



Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA HAND DELIVERY

December 7, 2004

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 040604-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Petition of Florida Cable Telecommunications Association for Leave to Intervene.

Copies of the Petition to Intervene have been served on the parties of record. Please acknowledge receipt of filing of the above by stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing. Please contact me with any questions.

Sincerely,

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER - DATE
12911 DEC-7 2004
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA 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

Filed: December 7, 2004

PETITION OF THE FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION FOR LEAVE TO INTERVENE

Pursuant to Rule 25-22.039, Florida Administrative Code, the Florida Cable Telecommunications Association, Inc. (FCTA), hereby petitions for leave to intervene in this docket, and states:

1. The FCTA is a non-profit trade association representing the cable telecommunications industry in Florida, cable companies providing cable services and information services, including cable modem and VoIP services in the State of Florida, as well as certificated competitive local exchange carriers (CLECs) providing local exchange telecommunications service in Florida (FCTA Members). The FCTA's business address is 246 E. 6th Avenue, Tallahassee, FL 32303.
2. The name and address of the person authorized to receive all notices, pleadings and other communications in this docket is:

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3. Pursuant to Rule 25-22.039, Florida Administrative Code, the FCTA has a substantial interest in this proceeding in that its substantial interests are subject to determination or will be affected through this proceeding.
4. In this docket, the Commission is poised to address whether to expand eligibility criteria for Lifeline and Link-Up assistance. The Commission is also expected to address whether Florida Incumbent Local Exchange Companies (ILECs) should be required to offer Lifeline credits to customers based on the newly expanded eligibility criteria and whether to adopt a new self-certification process to be implemented by Florida ILECs to determine eligibility for Lifeline and Link-Up assistance.
5. In the various petitions for hearing and protests of the Proposed Agency Action, Verizon has requested a funding mechanism to recover its costs of the proposed expanded Lifeline program through a surcharge on its own customers. A petition filed by a coalition of Small ILECs, TDS Telecom, GTCOM, and ALLTel Florida, Inc., joined by Intervenor, NEFCOM, has requested the establishment of a state universal service fund to be assessed on all telecommunications companies, as well as wireless and VoIP providers.¹

¹ VoIP providers are not telecommunications providers. See s. 364.02(12), Florida Statutes, exempting VoIP service from the definition of telecommunications service.

6. In direct testimony filed by the parties, TDS, GTCOM, ALLTel, and NEFCOM again state a need for a state universal service fund or alternative cost recovery mechanism to recover the cost of the \$3.50 state discount for Lifeline customers. Testimony filed by Verizon poses several alternate cost recovery and other mechanisms, including recovery through tax revenue, through a per-line surcharge on its customers, an industry-wide pool or fund requiring all carriers to contribute, or to require all certificated wireline carriers to offer Lifeline service if they provide any basic service, with the ability to collect the costs through a surcharge on their own customers. BellSouth states in its testimony that the Commission is not authorized to implement changes in the assistance programs or eligibility criteria and likewise is not authorized to establish cost recovery mechanisms associated with changes in the Lifeline program. However, if the Commission chooses to order changes to the programs as proposed, BellSouth believes individual ETCs should have the option to implement a recovery mechanism. Sprint, in its testimony, asserts that the Commission does not have the authority to establish a Lifeline funding mechanism beyond the current mechanism in which the ILECs provide \$3.50 per customer in monthly Lifeline support. Sprint further states that even if the Commission had the authority, Sprint believes that the Commission should not establish a separate funding mechanism.
7. Multiple FCTA Members are CLECs providing regulated circuit-switched telecommunications service and who would be substantially impacted either as contributors, as newly mandated Lifeline providers, or through the

reverberations of changes in the competitive landscape if any of the proposed cost recovery mechanisms were adopted by the Commission. Moreover, if any recovery mechanism or mandated Lifeline provision is imposed on VoIP providers, FCTA member VoIP providers will also be substantially affected. Currently, Bright House Networks offers VoIP service in Florida and virtually all of the FCTA's Members are planning a large scale rollout of VoIP service in 2005.

8. During its 1995 Session, the Florida Legislature modified a number of provisions of Chapter 364, Florida Statutes. In addition to allowing ILECs to opt for price regulation and authorizing competition by CLECs, the Legislature created Section 364.025, Florida Statutes, Universal Service. In Section 364.025(2), Florida Statutes, the Legislature provided:

For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be implemented by no later than January 1, 1996....

Moreover, under Section 364.025(4), Florida Statutes, the Legislature directed the Commission to research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature what the Commission determines to be a reasonable and fair mechanism for a permanent universal service funding mechanism. The legislation required the Commission to provide a recommendation to the Governor, the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the Senate and the

House of Representatives no later than January 1, 1997.

9. In anticipation of the January 1, 1996, effective date of this new legislation, the Commission, on December 27, 1995, issued a Final Order Determining Appropriate Interim Universal Service/Carrier of Last Resort Mechanism, Order No. PSC-95-1592-FOF-TP, *In Re: Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities*, Docket No. 95-0696-TP. In this Order, the Commission found that the record did not support the establishment of a funded interim universal service mechanism at that time. Accordingly, the Commission found that the appropriate interim universal service mechanism should consist of two parts. First, the Commission found that the ILECs should continue to fund their universal service obligations through markups on the services they offer. Order No. PSC-95-1592-FOF-TP, page 32. The Commission further determined:

However, if a LEC finds that its ability to sustain US as a COLR has, in fact, been eroded due to competitive pressures, it may file a petition for company-specific US relief. Its petition would be handled on an expedited basis. The petition must specifically demonstrate that competitive entry has eroded its ability to sustain US as a COLR, and specifically quantify the alleged shortfall that is due to competitive entry. The LEC will need to submit incremental cost data to identify the amount of its US subsidy, as well as calculations of the amount of net contribution lost that had been supporting the US subsidy. In no case will a LEC receive US/COLR funding in excess of the amount of its identified US subsidy. It is the LECs' burden to demonstrate the appropriateness of any amount requested and reasonableness of the proposed method to recover that amount.

- Id. The Commission expressly refrained from implementing a funded interim

mechanism. *Id.*

10. The new legislation also provided in Section 364.025(3), Florida Statutes, that if “any party, prior to January 1, 2000, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing a compelling showing of changed circumstances....” The current enactment of Section 364.025(3), Florida Statutes, extends the duration of the interim mechanism to January 1, 2009.
11. No Florida ILEC has ever availed itself of the aforementioned mechanisms for obtaining universal service relief from the interim mechanism established by the Commission. Moreover, none of the petitions filed in this docket even comes close to complying with the existing requirements and burden of proof for universal service funding or other universal service relief under the controlling procedure described above.
12. Significantly, in the Annual Report to the Florida Legislature on the Status of Competition in the Telecommunications Industry in Florida, as of May 31, 2004, the Commission found that, “[L]ocal exchange wireline competition has had little discernable impact on the continued availability of universal service.” *Competition Report*, at page 73. **Further, only the Florida Legislature has** authority to establish a permanent universal service fund, and the time for establishing such permanent universal service fund has been extended to January 1, 2009. Accordingly, the interim mechanism, shall remain the sole mechanism for obtaining universal service relief until the earlier of either the

time the Legislature establishes a permanent universal service mechanism or January 1, 2009. As stated above, none of the parties to this proceeding who are seeking universal service relief has attempted to comply with the requirements set forth in the Commission's 1995 Universal Service Order and the corresponding statutory provisions.

13. The 1996 Legislation required the Commission to establish an interim mechanism and file a report to the Legislature recommending a permanent universal service mechanism. Certain parties in this docket have quoted from the December 1996 *Report to the Governor and Legislature, Universal Service in Florida*, providing a recommendation as to an appropriate permanent universal service mechanism. As previously stated, only the Legislature has authority to adopt any provision of the Commission's recommendation as to a permanent universal service mechanism. Consequently, any reliance by any of the parties to this docket on the 1997 Commission recommendation as to a permanent universal service mechanism are irrelevant and inapplicable to the relief they are purportedly seeking in this docket. The sole and exclusive mechanism for seeking universal service relief is that provided in the interim mechanism until the Legislature decides otherwise.

14. Accordingly,

a. The Commission is without authority in this docket to create a universal service funding mechanism, impose an alternative cost recovery mechanism, or require all providers to provide Lifeline service. The only authority lies in the Commission's 1996 Universal Service Order in

conjunction with the 1996 Universal Service Statute which presently remain in full force and effect. Additionally, the Commission is without authority to impose any requirements upon VoIP providers that are exempt from regulation by the Commission in accordance with Section 364.02(12), Florida Statutes.

- b. The imposition of any or all of such requirements as enumerated in paragraph 10a above, will inflict immediate injury in fact on the FCTA's Members.
 - c. The FCTA's substantial injury is of a type or nature which this proceeding is designed to protect.
 - d. A substantial number of the FCTA's Members are substantially affected by the proposed universal service funding mechanisms.
 - e. The subject matter of the proposed actions is within the FCTA's general scope of interest and activity, and the relief requested by the FCTA, i.e., an Order denying any and all requests to create a universal service funding mechanism or other funding mechanism requesting contribution from other carriers, including FCTA Members, denying any requests that other carriers, including the FCTA Members, be mandated to provide Lifeline service, is of the type appropriate for a trade association to receive on behalf of its Members.
15. The rights and interests of FCTA's Members cannot be adequately represented by any other party in this docket. The FCTA's participation in this docket will not unduly delay or prejudice the rights of other parties.

16. The FCTA's intervention will advance judicial efficiency by consolidating the participation of the multiple FCTA Members.
17. The FCTA reserves the right to participate with full party status on matters affecting FCTA Members.

WHEREFORE, for the foregoing reasons, the FCTA requests that the Commission grant its Petition for Intervention, and afford the FCTA full party status in this proceeding that allows the FCTA to submit filings in this docket, including testimony, a prehearing statement, a posthearing statement and/or brief, motions, legal memoranda, and other papers and documents to be considered in the Commission's deliberation on Petitions and Protests filed in this docket.

Respectfully submitted this 27th day of December, 2004.



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& Regulatory Counsel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition of Florida Cable Telecommunications Association for Leave to Intervene in Docket 040604-TL has been served upon the following parties by U.S. Mail this 24th day of December 2004.

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