



Florida Cable Telecommunications Association

Steve Wilkerson, President

**VIA HAND DELIVERY**

December 17, 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 Prehearing Statement of the Florida Cable Telecommunications Association, and a diskette containing the Prehearing Statement in Word Perfect format.

Copies of the Prehearing Statement have been served on the parties of record electronically and by U.S. Mail. 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,

A handwritten signature in black ink, appearing to read 'Michael A. Gross', is written over a light gray rectangular background.

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

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER-DATE  
13285 DEC 20 04  
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement of the Florida Cable Telecommunications Association in Docket 040604-TL has been served upon the following parties electronically and by U.S. Mail this 17<sup>th</sup> day of December 2004.

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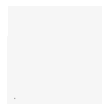
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Michael A. Gross



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>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.</b>	)	<b>Docket No. 040604-TL</b>
	)	
	)	<b>Filed: December 20, 2004</b>
	)	
	)	
	)	

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**PREHEARING STATEMENT OF THE FLORIDA  
CABLE TELECOMMUNICATIONS ASSOCIATION**

Florida Cable Telecommunications Association (FCTA), pursuant to Order Establishing Procedure, Order No. PSC-04-1066-PCO-TL, issued on November 1, 2004, and Order Modifying Procedure, Order No. PSC-04-1096-PCO-TL, issued on November 5, 2004, of the Florida Public Service Commission, files its Prehearing Statement and states:

**A. WITNESSES**

The FCTA will present the following witnesses to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Proffered by</u>	<u>Issues #</u>
Don J. Wood (Rebuttal	FCTA	6 , 6(a)

**B. EXHIBITS**

<u>Witness</u>	<u>Proffered by</u>	<u>I.D. No.</u>	<u>Description</u>
Don J. Wood	FCTA	DJW-1	Qualifications

**C. BASIC POSTION**

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.

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.<sup>1</sup>

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

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

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.

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.

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.

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 and 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.

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.

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, in accordance with Section 364.025(4)(a), Florida Statutes, 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.

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 is irrelevant and inapplicable to the relief they are purportedly seeking in this docket. The sole and exclusive mechanism for seeking universal service

service relief is that provided in the interim mechanism until the Legislature decides otherwise.

Accordingly, 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.

#### **D.-F. POSITIONS ON THE ISSUES**

##### **ISSUE 1**

Is the Commission authorized under state or federal law to order the actions set forth in Order No. PSC-04-0781-PAA-TL?

##### **FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

##### **ISSUE 2**

Are the actions taken by the Commission in Order No. pSC-04-0781-PAA-TL

reasonable and non-discriminatory?

**FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

**ISSUE 3**

Should the Commission address the Lifeline and Link-Up issues in rulemaking pursuant to Section 120.54, Florida Statutes?

**FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

**ISSUE 4**

What are the economic and regulatory impacts of implementing the actions taken by the Commission in Order No. PSC-04-0781-PAA-TL?

**FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or

properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

**ISSUE 5A**

Should consumers be allowed to self certify for program-based Lifeline and Link-Up eligibility?

**FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

**ISSUE 5B:**

If so, how much assistance should be provided for customers using self-certification?

**FCTA Position**

The FCTA does not have a position on this Issue. The FCTA seeks to reserve its right to file a posthearing brief (1) to respond to this issue and or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any position properly stated by any other party.

**ISSUE 6:**

Is the Commission authorized under state or federal law to establish a state lifeline funding mechanism? If so;

**FCTA Position**

The Commission is without authority in this docket to create a universal service funding mechanism, establish a state lifeline 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.

The establishment of a state funding mechanism was not addressed in the Commission's PAA regarding Lifeline services, and therefore appears to be beyond the scope of proceeding whose purpose is to evaluate the merits of the various elements of the PAA. A subsequent proceeding to address issues related to a potential funding mechanism should be undertaken if, but only if, one or more ETCs later come forward to demonstrate a substantial change of circumstances pursuant to Section 364.025(3), and it is determined that the Commission has the authority to establish a state fund. The opportunity for ETCs to petition the Commission for relief has

been addressed by both the Legislature (Section 364.025(3) and the Commission (Order No. PSC-95-1592-FOF-TP).

Pursuant to these requirements, ETCs bear the burden of petitioning the Commission for relief and of providing sufficient information to the Commission in order to demonstrate the cause of the substantially changed circumstances, the appropriateness of any funding requested, and the reasonableness of the proposed method of recovery. Order No. PSC-95-1592-FOF-TP contains specific requirements regarding the quantification of both the subsidy and alleged funding shortfall.

To date, no ETC has provided a quantification of its existing subsidy, a quantification of the amount of net contribution lost as a direct result of competitive entry, or a calculation of any resulting shortfall. No ETC has proposed a specific method of funding or has attempted to demonstrate the reasonableness of any such proposal.

#### **ISSUE 6A**

What is the appropriate state lifeline funding mechanism and how should it be implemented and administered?

#### **FCTA Position**

See FCTA's position on Issue 6 above.

**G. STIPULATED ISSUES**

The FCTA has not stipulated to any issues with any other parties and is unaware that any other parties have done so between or among themselves.

**H. PENDING MOTIONS**

The FCTA has no pending motions or other matters it seeks action upon.

**I. CONFIDENTIALITY CLAIMS**

The FCTA has no pending requests or claims for confidentiality of any material filed.

**J. COMPLIANCE WITH REQUIREMENTS OF ORDER Nos. PSC-04-1066-PCO-TL and PSC-04-1096-TL**

There are no requirements of Order No. PSC-04-1066-PCO-TL and Order No. PSC-04-1096-PCO-TL with which the FCTA cannot comply.

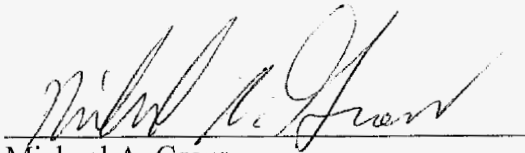
**K. IMPACT OF DECISIONS OR PENDING DECISIONS OF THE FCC OR ANY COURT**

The FCTA is unaware of any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.

**L. OBJECTIONS TO ANY WITNESS'S QUALIFICATIONS AS AN EXPERT**

The FCTA has no objections to any witness's qualifications as an expert in this docket.

Respectfully submitted this 17th day of December 2004.

A handwritten signature in black ink, appearing to read "Michael A. Gross", is written over a horizontal line.

Michael A. Gross

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and Regulatory Counsel

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