

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday, February 20, 2018
9:30 AM
Room 105 - Gerald L. Gunter Building

1. Draft Comments in Response to the Federal Communications Commission Notice of Proposed Rulemaking on Lifeline Reform (Attachment 1)
2. Legislative Update
3. General Counsel's Report
4. Executive Director's Report
5. Other Matters

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6463.



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 12, 2018

TO: Braulio L. Baez, Executive Director

FROM: Office of Industry Development & Market Analysis (Fogleman, Deas) *DF*
Office of the General Counsel (Murphy) *cm* *JD-GH*

RE: Draft Comments in response to the Federal Communications Commission's Order, Notice of Proposed Rulemaking, and Notice of Inquiry seeking comment on Lifeline program issues.

CRITICAL INFORMATION: Please place on February 20, 2018 Internal Affairs.

COMMISSION APPROVAL OF DRAFT COMMENTS IS SOUGHT.

On December 1, 2017, the Federal Communications Commission (FCC) released an Order, Notice of Proposed Rulemaking, and Notice of Inquiry (2017 Lifeline Order) implementing further reforms to the federal Lifeline program and sought comments on additional proposed reforms.¹ The Lifeline program is designed to enable low-income households to obtain basic local telephone and broadband service by providing a \$9.25 discount on their monthly bills or the option of receiving a free Lifeline cell phone and monthly minutes. Lifeline support is limited to only one line or connection per household. A household cannot receive one discount for a broadband connection and another for a wireline (or wireless) phone.

The stated intent of this 2017 Lifeline Order is to efficiently help close the digital divide for low-income consumers. Attachment A of this memorandum provides a more detailed overview of the 2017 Lifeline Order, including the associated Notice of Proposed Rulemaking, and Notice of Inquiry. Comments and reply comments to the FCC Notice of Proposed Rulemaking and Notice of Inquiry are due by February 21, 2018, and March 23, 2018, respectively. Attachment B of this memorandum is staff's draft comments. The draft comments address a number of issues raised by the FCC with particular emphasis on proposed restrictions on supporting non-facilities based carriers and the phase out of voice-only Lifeline service.

Attachments

cc: Keith Hetrick, General Counsel
Mark Futrell, Deputy Executive Director, Technical
April Lynn, Deputy Executive Director, Administrative

¹ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

Overview of 2017 Lifeline Order, NPRM, and NOI

Order

Port Freeze Elimination

In the 2016 Lifeline Order, the FCC established the extended port freeze of 12 months for broadband Internet access service.² This was “[t]o facilitate market entry for Lifeline-supported BIAS [broadband Internet access service] offerings, provide additional consumer benefits, and encourage competition” by “allowing broadband providers the security of a longer term relationship with subscribers.” Since the adoption of these requirements, multiple parties have raised concerns at the FCC regarding the effectiveness of the port freeze rule. Those parties argue that the port freeze requirements adversely impact consumers by restricting consumer choice. The FCC agreed with these concerns concluding that the port freeze rules ultimately disadvantage Lifeline consumers and do not promote competitive service offerings.³ As a result, the FCC took action to eliminate the port freeze rules for both voice and broadband Internet services.

Tribal Lands

Currently, the Lifeline program provides an enhanced subsidy of up to an additional \$25 per month for service provided to qualified residents of Tribal lands. The 2017 Lifeline Order will limit the enhanced Tribal support to only qualifying residents of rural areas, which eliminates enhanced support in urban areas where the additional \$25 per month is not required to make service affordable or to promote deployment.⁴ The 2017 Lifeline Order also limits enhanced Lifeline Tribal support to only facilities-based providers because the FCC believes that the last-mile facility providers are critical to deploying, maintaining, and building voice and broadband-capable networks on Tribal lands. The FCC believes that Lifeline funds are more efficiently spent when used to support facilities-based networks. Staff does not believe that these changes will have any impact on Tribal lands in Florida.

Notice of Proposed Rulemaking

Limiting Support to Facilities-Based Carriers

The FCC asserts that Lifeline support will best promote access to advanced communications services if support is focused on encouraging investment in broadband-capable networks.⁵ The FCC therefore proposes limiting Lifeline support to broadband service provided to a qualifying low-income consumer over the ETC’s voice and broadband-capable last-mile network. The FCC seeks comment on this proposal as well as how the FCC should discontinue Lifeline support for non-facilities-based service providers. The FCC also asks for comment on how it should define “facilities.”

² FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016.

³ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

⁴ Ibid.

⁵ Ibid.

Alternatively, the FCC seeks comment on TracFone's suggestions that the FCC minimize waste, fraud, and abuse in the Lifeline program through "conduct-based requirements."⁶ One form of conduct-based requirement would be to suspend for a year or disbar any Lifeline ETC with sufficiently high improper payment rates, whether on the basis of Payment Quality Assurance reviews or program audits.

Continuing the Phase Down of Lifeline Support for Voice Service

The FCC adopted rules in the 2016 Lifeline Order to phase out Lifeline support for voice-only services by 2021, to further the FCC's goal of transitioning to a broadband-focused Lifeline program.⁷ Some parties have argued against the phase down of Lifeline support for voice service, citing, among other concerns, the lack of affordable voice service. However, the FCC expects that, even without Lifeline voice support, low-income consumers would be able to obtain quality, affordable voice service in urban areas. Based on the 2018 Urban Rate Survey, several providers charge monthly rates of fifteen dollars or less for fixed voice-only service, and the national average monthly rate for fixed voice-only service is \$25.50. The FCC seeks comment on whether it should change the current schedule for phase out of Lifeline support for voice services, or in the alternative, eliminate the phase down in rural areas.⁸

Lifeline Broadband Provider Designation

In the 2016 Lifeline Order, the FCC established a framework to designate providers as Lifeline Broadband Providers (LBPs), eligible to receive Lifeline reimbursement for qualifying broadband Internet access service provided to eligible low-income consumers.⁹ The FCC asserted preemptive jurisdiction for designation of LBPs. The decision in the 2016 Lifeline Order to preempt the authority of states to designate LBPs was challenged and remanded back to the FCC. The FCC seeks comment on either reversing the preemption of LBPs or eliminating LBP designations.¹⁰

National Verifier

In the 2016 Lifeline Order, the FCC established the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll subscribers into the Lifeline Program.¹¹ The FCC's stated objectives for the National Verifier were: to protect against and reduce waste, fraud, and abuse; to lower costs to the universal service fund and Lifeline providers through administrative efficiencies; and, to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience. The FCC seeks comment on the

⁶ Ibid.

⁷ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016.

⁸ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

⁹ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016.

¹⁰ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

¹¹ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016.

proper response it should make when the scheduled launch of the National Verifier in a state is not accomplished by the announced date and carriers relying on the launch announcement are unprepared to handle eligibility determinations.¹² The FCC proposed two alternatives. The first proposal would halt enrollments for all consumers in the state until the state had taken corrective action to facilitate eligibility data to the National Verifier. The second proposal would only halt the processing of applications for those whose eligibility must be verified using a state database.

Improving Program Audits

The FCC proposes reforms to the process that the Universal Service Administrative Company (USAC) currently uses to identify which service providers will be subjected to Lifeline audits.¹³ The FCC seeks comments on its proposal to move towards identifying companies to be audited based on established risk factors. In addition, the FCC recognized that the report of the Government Accountability Office (GAO) identified significant fraud and an absence of internal controls in the Lifeline program. The GAO made these findings by performing undercover work to determine whether ETCs would enroll subscribers who are not eligible for Lifeline support. The FCC seeks comment on conducting similar undercover work as part of the audits administered by USAC or a third-party auditor acting on USAC's behalf.

Eligibility Verification

The FCC notes that Lifeline enrollment and recertification processes continue to demonstrate significant weakness that open the program to waste, fraud, and abuse. To address these concerns, the FCC seeks comment on prohibiting agent commissions related to enrolling subscribers in the Lifeline program.¹⁴

State Partnership

The FCC seeks comment on additional reports USAC could make public or available to state agencies to increase program transparency and accountability.¹⁵ Comments are sought on directing USAC to periodically report suspicious activity or trends to the Wireline Competition and Enforcement Bureaus, as well as the Office of Managing Director and any relevant state agencies.

Self-Enforcing Budget

The FCC proposes to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept within the Lifeline budget and to prevent undue burdens on the ratepayers who contribute to the program.¹⁶ The FCC proposes to replace the approach adopted in the 2016 Lifeline Order and require an annual cap for Lifeline disbursements.¹⁷ The FCC intends for the program to automatically make adjustments in order to maintain the cap in the event the budget is exceeded. The FCC seeks comment on how frequently such adjustments should be made and

¹² FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016.

whether to prioritize tribal and rural areas for support.¹⁸ Finally, the FCC asks for comment on the appropriate initial amount for this cap.

Notice of Inquiry

Targeting Rural and Tribal Areas

The FCC seeks comment on adopting rule changes to target Lifeline support to bring digital opportunities to areas that offer less incentive for deployment of high-speed broadband service, such as rural areas and rural Tribal areas.¹⁹ The FCC notes that rural and rural Tribal areas have higher percentages of broadband non-adopters compared to other areas. The FCC also seeks comment on reforms that would expand the scope of the enhanced Lifeline support available to consumers on Tribal areas to include rural areas. The FCC asks for comments on whether the current cap of \$25 for enhanced support is sufficient and if the cap should vary between areas.

Benefit Limits

The FCC requests comment on whether it should implement a benefit limit that restricts the total amount of support a household may receive or the length of time a household may participate in the Lifeline program.²⁰ The objectives of such restrictions would include encouraging broadband adoption without reliance on the Lifeline subsidy and controlling the disbursement of scarce program funds. Such a limit would provide low-income households incentives to not take the subsidy unless it is needed at a given time.

¹⁸ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

¹⁹ Ibid.

²⁰ Ibid.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunication Carriers Eligible For Universal Service Support)	WC Docket No. 09-197
)	

**COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

February 20, 2018

Introduction and Summary

The Florida Public Service Commission (FPSC) submits these comments in response to the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking (NPRM), and Notice of Inquiry (NOI) in the above captioned proceedings regarding the federal Lifeline Program released by the Federal Communications Commission (FCC) on December 1, 2017.²¹ Among other issues, the FCC is seeking comment on whether to limit Lifeline support to facilities-based carriers, whether to continue the phase down of voice-only support, possible changes to the existing Lifeline budget, and strategies intended to limit waste, fraud and abuse. The FPSC encourages the FCC to consider the following:

- Resellers contribute, albeit indirectly, to the infrastructure of the underlying network they use.
- Competitive options for consumers would be constrained if the FCC limited support to only facility-based Lifeline providers.
- Consumers are best situated to determine if they need or can afford both broadband and voice services.
- Broadband Internet Access Service cannot be eligible for universal service support unless it includes a telecommunications service such as voice.
- Any conduct-based standards adopted by the FCC should be applied to all ETCs.
- Collaboration among the FCC, Universal Service Administrative Company (USAC), and state commissions to identify instances of potential fraud is in everyone's best interest.
- Integrating access to existing state databases for purposes of eligibility verification may take time and requires resources that should be reimbursed to states.
- If the FCC implements a self-enforcing budget, the FCC should not discriminate among rural, non-rural, and tribal households.

²¹ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017.

Limiting Support to Facilities-Based Carriers

In this proceeding, the FCC has stated that Lifeline support will best promote access to advanced communications services if it is focused on encouraging investment in broadband-capable networks.²² It therefore proposes “limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC’s voice- and broadband-capable last-mile network.”²³ The FCC believes that this proposal would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans. Furthermore, if Lifeline support can help promote the deployment of more broadband-capable facilities by Lifeline carriers, such support can then indirectly serve to reduce prices for consumers. The FCC seeks comment on this proposal as well as how it should discontinue Lifeline support for non-facilities-based service providers.

While the FPSC remains concerned about growth in the size of the Lifeline budget, we do not believe the FCC’s proposal will have the desired effect to more efficiently meet the needs of Lifeline consumers. First, resellers contribute, albeit indirectly, to the infrastructure of the underlying network. Specifically, resellers pay wholesale companies a market-based rate for the services they use that should include the wholesale companies’ expenses related to infrastructure. Second, some prominent facilities-based carriers have already left the Lifeline market. In Florida, AT&T has withdrawn as an ETC in areas where it was not eligible to receive high-cost support.²⁴ Resellers are the only option in many of the affected areas where AT&T has relinquished this designation for wireline service. Finally, many states have seen a significant transition in the provision of Lifeline service by wireline to wireless carriers. Many of these wireless resellers have developed this business plan, not to defraud the Lifeline program, but to serve a market underserved by many traditional carriers.

In Florida, the vast majority of Lifeline customers are served by wireless resellers. As of June 2017, 63 percent of Lifeline customers in Florida receive service from a reseller of wireless

²² Ibid., ¶65.

²³ Ibid.

²⁴ Request For Relinquishment Of Partial Eligible Telecommunications Carrier (ETC) Status, By Bellsouth Telecommunications, LLC d/b/a AT&T Fla., Fla. Public Service Comm., Order No. PSC-2017-0290-PAA-TP (Jul. 24, 2017).

services.²⁵ By comparison, 33 percent are serviced by facilities-based wireless carriers. Facilities-based Lifeline service from wireline providers represents a declining market, currently about three percent of the Florida Lifeline market.²⁶ Less than one percent of Florida Lifeline customers are served by wireline resellers.²⁷ Eliminating support for non-facilities-based service providers could cause some wireless providers in a state to leave the Lifeline market, resulting in reduced service options and potentially a loss of Lifeline service altogether. If the FCC moves forward with limiting support to only facilities-based carriers, the FPSC believes that affected Lifeline consumers will need a reasonable transition period to find an alternative Lifeline provider in order to minimize a potential disruption of service.

In general, the Lifeline program was never designed to promote infrastructure deployment. Lifeline was intended to ensure affordability of service to vulnerable consumers, and the FPSC believes that is what the Lifeline program should continue to focus on. Infrastructure investment, while an important component of universal service policy, is better addressed through the federal high-cost programs.

Support for Lifeline Voice-Only Service

The FCC also seeks comment on continuing the phase down of Lifeline support for voice-only services.²⁸ In the 2016 Lifeline Order, the FCC adopted rules to gradually phase out Lifeline support for voice-only services to further its goal of transitioning to a broadband-focused Lifeline program.²⁹ The current rules provide that Lifeline support will end on December 1, 2021, for voice-only Lifeline service.³⁰ An exception was included permitting Lifeline voice support to continue in census blocks where there is only one Lifeline provider.

²⁵ Florida Lifeline Assistance: A report to the Governor, President of the Senate, Speaker of the House of Representatives, December 2017, Attachment B, <http://www.floridapsc.com/Files/PDF/Publications/Reports/Telecommunication/LifelineReport/2017.pdf>, accessed February 7, 2018.

²⁶ Ibid.

²⁷ Ibid.

²⁸ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶74.

²⁹ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶48.

³⁰ 47 CFR Part 54.403(a)(2).

The FPSC believes that customers should have the option to continue to receive Lifeline support for voice-only service and that the FCC should eliminate its planned phase down of support for voice only services. We are concerned that if the only option for customers to obtain Lifeline voice service is by combining the service with broadband, the cost of the combined services may become cost prohibitive for some consumers without increasing financial support from the Lifeline program. Furthermore, some consumers may have concluded that they do not need broadband service. Customers should continue to have the option of stand-alone voice or a combination of voice and broadband services.

In addition, a phase out of voice services appears to be inconsistent with the Telecommunications Act of 1996 (Act). Section 214(e)(1) of the Act requires ETCs to offer services that are supported by the Federal universal service mechanism under section 254(c) of the Act.³¹ Section 254(c) of the Act is clear that universal service is an evolving level of “telecommunications services.”³² Given the recent reclassification of Broadband Internet Access Service as an information service, the FPSC does not see how a carrier only offering broadband service would qualify as an ETC and receive to receive universal service support.³³ This interpretation is consistent by the decision of the Tenth Circuit Court of Appeals (Court) in 2014.³⁴ Wherein the Court concluded that “*there is no imminent possibility that broadband-only providers will receive USF support under the FCC’s Order, since they cannot be designated as ‘eligible telecommunications carriers.’*” (emphasis added).

Conduct-Based Requirements

The FCC requests comment on TracFone’s suggestion that the FCC minimize waste, fraud, and abuse in the Lifeline program through “conduct-based requirements.”³⁵ TracFone’s proposal would be to suspend for a year or disbar any Lifeline ETC with sufficiently high

³¹ 47 U.S.C. § 214(e)(1).

³² 47 U.S.C. § 254(c).

³³ FCC, Declaratory Ruling, Report and Order, and Order, FCC 17-166, WC Docket No. 17-108, released January 4, 2018.

³⁴ *In Re: FCC 11-161*, 753 F.3d 1015, at 1048-1049 (10th Cir. 2014).

³⁵ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶73.

improper payment rates. As Florida is a net-contributor to the federal universal service program, the FPSC supports this proposal as a way to ensure that such ETCs do not financially benefit from defrauding the program. The FCC notes that most of its enforcement actions have centered on wireless resellers and seeks comment on if this new requirement be limited to only wireless resellers or all Lifeline ETCs. The FPSC believes that all ETCs should be held to the same standards.

Improving Program Audits

The FCC proposes to adjust the process that USAC currently uses to identify which service providers will be subjected to Lifeline audits.³⁶ The FCC's plan would transition the independent audit requirements required by its rules away from a \$5 million threshold. Instead, audits would be based on established risk factors and take into consideration the potential amount of harm to the universal service fund. The FPSC agrees that increased flexibility should be provided for the audit selection process, allowing USAC to adapt its risk factors over time as necessary to effectively and efficiently identify instances of waste, fraud, or abuse of the program. At the same time, the FPSC believes that the FCC and USAC should collaborate with state commissions to identify potential instances of waste, fraud, and abuse in the program.

Prohibiting Agent Commissions

The FCC seeks comment on prohibiting agent commissions related to enrolling subscribers in the Lifeline program. According to the FCC, many ETCs compensate sales employees and contractors with a commission for each consumer enrolled. These sales and marketing practices can encourage the employees and agents of ETCs to enroll subscribers in the programs regardless of a consumer's eligibility.³⁷ As noted in prior comments of the FPSC, we believe that agents should not be paid commissions for each Lifeline application submitted.³⁸

³⁶ Ibid., ¶85.

³⁷ Ibid., ¶91.

³⁸ Comments of the FPSC to the FCC in WC Docket Nos. 11-42, 09-197, and 10-90, filed on August 31, 2015.

National Verifier Implementation

In the 2016 Lifeline Order, the FCC established the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program.³⁹ In this proceeding, the FCC seeks comment on ways to ensure the FCC can partner with states to facilitate the successful implementation of the National Verifier.⁴⁰ To protect the integrity of the enrollment and eligibility determination process, the FCC has asked for comment on whether new Lifeline enrollments should be halted in a state at any point if the launch of the National Verifier has been unnecessarily delayed in that state.

The FPSC opposes “halting” processing of Lifeline applications statewide when a delay has occurred in integrating state databases into the National Verifier. We question how the FCC would determine factually whether a delay was “unnecessary.” At a minimum, eligibility criteria that are outside of any state database should continue to be used. Furthermore, the National Verifier has been tasked to verify eligibility either through electronic means, or by physical examination of supporting documents.⁴¹ Eligible consumers should not be disadvantaged regardless of the National Verifier’s ability to integrate an electronic link to state databases.

Creating a system that allows the National Verifier to confirm the participation in a qualifying program is not without cost. State agencies are likely to require additional federal funds to compensate for costs associated with verification or access to state databases. The FPSC believes that the FCC should help states defray costs associated with making consumer eligibility information available to the National Verifier. This is especially true in states like Florida, where a database has already been developed by the Florida Department of Children and Families.

³⁹ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶¶126-166.

⁴⁰ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶59.

⁴¹ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶133.

USAC Report Availability

In this proceeding, the FCC asks for comment on additional reports USAC could make public or available to state agencies to increase program transparency and accountability.⁴² The FCC asks for comment on directing USAC to periodically report suspicious activity or trends to the FCC's Wireline Competition and Enforcement Bureaus, Office of Managing Director, and any relevant state agencies. The FPSC supports the idea of USAC notifying state commissions of suspicious activity with carrier specific information within their respective states.

Self-Enforcing Budget

The FCC proposes to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program.⁴³ The FCC's plan would replace the approach adopted in the 2016 Lifeline Order and require an annual cap for Lifeline disbursements. The process adopted in 2016 required the Wireline Competition Bureau to report to the FCC Commissioners detailing the reasons for increased spending and recommending next steps should Lifeline/Link Up funding meet or exceed 90 percent of that year's budget.⁴⁴ The FCC intends for the self-enforcing budget to automatically make adjustments in order to maintain the cap in the event the budget is exceeded. The FCC seeks comment on how frequently such adjustments should be made and whether to prioritize Tribal and rural areas for support.

The FPSC reiterates our prior comments recommending a budget or cap could be tied to the growth or decrease in federal SNAP program participants.⁴⁵ For example, if participation in the SNAP program increases by three percent, the Lifeline budget would be allowed to increase by three percent. Conversely, if participation in the SNAP program decreases by three percent, the Lifeline budget would decrease by three percent. SNAP is the primary eligibility criteria used

⁴² FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶102.

⁴³ Ibid., ¶¶105-108.

⁴⁴ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, ¶402.

⁴⁵ Comments of the FPSC to the FCC in WC Docket Nos. 11-42, 09-197, and 10-90, filed on August 31, 2015.

by consumers when signing up for Lifeline services.⁴⁶ Connecting the primary eligibility criteria to a self-enforcing budget may address the “sufficiency” requirement mandated by Congress in Section 254(e) of the Act.⁴⁷ Regarding prioritizing Tribal and rural areas for support, the FPSC opposes such a change. Equally qualifying households should not be disadvantaged because they are not considered to be in a rural, non-rural, or Tribal area.

Benefit Limits

The FCC requests comment on whether it should implement a benefit limit that restricts the total amount of support a household may receive or the length of time a household may participate in the program.⁴⁸ Such a limit would provide low-income households incentives to not take the subsidy unless it is needed at that time. The FCC seeks comment on whether it should adopt a benefit limit for the Lifeline program. On average, households currently remain enrolled for 1.75 years in the Lifeline program.⁴⁹ The FCC asks if there are other alternatives to a benefit limit that it should consider to better focus Lifeline funds on those households who need it most. The FPSC believes that administering and tracking such limits would unnecessarily complicate the program in light of the FCC’s own data that most households remain enrolled for under two years. We do not believe a limit based on the total amount of support or the length of time allowed for participation is necessary at this time.

⁴⁶ FCC, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, WC Docket Nos. 11-42, 09-197, and 10-90, released April 27, 2016, footnote 453.

⁴⁷ 47 U.S.C. § 254(e).

⁴⁸ FCC, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, WC Docket Nos. 17-287, 11-42, and 09-197, released December 1, 2017, ¶¶130-131.

⁴⁹ *Ibid.*, ¶131.

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

III. Supplemental Materials for Internal Affairs

Note: The records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.

IV. Transcript

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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PROCEEDINGS: INTERNAL AFFAIRS

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, February 20, 2018

TIME: Commenced: 9:30 a.m.
Concluded: 9:47 a.m.

PLACE: Gerald L. Gunter Building
Room 105
2540 Shumard Oak Boulevard
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

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

2 CHAIRMAN GRAHAM: Good morning.

3 AUDIENCE: Good morning.

4 CHAIRMAN GRAHAM: I apologize for being a
5 minute or two late. A lot of moving parts this
6 morning. We will call this meeting to order. It
7 is Tuesday, February the 20th. It's about 9:33.
8 And this is the internal affairs meeting for the
9 Public Service Commission.

10 We do have a Commissioner, Commissioner
11 Polmann, on the phone. He's just getting off
12 death's bed, and we figured it was probably best
13 for him to rest at home and not show up here, being
14 Typhoon Mary.

15 (Laughter.)

16 COMMISSIONER BROWN: Yes. Thank you for that.

17 CHAIRMAN GRAHAM: Doc, welcome.

18 COMMISSIONER POLMANN: Good morning. Thank
19 you for facilitating my participation.

20 CHAIRMAN GRAHAM: Well, we hope you feel
21 better. We do -- we really, really do.

22 Okay. We also have a --

23 COMMISSIONER POLMANN: I am a --

24 CHAIRMAN GRAHAM: Go ahead.

25 COMMISSIONER POLMANN: No, I was just saying I

1 am -- I am on the mend. So, I'll -- getting
2 better. Thank you.

3 CHAIRMAN GRAHAM: All right. Well, once
4 again, we hope you feel better.

5 We also have a brand-new Commissioner here
6 with us today. And not to put him too much on the
7 spot, but Andrew, tell us a little about yourself.

8 COMMISSIONER FAY: Thank you, Mr. Chairman.

9 I am excited to be here. I am a lawyer that
10 comes with a background in Legislative and Cabinet
11 affairs and a lot of executive state government.

12 And the make-up of the Commission was very
13 interesting to me. And so, I look forward to -- to
14 experiencing these different types of hearings and
15 things that we get to dive into.

16 I will say, this morning, I got my first full
17 taste of hazing, in that, I was walked down to
18 the -- the other room, where there was nobody in
19 that room, before we walked down here.

20 So, I look forward to the -- the -- working
21 with the -- the other Commissioners in a -- in a
22 fashion that I think we all feel is best for
23 Florida, but at the same time, using our own skill
24 sets to -- to contribute towards the Commission.

25 CHAIRMAN GRAHAM: Well, it's interesting, I --

1 I have to tell you, my first day being in here, I
2 showed up, and I was walking up to my office, and
3 we had a substitute out front, one of the guards.
4 And the guard says, well, I need to see your ID.
5 Well, I didn't have my ID. And I said, it's right
6 there, hanging on the wall behind you.

7 (Laughter.)

8 CHAIRMAN GRAHAM: It's a rare -- one of those
9 rare occasions, but --

10 COMMISSIONER FAY: Yeah. Yeah.

11 CHAIRMAN GRAHAM: It was kind of funny.

12 Commissioner Brown.

13 COMMISSIONER BROWN: Chairman, if I may --
14 Commissioner Fay, welcome to the Commission.
15 Looking forward to getting to know you and working
16 with you over the next few years, hopefully. And I
17 just want to say our door is always open. And
18 we've got an incredible staff here that will -- I
19 know is already probably helping you out around the
20 clock, but welcome.

21 And for the record, I was also hazed this
22 morning. I went to the agenda room, too, with
23 Commissioner Fay. Thank you.

24 CHAIRMAN GRAHAM: Commissioner Clark.

25 COMMISSIONER CLARK: Mr. Chairman, in the

1 spirit of true confession, Forrest led us all to
2 the wrong room this morning.

3 (Laughter.)

4 COMMISSIONER CLARK: I do want to say welcome
5 to Commissioner Fay. It is also good not to be the
6 rookie anymore -- not the roukiest of rookies, at
7 least.

8 So, it's good to have you with us. Look
9 forward to working with you.

10 COMMISSIONER FAY: Thank you.

11 CHAIRMAN GRAHAM: I was going to say, we
12 haven't been -- had this least seniority since --
13 the last seven-and-a-half, eight years.

14 COMMISSIONER BROWN: You're right.

15 CHAIRMAN GRAHAM: Well, everybody, welcome.
16 Let's start from the very beginning. First
17 thing, Item No. 1. Staff.

18 MR. FOGLEMAN: Good morning, Commissioners.
19 Greg Fogleman from the Office of Industry
20 Development and Market Analysis.

21 On December 1st, the FCC requested comments
22 regarding further reforms to the federal Lifeline
23 program. In general, the Lifeline program is
24 intended to enable low-income households to obtain
25 basic local telephone service and broadband

1 services. The proposed comments oppose limiting
2 Lifeline participation to only facilitates-based
3 carriers and phasing out of support for voice-only
4 services.

5 Staff has noted a typographical error in the
6 draft at Page 10 and is requesting editorial
7 privileges to make non-substantive corrections.

8 Staff is available for questions at this time.

9 CHAIRMAN GRAHAM: Commissioners, any questions
10 of staff?

11 Commissioner Brown.

12 COMMISSIONER BROWN: Thank you.

13 Where is the typographical error?

14 MR. FOGLEMAN: At Page 10, the second
15 paragraph, seventh line.

16 COMMISSIONER BROWN: Uh-huh.

17 MR. FOGLEMAN: It has "ETCs and receive to
18 receive." So, "to receive" should be struck.

19 COMMISSIONER BROWN: So, that same page, I do
20 have a question about staff's recommendation on
21 recommending the stand-alone voice versus the
22 combination of voice and broadband.

23 Just kind of want to get an idea of why you're
24 recommending contin- -- well, against what the rule
25 is proposing to combine voice -- continue voice and

1 broadband together.

2 MR. FOGLEMAN: Well, I think the idea is that,
3 first of all, consumers probably are best situated
4 to determine whether or not they should have to buy
5 both services together. They can figure out
6 whether or not they can afford it, if they need it.
7 I think that's kind of the -- the fundamental
8 question for me is whether or not -- who -- who's
9 best situated.

10 COMMISSIONER BROWN: Isn't the voice
11 declining, though?

12 MR. FOGLEMAN: Voice -- is voice declining.
13 Yes -- well, there is an increased demand for --
14 for both, but again, depending on what you need and
15 what you can afford, shouldn't it still be made
16 available.

17 And I think the other question is, you know,
18 what does -- what does the law kind of require.
19 And right now, voice is a supported service. It's
20 kind of the fundamental supported service.

21 And since the FCC has, now, moved from saying
22 that, you know, broadband, you know, was Ti- --
23 Title 1. It was an information service. Then, in
24 the -- for the 2016 order, it said, okay, no, it's
25 Title 2. And it's -- Title 2 was considered

1 telecom, and it fit within this kind of framework.

2 Now the FCC has kind of gone back and said,
3 well, no, actually, we've changed our mind. Now
4 we're putting it back in Title 1, so now it's no
5 longer in telecom.

6 So, by itself, it's more difficult to -- to
7 fit it in -- in the -- the -- that silo, so to
8 speak. So, bundled with a voice service,
9 certainly, it works. It -- it's -- you can defend
10 that and it makes sense. Voice by itself -- again,
11 it makes sense.

12 Where I have difficulty, you know, kind of
13 aligning everything up is where, if we're just
14 talking about stand-alone broadband-only -- and the
15 Court has kind of articulated that position as well
16 when they were trying to support it by itself under
17 Title 1. So, that's the concern.

18 COMMISSIONER BROWN: Okay. Thank you.

19 CHAIRMAN GRAHAM: Commissioners? Doc, any
20 questions from you?

21 COMMISSIONER POLMANN: Thank you,
22 Mr. Chairman.

23 I -- to follow on from Commissioner Brown's
24 comments, I think the FCC is in a -- I don't want
25 to say in a difficult spot, but the consumer is --

1 is in a little bit of a -- a tough position. And I
2 think the staff has really found the key question
3 here.

4 From my perspective, I don't -- I don't think
5 that they should -- the consumer should be in the
6 place of having to give up the voice-only, in a
7 sense, because of the affordability question.

8 We're -- we're at that place, kind of in
9 transition with the technology and -- and I feel
10 that it's important that the voice-only remain
11 clearly available to those who feel that that meets
12 their needs and that's what they can afford and
13 that it be supported through this program; that --
14 that the program does not be presented in such a
15 way that it is -- or even appears to be leading or
16 pushing consumers to broadband -- either broadband-
17 only or broadband and voice, since that consumer
18 has to effectively give up the voice-only option.

19 I don't know if I'm being articulate or not,
20 but I -- I want to make sure, at least I -- I feel
21 that our comments that we're putting forward,
22 hopefully, are supporting voice for the consumer,
23 if that's what the consumer feels is best for them.

24 CHAIRMAN GRAHAM: Okay. J.R.

25 MR. KELLY: Thank you, Mr. Chair.

1 I simply wanted to take five seconds and
2 commend your staff. I thought it was an excellent
3 set of comments. I thought they captured the gist
4 of -- of the very-significant points to be made
5 and -- and we are very supportive of it. And I
6 just simply wanted to compliment your staff on it.

7 CHAIRMAN GRAHAM: Thank you.

8 Any other Commissioners?

9 Braulio, what do we need to do here; just give
10 you permission to move forward?

11 MR. BAEZ: Just vote them out.

12 CHAIRMAN GRAHAM: Okay.

13 MR. BAEZ: Thank you.

14 COMMISSIONER BROWN: Mr. Chairman --

15 MR. BAEZ: With the editorial privileges.

16 COMMISSIONER BROWN: I -- I move that we
17 approve the comments submitted by -- to the FCC and
18 give staff administrative authority to approve
19 editorial rights that are non-substantive in
20 nature.

21 COMMISSIONER CLARK: Second the motion,
22 Mr. Chairman.

23 CHAIRMAN GRAHAM: It's been moved and seconded
24 to give staff approval to move forward.

25 Any further discussion? Seeing none, all in

1 favor, say aye.

2 (Chorus of ayes.)

3 CHAIRMAN GRAHAM: Any opposed?

4 By your action --

5 COMMISSIONER POLMANN: Aye.

6 CHAIRMAN GRAHAM: By your action, you've
7 approved the motion. Thank you very much.

8 Okay. Legislative update, come on down. 17
9 more days, not that I'm counting.

10 MS. PENNINGTON: We don't count.

11 Good morning.

12 COMMISSIONER BROWN: Good morning.

13 COMMISSIONER CLARK: Good morning.

14 MS. PENNINGTON: There's really not a whole
15 lot going on. There's not much going on today.
16 Oh, right. It's Adam's birthday today. So, happy
17 birthday, Adam. And a small matter, three of you
18 are up for a confirmation hearing in the Senate.
19 There's an elections committee this afternoon, but
20 other than that -- other than that, there's not
21 much going on today.

22 The -- the linear bill that almost passed last
23 year does seem poised, this year, to pass. It has
24 passed the house as House Bill 405. That bill is
25 on third reading in the Senate. And we expect it

1 to pass tomorrow. And it will, then, be on its way
2 to the Governor.

3 To give you some indication of how little is
4 actually getting done downtown, three real bills
5 have actually passed the Legislature. Only 17 are
6 in messages. And most of those are appropriation
7 bills.

8 So, we're in -- we're in a posture -- we're
9 just waiting on conferees to be appointed and the
10 conference -- the appropriations conference process
11 to begin. We really don't know when that's going
12 to be. And I don't think we're alone in that.

13 Session is over March 9th. We are in week
14 seven. And Adam just wanted me to mention the CRC
15 road show.

16 MR. POTTS: Yes. CRC is doing their tour
17 around the state again. And they finish that on
18 March 13th. Today, they're in Jacksonville. And
19 they just have to have their completed report
20 turned in to the Secretary of State by May --
21 May 10th.

22 CHAIRMAN GRAHAM: Commissioner Brown.

23 COMMISSIONER BROWN: Thank -- thank you.

24 And happy birthday, Adam.

25 MR. POTTS: Oh, thanks.

1 COMMISSIONER BROWN: Question: What happens
2 after the CRC proposes their recommended report?
3 What's the schedule and time line of -- of events
4 that will occur?

5 MR. POTTS: Then they'll go to the ballot.

6 COMMISSIONER BROWN: Instantly.

7 MR. POTTS: They go directly to the ballot, so
8 they -- part of --

9 MS. PENNINGTON: I actually asked that
10 question --

11 MR. POTTS: -- for -- for review.

12 MS. PENNINGTON: -- yesterday. There's no
13 Supreme Court review.

14 COMMISSIONER BROWN: There's no review.

15 MR. POTTS: Right. They don't have the
16 single-subject requirement either. They don't have
17 the tight guidelines for the title.

18 COMMISSIONER BROWN: So, how many are likely
19 to go to be approved?

20 MR. POTTS: No idea right now. They
21 haven't --

22 MS. PENNINGTON: They are down to 37 right now
23 that they are -- that their road show is based
24 upon. They could end up with 37. They could end
25 up with zero or some --

1 MR. POTTS: They're --

2 MS. PENNINGTON: I expect it will be a number
3 in between.

4 COMMISSIONER BROWN: The last time that the
5 Constitutional Revision Committee met, 20 years
6 ago --

7 MR. POTTS: Uh-huh.

8 COMMISSIONER BROWN: How many proposals --
9 amendments --

10 MS. PENNINGTON: I --

11 COMMISSIONER BROWN: -- were on the ballot?

12 MR. POTTS: Less than ten.

13 MS. PENNINGTON: Don't quote me on this, but
14 you know, some were wound into this and that. And
15 I think there were, like, eight or nine amendments,
16 but some of them covered quite a bit. But there
17 were less than ten. That -- that number is just
18 sticking in my head, but don't quote me on that
19 number. We'll get you the official number.

20 MR. POTTS: Yeah.

21 COMMISSIONER BROWN: Thank you.

22 CHAIRMAN GRAHAM: Do we still have any that
23 are still affecting the PSC, of the 37?

24 MS. PENNINGTON: Right now, no, sir.

25 MR. POTTS: No, but nothing is dead, and

1 anything can still come up. It's kind of a
2 different process.

3 CHAIRMAN GRAHAM: Sure.

4 Anything else, Commissioners? Staff?

5 Well, thank you very much for your update.
6 And Adam, happy birthday.

7 MR. POTTS: Thank you.

8 CHAIRMAN GRAHAM: Okay. General counsel
9 report.

10 MR. HETRICK: Busy, busy, busy, but no -- no
11 other comment at this time.

12 CHAIRMAN GRAHAM: Oh, I like those.
13 Executive director report.

14 MR. BAEZ: In -- in the interest of -- of
15 brevity, we're -- we're going to keep it short.
16 You know, we have our --

17 CHAIRMAN GRAHAM: Your mic is not on.

18 MR. BAEZ: I'm sorry. Thank you,
19 Commissioner -- Mr. Chairman.

20 Welcome, Commissioner Fay, from the staff. We
21 look forward to working with you.

22 We have PURC in the next couple of days. Some
23 of you may be in attendance.

24 And your next agenda is March 1st. And in the
25 interest of brevity, we'll keep it -- we'll keep it

1 to that.

2 CHAIRMAN GRAHAM: Now, the Gunter Award is on
3 Wednesday or Thursday?

4 MR. BAEZ: The last day of the luncheon.

5 CHAIRMAN GRAHAM: So, that will be lunch on
6 Thursday. Okay.

7 MR. BAEZ: So, don't miss it, if you can.

8 CHAIRMAN GRAHAM: Anything else. Any
9 questions of the executive director? Okay.

10 Other matters? No other matters. Okay. I
11 like that.

12 It's sounds -- looks like we are adjourned.
13 Everybody, travel safe.

14 (Whereupon, proceedings concluded at 9:47
15 a.m.)

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CERTIFICATE OF REPORTER

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ANDREA KOMARIDIS
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