BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendment of Rule 25-4.0665, Lifeline Service	)))	Undocketed Filed February 27, 2007

POST-WORKSHOP COMMENTS OF VERIZON FLORIDA LLC

Verizon Florida LLC ("Verizon") files these Post-Workshop Comments pursuant to Staff's direction at the Lifeline Workshop held on February 6, 2006. Below Verizon addresses sections (3), (6), (9) and (25) of proposed Rule 25-4.0665 (the "Proposed Rule").

A. Section (3): Application of Lifeline Discount to Service Packages

Section (3) of the Proposed Rule would require that "[t]he Lifeline service discount . . . be applied to the basic local exchange service rate*, or the telephone portion of any service offering which combines basic local exchange service with nonbasic service (e.g., a service package combining basic local exchange service with call waiting, call forwarding, and voice mail)*." (Emphasis added.) The italicized language should be deleted from the Proposed Rule for several reasons. First, under Florida law "basic local exchange service" (often referred to as "basic service") is a stand-alone service, not a component of a larger nonbasic service package. Second, by requiring telecommunications carriers to offer the discount for most nonbasic service packages, section (3) would violate Florida law, which only requires wireline ETCs to provide a single Lifeline Assistance Plan for basic service. Third, such a requirement would not be competitively neutral, but would discriminate against wireline carriers.

Fourth, section (3) would not advance the goal of universal service that the federal and state Lifeline programs are designed to foster. Each of these points is discussed in detail below.

1. Section (3) Ignores the Statutory Definitions of Basic and Nonbasic Service

Section (3) of the Proposed Rule assumes that a local carrier may offer a service package comprised of basic service and nonbasic service. Under Florida law, however, a service must either be a basic service or a nonbasic service – it cannot be both. Florida law provides that basic service consists of the following elements:

> voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.[1]

Nonbasic service is defined as "any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163."[2] In other words, a nonbasic service is any retail service consisting of a different set of elements than basic service. Thus, by definition, when a service offered as a package consists of the basic service elements and additional elements, that service is nonbasic.

[1] Fl. Stat. § 364.02(1).
[2] Fl. Stat. § 364.02 (10).

Florida's statutory scheme confirms that a local carrier's retail service offering must either be a basic service or a nonbasic service and cannot be a combination of the two. Under Florida law, a local carrier electing alternative regulation may adjust its basic service rates 1% less than the rate of inflation only once in any 12 month period, after giving 30 days notice of its intention to do so.[3] For a nonbasic service, the carrier may change its rates on one day's notice and it may increase its rates up to 6% or 20% within a 12-month period, depending on whether it faces competition in an exchange area.[4] This dichotomy requires that a service fall into one category or the other. Otherwise, most service packages would be hybrids subject to both basic and nonbasic regulation, requiring them to be broken down into basic and nonbasic components and priced and tariffed under different rules. The legislature obviously did not intend the statute to be applied in such an unworkable and irrational manner and, not surprisingly, the Commission has not done so.

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

[3] Fl. Stat. § 364.051 (2)(c)(3).
[4] Fl. Stat. § 364.051 (5)(a).

interpretation by the Commission confirms that nonbasic service packages may not be treated as basic service for some purposes and nonbasic service for others.

Section (3) of the Proposed Rule would require that the Lifeline discount be applied to "the telephone portion of any service offering which combines basic local exchange service with nonbasic service." This proposal conceives of a nonbasic service package as a combination of basic and nonbasic service that may be divided into component parts for regulatory purposes. Based on this misconception, Staff proposes to apply the Lifeline discount to the basic service portion of a nonbasic service package. Because this approach contradicts the legislative definitions of basic and nonbasic service, the statutory scheme for telecommunications regulation, and the Commission's consistent interpretation of the statute, section (3) as drafted cannot withstand scrutiny.

2. <u>Section (3) Violates the Florida Requirement that Carriers Offer a Lifeline Assistance Plan that Covers Basic Service</u>

Section (3) would require wireline eligible telecommunications carriers ("ETCs") to apply the Lifeline discount to most service packages. This requirement violates Florida law, which provides that an ETC is required to "provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff or price list."[5] The statute does not define Lifeline or Lifeline Assistance Plan and thus expresses no intention to change the meanings given those terms under federal law. Federal regulations define "Lifeline" to mean "a retail local service offering" that is (i) available only to qualifying low-income consumers, (ii) provides the applicable discount,

[5] Fl. Stat. § 364.10 (2)(a).

and (iii) includes the services or functionalities enumerated in C.F.R. section 54.101, which substantially corresponds to basic service in Florida.[6] Under those regulations, state commissions are required to file or require ETCs to file information with the federal universal service fund administrator "demonstrating that the carrier's *Lifeline plan* meets the criteria set forth" in federal law.[7] The Lifeline Assistance Plan under the Florida statute is obviously the Lifeline plan required under federal regulations, and thus a Lifeline Assistance Plan must meet the federal Lifeline criteria. The Florida requirement that ETCs provide a Lifeline Assistance Plan therefore means that they must specify one retail local service offering that meets the federal standard to which they will apply the Lifeline discount.[8]

The Florida universal service and Lifeline statutes confirm that ETCs only must apply the Lifeline discount to one service, and further clarify that this service must be basic service. Lifeline is a universal service program that was created to increase subscribership for low-income consumers.[9] Under the Florida universal service statute, local exchange carriers' current universal service obligation is to provide basic service to the consumers in their service territory.[10] Requiring a greater obligation for Lifeline customers (*i.e.*, an obligation to provide them with nonbasic service packages) would be inconsistent with the Florida universal service statute. In accordance with that statute,

---

[6] *See* 47 C.F.R. § 54.401(a). Similarly, ETCs that do not charge federal End-User Common Line charges or equivalent federal charges are required to apply the Lifeline discount "to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in C.F.R. § 54.101 (a)(1) through (a)(9)." 47. C.F.R. § 54.403(b).
[7] 47 C.F.R. § 54.401(d)(emphasis added).
[8] Contrary to the suggestion made at the hearing (*see* T.20), a Lifeline Assistance Plan is not simply the Lifeline discount itself. The plain meaning of the word "plan" is broader than "discount," and the federal background dispels any possibility that the legislature could have intended a meaning so at odds with the language it chose.
[9] *See* In re Federal-State Joint Board on Universal Service, *First Report and Order*, CC Docket No. 96-45, FCC 97-157 at ¶ 333 (rel. May 8, 1997)("FCC Universal Service Order").
[10] Fl. Stat. § 364.025. ETCs must provide essentially the same type of service under federal law. *See* C.F.R. § 54.101.

the Florida Lifeline statute includes a number of provisions addressed only to the obligation to provide the Lifeline discount for basic service. A customer receiving Lifeline benefits is not subject to increases in *basic service* rates due to rate rebalancing until certain conditions are met.[11] An ETC may not discontinue *basic service* to a customer receiving the Lifeline discount because of nonpayment for nonbasic services.[12] And an ETC may not refuse to connect, reconnect or provide Lifeline service when the customer pays for *basic service* but fails to pay for nonbasic service.[13] These provisions confirm that the Lifeline discount must be applied to basic service, but not to nonbasic services.[14]

The requirement that wireline ETCs provide the Lifeline discount on basic service to eligible consumers does not, of course, prevent ETCs from voluntarily applying a discount to any or all of their nonbasic services. Some carriers in Florida choose to apply a Lifeline-like discount to nonbasic services, while others do not. Under Florida law, this decision must be left to a carrier's business judgment.

3. Section (3) Would Discriminate Against Wireline ETCs

Section (3) of the Proposed Rule fails to comply with the policy of competitive neutrality. The FCC adopted the recommendation of the Federal-State Joint Board on Universal Service ("Joint Board") that competitive neutrality be adopted as a principle on which the FCC bases its policies for the preservation and advancement of universal

[11] Fl. Stat. § 364.10 (3)(c).
[12] Fl. Stat. § 364.10 (3)(d).
[13] Fl. Stat. § 364.10 (3)(e).
[14] Staff appears to recognize that the Lifeline discount only must be applied to basic service, because of its novel attempt in section (3) to characterize service packages as being combinations of basic and nonbasic services. Staff apparently drafted section (3) in this manner so it could argue that the Lifeline discount was being applied to the basic service portion of the package. As discussed above, however, service packages may not be characterized this way under Florida law.

service.[15] The FCC concluded that this principle "is consistent with several provisions of section 254 including the explicit requirement of equitable and nondiscriminatory contributions,"[16] a requirement that also applies to state Lifeline programs.[17] The FCC defined the principle of competitive neutrality as follows:

> COMPETITIVE NEUTRALITY – Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that the universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.[18]

The principle of competitive neutrality applies to federal Lifeline programs[19] and as discussed below is a policy that has been endorsed by this Commission. Section (3) of the Proposed Rule fails to meet the competitive neutrality standard for at least two reasons: (i) it discriminates between wireline and wireless ETCs; and (ii) it exacerbates the discrimination that already exists between ETCs and other communication service providers.

a. <u>Section (3) discriminates between wireline and wireless ETCs</u>

Proposed section (3) would apply to wireline ETCs and not wireless ETCs. In part this is true because this section uses the terms "basic local exchange service" and "nonbasic service" that under Florida law apply to wireline carriers. As the wireless carriers at the workshop explained, they do not have service plans that conform to the

---

[15] FCC Universal Service Order ¶ 46 (rel. May 8, 1997)("FCC Universal Service Order").
[16] *Id.* at ¶ 48.
[17] 47 U.S.C. § 254(f).
[18] *Id.* at ¶ 47.
[19] *See* FCC Universal Service Order ¶ 364. This Commission may adopt Lifeline rules only to the extent they are "not inconsistent with the [FCC's] rules to preserve and advance universal service." 47 U.S.C. § 254 (f). Further, the Commission consistently has articulated its own policy of competitive neutrality, as discussed below.

Florida definition of basic service.[20] Rather, one of their duties under federal law is to apply the Lifeline discount to their lowest tariffed or otherwise generally available residential rate, which generally is a package of services that includes more than just basic service.[21] More fundamentally, the Commission lacks jurisdiction over wireless carriers except to the extent delineated under Chapter 364 or "specifically authorized by federal law."[22] Staff has not pointed to any provisions of Chapter 364 or federal law specifically authorizing the Commission to establish Lifeline rules for wireless carriers, which may explain why section (3) is drafted in terms that only would apply to wireline carriers.

Assuming that Staff intends to apply section (3) only to wireline carriers, the result would be that wireline carriers would be required to provide the Lifeline discount to virtually all of their service packages, while their wireless competitors only would be required to apply the discount to their lowest tariffed or otherwise generally available residential rate. Because Florida requires ETCs to absorb the $3.50 state portion of the Lifeline discount, requiring wireline carriers to expand their Lifeline programs while not requiring wireless carriers to do so obviously would put wireline carriers at a competitive disadvantage. In short, section (3) would result in significant discrimination between wireline and wireless carriers, and thus would fail to meet the competitive neutrality standard.

b. Section (3) would discriminate between wireline ETCs and non-ETCs

[20] T.23-26.
[21] *See* T.23-25; 47. C.F.R. § 54.403(b).
[22] Fl. Stat. § 364.011.

The Commission has long recognized that requiring ETCs to fund the $3.50 portion of the Lifeline discount through their rates has the potential to cause competitive harm to wireline carriers, especially incumbent local exchange carriers ("incumbent LECs"). In 1997, the FCC noted that "[t]he Florida PSC points out that this method of generating Lifeline support from the intrastate jurisdiction could result in some carriers (*i.e.*, ILECs) bearing an unreasonable share of the program's cost."[23] In 1999, the Commission again recognized the problem, stating:

> Although the absence of explicit state level funding of Lifeline may have been appropriate under rate of return regulation, where a LEC could apply for rate increases if needed, we believe that in the long term this policy is likely not sustainable in a competitive environment. Local exchange companies with qualifying customers could provide a disproportionate share of the state matching funds for those customers, while providers with no Lifeline customers would contribute nothing. The provider serving the most low-income customers thus would be disadvantaged.[24]

Although the Commission's concern about incumbent LECs bearing a disproportionate share of Lifeline's cost may have seemed theoretical in the late 1990s, it certainly is not today.

This Commission has documented the explosion in Florida intermodal competition, stating that "[w]ireless, VoIP, and broadband services are fulfilling the expectations of competition and represent a significant portion of today's communications market in Florida."[25] The Commission recently noted that Florida local exchange companies served 1 million fewer lines in May 2006 than they did in June

---

[23] FCC Universal Service Order ¶ 361.
[24] Florida Public Service Commission Report on Universal Service and Lifeline Funding Issues, p. 26 (February 1999).
[25] 2006 Annual Competition Report to the Governor and the Legislature, p. 2 ("Florida Competition Report").

2001,[26] a direct result of the competition they now face. According to the FCC's most recent report on local competition, there were far more wireless subscribers (14.1 million) in Florida as of June 2006 than there were local exchange access lines (10.6 million).[27] Based on incomplete data, this Commission was able to determine that there are now more than 662,000 VoIP subscribers in Florida,[28] which almost certainly understates the total by a wide margin. And the number of Florida broadband lines continues to expand rapidly, reaching approximately 3 million at last count by the Commission, an increase of 25% over the previous year.[29] All of these facts demonstrate that telephone competition is booming in Florida, multiplying the number of telecommunications and communications services being subscribed to by consumers, including low-income Floridians.

In the new competitive environment, incumbent LECs face vigorous competition from providers such as cable companies, CLECs and wireless carriers that are not required to spend a penny on Lifeline service. Because of the intense competition that incumbent LECs now face, it is no longer possible for them simply to spread the cost of Lifeline to their customer bases without losing customers. Imposing a requirement on wireline ETCs that they provide Lifeline discounts on virtually all service packages would exacerbate the competitive disadvantage they already face. Section (3) thus fails to meet the competitive neutrality test for this additional reason.[30]

---

[26] *Id.* at 23.
[27] Local Telephone Competition: Status as of June 30, 2006, Tables 7 and 14 (January 2007)(FCC Wireline Competiton Bureau).
[28] *Id.* at 3.
[29] *Id.*
[30] At the workshop, AARP argued that expanding the Lifeline program while requiring incumbent LECs to continue to absorb the $3.50 state portion of the Lifeline discount was appropriate because incumbent LECs agreed to expand the Lifeline program in 2003 as part of the rate rebalancing legislation. T.31-32. In fact, in 2003 incumbent LECs agreed to expand Lifeline eligibility to otherwise eligible customers

4. Section (3) Fails to Advance the Goal of Universal Service

Lifeline is a universal service program that was created to increase subscribership for low-income consumers in order to ensure that they have a basic connection to the network for access to emergency services and to integrate them into the economy – *even if they could not otherwise afford telephone service*. Hence, the term "Lifeline." Proposed section (3) would not advance the goal of universal service because its principal effects would be to encourage Lifeline customers who already have basic service to upgrade to nonbasic service packages and to make the Lifeline discount available to Lifeline-eligible customers who are already subscribing to nonbasic service packages. In other words, proposed section (3) would not increase telephone subscribership, but would merely provide a "Lifeline" discount to additional customers who *already have telephone service*. Indeed, Staff acknowledged at the January 10, 2007 workshop that it had not studied what effect section (3) would have on telephone subscribership. Because a requirement that the Lifeline discount be applied to nonbasic packages would not promote federal and state universal service policy, it should not be included in the Proposed Rule.

A rule requiring ETCs to apply the Lifeline discount only to basic service does not prevent Lifeline customers from receiving additional, nonbasic services. Verizon Lifeline customers, for example, may buy vertical features on an a la carte basis from Verizon's tariff or may select between one of two packages including just vertical services. They

---

meeting an income eligibility test of at 135% or less of the federal poverty income guidelines; to not increase rates for Lifeline customers; and to spend $1 million advertising their Lifeline plans. The incumbent LECs complied with each of these requirements. [**WAS $1 MILLION FOR EACH ILEC OR FOR EVERYONE?**]

also may buy separately other nonbasic services such as voice mail and long distance service and unregulated services such as broadband and video service. Alternatively, the customer may forego the Lifeline discount and accept a nonbasic package, which is offered at a discount from the sum of the individual tariffed service rates. Eligible customers are thus able to buy basic service at deeply discounted rates, to add nonbasic services at tariffed rates, or to forego the Lifeline discount and choose a tariffed package that meets their needs. This approach complies with state universal service law and policy as they have been applied in Florida for many years, and should continue.

For the foregoing reasons, section (3) as drafted would violate Florida law and policy and would be irrational, arbitrary and capricious. Accordingly, section (3) should be modified in the manner Verizon has proposed.

B. <u>Section 6: Self-Certification Forms</u>

Section (6) of the Proposed Rule would require ETCs to accept the "Lifeline and Link-Up Florida On-Line Self Certification Form" as proof of a subscriber's eligibility for Link-Up and Lifeline Service. Verizon proposes that the rule be modified to refer to the "Simplified Enrollment Form" to convey the true intent of the form.

C. <u>Section (9): Application Receipts</u>

Section (9) of the Proposed Rule would require ETCs to provide a Lifeline application receipt within three days that provides the date of receipt and the documents provided with the application. Providing an application receipt would increase ETCs' work time and costs without any substantial benefit to customers. In most cases, a receipt is a solution in search of a problem. For example, when a customer submits an incorrect or incomplete application, Verizon provides the customer with a personalized letter detailing the reasons why Lifeline was not added to the account and the steps the customer must take to receive Lifeline. (**See attached Exhibit __**). A customer that has submitted a correct and complete form normally can expect to see the Lifeline benefit on his or her bill within one to two billing cycles. If a customer's application has not been received, obviously the ETC will not be able to provide a receipt. If a customer is concerned that Verizon has not received its application, the customer is always free to call Verizon to verify receipt.

D. Section (25): Quarterly Reports

Section (25) of the Proposed Rule would require ETCs offering Link-Up and Lifeline service to submit extensive quarterly Lifeline reports to the Commission. Such reporting requirements would impose a significant new regulatory burden on ETCs. Verizon generally agrees with other carriers that have requested that the reporting requirements be reduced. In particular, Verizon opposes the move to quarterly reporting, which would quadruple the regulatory burden that carriers would have to shoulder. Moreover, Verizon submits that the proposed requirement that carriers report the reasons why Lifeline service was denied constitutes regulatory overkill. Verizon tracks the reasons why customers were denied Lifeline when they apply through the OPC income eligibility certification process, but not when Lifeline is denied for program-based enrollment. Carriers should not be required to create tracking processes to provide such information. Finally, Verizon notes again that obtaining applicants' full social security numbers is critical to the recertification process, and therefore requests that section (25) require full social security numbers, not just the last four digits.

For the foregoing reasons, Verizon requests that the Commission adopt Verizon's requested modifications to the Proposed Rules.

Respectfully submitted on February 27, 2007.

By: Dulaney L. O'Roark

Dulaney L. O'Roark III
6 Concourse Parkway, Suite 600
Atlanta, Georgia 30328
Phone: (770) 284-5498
Fax: (770) 284-5488
Email: de.oroark@verizon.com

Attorney for Verizon Florida LLC