

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 6, 2006

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

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

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: 07/18/06 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

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 (ETCs) 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, and the Low-Income Home Energy Assistance Program (LIHEAP).¹

On June 9, 2003, the Federal Communications 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.² In comments filed with the FCC on August 18, 2003, the FPSC supported adding the TANF and the National School Lunch Program (NSLP) - Free Lunch 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 NSLP - Free Lunch programs may increase participation.

The FPSC also commented that "The Commission supports the application of an income-based standard in general; however, we believe additional data and analysis are needed before any specific standard can be endorsed beyond that which is set forth in our state statute. In accordance with Section 364.10, Florida Statutes, the FPSC currently applies an income-based eligibility standard of 125% in certain circumstances."

On April 29, 2004, the FCC released its Report and Order (Order), and Further Notice of Proposed Rulemaking (FNPRM) regarding Lifeline and Link-Up.³ To improve the Lifeline and Link-Up programs and to increase subscribership, the FCC's Order, in part: 1) added TANF and NSLP - Free Lunch to the program-based eligibility criteria; and, 2) added an income-based eligibility criterion of 135% of the Federal Poverty Guidelines (FPG).

In light of the FCC's Order adopting the additional program eligibility criteria and the 135% of the FPG income eligibility criterion, the FPSC, by Order No. PSC-04-0781-PAA-TL, issued August 10, 2004,⁴ found that it was beneficial for Florida to also adopt the new criteria. The FPSC also determined that a streamlined certification process would get needed assistance to consumers quicker.

On August 31, 2004, seven parties protested Order No. PSC-04-0781-PAA-TL. In their December 17, 2004, Prehearing Statements, BellSouth, Embarq Florida, Inc.,⁵ and Verizon questioned the Commission's authority to order the Lifeline enhancements contained in the order.

- BellSouth stated that "The Commission has no authority under Chapter 364, Florida Statutes to mandate additions to eligibility tests for Lifeline and Link-Up."

¹ Order No. PSC-98-0328-FOF-TP, Approving Changes to the Lifeline Program, Issued February 24, 1998, In Docket No. 970744-TP.

² 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.)

³ 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.)

⁴ In Re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs, Docket No. 040604-TL.

⁵ Embarq Florida, Inc. f/k/a Sprint-Florida, Incorporated.

- Embarq Florida, Inc. stated that “The Commission does not have the authority under governing Florida law to order the actions set forth in Order No. PSC-04-0781-PAA-TL.”
- Verizon stated that “There is nothing in Chapter 364 that gives the Commission the power to expand the Lifeline eligibility criteria, create a self-certification process and impose these unfunded mandates on incumbents. Indeed, the PAA Order does not cite any authority, nor is there any statute in Chapter 364 that even suggests – let alone expressly states – that the Commission has the power to expand the Lifeline eligibility criteria or create a self-certification process.”

In their December 17, 2004, Prehearing Statements, the Office of Public Counsel and the AARP agreed that the Commission is authorized to order the actions set forth in Order No. PSC-04-0781-PAA-TL.

On February 8, 2005, the Commission, by Order No. PSC-05-0153-AS-TL, approved settlement proposals filed by BellSouth, Embarq Florida, Inc., and Verizon to implement a simplified Lifeline and Link-Up certification process. The proposals did not include the NSLP – Free Lunch or the 135% of the FPG income-based criterion as additional eligibility criteria.

Subsequently, BellSouth, Embarq Florida, Inc., and Verizon voluntarily adopted the NSLP – Free Lunch as an additional eligibility criterion. In addition, the Florida Legislature, through Senate Bill 1322, increased the Lifeline and Link-Up income-based eligibility criterion to 135% of the FPG for local exchange companies that receive FPSC approval to reduce their switched access rates pursuant to Chapter 364.164, Florida Statutes. BellSouth, Embarq Florida, Inc., and Verizon are the only Florida local exchange companies that have received FPSC approval to reduce their switched access rates.

The simplified certification process allows eligible Lifeline and Link-Up customers to enroll in the programs by simply signing a document certifying, under penalty of perjury, that the customer participates in one of the Florida Lifeline and Link-Up qualifying programs. BellSouth, Embarq Florida, Inc., and Verizon were concerned about possible fraud occurring with the simplified certification process. To address these concerns, a one-year period was established to allow parties to assess the impact of the program and any evidence of fraud.

Upon expiration of the one-year period, no complaints or evidence of fraud has been communicated to staff by BellSouth, Embarq Florida, Inc., or Verizon regarding implementation of the simplified certification process or the NSLP – Free Lunch. This recommendation addresses the expansion of the simplified certification process and the NSLP – Free Lunch to all ETCs in Florida.⁶

⁶ ALLTEL, ALLTEL Wireless, American Dial Tone, Budget Phone, Frontier Communications, GTC, ITS Telecom, Knology, Nextel Partners, Nexus Communications, Northeast Telephone, Smart City, Sprint PCS, TDS Telecom, and Vilaire Communications have also been granted ETC status in the State of Florida.

Issue 1: Should the Commission expand the application of the Lifeline and Link-Up simplified certification enrollment process to include all eligible telecommunications carriers (ETCs)?

Recommendation: Yes. The Commission should require all ETCs to adopt the simplified certification process for enrollment in the Lifeline and Link-Up programs. (C. Williams, Casey, Bulecza-Banks)

Staff Analysis: As discussed in the Case Background, eligibility for both Lifeline and Link-Up in Florida is determined by customer enrollment in one of the following programs:

- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income (SSI)
- Food Stamps
- Medicaid
- Federal Public Housing Assistance
- Low-Income Home Energy Assistance Plan (LIHEAP)
- National School Lunch Program (NSLP) – Free Lunch⁷
- Bureau of Indian Affairs programs

A customer of BellSouth, Embarq Florida, Inc., or Verizon can enroll in the Lifeline and Link-Up programs by simply signing a document certifying, under penalty of perjury, that the customer participates in one of the Florida Lifeline and Link-Up qualifying programs. However, customers of other ETCs providing Lifeline and Link-Up service in Florida provide initial proof of eligibility prior to enrollment in the programs. This creates an additional step in the enrollment process, and fragments the Florida Lifeline and Link-Up programs.

Under the FCC's rules, states that do not have a state Lifeline program must follow federal default rules, which require ETCs to allow consumers to self-certify their eligibility, subject to penalty of perjury. States that have their own Lifeline programs may impose more stringent enrollment requirements, including proof of eligibility prior to initial enrollment.

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 requirements 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 system.⁸ (FCC 04-87, ¶ 27)

Consistent with the federal self-certification process, BellSouth, Embarq Florida, Inc., and Verizon's streamlined certification process allows consumers to self-certify that they are receiving benefits from one or more of the Florida approved programs identified earlier. Lifeline and Link-Up applications for BellSouth, Embarq Florida, Inc., and Verizon list the Florida-approved need-based programs, and have a place for the consumer to check which program(s)

⁷ Currently applies to BellSouth, Embarq Florida, Inc., and Verizon only.

⁸ 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.)

qualifies them for Lifeline and Link-Up. The form also includes notification that the consumer is signing the form under penalty of perjury.

In order to minimize fraud by self-certified participants, the Commission has adopted FCC guidelines which require the ETCs to conduct verification audits using a statistically valid sample of their Lifeline customers.

The current program-based enrollment process used by most ETCs requires additional steps to determine eligibility and to complete the enrollment process. Expanding the simplified certification process to include all ETCs will reduce steps that may be obstacles to participation.

In summary, the current simplified certification process improves efficiencies and helps get needed assistance to consumers sooner. In addition, no evidence has been presented to indicate that the simplified certification process contributes to an increase in fraudulent activity. Therefore, staff recommends that the Commission expand the application of the simplified certification enrollment process by requiring all ETCs to adopt this method of enrollment for the Lifeline and Link-Up programs. This action will make the programs more uniform, and allow all qualified consumers an opportunity to benefit.

Issue 2: Should the Commission expand the application of the National School Lunch Program (NSLP) - Free Lunch to all eligible telecommunications carriers (ETCs)?

Recommendation: Yes. The Commission should require all ETCs to adopt the NSLP – Free Lunch as eligibility criteria for participation in the Lifeline and Link-Up programs. (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 NSLP – Free Lunch programs to the federal default eligibility criteria. The FCC further 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 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 NSLP – Free Lunch programs because many low-income households typically participate in more than one assistance program once they meet the qualifying criteria. However, the FCC expressed support that adoption of the criteria could improve the programs.

To be eligible for the NSLP – Free Lunch, a consumer’s household income must be at or below 130% of the FPG, which is presently \$26,000 for a family of four.⁹ In addition, children are automatically eligible to participate in the NSLP - Free Lunch if their household receives Food Stamps, benefits under the Food Distribution Program on Indian Reservations or, in most cases, benefits under the TANF program.¹⁰ As discussed in the Case Background, BellSouth, Embarq Florida, Inc., and Verizon have voluntarily adopted the NSLP – Free Lunch as additional eligibility criteria.

Expanding the NSLP – Free Lunch to all ETCs will enhance the effectiveness of the Lifeline and Link-Up programs by offering all consumers the convenience of an additional method of enrollment, and make the programs more uniform. Therefore, staff recommends that the Commission require all ETCs to adopt the NSLP – Free Lunch for purposes of determining eligibility in the Lifeline and Link-Up programs in Florida.

⁹ 2006 FPG

¹⁰ <<http://www.fns.usda.gov/cnd/About/faqs.htm>>.

Docket No. 040604-TL

Date: July 6, 2006

Issue 3: Should this docket be closed?

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. (Teitzman, Scott)