2 But, you know, I don't want to send the message that  
3 hat we are doing here is to create an entitlement and that if  
4 ou commit fraud you can have free phone service. That is not  
5 has the intent is, in my opinion. And by no means would I  
6 econd a motion with the understanding that that is the intent  
7 of it.

8 Also, you know, as it relates to the overall numbers,  
9 s Florida's economy improves and as people have an increase in  
10 heir income, the numbers may go up or the numbers may go down,  
11 so I don't think that that is a factor. But I do think that we  
12 eed to give strong consideration to doing what we need to do  
13 n order to make available the Lifeline program to those who  
14 eed it as a transitional program. And as I said earlier, for  
15 hose who really and truly have a need, and they just can't do  
16 anything to improve their financial situation.

17 As I said earlier, also I truly believe that we need  
18 o -- it would give me more comfort if we would ask staff to  
19 help us quantify or estimate what the effects of our actions  
20 re today. Are we really going to have a program that  
21 ddresses what I just said, and one that allows us to recoup or  
22 o get more of what Florida contributes into the universal  
23 ervice fund, or is it just going to be a situation where we  
24 mplement a program and our problem just gets worse in terms of  
25 s contributing but not recouping what we are putting into the

1 fund?

2 CHAIRMAN BAEZ: Is that a question to staff,  
3 Commissioner?

4 COMMISSIONER BRADLEY: Yes.

5 MR. WILLIAMS: Commissioner Bradley, we think it will  
6 have a positive impact, but we think that you can't look at  
7 just this recommendation in isolation. You have to look at all  
8 of the different initiatives that this Commission has put forth  
9 to increase Lifeline subscribership. We are involved in very  
10 aggressive outreach efforts. We have been involved for quite  
11 sometime, and we think that adding this criteria will move us  
12 forward.

13 In addition, I would point out that last year we  
14 implemented an enrollment process that involved the Department  
15 of Children and Families, and we think that that program is  
16 just coming on board. So it is not, you know, just to look at  
17 this recommendation in isolation. We think that there are some  
18 major points here. But considering this recommendation in  
19 combination with increased outreach efforts which has been  
20 discussed earlier, we think we can move forward.

21 MS. BULECZA-BANKS: One point, if I might interject.  
22 One of the concerns staff has is that if you are a federal  
23 default state, you have to file the criteria established by the  
24 FCC. And so we know that the federal default states will be  
25 putting into place the free lunch program.

1 CHAIRMAN BAEZ: How many states is that, do you know?

2 MR. WILLIAMS: I'm sure exactly the number of states.  
3 The federal default states would be those states that do not  
4 have their own Lifeline program, but we can get that number for  
5 you. Most states do have their own state Lifeline program, so  
6 that number would be relatively small.

7 MS. BULECZA-BANKS: But here, in essence, is one of  
8 our concerns. If the other states also adopt these programs  
9 and they increase their penetration and their ability out  
10 there, it could exacerbate our net provider situation into the  
11 fund. That was one of staff's concerns. Again, we are going  
12 to be dealing with a lot of projections.

13 I do have some numbers that the staff had come up  
14 with which I will provide to you --

15 COMMISSIONER JABER: Do you know what is wrong with  
16 what you just said, Ms. Banks, at least the trouble that I have  
17 with what you just said; if our outreach efforts and the things  
18 that were identified in Mr. McLean's rulemaking petition  
19 several weeks ago, if those are ineffective, you can add a  
20 million criteria, you still have an ineffective Lifeline  
21 program if you don't have, significant, and appropriate, and  
22 effective outreach efforts with the appropriate funding in the  
23 right place to make it happen

24 CHAIRMAN BAEZ: Ms. Banks, you were going to provide  
25 some numbers?



1 MS. BULECZA-BANKS: Yes, Chairman. One of the --  
2 some of the staff analysis that was done was trying to  
3 determine the number of additional households that would become  
4 eligible if the income criteria of 135 was adopted. In looking  
5 out, going from 125 to 135 under staff's calculations there  
6 would be an additional 134,074 households that become eligible.

7 Under the free lunch program, as the FCC has stated,  
8 it is very difficult to determine if you are going to get much  
9 increase in your total population, because most of these people  
10 who would be eligible for free lunch are already eligible and  
11 would be participating in some of the other programs.

12 So, with that, it's rather difficult, but staff has  
13 estimated that it would have a minimal effect based on a  
14 regression analysis that was completed. It should have a  
15 minimal effect.

16 COMMISSIONER BRADLEY: Let me ask another question,  
17 Mr. Chairman.

18 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

19 COMMISSIONER BRADLEY: My question goes to sanctions  
20 Are there any sanctions that can be imposed to make this more  
21 fraud proof? Or that may not be something that is within our  
22 prerogative.

23 MR. TEITZMAN: Part of the process will be the  
24 signing of an affidavit, so there will be some sanctions with  
25 regards to that. It would be up to the companies, though, to

1 pursue sanctions through the court system. I do not think the  
2 Commission would have the authority or jurisdiction to impose  
3 sanctions on consumers.

4 COMMISSIONER BRADLEY: I guess that's a no.

5 MR. McLEAN: Mr. Chairman, I am wondering if there is  
6 any evidence anywhere in the record, anywhere that says there  
7 is any fraudulent activity on the part of any consumer.

8 CHAIRMAN BAEZ: Hold on, Mr. McLean. I would have  
9 the same questions, but --

10 COMMISSIONER BRADLEY: Consumers always commit fraud.

11 CHAIRMAN BAEZ: This isn't a trial and we are not  
12 going to get into the back and forth. I can already see  
13 this thing -- I can already see the proverbial toothpaste  
14 getting out of the tube, okay. So I just wanted to make  
15 some -- I wanted to make some comments before. I see  
16 Commissioner Deason leaning in, and I don't know if he had  
17 anything to say, I don't want to get out ahead of him.

18 But here is the way, Commissioners, for your benefit  
19 and maybe my own to hear myself think it out. This is the way  
20 that I was looking at it. I recognize a lot of good points  
21 have been made, not just by the companies in terms of concerns,  
22 but by staff, and some of the questions the Commissioners have  
23 made have given me pause for thought, as well.

24 Here is the way that I look at this issue. I agree  
25 that we need an effective outreach policy, and I think that

1 that is at least trying to be addressed through the good  
2 efforts of the Office of Public Counsel and the companies and  
3 our staff, as well. Something that should develop over the  
4 late summer even more. I hope to see the good fruits of that.

5       It is also true that there may be parts of this  
6 recommendation that are very appropriate -- that may be  
7 appropriate to be discussed further. I refer, specifically, to  
8 those portions of the recommendation which actually have the  
9 effect of imposing or impacting the company, any one company or  
10 provider's obligation to provide the intrastate portion, or the  
11 3.50 that we keep mentioning.

12       The one thing that I don't understand is if we have  
13 sent several iterations of comments to the FCC complaining  
14 about how we need to have -- about how the FCC has to somehow  
15 mandate better accountability, address the issue of  
16 accountability, because here we are, the State of Florida,  
17 being a net provider under a portion of this Lifeline funding  
18 that we don't have a choice to provide, that our ratepayers in  
19 this state, or customers, your customers don't have a choice to  
20 provide, that being the \$8.25 now that is subject to a  
21 recommendation or self-certification. I don't understand how  
22 anyone in their right mind would not try to go after what is --  
23 and I use the term loosely -- rightfully Florida's, the  
24 customers of Florida's. And self-certification being the  
25 simpler.

1 I agree completely there are issues of fraud, there  
2 are issues that we need to address, but if we have always been  
3 so confident that we can do it better, and we have always been  
4 so confident in providing our comments to the FCC and saying,  
5 hey, look at it our way, we have these concerns, and they are  
6 real, and we believe them. Then why aren't we good enough to  
7 trust ourselves to try and address those issues of  
8 accountability in our own backyard.

9 But to really -- I mean, I keep thinking \$29 million.  
10 \$29 million we fritter away every year. And if there is any  
11 part of this recommendation, and one of the reasons I asked  
12 General Counsel as to what the score is on protests of PAA  
13 orders, but if there is any part of this recommendation that I  
14 think I wouldn't -- it would perplex me as to a protest, is any  
15 effort by this Commission, and by the companies, and by the  
16 Public Counsel's Office to try and lay claim and recover, let's  
17 use a regulatory term, something which I'm sure the companies  
18 that are sitting before us are very familiar, recover some of  
19 the funds that we are frittering away to states like California  
20 with their lax accountability, states like New York with their  
21 apples-and-oranges comparisons and numbers.

22 Well, this is an opportunity for us to prove that we  
23 can do it better. And let's take control of our own destiny.  
24 And let's really take up the challenge of making it a very  
25 broad-based and broad-phased approach. Outreach. A rulemaking

1 that sets up reasonable -- that produces reasonable agreement  
2 among all the parties as to what is doable in terms of Lifeline  
3 guidelines. But let's not let this -- let's not let this net  
4 provider statute situation persist. Because that is the one  
5 thing that I don't think anybody should disagree on. If there  
6 is money being paid out, let's keep it here. And then let's  
7 deal with -- let's deal with, you know, Commissioner Bradley's  
8 concern as to fraud and so forth here in this state.

9           You know, I find it -- and I also find it a little  
10 disingenuous to have parties question our authority to  
11 promulgate criteria, and then yet suggest to us to go to  
12 rulemaking. I find that -- I'm having trouble reconciling the  
13 two. Because if any of it is true, then we are going to wind  
14 up at a workshop arguing over who has got authority to do what.  
15 Where was everyone when we adopted TANF, where was everyone  
16 when we adopted the default criteria from the FCC? I wasn't  
17 here. I don't remember the arguments, if anybody was standing  
18 up telling us we didn't have authority to adopt it then.

19           COMMISSIONER DAVIDSON: (Inaudible).

20           CHAIRMAN BAEZ: Perhaps Commissioner Deason, who  
21 apparently has been here for every docket that we can  
22 remember -- no. But all kidding aside, I don't have the  
23 benefit of the memory of those debates and discussions. But my  
24 rather long point, getting shorter now, there are parts of this  
25 recommendation that I don't -- that no matter how much you

1 disagree with the Commission's overstepping, or what the  
2 inappropriate forum or process that is being included, there  
3 are some things that we can start doing today.

4           And I urge you, and I urge you to exercise your  
5 rights, such as they are, in a very, very prudent manner.  
6 Because the industry is the one that is going to have to -- if  
7 I may be so bold, you are going to have to stick your necks out  
8 on this and be the ones that are protesting what can be widely  
9 perceived as progress on Lifeline. Forget the details, forget  
10 all the valid points that you have made. That is the score to  
11 the public. That is the score to our customers, to our  
12 ratepayers, to the people that we try and serve and represent.

13           And with that word of caution, I don't know if anyone  
14 else has anything else to say. Mr. Williams.

15           MR. WILLIAMS: Yes. Mr. Chairman, staff would like  
16 to make just one brief clarification point.

17           CHAIRMAN BAEZ: Please.

18           MR. WILLIAMS: There was a discussion earlier  
19 regarding staff's reference to the 13.7 percent subscribership  
20 level and the issue of the numerator and denominator. We would  
21 like to make it clear that in terms of the numerator, that  
22 data, those numbers are direct numbers that are reported by the  
23 local exchange companies to the universal service  
24 administrative company.

25           CHAIRMAN BAEZ: Thank you. I appreciate that, Mr.

1 Williams. I think a lot of hay has been made with the numbers,  
2 and numerators, and denominators. The pure fact is that if we  
3 only compare to ourselves, a take rate in the teens doesn't  
4 speak well for any of us. No matter whether they are apples or  
5 oranges that we are complaining, I agree with Commissioner  
6 Davidson, that number is just too low.

7 I'm not -- I'm repeating myself. I mean, I have said  
8 this to anyone that will listen time and time again. It should  
9 be no surprise to anyone. You know, again, if there is nothing  
10 else, Commissioners, there is a motion and a second.

11 COMMISSIONER JABER: Mr. Chairman, I don't have any  
12 other questions or anything like that, I just don't want to  
13 blindside my colleagues. I support everything you have said; I  
14 support what Commissioner Davidson has said. All the  
15 Commissioners, frankly. I support that. What I cannot support  
16 yet is the motion, and let me explain why. I want to give Mr.  
17 McLean's petition for rulemaking an opportunity to flesh itself  
18 out. To me that has to come first before we expand the  
19 criteria.

20 Let me explain further. As I recall from that item  
21 on agenda, the concerns were that it is taking too long for  
22 companies to connect Lifeline customers. It's taking too long  
23 for credits to get to where they are. I'm speaking off of  
24 memory and I'm paraphrasing. That people are getting kicked  
25 off after 90 days. I want to see that flesh itself out. I

1 want accountability from the companies in that regard. I want  
2 to make sure that we have an effective base before we expand  
3 criteria.

4 My preference would have been -- while I support  
5 everything that was said, my preference would have been purely  
6 procedural to set this in some sort of collaborative forum.  
7 Not necessarily a rulemaking, but some sort of collaborative  
8 forum. With that said, I don't stand in the way of the motion  
9 or anything, I just didn't want to blindside you on it.

10 CHAIRMAN BAEZ: And, Commissioner, I don't disagree,  
11 but for that very reason, I think I can -- well, I'm going to  
12 go out on a limb here and let you know that I am supporting the  
13 motion and my reason is this: I understand full well that  
14 there are impacts to these companies that needs to be  
15 discussed. But the reason I asked, and I alluded to it  
16 earlier, I think there is an opportunity for now those that  
17 have the burden of considering whether they do want to protest  
18 whatever comes out of this, to really employ their good minds  
19 to pick the correct bones to pick. And I really mean that.  
20 Because, otherwise, we are just going to be going backwards.

21 There is a lot of good stuff here to discuss, and I  
22 really do look forward to how Mr. McLean's rulemaking petition  
23 fleshes out because I do recognize that it has been -- the  
24 scope has been expanded, and there are good issues, very  
25 important issues to discuss in that venue. And there may be



1     ome things in here, and I understand why you can't support it,  
2     ut I would much rather have the companies go back and really  
3     ake a long hard look at what it is exactly that this means,  
4     nd then decide, you know what, maybe I don't have to worry  
5     bout this. Because I guarantee you there are parts of this  
6     ecommodation that don't impact the 3.50. And if 3.50 is  
7     omething that we need to be discussing, that could be part of  
8     t.

9             COMMISSIONER JABER: I understand.

10            CHAIRMAN BAEZ: You know, that could rightfully be  
11     art of it, too. I think it should be open to just about  
12     nything, but whatever we can salvage out of this that is good,  
13     et's do it. That is all I've got to say. I probably said too  
14     uch. Commissioner Bradley.

15            COMMISSIONER BRADLEY: And, you know, just to add to  
16     t, I strongly supported rate rebalancing, and I strongly  
17     upport the Lifeline program. And with that I will, again,  
18     eiterate the fact that I second the motion.

19            CHAIRMAN BAEZ: Commissioner Deason.

20            COMMISSIONER DEASON: Well, I think everybody is kind  
21     of putting everybody on notice as to how they are going to vote  
22     before we vote.

23            CHAIRMAN BAEZ: That has never happened, has it?

24            COMMISSIONER DEASON: Let me do the same. I'm not  
25     going support the motion for this: First of all, let me just

1 say I think there is consensus here that everybody recognizes  
2 the importance of an effective Lifeline program. I certainly  
3 count myself in that category. So we have consensus there. I  
4 think we also have consensus that the system, the process, the  
5 program, or whatever, however you want to refer to it, that it  
6 is not working as effectively as it could and should, and that  
7 there needs to be action taken to address that. I think we all  
8 have consensus on that. To me it is just a question of how do  
9 we get there. How do we get there from where we are now?

10 I just think that the most efficient, expeditious,  
11 and comprehensive way to address this is rulemaking. And that  
12 is the reason that I'm going to vote in the negative. Not that  
13 I oppose all of the good things that have been said here today,  
14 it is just a matter of the way we get there.

15 CHAIRMAN BAEZ: Thank you, Commissioners.  
16 Commissioner Davidson, back to you.

17 COMMISSIONER DAVIDSON: Two follow-up comments. One,  
18 just to commend the Chairman. I know he and his office have  
19 been very focused on Lifeline issues since the get-go and that  
20 is a good thing. And, two, nothing in -- if this motion  
21 carries, nothing precludes the parties from working  
22 collaboratively to try and get the issues resolved. It would  
23 be great if, spearheaded by Mr. McLean and others, we get a  
24 proposal brought to us that resolves a lot of these issues and  
25 we can just stamp approved.

1 CHAIRMAN BAEZ: Twenty-one days, ladies and  
2 entlemen. There is a motion and a second. All those in favor  
3 ay aye

4 Aye.

5 COMMISSIONER DAVIDSON: Aye.

6 COMMISSIONER BRADLEY: Aye.

7 CHAIRMAN BAEZ: All those nay.

8 COMMISSIONER DEASON: Nay.

9 COMMISSIONER JABER: Nay.

10 CHAIRMAN BAEZ: Thank you, Commissioners Thank you  
11 ll for your thoughts and comments. Good luck.

12 (The agenda item concluded at 2:40 p.m.)  
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1  
2 STATE OF FLORIDA )

3 CERTIFICATE OF REPORTER

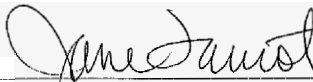
4 COUNTY OF LEON )

5  
6 I, JANE FAUROT, RPR, Chief, Office of Hearing  
7 Reporter Services, FPSC Division of Commission Clerk and  
8 Administrative Services, do hereby certify that the foregoing  
9 proceeding was heard at the time and place herein stated.

10 IT IS FURTHER CERTIFIED that I stenographically  
11 reported the said proceedings; that the same has been  
12 transcribed under my direct supervision; and that this  
13 transcript constitutes a true transcription of my notes of said  
14 proceedings.

15 I FURTHER CERTIFY that I am not a relative, employee,  
16 attorney or counsel of any of the parties, nor am I a relative  
17 or employee of any of the parties' attorney or counsel  
18 connected with the action, nor am I financially interested in  
19 the action.

20 DATED THIS 21st day of July, 2004.

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23  
24  
25  


JANE FAUROT, RPR  
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