

State of Florida



Public Service Commission

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

DATE: July 9, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (C. Williams, Casey, Bulecza-Banks)
Office of Federal & Legislative Liaison (Fogleman)
Office of the General Counsel (Teitzman)

RE: Docket No. 040604-TL – Adoption of the National School Lunch program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs.

AGENDA: 07/20/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040604.RCM.DOC

Case Background

On February 24, 1998, the Florida Public Service Commission (FPSC or Commission) adopted initial eligibility criteria for Lifeline and Link-Up and required Eligible Telecommunications Carriers (ETC) to file tariffs including the program-based eligibility criteria to become effective April 1, 1998. The initial criteria included: the Temporary Assistance to Needy Families program (TANF), Medicaid, Supplementary Security Income (SSI), Food Stamps, Federal Public Housing Assistance (Section 8), and Low-Income Home Energy Assistance program (LIHEAP).¹ The Commission has not adopted an income-based (percentage of poverty level) eligibility criterion applicable to all ETCs.

A tangential expansion of Lifeline and Link-Up eligibility occurred as a result of the Florida Legislature's passage of "The Tele-Competition Innovation and Infrastructure

¹ Order No. PSC-98-0328-FOF-TP, Approving Changes to the Lifeline Program.

Enhancement Act of 2003” (the 2003 Act). The 2003 Act specifies that any local exchange telecommunications company (LEC) authorized by the FPSC to reduce its switched network access rates pursuant to Section 364.164, Florida Statutes, shall provide Lifeline and Link-Up service to customers who meet an income eligibility test at 125% or less of the Federal Poverty Guidelines (FPG)². However, this income-based test only applies to certain LECs and was not a modification to the FPSC’s adopted criteria which is applicable to all ETCs.

On June 9, 2003, the Federal Communication Commission (FCC) released its Notice of Proposed Rulemaking (NPRM) seeking comment on the Universal Service Joint Board’s (Joint Board) Recommended Decision that addressed modifications to the Lifeline and Link-Up programs.³ The FPSC filed comments in response to the FCC’s NPRM on August 18, 2003. In comments to the FCC, the FPSC supported adding the TANF and the National School Lunch free lunch program (NSL) programs to the federal default eligibility criteria. The FPSC explained that Florida has already adopted TANF as an eligibility criterion, and commented that adding the TANF and NSL programs may increase participation.

On April 29, 2004, the FCC released its Report and Order (Order), and Further Notice of Proposed Rulemaking (FNPRM) regarding Lifeline and Link-Up.⁴ To improve the Lifeline and Link-Up programs and to increase subscribership, the FCC’s Order, in part: 1) added TANF and NSL to the program-based eligibility criteria; and, 2) added an income-based eligibility criterion of 135% of the FPG. A comparison of federal and state eligibility criteria is as follows:

Lifeline and Link-Up Program Eligibility Criteria	
Federal Default Eligibility Criteria	Florida PSC Adopted Eligibility Criteria
Income-based Criterion at 135% of the FPG	See Footnote 2
National School Lunch’s free lunch program	
Temporary Assistance to Needy Families (TANF)	Temporary Assistance to Needy Families (TANF)
Medicaid	Medicaid
Food Stamps	Food Stamps
Supplemental Security Income (SSI)	Supplemental Security Income (SSI)
Federal Public Housing Assistance (Section 8)	Federal Public Housing Assistance (Section 8)
Low Income Home Energy Assistance Program (LIHEAP)	Low Income Home Energy Assistance Program (LIHEAP)
Bureau of Indian Affairs Programs	Bureau of Indian Affairs Programs

²The FPSC does not have an adopted income-based criteria. However, a 125% income eligibility criterion addressed in the 2003 Act is mandatory after a LEC has taken action to reduced its switched network access rates pursuant to Section 364.164, Florida Statutes. Also, BellSouth Telecommunications, Inc. (BellSouth) has been enrolling customers under the 125% income-based criterion as a result of a settlement agreement with the Office of Public Counsel (OPC) that was approved by the Commission by Order No. PSC-01-1643-AS-TL, issued August 13, 2001, in Docket No. 991378. In addition to BellSouth, Verizon Florida Inc. (Verizon) and Sprint-Florida Incorporated (Sprint) are also currently enrolling customers under the 125% income-based criterion. The OPC was designated as the entity responsible for certifying eligibility claims for Lifeline and Link-Up under the 2003 Act.

³ Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 03-120, (Rel. June 9, 2003.)

⁴ Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 04-87, (Re. April 29, 2004.)

In Florida, as of March 31, 2004, there were approximately 1.1 million households eligible for Lifeline and Link-Up under the current eligibility criteria, with approximately 150,686 (13.7%) of the eligible households actually subscribing. Florida's 13.7% subscribership level is less than half the national average of 38%.⁵

In this document we recommend: 1) the adoption of the of the National School Lunch free lunch program for purposes of determining eligibility in Florida's Lifeline and Link-Up programs; 2) the adoption of an income-based eligibility criterion of 135% of the FPG; 3) the modification of Florida's Lifeline program to incorporate a self-certification option; and, 4) require annual reporting by ETCs.

⁵ Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 04-87, (Re. April 29, 2004.) The Florida Legislature, Office of Economic and Demographic Research. Universal Service Administrative Company, Lifeline Participation Data.

Discussion of Issues

Issue 1: Should the Commission adopt the National School Lunch free lunch program (NSL) for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida consistent with the federal program?

Recommendation: Yes. Staff recommends that the Commission adopt the National School Lunch free lunch program (NSL) for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida. (C. Williams, Casey, Bulecza-Banks)

Staff Analysis: In its April 29, 2004, Order, the FCC adopted the Joint Board's recommendation to add the TANF and NSL programs to the federal default eligibility criteria. The FCC explained that low-income consumers that come into contact with state agencies while enrolling in one public assistance program are often made aware of their eligibility to participate in another public assistance program. The FCC further explained that adding these programs will likely help improve participation in Lifeline and Link-Up and, in doing so, would increase telephone subscribership and/or make rates more affordable for low-income households⁶.

The FCC also acknowledged that it is difficult to project the number of additional persons that may become eligible for Lifeline and Link-Up by adopting the TANF and NSL programs because many low-income households typically participate in more than one assistance program once they meet the qualifying criteria.

To be eligible for the NSL free lunch program, a consumer's household income must be at or below 130% of the FPG, which is \$23,920 for a family of four.⁷ In addition, children are automatically eligible to participate in the NSL free lunch program if their household receives Food Stamps, benefits under the Food Distribution Program on Indian Reservations or, in most cases, benefits under the TANF program.⁸

In Florida, for School Year 2003/2004, there were approximately 962,000 children eligible to participate in the NSL program.⁹ If the FPSC adopts the NSL program, FPSC staff plans to coordinate with the Florida Department of Education, Florida Association of School Superintendents, and other organizations to incorporate the program into Florida's current Lifeline and Link-Up outreach initiatives.

Staff believes adding the NSL program will benefit Florida by increasing the number of eligible consumers for the Lifeline and Link-Up programs. Therefore, staff recommends that the Commission adopt the NSL program for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida.

⁶ The FCC has held that states agencies have sufficient flexibility to target support based on the state's particular needs and circumstances. Fourth report and Order, CC Docket No. 96-45, In the Matter of Federal-State Joint Board on Universal Service, FCC 97-420, (Released December 30, 1997.)

⁷ 2003 FPG, 68 Fed.Reg. at 6456-58.

⁸ <<http://www.fns.usda.gov/cnd/About/faqs.htm>>.

⁹ Florida Department of Education Percent of Public School Membership Eligible for GEFE Free/Reduced/Provision 2 Lunch By School Survey 3 Year 03/04.

Issue 2: Should the Commission adopt an income-based eligibility criterion for consumers with incomes at or below 135% of the Federal Poverty Guidelines (FPG) for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida consistent with the federal program?

Recommendation: Yes. Staff recommends that the Commission adopt an income-based eligibility criterion for consumers with incomes at or below 135% of the Federal Poverty Guidelines (FPG) for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida. (C. Williams, Casey, Bulecza-Banks)

Staff Analysis: The FCC's April 29, 2004, Order supports participation in Lifeline and Link-Up when a consumer's income is at or below 135% of the FPG, which is \$24,840 for a family of four. The FCC explained that adding an income-based criterion to the federal default eligibility criteria may increase participation in the programs and is a reasonable and cautious approach.

The FPSC's August 18, 2003, comments to the FCC supported the application of an income-based standard in general, but urged that additional data and analysis were needed before any specific standard could be endorsed beyond that which is set forth in our state statute. The FPSC noted that, in accordance with Section 364.10, Florida Statutes, the FPSC applies an income-based eligibility standard of 125% in certain circumstances.

An FCC staff analysis¹⁰ projects that in Year 2005, 8 million additional households would qualify for Lifeline if all states adopted the 135% income-based criterion. The analysis also projects that 938,473 additional Florida households would qualify under the 135% criterion, resulting in a total number of Lifeline eligible households of approximately 2 million. The analysis projects that federal Lifeline expenditures could increase by \$127 to \$140 million over current levels. At year-end 2003, Lifeline expenditures for all states were \$678 million.

Further, the analysis projects that adding an income-based criterion of 135% could result in approximately 1.17 to 1.29 million new nationwide Lifeline subscribers in 2005, and approximately 135,981 to 150,523 new Lifeline subscribers in Florida.

Based on the most recent Federal-State Joint Board Monitoring Report,¹¹ Florida contributed \$44.7 million into the Low Income Support Mechanism and received \$15.5 million in payments. Using FCC data, FPSC staff estimates that Florida citizens' could be faced with additional contribution into the Low Income Support Mechanism could increase approximately \$8.5 to \$9.3 million in 2005 if the 135% criterion was adopted. Florida's new net dollar flow would be a factor of both our contribution and the number of new Lifeline and Link-Up subscribers in Florida.

In light of the FCC's Order adopting the 135% FPG eligibility criterion, it is staff's belief that it is in Florida's best interest to also adopt this criterion. If Florida maintains its 125% criterion in certain circumstances rather than adopting the 135% criterion for all ETCs, it could result in compounding Florida's status as a net contributor into the Universal Service Fund

¹⁰ Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 04-87, Appendix K., (Re. April 29, 2004.)

¹¹ Federal-State Joint Board Monitoring Report, Released on December 22, 2003.

(USF) Low Income Support Mechanism and keep some consumers that would otherwise be eligible out of the program. Staff does want to point out that rural LECs could be negatively impacted by implementing the 135% criterion. As rural LECs often have a disproportionate share of low-income consumers, inclusion of an income-based criterion could result in a significant number of consumers participating in Lifeline assistance. As an ETC, the rural LEC must provide a \$3.50 credit for Lifeline assistance for each Lifeline customer, which could present challenges in the rural LECs ability to absorb the \$3.50 credit.

Staff believes that it is within the Commission's discretion to approve revised eligibility criteria, including an increase of the income-based criterion from 125% to 135%. Section 364.10(3), Florida Statutes, provides that carriers which have been authorized to reduce their switched access charges shall provide Lifeline service to any otherwise eligible customer who meets an income-based criterion of 125% of the FPG. However, the statute further provides that, "Such a test for eligibility must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low-income assistance programs." By the FCC's Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 03-109, Release Number 04-87, the FCC adopted 135% of the FPG as its income-based criterion. See 2004 FCC Lexis 2296 at ¶10. Since there is now a federal income-based eligibility standard, it appears that the 125% criterion no longer simply augments the federal requirements. As such, staff believes it is appropriate for the Commission to approve the 135% FPG criterion in recognition of the federal guidelines. Furthermore, since the FCC's adoption of the 135% criterion contemplates that it would be applied across the board to all ETCs, staff recommends that the 135% FPG income criterion be applied to all ETCs in Florida.

Although staff believes that the Commission has the authority to adopt the 135% criterion, staff emphasizes that the Florida statutes do not specifically and affirmatively mandate that the Commission implement any federal income-based eligibility criterion, nor does it require that the Commission act in this regard in any particular time frame. Additionally, staff notes that the FCC is seeking comments on whether to increase the income criterion from 135% to 150% of the FPG. Thus, staff believes that the Commission could defer action on this standard until a decision has made on the 150% criterion or if the Commission wishes legislative input.

Issue 3: Should the Commission modify Florida's Lifeline program to allow the addition of a self-certification option?

Recommendation: Yes. In addition to the standard certification currently in place, staff recommends that the Commission allow Florida consumers that qualify for Lifeline assistance, the option of electing a self-certification process. The amount of Lifeline assistance provided would be based on the type of certification chosen by the consumer. ETCs should be directed to disclose to consumers both Lifeline certification processes available, along with the Lifeline credits available under each process. Further, the industry should be directed, in coordination with FPSC staff and the Office of Public Counsel, to efficiently implement this option for Florida's citizens. (C. Williams, Teitzman, Casey, Bulecza-Banks, Fogleman)

Staff Analysis:

As discussed in Issue 2 of this recommendation, Florida is an annual net contributor of approximately \$29.2 million dollars into the USF Low Income Support Mechanism. In the recommendation background, staff notes that Lifeline participation in Florida is approximately 14% of the eligible households, compared to the national average participation of 38%. Staff has considered a number of methods which could be used to increase subscribership to Lifeline and Link-Up in the State of Florida. Staff believes that one of the major reasons more eligible consumers have not signed up for the Lifeline and Link-Up assistance programs is the time-consuming certification process.

Current Process

Initial Eligibility Determination

Presently, eligibility for both Lifeline and Link-Up in Florida is determined by subscriber enrollment in any one of the following programs:

- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income (SSI)
- Food Stamps
- Medicaid
- Federal Public Housing Assistance (Section 8)
- Low-Income Home Energy Assistance Plan (LIHEAP)
- Bureau of Indian Affairs programs

(a) The Florida Department of Children and Family Services (DCF) certifies eligibility for Lifeline and Link-Up based upon participation in the TANF, Food Stamp, or Medicaid programs. DCF has a formal process to notify potential clients about Lifeline and Link-Up when they apply for TANF, Food Stamp, or Medicaid programs. If, after a review of the application, DCF determines that the consumer is eligible for one or more of these programs, the consumer is given a notice of eligibility which advises the consumer to contact an ETC to apply for Lifeline and Link-Up. The consumer takes the DCF notice to the ETC as proof of eligibility for the

Lifeline and Link-Up programs. The consumer can use this process or submit proof of participation in one of the approved programs directly to the ETC.

(b) If a consumer participates in SSI, Section 8, LIHEAP, or Bureau of Indian Affairs programs, he supplies proof of participation in the program directly to their ETC to qualify for Lifeline and Link-Up.

Another basis for eligibility is through an income-based criterion. As a result of a Commission-approved 2001 settlement agreement between BellSouth and OPC, BellSouth expanded Lifeline eligibility to its subscribers with annual incomes up to 125% of the FPG. The settlement agreement approved by the Commission also designated the OPC as the entity responsible for certifying claims of eligibility for Lifeline customers using 125% of the FPG. Subsequently, both Verizon and Sprint filed tariffs to expand Lifeline eligibility to customers with incomes at or below 125% or less of the FPG.

Further Qualification

After going through the certification process of these agencies, the consumer's application for Lifeline and Link-Up is forwarded to the appropriate ETC. ETCs often perform additional analyses and have additional requirements to determine whether the consumer will be given Lifeline credits. Some ETCs evaluate whether the consumer has an outstanding balance on a previous or current account. According to FPSC Order No. PSC-99-2503-PAA-TL, if a consumer has an outstanding balance, he will not be automatically denied Lifeline benefits, but he may be asked to satisfy the outstanding balance, whether through a payment plan or a payment in full. Another item that the ETCs consider is whether the consumer's current phone service is under the name of a different person. ETCs often require that telephone service be in the name of the consumer who has been certified under one of the state-approved programs. ETCs often research to determine whether a consumer is currently receiving Lifeline benefits to ensure that a consumer receives Lifeline credits on one telephone line per residence, at the consumer's principal place of residence. This process appears to be quite lengthy and time-consuming for both the ETC and the consumer.

Proposed Self-Certification Process

A streamlined certification process would ease the burden on consumers, get needed assistance to the consumer quickly, and result in increased subscribership for the State of Florida. To accomplish this, a self-certification process for the Lifeline programs should be added as an option to the consumer.

Under the FCC rules, there are four tiers of monthly federal Lifeline support.

- The first tier of federal support is a \$6.50 credit for the federal subscriber line charge, which is available to all eligible subscribers.
- The second tier of federal support is a \$1.75 credit that is available to subscribers in those states that have approved the credit. All fifty (50) states have approved this tier of support.

- The third tier of federal support is one-half the amount of additional state support up to a maximum of \$1.75 in federal support. Because Florida presently requires ETCs to provide an additional \$3.50 credit to Lifeline customers' bills, Florida Lifeline subscribers currently receive a total monthly credit up to \$13.50, consisting of \$10.00 (\$6.50+\$1.75+\$1.75) in federal support and \$3.50 in state support. The telephone subscriber may receive a credit less than \$13.50 if the subscriber's bill for basic local telephone service is less than the maximum available credit. At no time is the customer's bill for local service less than zero.
- The fourth tier of support, available only to eligible subscribers living on tribal lands, provides an additional credit up to \$25.00 per month. This amount is limited to the extent that the credit does not bring the basic local residential rate below \$1.00 per month.

Self-Certification

Under the federal default rules, if a consumer is enrolled in at least one of the programs identified previously, he may provide proof of eligibility and be automatically eligible for Lifeline and Link-Up assistance. For states that do not have a state Lifeline program, the FCC's default rules require ETCs to implement a process whereby consumers may self-certify their eligibility subject to penalty of perjury. States that operate their own Lifeline program, may adopt more stringent measures.

The FCC's rules require all states, including federal default states, to adopt certification procedures to document income-based eligibility. The FCC specifically limited self-certification to the program-based criteria because it believed that self-certification on an income basis could result in a greater potential for fraud and abuse in the Lifeline and Link-Up program. Further, the FCC mandated that certification of income-based eligibility must be accompanied by supporting documentation to ensure that only qualified individuals receive Lifeline and Link-Up assistance.

Consistent with the federal self-certification process, a streamlined certification process could be initiated whereby consumers could elect to self-certify that they are receiving benefits from one or more of the Florida approved programs identified earlier, and receive the \$8.25 tier one and tier two support immediately. Self-certification would involve a customer calling his or her ETC to verbally certify that he or she is eligible to participate in Lifeline and Link-Up based on participation in one of the qualifying programs. The utility would immediately enroll the customer in the Lifeline and Link-Up programs over the phone and send the customer a self-certification form. Customers would then be required to return the self-certification form to the utility within 60 days in order to remain in the program.

The self-certification form would list the Florida-approved need-based programs, and have a place for the consumer to check which program(s) qualifies them for Lifeline and Link-Up. The form would also include notification that the consumer is signing the form under penalty of perjury. The utility would send a re-certification form to the participant on an annual basis.

Both the Joint Board on Universal Service and the FCC agree that self-certification for program-based qualification encourages eligible consumers to participate in Lifeline and Link Up, and imposes minimal burdens on consumers. They also agreed that participation in need-based programs is easily verified, and that certification of qualified program participation, under penalty of perjury, serves as an effective disincentive to abuse the system¹². (FCC 04-87, ¶ 27)

In order to minimize fraud by self-certified participants, the Commission should annually require the ETCs to calculate a statistically valid sample of their Lifeline customers to ensure eligibility standards are being met. The Commission should also require that ETCs disclose both the \$8.25 and \$13.50 Lifeline assistance programs, and the means for qualifying for both, when speaking with prospective participants.

Standard Certification

If a consumer initially elects to wait and obtain certification by OPC or one of the appropriate state or federal agencies, he or she would follow the process currently used today, and receive the full \$13.50 Lifeline assistance credit. Also, if a consumer who self-certified and is receiving \$8.25 in Lifeline benefits decides that he or she would like to receive the \$13.50 in assistance, they could go through the existing certification process with OPC or one of the appropriate state or federal agencies while still receiving the \$8.25 while waiting for approval.

Summary

Staff has reviewed state statutes and FCC rules regarding the self-certification process. Staff believes a self-certification process is consistent with state statutes and FCC rules. Since the program eligibility criteria remain the same no matter which certification process is chosen, and given it is the consumer's choice which certification process to use, there will be no discrimination among eligible applicants.

While Florida has a state program with criteria as discussed previously, the program involves extensive administrative actions and costs to determine eligibility, certification of eligibility, determination of qualification by the ETCs and finally, enrollment in the program. To eliminate administrative overhead and processes that may be obstacles to participation, continue provision of a subsidy to the eligible and deserving, and increasing enrollment such that at a minimum, Florida citizens' payments are going to Florida citizens, another certification process should be made available to Florida consumers. We believe allowing self-certification will go a long way towards achieving the stated goals.

Under the self-certification process, ETCs will not contribute \$3.50 in state support for customers opting to use the self-certification process. Further, the self-certification process will provide assistance to those in need more quickly and easily, resulting in increased subscribership in the Lifeline and Link-Up programs. Therefore, staff recommends that the Commission modify Florida's existing Lifeline program to allow consumers, in addition to the standard

¹² Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, In the Matter of Lifeline and Link-Up, Release No. FCC 04-87, (Re. April 29, 2004.)

certification process, the option of self-certification, with the amount of assistance to eligible households contingent on the type of certification chosen by the consumer. Finally, the industry should be directed, in coordination with FPSC staff and OPC to bring the self-certification option to consumers as quickly as possible.

Issue 4: Should the Commission require ETCs, on an annual basis, to file reports identifying the number of applicants applying for Lifeline and Link-up, the number of applicants approved for Lifeline and Link-up, the method of certification the applicant used, and whether the approved applicant will receive \$8.25 or \$13.50 in assistance.

Recommendation: Yes. Staff recommends that the Commission require ETCs, on an annual basis, to file reports identifying the number of applicants applying for Lifeline and Link-up, the number of applicants approved for Lifeline/Link-up, the method of certification the applicant used, and whether the approved applicant received \$8.25 or \$13.50 in assistance. (C. Williams, Teitzman, Casey, Bulecza-Banks)

Staff Analysis: Section 364.10(3)(e), Florida Statutes, requires the Commission to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers subscribing to Lifeline service and the effectiveness of any procedures to promote participation in the program. The annual reports will provide useful data on the effectiveness of the ETC's procedures to promote Lifeline and Link-up participation.

Staff believes these reports will assist in determining which ETCs have successful enrollment programs for Lifeline and Link-up which could be shared with other ETCs in Florida. Therefore, staff recommends that the Commission require ETCs, on an annual basis, to file reports identifying the number of applicants applying for Lifeline and Link-up, the number of applicants approved for Lifeline/Link-up, the method of certification the applicant used, and whether the approved applicant received \$8.25 or \$13.50 in assistance.

Docket No. 040604-TL

Date: July 9, 2004

Issue 5: Should this docket be closed. (Teitzman)

Recommendation: Yes. If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order.

Staff Analysis: If no person whose interests are substantially affected by the proposed agency action files a protest within the 21-day protest period, this docket should be closed upon the issuance of a consummating order.