

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

Filed: July 14, 2008

SPRINT NEXTEL'S PROTEST OF ORDER NO. PSC-08-0417-PAA AND PETITION FOR FORMAL PROCEEDING

NPCR, Inc. d/b/a Nextel Partners and Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS ("Sprint Nextel" or "Petitioners"), by and through undersigned counsel, pursuant to sections 120.569 and 120.57, Florida Statutes, and rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby protests Order No. PSC-08-0417-PAA-TP ("PAA Order"), issued June 23, 2008, and requests the initiation of formal proceedings.

I. Agency Affected and Docket:

The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Docket No.: 080234-TP.

II. Petitioners' Information

A. Petitioners

1. NPCR, Inc. d/b/a Nextel Partners
6500 Sprint Parkway
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2. Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS
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B. Petitioners' Representatives

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C. Petitioners' Substantial Interests

Petitioners are providers of wireless telecommunications services in Florida and each has been designated as an eligible telecommunications carrier ("ETC") in portions of Florida by the Federal Communications Commission ("FCC"), authorizing them to provide Lifeline service in those areas.¹ NPCR, Inc. d/b/a Nextel Partners is designated as an ETC in portions of the panhandle of Florida, mostly to the north and west of Tallahassee. Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS is designated as an ETC and authorized to provide Lifeline service in a broader area covering roughly 50% of the state.

¹ *In the Matter of Federal-State Joint Board on Universal Service; Sprint Corporation; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, North Carolina, Tennessee and Virginia*, CC Docket No. 96-45, Order, DA 04-3617 (rel. Nov. 18, 2004); *In the Matter of Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and Virginia*, CC Docket No. 96-45, Order, DA 04-2667 (rel. Aug. 25, 2004), corrected by Erratum (Sept. 13, 2004); see also 47 C.F.R. § 54.401.

The PAA Order would affect Petitioners' substantial interests by requiring Petitioners to apply the Lifeline discount to all wireless service plans as well as to "bundled" services that include wireless voice and wireless data products (i.e., Internet service) in a manner contrary to federal law. The Commission's PAA Order is inconsistent with federal law, state law, and principles of statutory interpretation. The PAA Order would require Sprint Nextel to apply the Lifeline discount to services to which it is clearly inapplicable.

Further, presently, in a manner consistent with federal law, the Petitioners maintain a Lifeline service plan that is the lowest-rate generally available service plan. Petitioners' billing systems and other internal processes have been set up to accommodate this Lifeline plan in Florida and in other jurisdictions in which Petitioners and/or their corporate affiliates are designated as ETCs. The PAA Order, therefore, would require Petitioners to dedicate resources to making billing system and other process changes to accommodate the new requirements specific to Florida.

In addition, because the PAA Order would require Petitioners to apply the Lifeline discount to all service plans and bundles as part of the Commission's automatic enrollment process, Petitioners would be forced to maintain a separate process for their Florida Lifeline Programs.

Thus, Sprint Nextel's substantial interests are affected by the Commission's action in this docket.

III. Notice of Agency Decision

Petitioners received notice of the agency decision when the PAA Order was issued on June 23, 2008.

IV. Disputed Issues of Material Fact and Law

Sprint Nextel's allegations of disputed issues of material fact, include, but are not limited to:

- Whether or not a portion of such bundled services offered by wireless providers constitutes "the basic local service rate portion" to which the Lifeline discount may be applied.²

Based on the definition of basic local telecommunications service in section 364.02(10), Florida Statutes, wireless providers do not offer basic local service. This disputed issue of fact is material because, in order to justify application of the Lifeline discount to bundles that include services not supported under the Lifeline program, including but not limited to data services (i.e., Internet), the Commission maintains that it is applying the discount to the "basic local exchange service" portion of the bundle and not the other, unsupported services in the bundle. However, Petitioners do not offer basic local exchange services, so there is no "basic local service rate portion" of a bundle to which the Lifeline discount may be applied.³

Sprint Nextel's disputed issues of law include, but are not limited to, the following:

² Petitioners' opposition concerns mainly the PAA Order's misapplication of federal and state law to undisputed facts. However, the issue of disputed material fact above has direct bearing on the Commission's rationale for applying the Lifeline discount to bundled services for wireless ETCs.

³ Petitioners offer local usage comparable to that offered by incumbent wireline providers. "Local usage" is defined under federal law as 47 C.F.R. § 54.101(a)(2) as "an amount of minutes of use of local exchange service, prescribed by the [FCC], provided free of charge to end users." However, Petitioners' service offerings generally include nationwide calling, thus the local calling area is all households and phones in the United States. These service offerings are at least comparable to basic local exchange service provided by incumbent LECs. Incumbent LECs' basic local exchange service may allow for unlimited calling, but those minutes can only be used within a single exchange (or a group of neighboring exchanges), and from a fixed location.

- Whether the PAA Order erroneously interprets federal law and FCC rules to require application of the Lifeline credit to any generally available residential rate plan;
- Whether the PAA Order erroneously applies the Lifeline discount to bundles that include data (Internet) services which undisputedly are not supported by the Lifeline Program;
- Whether the PAA Order erroneously asserts that wireless bundles include a separate “basic local service rate portion” to which the Lifeline credit may be applied;
- Whether the PAA Order creates an inappropriate fiction that the Lifeline credit is not being applied to the data and other unsupported services that are part of the bundle, but instead only to the “basic local service rate portion” of the bundle.

V. Ultimate Facts and Law

The ultimate issue of fact and law is that the Commission has misapplied and misinterpreted state and federal law in concluding that a Lifeline discount is applicable to a bundle of services not supported under the Lifeline program and seeks to impermissibly broaden the Lifeline program far beyond its intended scope.

VI. Rules and Statutes Requiring Reversal of the Agency’s Decision

A. Relevant Statutes

Sprint Nextel is entitled to relief pursuant to the following statutes:

1. Section 364.02, Florida Statutes, which states:

(1) "Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide

dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing...

(10) "Nonbasic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163.

(14) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

... (c) A commercial mobile radio service provider;

2. Section 364.011, Florida Statutes, which states:

Exemptions from commission jurisdiction.--The following services are exempt from oversight by the commission, *except to the extent delineated in this chapter or specifically authorized by federal law*:

(1) Intrastate interexchange telecommunications services.

(2) Broadband services, regardless of the provider, platform, or protocol.

(3) VoIP.

*(4) Wireless telecommunications, including commercial mobile radio service providers.*⁴

3. Section 364.10(2)(a), Florida Statutes, which states:

...[A]n eligible telecommunications carrier shall provide a *Lifeline Assistance Plan* to qualified residential subscribers, as defined in a commission-approved tariff or price list... For the purposes of this section, *the term "eligible telecommunications carrier" means a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.* (Emphasis added)

4. 47 C.F.R. § 54.403(b), which provides in pertinent part:

Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such

⁴ Emphasis provided.

carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers **shall** apply the Tier-One federal Lifeline support amount, plus any additional support amount, *to reduce their lowest tariffed (or otherwise generally available) residential rate* for the services enumerated in Sec. 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.⁵

B. Relationship to Facts

Contrary to state and federal law, the PAA Order seeks to apply the Lifeline discount to virtually all service plans and bundles Petitioners offer. Petitioners currently and appropriately apply the discount to the lowest generally available residential rate consistent with federal law.

V. Relief Sought

Wherefore, Sprint Nextel requests that:

1. The PAA Order be reversed as inconsistent with state and federal law;
2. In the alternative, that the Commission initiate a proceeding and issue a procedural order setting forth a briefing schedule to permit affected parties to present to the Commission written briefs on the factual, legal and policy grounds for reversing the PAA Order.⁶

Respectfully submitted this 14th day of July, 2008.

s/ Douglas C. Nelson
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⁵ Emphasis provided.

⁶ Petitioners do not believe a hearing is necessary to resolve the matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. mail to persons listed below this 14th day of July, 2008:

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