

State of Florida



Public Service Commission

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

DATE: May 8, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Williams, Casey) *W* *PC* *M*
Office of General Counsel (Poblete, Teitzman) *AT* *OL*

RE: Docket No. 080234-TP – Implementation of Florida Lifeline Program involving bundled service packages and placement of additional enrollment requirements on customers.

AGENDA: 05/20/08 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\080234.RCM.DOC

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Case Background

In April 2007, the Florida Public Service Commission (FPSC or Commission) and the Department of Children and Families (DCF) implemented a joint project to develop a Lifeline automatic enrollment process. In this process, potential Lifeline customers, once certified through a DCF qualifying program, would have their names placed on a spreadsheet to be forwarded to the FPSC. In turn, the FPSC automatically sorts the list by the applicant's telephone company, and forwards an automatic e-mail informing the appropriate eligible telecommunications carrier (ETC) that a Lifeline application is available for retrieval through the Commission's secure database.

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FPSC-COMMISSION CLERK

Staff has been tracking the number of Lifeline applications processed through the Lifeline automatic enrollment process, and since its inception, over 110,000 Lifeline applications have been received.

This recommendation addresses application of the Lifeline discount to bundled service packages. A bundled service package combines basic local exchange service with nonbasic services to create an enhanced service offering. For purposes of this recommendation, nonbasic service includes call waiting, call forwarding, voice mail, internet access, and all other services that may be offered in a bundled package which includes basic service.¹

Currently, ETC policies within Florida differ as to whether the Lifeline discount applies to bundled service packages. Some ETCs provide consumers with the option to subscribe to any bundled package while others reject the applications of consumers subscribing to bundled services. Still others engage in procedures informing consumers of their limited plans for Lifeline, giving them the only option of subscribing to a basic service.

For example, since August of 2007, 5,370 applications have been rejected on the basis of customer subscription to a bundled service package.² Verizon, which currently has a policy against applying the Lifeline discount to bundled service packages, is responsible for 3,991 of these rejections. In contrast, AT&T and Embarq have flexible policies which provide Lifeline customers with the option to subscribe to any bundled package.

Sprint-Nextel, on the other hand, engages in additional validation procedures upon receipt of the automatic email from the FPSC. For consumers subscribing to bundled service packages, a second application is mailed to the applicant. Enclosed with this application is a letter explaining that the company only offers basic service for Lifeline customers and that, as a result, the consumer's subscription will be changed from his or her existing bundled package to the Lifeline basic service. From the inception of the Lifeline automatic enrollment process in April 2007, Sprint-Nextel has received over 9,800 Lifeline automatic enrollment applications. As of April 2008, Sprint-Nextel has been providing Lifeline service to only 97 customers.³

The Commission is vested with jurisdiction over these matters pursuant to 47 U.S.C. § 254(f), 47 C.F.R. § 54.401(d), and Sections 364.01(1) and 364.025(1), Florida Statutes, (F.S.).

¹ Staff notes that Section 364.02(10), Florida Statutes (F.S.), defines nonbasic service 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 This is 19.27% of the total number of application rejections. Examples of other reasons for rejections of Lifeline applications include: (1) Customer Social Security Identification number mismatch (17.37%); (2) The telecommunications service provider identified by the customer is not an approved ETC in Florida (9.10%); and (3) Customer has a business account (.59%).

³ Based on Universal Service Administrative Company data, Sprint was reimbursed \$937, and Nextel was reimbursed \$30 in April 2008, for providing Lifeline service. The \$967 reimbursement represents approximately 97 Lifeline customers.

Discussion of Issues

Issue 1: Pursuant to 47 C.F.R. § 54.403(b), are ETCs required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service?

Recommendation: Yes. Pursuant to 47 C.F.R. § 54.403(b), ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service. (Poblete, Teitzman, Williams, Casey)

Staff Analysis: As mentioned in the case background, since August 2007, 5,370 Lifeline applicants have been denied Lifeline service as a result of subscription to a bundled service package. Staff believes that such rejection of Lifeline applications on the basis of customer participation in bundled service packages is violative of 47 C.F.R. § 54.403(b). Applying the plain meaning rule to 47 C.F.R. § 54.403(b), it is staff's belief that, pursuant to 47 C.F.R. § 54.403(b), ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service. Alternatively, applying canons of statutory construction to interpret the applicable rules and statutes, leads to the same conclusion. Further, this recommendation is consistent with and supported by the rulings and opinions of the Federal Communications Commission (FCC) and other state commissions.

Applicable Rules and Statutes

Universal Service

Section 254 of the Telecommunications Act of 1934 (Act), as amended, codifies Universal Service, which is the historical commitment to make telecommunications services available for all Americans.⁴ Section 254(b) sets forth the principles upon which the Federal-State Joint Board and the FCC "shall base policies for the preservation and advancement of universal service"⁵ Among others, these principles include the following: (1) "Consumers in all regions of the Nation, including low-income consumers . . . should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services";⁶ (2) "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service";⁷ and (3) "[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity, . . ."⁸

⁴ 47 U.S.C. § 254 (2006).

⁵ 47 U.S.C. § 254(b) (2006).

⁶ 47 U.S.C. § 254(b)(3) (2006).

⁷ 47 U.S.C. § 254(b)(5) (2006).

⁸ 47 U.S.C. § 254(b)(7) (2006).

Section 254(f) goes on to provide for state authority: “[a] state may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service to provide for additional definitions and standards”⁹

Section 364.01(1) of the Florida Statutes provides that the “Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.”¹⁰ Subsection (2) goes on to state that “[i]t is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies”¹¹

In terms of Universal Service, Section 364.025(1), F.S., states that:

For the purposes of this section, the term “universal service” means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.¹²

Lifeline

The Lifeline program is one of four Universal Service support mechanisms that furthers the goal of Universal Service by providing low-income consumers with discounts that reduce the cost of telephone service.¹³

47 C.F.R. § 54.403(b), which delineates the application of various Lifeline support amounts, includes the following directives:

Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier-One federal Lifeline support to waive the federal End-User Common Line charges for Lifeline consumers. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer’s intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (*or otherwise generally available*) residential rate for the services enumerated in §54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount. (emphasis added).

⁹ 47 U.S.C. § 254(f).

¹⁰ (2007).

¹¹ § 364.01(2), F.S. (2007).

¹² § 364.025(1), F.S. (2007).

¹³ See 47 C.F.R. § 54.401(a)(2) (2007).

47 C.F.R. § 54.401(d) provides that the “state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier’s Lifeline plan meets the criteria set forth in this subpart”

Section 364.10(3)(d), F.S., states:

An eligible telecommunications carrier may not discontinue basic local exchange telephone service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for *nonbasic services* billed by the telecommunications company, including long-distance service. (emphasis added).¹⁴

Canons of Statutory Construction

As stated above, in accordance with the plain reading rule, it is staff’s belief that, pursuant to 47 C.F.R. § 54.403(b), ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service.

Statutory Language

The plain meaning of a statute is the first and paramount consideration of statutory construction.¹⁵ Florida courts have held that “[w]hen the language is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction.”¹⁶ “The statute must be given its plain and obvious meaning.”¹⁷

In the instant case, the issue to be determined is whether ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service. The statutory language at issue is the parenthetical phrase “or otherwise generally available,” which is a part of the following directive: “Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in §54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.”¹⁸

The plain meaning of this directive is that an ETC is to apply its Lifeline support amount to reduce one of two rates: (1) its lowest tariffed residential rate; *or* (2) any otherwise generally available rate. By default, an ETC’s lowest tariffed rate is its basic local service rate, and its otherwise generally available rates consist of all other rates. The latter necessarily includes service offerings which combine both basic and nonbasic service—bundled service packages.

¹⁴ Staff notes that nonbasic service in this Section refers to nonbasic service as defined by Section 364.02(10), F.S.

¹⁵ *Capers v. State*, 678 So. 2d 330 (Fla. 1996).

¹⁶ *James W. Windham Builders, Inc. v. Overloop*, 951 So. 2d 40, 42 (Fla. 1st DCA 2007).

¹⁷ *Id.* (citing *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998)).

¹⁸ 47 C.F.R. § 54.403(b).

Thus, in applying the discount to rates “otherwise generally available”—that is, bundled services packages—an ETC must simply reduce the basic local service rate portion of the service by the Lifeline support amount. The plain and obvious meaning of this provision clearly requires ETCs to apply the Lifeline discount to both basic and the basic portion of bundled packages. Because the language of this provision is clear and unambiguous, conveying a clear and definite meaning, there is no need to apply other canons of statutory construction.

However, even if an ETC were to argue that the language of 47 C.F.R. § 54.403(b) is indeed ambiguous and subject to differing interpretations, staff believes that applying the canons of statutory construction would nevertheless lead to the same conclusion.

Statutory Context and Purpose

For example, in applying the fundamental canon of statutory construction which requires statutory interpretation to consider both statutory context and purpose, it is abundantly clear that ETCs are required to apply the Lifeline discount to either basic service rates or the basic portion rate of bundled packages. This canon requires that a statute be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context in a manner that furthers statutory purpose.¹⁹ The United States Supreme Court has characterized this approach by stating:

Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.²⁰

The Court has also described this process with the following statement: “In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”²¹ Thus, a specific statutory directive may be shaped by any number of related parts or provisions of the law including but not limited to: (1) the statute’s definition of terms; (2) the statute’s statement of findings and purposes; (3) the directive’s relationship to other directives; (4) the purposes inferred from those directives or the statute as a whole; (5) the statute’s overall structure; and (6) the broader context of the body of law into which the statute fits.

In the instant case, allowing the directive in question to be shaped by its broader context, in a manner consistent with its purpose, it is clear that the phrase “or otherwise generally available” encompasses bundled service packages and that the directive thus requires an ETC to

¹⁹ See *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) (noting that it is a “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme”); *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959) (stating that a court must “fit, if possible, all parts [of a statute] into an harmonious whole.”).

²⁰ *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 370 (1988) (citations omitted).

²¹ *U.S. v. Boisdore’s Heirs*, 49 U.S. 113, 122 (1850).

apply the Lifeline discount to basic service rates or the basic portion rates of bundled packages. As already stated, a fundamental canon of statutory construction is that a statute be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context in a manner that furthers statutory purpose. Identifying the statutory context and purpose is thus the first step in applying this particular canon.

As already mentioned, the parenthetical phrase in question is “or otherwise generally available” which is a part of the following directive: “Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in §54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.”²² Because this is a provision concerning Lifeline, a mechanism of Universal Service, its statutory context necessarily consists of rules and statutes concerning both Universal Service and Lifeline. Additionally, because a state’s laws on these matters are affected by federal law, the statutory context also consists of the rules and statutes governing these relationships. Pertinent federal provisions specifically concerning the states include Section 254(f) of the Act, which deals with Universal Service and 47 C.F.R. § 54.401(d), which deals with Lifeline. The former grants states the authority to adopt regulations not inconsistent with FCC rules to preserve and advance Universal Service. The latter requires the state commission or ETC to file information with the Universal Service Administrator demonstrating compliance with Lifeline federal rules and statutes.

The relevant Florida Statutes on Universal Service include Sections 364.01(1) and 364.025(1). Section 364.01(1), F.S. codifies the Commission’s powers over telecommunications companies and makes clear the legislature’s intent to give the Commission exclusive jurisdiction over regulating those companies. Section 364.025(1) defines Universal Service as an evolving level of access to telecommunications services that should be provided to all customers, including the economically disadvantaged, at just, reasonable and affordable rates, as the Commission determines, taking into account advances in technologies, services, and market demand for essential services.

Finally, also pertinent here is Section 254(b) of the Act which sets forth the principles of Universal Service and gives us our statutory purpose. Specifically, the most relevant principle here is that “[c]onsumers in all regions of the Nation, *including low-income consumers . . .* should have access to telecommunications and information services, *including interexchange services and advanced telecommunications and information services . . .*”²³ And, as already mentioned, the goal and purpose of Universal Service, and thus Lifeline, is to make telecommunications services available for all Americans.

Having identified the statutory context and purpose of the directive in question, the next and final step of this analysis is to interpret the directive within its context in a manner that furthers its purpose. The directive states that an ETC is to apply the Lifeline support amount to either the lowest tariffed residential rate or any otherwise generally available rate. The context is

²² 47 C.F.R. § 54.403(b).

²³ 47 U.S.C. § 254(b)(3).

Universal Service and Lifeline on both the federal and state level. The purpose here is to make telecommunications services available to all Americans. Considering this context and goal, the phrase “otherwise generally available” cannot be interpreted to mean anything other than all other plans made available by an ETC. This necessarily includes plans that combine both basic and nonbasic services. The purpose here, in broad terms, is for Universal Service mechanisms to provide telecommunications and information services, *including interexchange services and advanced telecommunications and information services*, to all consumers, *including low-income consumers*. It can therefore be inferred that the purpose of Lifeline, a Universal Service mechanism focused solely on qualifying low-income consumers, is to provide such services to low-income consumers. Such services—“telecommunications and information services, *including interexchange services and advanced telecommunications and information services*,”—necessarily includes both basic service and any service offering which combines both basic and nonbasic service. Thus, the phrase “or otherwise generally available” must be construed to mean all other rates including the rates of bundled service packages.

Further, Florida statutes contemplate Lifeline discounted basic service bundled with nonbasic service. As cited to above, Section 364.10(3)(d), F.S., states:

An eligible telecommunications carrier may not discontinue basic local exchange telephone service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for *nonbasic services* billed by the telecommunications company, including long-distance service. (emphasis added).

In other words, if a Lifeline customer fails to pay an ETC for any nonbasic services he or she had subscribed to, the ETC cannot, as a result of nonpayment, discontinue his or her basic service. This necessarily assumes that a Lifeline customer will have access to bundled service packages.

Statutory Words and Clauses

Another applicable canon of statutory construction is “that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.”²⁴

Here, the phrase “or otherwise generally available” must be given meaning and effect. Thus, in context, ETCs are to reduce their lowest tariffed *or* otherwise generally available residential rate by the Lifeline support amount. In other words, the Lifeline discount may be applied to *either* the lowest tariffed rate or any other available rate—that is, rates that combine both basic and nonbasic services. If the Lifeline discount was only applied to the lowest residential rate—that is, only the basic service rate—the phrase, “or otherwise generally available,” would *not* be given effect, thereby rendering it superfluous. Such an interpretation and consequent application would therefore violate this basic principle of statutory construction.

²⁴ *Hechtman v. Nations Title Ins. of NY*, 840 So. 2d 993, 996 (Fla. 2003); *See also Astoria Federal Savings & Loan Ass’n v. Solimino*, 501 U.S. 104, 112 (1991) (finding that “statutes should be read to avoid rendering superfluous any parts thereof”).

Accordingly, the words “or otherwise generally available” may not be construed as mere surplusage—words of no effect. Rather, they should be given effect, and here that would mean for the phrase “otherwise generally available” to encompass the rates of offerings that combine both basic and nonbasic services or bundled service packages.

Statutory Exceptions

The final applicable canon of statutory construction is that exceptions not made cannot be read into the statute.²⁵ In the instant case, it is clear that no exception was made for the application of the Lifeline discount to the basic rate portion of bundled service packages. As outlined above, the statute clearly refers to the reduction of either the lowest tariffed residential rate *or* an otherwise generally available rate which, as established above, includes bundled service packages. Because exceptions not made cannot be read into the statute, it is clear that bundled service packages are in no way exempt from the Lifeline discount. Therefore, the Lifeline discount must be applied to the basic service rate *or* the basic service rate portion of a bundled service package.

Accordingly, based on the application of the canons of statutory construction, as outlined above, staff believes that ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service, pursuant to 47 C.F.R. § 54.403(b).

FCC and Other State Commissions

Further, staff’s recommendation is consistent with the rulings and opinions of the FCC. In a Report and Order and Further Notice of Proposed Rulemaking (Report and Order), issued April 29, 2004, the FCC expressed support for Lifeline customer participation in bundled service packages:

We adopt the Joint Board’s recommendation not to adopt rules prohibiting Lifeline/Link-Up customers from purchasing vertical services, such as Caller ID, Call Waiting, and Three-way Calling. Like the Joint Board, *we believe any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the program.* (emphasis added).²⁶

The Report and Order was specifically issued to address Lifeline and Link-up.²⁷ In an effort to improve their effectiveness, the programs were modified to better serve the goals of

²⁵ See *Dobbs v. Sea Isle Hotel* 56 So. 2d 341, 342 (Fla. 1952) (noting the court’s frequent holding that the rule “expressio unius est exclusio alterius,” meaning “express mention of one thing is the exclusion of another,” is applicable in statutory construction and that “had the legislature intended to establish other exceptions [within the statute at issue] it would have done so clearly and unequivocally”); *Williams v. Am. Sur. Co. of N.Y.*, 99 So. 2d 877, 880 (Fla. 2nd DCA 1958) (stating “[w]here a statute sets forth exceptions, no others may be implied to be intended”).

²⁶ *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302, 8330 (April 29, 2004) (Report and Order and Notice of Proposed Rulemaking).

²⁷ See *id.* at 8305.

Universal Service.²⁸ Declining to adopt any rules prohibiting Lifeline and Link-Up customers from purchasing vertical services was thus one of many issues and modifications taken up by the FCC in this Report and Order. Staff notes that in addition to the statements quoted above regarding bundled packages, the FCC also states that the actions instituted by the Report and Order “will result in a more inclusive and robust Lifeline/Link-Up program, *consistent with the statutory goals of maintaining affordability and access of low-income consumers to supported services, while ensuring that support is used for its intended purpose.*” (emphasis added).²⁹ In other words, all of the issues and/or modifications to Lifeline and Link-Up found in the Report and Order, which include declining to adopt rules against bundled packages, are consistent with the goals and purposes of Universal Service. Therefore, rules which would serve to discourage enrollment or to create barriers to participation in the Lifeline and Link-Up, such as those prohibiting participation in vertical services, would be wholly inconsistent with Universal Service goals and principles.

Staff also notes significant discussion and activity on this issue in other states, including Kansas and California, that supports and/or results in conclusions similar to those set forth in this recommendation.

On October 2, 2006, the Kansas Corporation Commission (KCC) issued an Order Adopting Requirements for Designation of Eligible Telecommunications Carriers (Order).³⁰ In this Order is a ruling specifically concerning Lifeline support whereby the KCC takes the position that customers should have choices and that Universal Service programs, including Lifeline, should support customer choice.³¹ The KCC thus found “that all ETCs shall allow Lifeline customers to select a plan and apply the discount to that plan.”³²

The KCC came to this conclusion by likewise interpreting the parenthetical phrase at issue here, “or otherwise generally available,” as being inclusive of plans other than just the basic or lowest priced plan offered.³³ The KCC further stated, as Staff asserts here, that “limiting Lifeline customers to the lowest cost plan that an ETC has available is contrary to the goals for universal service.”³⁴

Following the KCC’s Order, several ETCs filed Petitions for Reconsideration. In an Order Addressing Petitions for Reconsideration, issued November 20, 2006, the KCC, however, stated:

²⁸ *Id.*

²⁹ *Id.*

³⁰ *In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, WL 3479050 (Kan.S.C.C.) (October 2, 2006) (Order Adopting Requirements for Designation of Eligible Telecommunications Carriers).

³¹ *Id.* at 10.

³² *Id.*

³³ *Id.* An ETC interpreted the mention of “the lowest tariffed residential rate” by 47 C.F.R. § 54.403(b) to mean that its practice of only allowing Lifeline customers to subscribe to its lowest tariffed service meant that it was in compliance with the rule. KCC Staff disagreed with this interpretation, observing that the ETC ignores the parenthetical language “or otherwise generally available.” The KCC agreed with this position, finding that the ETC was placing a “too limited” interpretation on the FCC’s rule. *Id.*

³⁴ *Id.*

The Commission will not reconsider its order directing ETCs to allow Lifeline customers to select which plan to apply the Lifeline discount. The Commission believes it is the public interest to ensure that Lifeline customers are not limited to one plan. The Commission notes that other carriers participating in this docket do provide a choice of plans to Lifeline customers. Finally, . . . neither [ETC] . . . provided the Commission with authority stating that this Commission cannot expand the application of the Lifeline discount to plans other than the lowest cost plan provided by an ETC. Likewise, . . . [they] have not demonstrated that they are harmed in any way by giving their low-income customers more choice among the services they are offering as ETCs.³⁵

Thereafter, an ETC filed a Petition for Declaratory Ruling with the FCC, seeking a declaration that the Order violates federal law.³⁶ As a result, the FCC issued a Public Notice, seeking comment on the petition from any interested party.³⁷

Staff notes that the National Association of State Utility Consumer Advocates and the Florida Office of Public Counsel (FOPC) filed comments with the FCC in support of the KCC. The FOPC made the following comments: "We believe that low-income customers should be eligible for Lifeline credit for any service or package of services provided by an Eligible Telecommunications Carrier (ETC) that includes basic local exchange telecommunications service capability."³⁸

On August 24, 2006, the California Public Utilities Commission (CPUC) issued an Opinion supporting the application of the Lifeline discount to bundled packages.³⁹ The CPUC introduces the general issue of bundling by stating that because "[t]he majority of communications services sold are in bundles, rather than on a stand-alone basis . . . policy decisions affecting bundles are especially significant for California consumers."⁴⁰ The CPUC then goes on to explain that "[w]ith respect to Lifeline, we hold that we should maintain our current practice of requiring that packages be made available to Lifeline customers at a discount equal to the Lifeline subsidy. This policy ensures that Lifeline consumers continue to realize the

³⁵ *In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, WL 3917749 *6 (Kan.S.C.C.) (November 20, 2006) (Order Addressing Petitions for Reconsideration).

³⁶ Petition of Sprint Spectrum, L.P. for a Declaratory Ruling that the KCC's October 2, 2006 Order in Docket No. 06-GIMT-446-GIT, violates federal law, WC Docket Nos. 03-109 and 07-138, filed June 8, 2007.

³⁷ Public Notice that the Wireline Competition Bureau seeks comment on Sprint Petition for Declaratory Ruling concerning a KCC Lifeline rule adopted October 2, 2006, WC Docket Nos. 03-109 and 07-138, DA 07-2978, released July 10, 2007. A decision on the petition is currently pending.

³⁸ *In the Matter of Sprint Spectrum, L.P. Petition for Declaratory Ruling*, Comments of the Citizens of Florida in Opposition to Sprint Nextel's Petition to Preempt the Order of the Kansas Corporation Commission Dated October 2, 2006, page 3.

³⁹ See *In re Order Instituting Rulemaking on Commission's Own Motion to Assess, Revise Regulation of Telecommunications Utilities*, WL 2527822 (Cal.P.U.C.) (August 24, 2006) (Opinion).

⁴⁰ *Id.* at 73.

scope of the benefit they receive.”⁴¹ In conclusion, the CPUC states the following: “[i]n summary, bundles may include any telecommunications service, but we will continue to require that bundles be made available to Lifeline customers at a discount equal to the Lifeline subsidy.”⁴²

Staff further notes state commission rules that clearly require the application of the Lifeline discount to bundled packages. The Public Utility Commission of Texas (TPUC), for example, has adopted Rule § 26.412, Texas Administrative Code, Lifeline Service Program. Within this rule is a subsection specifically titled “Bundled packages” which states that “[a] Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.”⁴³

The Utah Public Service Commission (UPSC) has adopted Rule 746-341, Utah Administrative Code, Lifeline/Link-Up Rule. Subsection (G) of Rule 746-341-5, Lifeline Telephone Service Features, states the following:

Other Services - - A Lifeline telephone service customer will not be required to purchase other services from the ETC, nor prohibited from purchasing other services unless the customer has failed to comply with the ETC’s terms and conditions for those services.

Other states that currently support the application of the Lifeline discount to bundled packages include: Wisconsin, Missouri, Indiana, Oregon, Michigan, Ohio, Kentucky, Vermont, Nebraska, Tennessee, Oklahoma, and South Carolina.⁴⁴

Conclusion

Based upon the foregoing analysis of the relevant rules and statutes, as well as on the position of the FCC and other state commissions, it is staff’s recommendation that the Commission find that, pursuant to 47 C.F.R. § 54.403(b), ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service

⁴¹ *Id.* at 74.

⁴² *Id.* at 75.

⁴³ Rule § 26.412(e)(7), Texas Administrative Code, Bundled packages (2008).

⁴⁴ State rules that support the application of the Lifeline discount to bundled packages include: § 160.09, Wisconsin Administrative Code; Rule 240-3.570, Missouri Code of State Regulations; and Rule 860-099-0040, Oregon Administrative Rules, OTAP Alternatives. States which do not prohibit but allow application of the Lifeline discount to bundled packages include: Indiana, Michigan, Kentucky, Vermont, Nebraska, Tennessee, Oklahoma, and South Carolina. On March 7, 2007, the Public Utilities Commission of Ohio (PUCO) issued an entry granting a limited waiver for a trial period regarding a January 12, 2007 request for waiver filed by AT&T Ohio. In its waiver, AT&T Ohio sought relief from Rule 4901:1-4-06(B)(1)(c), Ohio Administrative Code, which restricts the purchase of vertical features, other than call waiting, by Lifeline customers without a medical or safety self-certification. During this trial period, the PUCO noted that Lifeline customers would be permitted to purchase caller ID, three-way calling, and call waiting from AT&T Ohio without having to certify that these optional services are necessary for medical or safety reasons.

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offering which combines both basic and nonbasic service.⁴⁵ Such a finding would be consistent with the goals and principles of Universal Service and would foster increased participation in the Florida Lifeline Program.

⁴⁵ If the Commission approves this recommendation, staff notes that it is no longer necessary for Sprint-Nextel to engage in additional validation procedures on consumers subscribing to bundled service packages.

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Date: May 8, 2008

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation on Issue I, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Poblete, Teitzman)

Staff Analysis: If the Commission approves staff's recommendation on Issue I, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.