

State of Florida



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: November 21, 2006

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

FROM: Office of the General Counsel (Cibula)
Division of Competitive Markets & Enforcement (Casey, C. Williams)
Division of Economic Regulation (Dickens)

RE: Docket No. 060607-TP – Proposed adoption of Rule 25-4.0665, F.A.C., Lifeline Service.

AGENDA: 12/05/06 – Regular Agenda – Rule Adoption – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

RULE STATUS: Adoption May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060607.RCM.DOC

Case Background

Section 364.10(2)(e), Florida Statutes, requires eligible telecommunications carriers (ETCs) to notify a Lifeline subscriber of the impending termination of Lifeline service. The section requires that this notice be in the form of a letter separate from the subscriber's bill. The section states that the subscriber must be given 60 days to demonstrate continued eligibility.

Section 364.10(2)(e)3. specifically requires the Commission to establish procedures for such notification and termination. Moreover, Section 364.10(3)(j) states that the Commission "shall adopt rules to administer this section."

On October 3, 2006, the Commission voted to propose the adoption of Rule 25-4.0665, as set forth in Attachment A, to address the Legislature's mandate in regard to the notification of termination of Lifeline service. Interested persons had until November 3, 2006, to submit comments or request a hearing on the proposed rule.

On November 3, 2006, New Cingular Wireless PCS, LLC; Sarasota Cellular Telephone Company; Melbourne Cellular Telephone Company; Bradenton Cellular Partnership; Ocala Cellular Telephone Company, Inc.; Florida RSA No. 2B (Indian River) Limited Partnership; Orlando SMSA Limited Partnership; and Jacksonville MSA Limited Partnership, all of which d/b/a Cingular Wireless (collectively referred to herein as "Cingular") submitted comments on the proposed rule. Cingular states that, while it does not currently provide Lifeline service in Florida, it has an application pending before the Federal Communications Commission (FCC) requesting that it be designated as an ETC in certain areas of Florida. Cingular states that the nature of its comments is to "confirm Cingular's understanding of the Proposed Rule."

Section 364.011(4), Florida Statutes, exempts wireless telecommunications from Commission oversight, except to the extent delineated in Chapter 364 or specifically authorized by federal law. All wireless carriers currently operating in Florida as ETCs have obtained their ETC designation from the FCC.¹ The FCC has specifically stated when granting ETC status to wireless carriers that they must comply with state requirements in states that have Lifeline programs.²

This recommendation addresses whether the Commission should make changes to proposed Rule 25-4.0665 based on Cingular's comments. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), and 364.10, Florida Statutes.

¹ Staff notes, however, that there are two applications pending before the Commission, in Dockets Nos. 060581-TP and 060582-TP, wherein Alltel Communications Inc., a wireless carrier, is requesting the Commission grant the company ETC status in Florida. It is anticipated that the Commission will address the issue of whether the Commission has jurisdiction to grant ETC status to wireless carriers in those dockets.

² *In the Matter of Federal-State Joint Board on Universal Service; Sprint Corporation; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, North Carolina, Tennessee and Virginia*, 19 FCC Rcd 22663; 2004 FCC LEXIS 6504, footnote 27 (November 18, 2004)(Sprint Application for ETC Designation); *In the Matter of Federal-State Joint Board on Universal Service; Alltel Communications, Inc.; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, North Carolina, Virginia*, 19 FCC Rcd 20496; 2004 LEXIS 5457, footnote 29 (September 24, 2004)(Alltel Application for ETC Designation); *In the Matter of Federal-State Joint Board on Universal Service; Sprint Corporation; Application for Designation as an Eligible Telecommunications Carrier in the State of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, 19 FCC Rcd 16530; 2004 FCC LEXIS 4770, footnote 30 (August 25, 2004)(Nextel Application for ETC Designation).

Discussion of Issues

Issue 1: Should the Commission make changes to proposed Rule 25-4.0665, Florida Administrative Code, Lifeline Service, to address Cingular's comments?

Recommendation: No. The Commission should adopt proposed Rule 25-4.0665 without changes. (Cibula, C. Williams, Casey)

Staff Analysis: As stated in the case background, Cingular submitted comments on proposed Rule 25-4.0665 on November 3, 2006. In its comments, Cingular requests that the Commission "confirm Cingular's understanding of the Proposed Rule."

Cingular states that it assumes that the 60 days written notice prior to termination of Lifeline service required by the rule only applies to those situations where the ETC determines that the subscriber is no longer eligible for Lifeline service. Cingular states that the notice of termination should not pertain to those situations where the subscriber notifies the ETC that he/she no longer qualifies for Lifeline service.

The notice of pending termination required by Rule 25-4.0665 stems from Section 364.10(2)(e)1., Florida Statutes, wherein it is required that an ETC "must notify a Lifeline subscriber of impending termination of Lifeline service *if the company has a reasonable basis for believing that the subscriber no longer qualifies.*" (emphasis added) Section 364.10(2)(e)1. further states that this notification of pending termination must be in the form of a letter that is separate from the subscriber's bill. Thus, the notice of pending termination set forth in proposed Rule 25-4.0665(1) is only required when the ETC determines that the subscriber may no longer be eligible for Lifeline service, not when the subscriber notifies the ETC that he/she is no longer eligible for the service.

Cingular further states that it assumes that the last sentence of Rule 25-4.0665(1) does not pertain to a wireless carrier. The last sentence of Rule 25-4.0665(1) requires that the notice of pending termination inform the subscriber of the availability, pursuant to Section 364.105, Florida Statutes, of discounted residential basic local telecommunications service. Cingular states that "[t]his appears to refer solely to landline service offerings, as the formal residential vs. business classification applies only with respect to landline services; wireless carriers do not classify their services as 'residential' (or non-residential) given the inherently mobile nature of wireless services." The company states that it "assumes that the intent of the provision was not to require, for example, that wireless ETCs notify their customers of the availability of discounted residential basic local service as the wireless ETC would not likely have information regarding such landline service offerings, and would not have the ability to provide such services." The company asserts that "[e]ach ETC should only be required to provide information regarding its own service alternatives available to the customer, whether landline or wireless."

Staff disagrees with Cingular's suggestion that wireless carriers should be excluded from the requirement to provide information on discounted residential basic local telecommunications service as set forth in proposed Rule 25-4.0665(1). The FCC has specifically stated that wireless carriers designated as ETCs by the FCC must comply with state requirements in states that have

Lifeline programs.³ The availability of discounted residential basic local telecommunications service, pursuant to Section 364.105, Florida Statutes, for Lifeline subscribers transitioning off of the Lifeline program is part of Florida's Lifeline program. Thus, Cingular should inform subscribers of this service in the notices of impending termination, as set forth in proposed Rule 25-4.0665(1), as part of Florida's Lifeline program.

Staff believes that Cingular's concerns about being unable to distinguish between which of its customers are "residential" and "non-residential" should not prevent the company from complying with the notice requirement. Lifeline service is only available to residential subscribers. Thus, Cingular should not have a problem determining which customers are "residential" and "non-residential" because all of Cingular's Lifeline customers should be residential subscribers.

Cingular's comments did not contain any specific direction as to how the rule language should be changed. Moreover, it does not appear that the rule language requires changes based on Cingular's comments. Thus, staff recommends that the Commission adopt proposed Rule 25-4.0665, as set forth in Attachment A, without changes.

³ Sprint Application for ETC Designation, 2004 FCC LEXIS at 6504, footnote 27; Alltel Application for ETC Designation, 2004 LEXIS at 5457, footnote 29; Nextel Application for ETC Designation, 2004 FCC LEXIS at 4770, footnote 30.

Docket No. 060607-TP
Date: November 21, 2006

Issue 2: Should Rule 25-4.0665 be filed for adoption with the Secretary of State and the docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, the rule may be filed with the Secretary of State and the docket should be closed. (Cibula)

Staff Analysis: If the Commission votes to adopt Rule 25-4.0655 without changes, as staff is recommending in Issue 1, the rule may be filed for adoption with the Secretary of State. The docket should then be closed.