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April 3, 2009

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Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket No. 080234-TP
Implementation of Florida lifeline program involving bundled service packages
and placement of additional enrollment requirements on customers

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter are an original and seven copies of Verizon Florida LLC's Post-Hearing Brief. Also enclosed is a diskette with a copy of the Brief in Word format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,

DL
Dulaney L. O'Roark III

Dulaney L. O'Roark III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and/or U.S. mail on April 3, 2009 to:

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Dulaney L. O'Roark III
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program) Docket No. 080234-TP
involving bundled service packages and) Filed: April 3, 2009
placement of additional enrollment requirements)
on customers)
_____)

VERIZON FLORIDA LLC'S POST-HEARING BRIEF

Verizon Florida LLC ("Verizon") in this brief addresses Issues 1 and 3, which concern Eligible Telecommunications Carriers ("ETCs") like Verizon that charge federal end user common line charges ("EUCL") or equivalent federal charges.¹ As Verizon explains below, these ETCs may not be required to apply the Lifeline discount to bundled services under federal or Florida law, as discussed in Issue 1, and should not be required to do so as a matter of policy, as discussed in Issue 3.

SUMMARY OF VERIZON'S POSITION

Federal law does not require that the Lifeline discount be applied to bundled services. Federal regulations only require ETCs to make available to low-income consumers a retail local service offering that applies the discount to a limited set of services that is substantially the same as basic local telecommunications service under Florida law; they do not require ETCs to apply the Lifeline discount to bundled services. Staff's proposal that ETCs be required to apply the discount to any bundled service goes further than the federal requirements and would radically change the Lifeline program by making the discount apply not just to a limited set of supported services, but to virtually all services.

¹ Whether ETCs such as wireless carriers that do not charge the EUCL may or should be required to apply the Lifeline discount to bundled services is addressed in Issues 2 and 4, on which Verizon has not taken a position. When Verizon refers to "ETCs" below, it is referring solely to ETCs that charge the EUCL.

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Florida law does not authorize the Commission to require ETCs to apply the Lifeline discount to services other than the limited set of services specified by federal law. Florida law relies on the definition of “Lifeline” in federal law and the Florida Lifeline program therefore only requires that the Lifeline discount be applied to basic service, not bundled services. Likewise, Section 364.10(2)(a) provides that an ETC is required to provide a “Lifeline Assistance Plan,” which corresponds to the Lifeline plan required by federal law. Under federal regulations, state commissions are required to file or require ETCs to file information with the federal universal service fund administrator (“USAC”) “demonstrating that the carrier’s *Lifeline plan* meets the criteria set forth” in federal law.² The Florida requirement that ETCs provide a Lifeline Assistance Plan thus implements the federal requirement that ETCs have Lifeline plans that meet federal criteria, including a Lifeline discount that applies to basic service. Staff’s argument for a floating Lifeline discount that must be applied to any bundled service that includes basic service functionality must be rejected for the additional reason that it conflicts with the Florida definitions of basic and nonbasic service. Under Florida law a telecommunications service must be basic or nonbasic; it cannot be both. Staff’s conception of a bundled service offering that consists of basic and nonbasic services is fundamentally flawed and contrary to Florida law.

As a matter of public policy, moreover, the Commission should not require a Lifeline discount on bundles. The underlying public policy goal of the Lifeline and Link-up programs is the “preservation and advancement of universal service.”³ Mandating Lifeline discounts for bundles would not increase subscribership because its principal

² 47 C.F.R. § 54.401(d)(emphasis added).

³ See e.g., *In re: Lifeline and Link-up*, WC Docket No. 03-109 at § 3 (rel. April 29, 2004).

effects would be to encourage Lifeline customers who already have basic service to upgrade to nonbasic service packages and to make the Lifeline discount available to Lifeline-eligible customers who are already subscribing to nonbasic-service packages. In other words, the mandate would not increase network subscribership, but would merely provide a Lifeline discount to additional customers who already have telephone service. Such a requirement would not advance universal service.

Mandating the discount for bundles would be bad public policy for the additional reason that it would put ETCs like Verizon at a competitive disadvantage against their unregulated competitors, who are not required to provide a Lifeline discount. This disadvantage is significant because Verizon is not reimbursed for \$6.66 of the discount.⁴ Thus, if the requirement were imposed Verizon would have to fund a subsidy for bundled services that Bright House and other competitors do not have to bear.

Finally, Staff argues that applying the Lifeline discount only to basic service has decreased Verizon's Lifeline subscribership; has prevented eligible customers from subscribing to Lifeline; is discriminatory; provides inferior service to Lifeline customers; and seeks to control their discretionary spending. These arguments are baseless, as explained below.

ISSUES AND ARGUMENT

ISSUE 1: Under applicable law, may the commission require Florida ETCs that charge federal end user common line charges, or equivalent federal charges, to apply the Lifeline discount to bundled service offerings which include functionality that is comparable to that described at 47 CRF 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

⁴ See Exh. 11. The \$6.66 includes the \$3.50 state portion of the Lifeline discount required to obtain full federal funding, and an additional \$3.16 resulting from rate rebalancing.

***VERIZON:** No. Under federal law, ETCs only are required to apply the Lifeline discount to basic service, not to other, nonbasic services, including bundled services. Florida law requires ETCs to provide a Lifeline plan meeting this federal requirement, and does not authorize the Commission to impose obligations exceeding that requirement.*

The Commission may not require Florida ETCs to apply the Lifeline discount to bundled service offerings because federal law only requires that the Lifeline discount be applied to a retail local service offering that includes basic service and Florida law does not authorize the Commission to impose obligations exceeding that requirement.

A. Federal law does not require ETCs to Apply the Lifeline Discount to Bundled Service Offerings

Federal regulations define “Lifeline” to mean “a retail local service offering” that is (i) available only to qualifying low-income consumers, (ii) provides the applicable discount, and (iii) includes the services or functionalities enumerated in C.F.R. § 54.101.⁵ The services and functionalities listed in section 54.101 are as follows:

1. Voice grade access to the public switched network
2. Local usage
3. Dual-tone multi-frequency signaling or its functional equivalent
4. Single party service or its functional equivalent
5. Access to emergency services
6. Access to all operator services
7. Access to interexchange service
8. Access to directory assistance
9. Toll limitation for qualifying low-income customers

The listed services substantially correspond to basic service in Florida.⁶ The federal definition thus requires ETCs to provide the Lifeline discount only to basic service.

Nothing in federal statutes, regulations or FCC orders imposes a requirement that the discount be applied to bundled services. The Federal State Joint Board on Universal Service periodically considers whether to expand the list of supported

⁵ 47 C.F.R. § 54.401.

⁶ Casey cross, Transcript (“T.”) at 156-57.

services in 47 C.F.R. § 54.101, and has consistently declined to recommend doing so.⁷ Likewise, the Joint Board has not recommended and the FCC has not adopted a change that would require service bundles to be supported when they include the listed services.⁸ They have not taken these steps even though they are well aware that most states do not mandate that the Lifeline discount be applied to bundled services. Indeed, the FCC's Lifeline website provides a link to a USAC web-site tool that enables customers to check to see whether a company in a particular state offers Lifeline on more than just basic services.⁹ The FCC thus has made a conscious decision not to require ETCs to impose the Lifeline discount on bundles, as reflected in the clear and unambiguous language of 47 C.F.R. § 54.401.

On cross-examination, Mr. Casey acknowledged that Verizon's Lifeline Assistance Plan filed with the Commission meets the express federal requirements. Verizon's plan provides a retail local service offering; is available only to qualifying low-income customers; provides the applicable Lifeline discount; and includes each of the services listed in 47 C.F.R. § 54.101(a)(1) through (a)(9).¹⁰ Verizon has been required to file information with USAC demonstrating that its program meets the federal Lifeline requirements.¹¹ Staff does not dispute that Verizon's Lifeline plan has been certified by USAC as complying with these requirements.¹²

Staff states no basis for its conclusion that Verizon fails to meet the federal requirements other than its own unsupported opinion. Indeed, Mr. Casey admitted that

⁷ Vasington summary, T.57; Casey cross, T.156.

⁸ See Vasington summary, T.57-58.

⁹ Vasington Direct at 6, T.29 (citing <http://www.lifelinesupport.org/li/low-income/lifelinesupport/browser/>; http://www.lifeline.gov/lifeline_Consumers.html).

¹⁰ Casey cross, T.143-44. See also Exh. 11, section A3.4.3.

¹¹ Casey cross, T.144; 47 U.S.C. § 54.401(d).

¹² Casey cross, T.145.

the FCC's regulations do not state that the Lifeline discount must be applied to bundled services or to basic service functionality offered as part of a service bundle:

- Q. . . . I'm asking you whether there's any federal rule or regulation that states that the Lifeline discount must be applied to a bundled service.
- A. No, it does not say that. It states to be applied to basic local service. And if basic local, basic local service is included in a bundled package, then a Lifeline discount should be applied to that portion of the package which includes basic local service.
- Q. That is your conclusion, not something the FCC has ever stated; correct?
- A. That's correct. That's my opinion. And I'm not an attorney, as you know.¹³

Thus, by Staff's own admission its position lacks any textual support in the applicable federal regulations. Moreover, Staff's position would vastly expand the services that the FCC requires ETCs to provide to Lifeline customers.¹⁴ The FCC only requires ETCs to make available a retail service offering for eligible customers that applies the Lifeline discount to basic service, but Staff seeks to require ETCs to apply the discount to virtually all services, whether basic service is ordered by itself (or with separate nonbasic services) or basic functionality is included in a bundled service offering.¹⁵ Because Staff's unsupported opinion that federal law imposes such a requirement conflicts with the FCC's Lifeline regulations and the longstanding practice of the Joint Board and FCC, it must be rejected.

Staff also argues that its position is supported by a 2004 FCC Order in which the FCC stated that "we believe any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to

¹³ Casey cross, T.145-46.

¹⁴ Vasington Direct Testimony at 7, T.31; Vasington summary, T.57-58.

¹⁵ *Id.*; Casey cross, T.160.

participation in the program.”¹⁶ As Mr. Casey acknowledged at the hearing, in that order the FCC merely declined to adopt a rule that would have prohibited Lifeline customers from purchasing vertical services,¹⁷ and the quoted statement must be read in that context. The FCC’s order did not change the federal regulations concerning services that ETCs are required to provide Lifeline customers and did not speak to the issue of service bundles.¹⁸ Staff thus tries to read into the order conclusions the FCC did not reach and that would be contrary to the FCC’s regulations. The order therefore provides no support for Staff’s position.

In short, federal Lifeline requirements are clear and unambiguous, and do not require ETCs to apply the Lifeline discount to bundled services.

B. Florida Law Does not Authorize the Commission to Require ETCs to Apply the Lifeline Discount to Bundled Service Offerings

Staff fails to point to any Florida statutory provision that would authorize the Commission to exceed the federal Lifeline requirements and require ETCs to apply the Lifeline discount to bundled services. To the contrary, the Florida and federal Lifeline programs are interrelated¹⁹ and, not surprisingly, a number of Florida provisions make clear that the Commission must adhere to the federal requirements concerning the service to which the Lifeline discount must be applied.

1. Florida law requires ETCs to meet federal requirements concerning the services to which the Lifeline discount must be applied

Florida law does not define “Lifeline,” but instead relies on the definition supplied by federal law, a point that Staff does not dispute because it acknowledges that the

¹⁶ Casey Direct Testimony at 13, T.107 (citing FCC Order FCC 04-87).

¹⁷ Casey cross, T.146.

¹⁸ Casey cross, T.146-47.

¹⁹ Casey cross, T.147.

Florida Lifeline program uses the federal definition.²⁰ Because the federal definition only requires that ETCs provide low-income consumers a service offering that applies the Lifeline discount to basic service, that same requirement applies in Florida. This conclusion comports with the Commission's statement that the goal of the Lifeline and Link-up programs "is to help low-income households in Florida obtain and maintain *basic telephone service*."²¹

The Florida Lifeline statute also links the federal and state programs and their requirements by stating that an ETC must "provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff or price list."²² Under federal regulations, state commissions are required to file or require ETCs to file information with USAC "demonstrating that the carrier's *Lifeline plan* meets the criteria set forth" in federal law.²³ The Florida provision stating that ETCs must provide a Lifeline Assistance Plan thus implements the federal requirement that ETCs have Lifeline plans that meet the federal criteria.²⁴ Because those federal criteria only require a retail local service offering that applies the Lifeline discount to basic service, Lifeline Assistance Plans comply with Florida law if they meet that requirement.

Staff's position that the Lifeline discount must be applied to virtually all bundles that include basic functionality must be rejected for the additional reason that Florida law clearly distinguishes between basic and nonbasic services. Under Chapter 364, a

²⁰ Casey cross, T.142, 147.

²¹ Casey Direct Testimony at 4-5, T.98-99 (citing PSC Order No. PSC-08-0130-FOF-TL)(emphasis added).

²² Fl. Stat. § 364.10(2)(a)

²³ 47 C.F.R. § 54.401(d)(emphasis added).

²⁴ The federal and state Lifeline programs are linked in many other ways. For example, the Commission approves ETCs under a federal standard; ETCs file their Lifeline Assistance Plans with the Commission and request annual Lifeline certification from USAC; and Lifeline funding is provided in part by the federal program and in part by the Florida program (through funding by ETCs). Casey cross, T. 144, 147-48.

telecommunications service must either be a basic service or a nonbasic service; it cannot be both. Florida law provides that basic service consists of the following elements:

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. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.²⁵

Nonbasic service, on the other hand, is defined as "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."²⁶ In other words, a nonbasic service is any retail service consisting of a different set of elements than basic service, although basic service elements may be included. Thus, when a telecommunications service offered as a bundle (that is, as a group of services offered at a single price²⁷) consists of the basic service elements and additional elements, that service is nonbasic.

Florida's statutory scheme confirms that a local carrier's retail service offering must either be a basic service or a nonbasic service and cannot be a combination of the two. Under Florida law, a local carrier electing alternative regulation may adjust its basic service rates 1% less than the rate of inflation only once in any 12 month period,

²⁵ Fl. Stat. § 364.02(1).

²⁶ Fl. Stat. § 364.02 (10).

²⁷ Casey cross, T.160.

after giving 30 days notice of its intention to do so.²⁸ For a nonbasic service, the carrier may change its rates on one day's notice and it may increase its rates up to 6% or 20% within a 12-month period, depending on whether it faces competition in an exchange area.²⁹ This dichotomy requires that a telecommunications service fall into one category or the other. Otherwise, most service packages would be hybrids subject to both basic and nonbasic regulation, requiring them to be broken down into basic and nonbasic components and priced and tariffed under different rules. The legislature obviously did not intend the statute to be applied in such an unworkable and irrational manner and, not surprisingly, the Commission has not interpreted it that way.

The Commission consistently has interpreted "nonbasic service" to include service packages comprised of the basic service elements and other elements. The Commission has approved price cap plans with nonbasic service categories that include packages combining basic service elements and other elements such as vertical features, voice mail and intrastate long distance service. The Commission has not required that such service packages be divided into basic and nonbasic components that are given different regulatory treatment. To the contrary, the Commission has treated these packages as nonbasic services for *all* purposes, and has applied the nonbasic pricing and tariffing rules to them in their entirety. This consistent interpretation by the Commission confirms that service bundles may not be treated as basic service for some purposes and nonbasic service for others.

In sum, Florida law requires ETCs to apply the Lifeline discount to basic service and does not authorize the Commission to adopt Staff's position that the discount must

²⁸ Fl. Stat. § 364.051(2)(c)(3).

²⁹ Fl. Stat. § 364.051(5)(a).

be applied to virtually all services.

2. The Commission lacks authority to require ETCs to exceed federal requirements concerning the service to which the Lifeline discount must be applied

Staff cites Florida law, federal law and decisions by other state commissions in an attempt to convince the Commission that it may require ETCs to apply the Lifeline discount to bundled services. None of the statutes and rulings it cites give the Commission such authority.

Staff points to three Florida statutory provisions that it claims support its position, but none of them bear on the question of whether the Lifeline discount must be applied to bundled services. First, Staff cites Section 364.10(3)(a), which provides as follows:

Effective September 1, 2003, any local exchange telecommunications company authorized by the commission to reduce its switched network access rate pursuant to s. 364.164 shall have tariffed and shall provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 135 percent or less of the federal poverty income guidelines for Lifeline customers.

Mr. Casey acknowledged that the rate rebalancing statute referenced in this provision has been repealed.³⁰ Moreover, this provision does not say anything about what services must be provided to Lifeline customers, and does not entitle a customer to have the Lifeline discount apply to any additional services that are not otherwise supported by the Lifeline program.³¹ The use of the phrase “otherwise eligible” makes clear that the Legislature did not enact this provision to expand the services to which the Lifeline discount must be applied. Section 364.10(3)(a) therefore provides no support for Staff’s position.

³⁰ Casey cross, T.153.

³¹ Casey cross, T.153-54.

Second, Staff relies on Section 364.10(3)(d), which provides:

An eligible telecommunications carrier may not discontinue basic local exchange telephone service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including long-distance service.

Contrary to Staff's assertion, this provision does not "necessarily assume[] that a Lifeline customer will have access to bundled service packages."³² Rather, it merely defines the respective rights of the carrier and customer when a customer does not pay for nonbasic services the carrier has provided. This provision is entirely consistent with Verizon's practice of permitting a Lifeline customer to buy a la carte nonbasic services, *i.e.*, nonbasic services that are *separate from and in addition to* the customer's discounted basic service.

Third, Staff cites the Florida universal service statute, which provides in relevant part as follows:

For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.

This definition is similar to the federal definition of universal service.³³ Based on the federal definition, the FCC has determined that the services listed in 47 C.F.R. § 54.101 – essentially basic service as defined in Florida – should be supported by federal universal service programs, including Lifeline. The Commission has not modified this

³² Casey Direct Testimony at 24, T.116.

³³ Casey cross, T.156; Exh. 12.

list for purposes of universal service in Florida and Staff made clear at the hearing that it was not asking the Commission to do so in this case.³⁴ The Florida universal service statute therefore has no bearing here.

Staff's reliance on federal law also is misplaced. Staff argues that the federal universal service statute permits states to adopt regulations concerning universal service as long as they are not inconsistent with federal law,³⁵ but this argument begs the question whether the Florida legislature has authorized the Commission to take such action. Staff acknowledged that without state legislative authority, the Commission may not adopt such regulations.³⁶ As discussed above, the legislature has *not* authorized the Commission to require ETCs to apply the Lifeline discount to bundled services, so the allegation that the federal universal service statute in theory might permit consistent state regulation is irrelevant here. Staff also cites a 1997 FCC order for the proposition that the FCC's Lifeline program then in effect reduced end-user surcharges paid for some "state specified level of service." Staff failed to note, however, that the FCC order went on to change the Lifeline program to require the level of service now specified in 47 C.F.R. § 54.101. In other words, the FCC order jettisoned the old state-specified-level-of-service regime and replaced it with the current federal regulation that specifies the level of service to be provided. Staff's discussion of the regulations that applied more than 10 years ago is therefore irrelevant.

Finally, Staff points to a handful of state commission decisions that have applied

³⁴ Casey cross, T.158.

³⁵ Casey Direct Testimony at 14, T.108 (citing 47 U.S.C. § 254(f)).

³⁶ Casey cross, T.149.

the Lifeline discount to bundled service,³⁷ an approach that most commissions have not adopted. Of the states where Verizon's ILEC affiliates operate that have required that the Lifeline discount be applied to bundled services, all but one fully funds the state portion of the Lifeline discount.³⁸ More importantly, such state commission decisions are irrelevant here because each commission must determine its authority under applicable state law. A decision by another commission that it has such authority has no bearing on whether Florida law authorizes the Commission to require ETCs to apply the Lifeline discount to bundled services.

Staff's failure to cite any authority that would permit the Commission to require ETCs to apply the Lifeline discount to bundled services confirms that no such authority exists and the Commission may not impose such a requirement.

ISSUE 3: Should the Commission require each Florida ETC that charges federal end user common line charges, or equivalent federal charges, to apply the Lifeline discount to its bundled services which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or section 364.02(1), Florida Statutes?

***VERIZON:** No. Even if the Commission were legally authorized to impose such a requirement (which it is not), the Commission should not do so because it would not promote the goal of universal service and it would put ETCs at a competitive disadvantage against their unregulated competitors.*

A. Requiring ETCs to Apply the Lifeline Discount to Bundled Services Would Not Advance the Goal of Universal Service

³⁷ Whether federal rules *preclude* a state mandate the Lifeline discount for bundles is still an open question. That issue was raised in an FCC Petition by Sprint seeking a declaration that a Kansas Corporation Commission order allowing customers to apply the Lifeline discount to any service violates federal law. *Petition of Sprint Spectrum, L.P. for a Declaratory Ruling that the KCC's October 2, 2006 Order in Docket No. 06-GIMT-446-GIT, violates federal law*, WC Docket Nos. 03-109 and 07-138 (filed June 8, 2007). The FCC has not yet ruled on that petition.

³⁸ Vasington hearing testimony, T.22.

Lifeline is a universal service program that helps low-income consumers obtain and maintain basic telephone service.³⁹ Universal service policy “means that acceptable quality telecommunications services are available at affordable rates to as many individuals as is practical” and “aims to achieve universal telephone service.”⁴⁰ Universal service provides the following social benefits: (i) increasing the value of telephone service by expanding the number of subscribers that may be reached through the network; (ii) providing consumers with safety and other benefits of having telephone service; and (iii) promoting economic growth and development.⁴¹ These benefits are achieved by connecting customers to communications networks through the provision of basic telephone service.⁴²

A requirement that the Lifeline discount be applied to bundles would not advance universal service. Such a requirement would not increase telephone subscribership because its principal effects would be to encourage Lifeline customers who already have basic service to upgrade to nonbasic service packages and to make the Lifeline discount available to Lifeline-eligible customers who are already subscribing to nonbasic-service packages. In other words, mandating Lifeline discounts for bundles would not increase telephone subscribership, but would merely provide a Lifeline discount to additional customers who already have telephone service.⁴³

Staff admitted at the hearing that it has not performed any empirical studies to determine whether requiring the Lifeline discount for bundles would increase telephone

³⁹ Casey cross, T.155. Other universal service programs are high-cost support, schools and libraries, and rural health care. See <http://www.lifelinesupport.org/about/usac/>.

⁴⁰ National Regulatory Research Institute, “Commissioner Primer: Universal Service,” May 2006, at 2.

⁴¹ Vasington Direct Testimony at 3-4, T.26-7.

⁴² Vasington Direct Testimony at 4, 7-8, T.27, 30-31.

⁴³ Vasington Direct Testimony at 8, T.31.

subscribership.⁴⁴ In fact, Mr. Casey's testimony on cross-examination demonstrated that because this requirement would give the customer the Lifeline discount and the bundle discount, its only effect would be to make vertical services and other nonbasic services cheaper.⁴⁵ The impact of Staff's proposal therefore would be, as Mr. Vasington testified, to help existing Lifeline customers to upgrade their service or existing bundle service customers to obtain the Lifeline discount, not to increase telephone subscribership.⁴⁶ In reality, Staff simply seeks increased Lifeline enrollment as an end in itself rather than as a means to achieving universal service.

For these reasons, even if Florida law permitted the Commission to require ETCs to apply the Lifeline discount to bundled services (which it does not), such a requirement would have to be rejected because it would not promote Lifeline's policy goals.

B. Requiring ETCs to Apply the Lifeline Discount to Bundled Services Would Have Anticompetitive Effects

The market for telecommunications service in Florida is highly competitive. As the Commission's 2008 report on the status of competition concluded:

Florida's communications market continues to evolve as new technologies and services become more widely accepted. Estimates of wireless substitution for wireline service have increased from prior years, and this trend is expected to continue in the near future. In the most recent reporting period, Florida cable companies expanded the number of markets in which they offer voice services. Finally, Vonage, a nationally known VoIP provider, reported an increased number of Florida subscribers since the last edition of the report; however, that number was filed as confidential. These facts, coupled with continued residential access line losses

⁴⁴ Casey cross, T.165-66.

⁴⁵ Casey cross, T.161.

⁴⁶ Vasington Direct Testimony at 8, T.31.

by ILECs, suggest an active market for voice communications services in many areas of Florida.⁴⁷

Competition is particularly fierce in the Tampa Bay region that Verizon serves. The 2008 competition report shows that from June 2004 to December 2007, Verizon experienced a 32% decrease in residential access lines, more than other ILECs in Florida.⁴⁸ Many of Verizon's competitors are not ETCs and do not provide the Lifeline discount.⁴⁹ Because Florida does not fund the state portion of the discount, which is currently \$6.66,⁵⁰ local service providers that are not ETCs enjoy a competitive advantage over ETCs like Verizon.

The Commission previously has recognized the anticompetitive effects of asymmetric Lifeline policies, particularly the requirement that ETCs fund the Lifeline discount through their rates. In 1997, the FCC noted that "[t]he Florida PSC points out that this method of generating Lifeline support from the intrastate jurisdiction could result in some carriers (i.e., ILECs) bearing an unreasonable share of the program's costs."⁵¹ In 1999, the Commission again recognized this problem, stating:

Although the absence of explicit state level funding of Lifeline may have been appropriate under rate of return regulation, where a LEC could apply for rate increases if needed, we believe that in the long term this policy is likely not sustainable in a competitive environment. Local exchange companies with qualifying customers could provide a disproportionate share of the state matching funds for those customers, while providers with no Lifeline customers would contribute nothing. The provider serving

⁴⁷ Florida Public Service Commission's Division of Competitive Markets and Enforcement, "Report on the Status of Competition in the Telecommunications Industry: As of December 31, 2007," at 3.

⁴⁸ *Id.* at 34, Figure 3-9.

⁴⁹ *Vasington Direct* at 15-16, T.38-39.

⁵⁰ See Exh. 11. The \$6.66 includes the \$3.50 state portion of the Lifeline discount required to obtain full federal funding, and an additional \$3.16 resulting from rate rebalancing.

⁵¹ *In re: Federal-State Joint Board on Universal Service, First Report and Order*, CC Docket No. 96-45, FCC 97-157 at ¶ 361 (rel. May 8, 1997).

the most low-income customers thus would be disadvantaged.⁵²

Because mandating the Lifeline discount for bundles would exacerbate the problem the Commission has previously recognized,⁵³ such a requirement should not be imposed.⁵⁴

C. Additional Arguments Made by Staff Should Be Rejected

Staff argues Verizon's policy of applying the Lifeline discount only to basic service has caused a relatively small decrease in the number of Verizon's Lifeline customers over a recent 21-month period.⁵⁵ In fact, however, the reduction in the number of Lifeline customers has been outpaced by the reduction in the number of total lines served by Verizon in Florida, so the ratio of Lifeline customers to total customers increased over this period. Further, the number of Verizon's Lifeline customers increased from December 2003 to September 2006, even though Verizon had the same policy on Lifeline in place during that period.⁵⁶ The evidentiary record in this case thus does not support Staff's contention that Verizon's policy has caused the recent modest decline in the number of customers subscribing to Verizon's Lifeline program.

Nor is there any merit to Staff's contention that Verizon has somehow prevented

⁵² Florida Public Service Commission Report on Universal Service and Lifeline Funding Issues, at 26 (February 1999).

⁵³ As noted in a letter from Verizon (see Exh. 8), it has not requested that this issue be addressed through a universal service fund because it believes that the administrative burdens of such a fund would outweigh any benefits. Thus, the creation of a fund would not remedy the competitive disparity created by the requirement that ETCs self-fund a portion of the Lifeline discount.

⁵⁴ In California, North Carolina, Oregon, and Texas, Verizon is required to offer Lifeline discounts on bundles, but is fully reimbursed for all Lifeline discounts, either from a state universal service fund, or (in North Carolina) as a credit against state taxes. Pennsylvania is the only one state that requires Verizon's ILEC affiliate to offer Lifeline on bundles without full reimbursement. Vasington Direct at 17, T.40; Vasington hearing testimony, T.22.

⁵⁵ Casey Direct Testimony at 31, T.125.

⁵⁶ Florida Public Service Commission, "Number of Customers Subscribing to Lifeline Service," December 2006, at Table 4.

eligible customers from receiving the Lifeline discount from Verizon.⁵⁷ Verizon's policy is to tell customers that they may not have both Lifeline and a service bundle, which is *not* a denial of Lifeline service. These customers are free to choose to keep or take the Lifeline discount on basic service, or they may choose the discount on bundled service instead. All Verizon's policy forbids is receiving both discounts on bundled service, which is clearly communicated to customers so they can make the choice that best meets their needs. Some customers may choose the Lifeline discount and some may choose the bundle discount, but this has no impact on subscribership, and no customer has been denied Lifeline service due to this policy.⁵⁸

Staff made three additional arguments in Mr. Casey's Direct Testimony that should be rejected. First, Mr. Casey contended that it is discriminatory for an ETC not to apply the Lifeline discount to service bundles.⁵⁹ This argument makes no sense because Florida law creates the requirement that the Lifeline discount be applied to basic services. An ETC does not discriminate against anyone by adhering to a distinction instituted by law. Second, Mr. Casey asserted that ETCs that do not apply the Lifeline discount to service bundles are providing inferior service.⁶⁰ But Verizon provides the same level of basic service to Lifeline customers that it provides to other basic customers.⁶¹ Further, if Lifeline customers wish to receive additional telecommunications services, they have two options: (a) they can order such services on an a la carte basis and remain basic customers; or (b) they can forego the Lifeline discount and order the service bundle and receive the discounted, package rate for those services. Third, Mr. Casey argued that the Commission should not attempt to

⁵⁷ See Casey Direct Testimony at 9, 31, T.103, 125.

⁵⁸ Vasington Rebuttal Testimony at 5-6, T.47-48.

⁵⁹ Casey Direct Testimony at 21, T.115.

⁶⁰ *Id.*

⁶¹ Vasington Rebuttal Testimony at 7-8, T.49-50.


control consumers' discretionary spending by limiting the Lifeline discount.⁶² But limiting the Lifeline discount to basic service does not seek to control consumers' discretionary spending. Indeed, by its argument Staff admits that it seeks to expand the application of the discount for the benefit of discretionary services, which goes far beyond the purpose of the Lifeline program.

Staff's arguments therefore are without merit and should be rejected.

CONCLUSION

For the foregoing reasons, Verizon respectfully requests the Commission to adopt Verizon's positions on Issues 1 and 3.

Respectfully submitted on April 3, 2009.

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⁶² Casey Direct Testimony at 21, T.115.