

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of eligible telecommunications carriers pursuant to Section 214(e) of the Telecommunications Act of 1996.

DOCKET NO. 970644-TP
ORDER NO. PSC-98-0760-FOF-TP
ISSUED: June 1, 1998

In Re: Implementation of changes in the Federal Lifeline Assistance Program currently provided by telecommunications carriers of last resort.

DOCKET NO. 970744-TP

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING MODIFICATIONS
TO TOLL CONTROL PROVISION IN DOCKET NO. 970744-TP
AND FINAL ORDER CLOSING DOCKET NO. 970644-TP

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

The FCC instituted several changes to the Lifeline Assistance Plan (Lifeline) in its Report and Order on Universal Service (CC Docket No. 96-45, FCC Order 97-157, released May 8, 1997). Some of the changes were adopted to make the program consistent with the Telecommunications Act of 1996 (the Act), particularly with regard to competitive neutrality. The previous Lifeline

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program was a function of jurisdictional separations and applied only to incumbent local exchange companies (LECs); thus, it was not competitively neutral. Other changes were instituted in an attempt to increase subscribership levels among low-income consumers. We adopted the new provisions in a series of orders in Docket Nos. 970644-TP and 970744-TP.

On January 26, 1998, ALLTEL Florida, Inc. (ALLTEL), BellSouth Telecommunications, Inc. (BellSouth), and Sprint-Florida, Incorporated (Sprint) filed protests to Order No. PSC-98-0026-FOF-TP. This order addresses the parties' protests and the FCC action regarding waivers from the provision of toll control.

II. MODIFICATIONS TO TOLL CONTROL PROVISION

One of the requirements added to the federal Lifeline program, effective January 1, 1998, was that Lifeline consumers be able to receive, without charge, toll limitation services. Two forms of toll limitation services were required: voluntary toll blocking and toll control. (FCC Order 97-157, ¶383) With voluntary toll blocking, customers may have all toll calls blocked. With toll control services, customers may limit in advance the toll usage per billing cycle.

States are permitted to grant waivers to eligible telecommunications carriers (ETCs) who are technically incapable of providing toll limitation services while they upgrade their switches to enable them to provide such services. Presently, all ETCs in Florida can provide toll blocking, but not toll control. By Order No. PSC-98-0026-FOF-TP, issued January 5, 1998, we granted waivers from the requirement to offer toll control for one year, beginning January 1, 1998.

At the time we voted on this matter, there were petitions pending at the FCC seeking reconsideration of the requirement to provide toll control. While we were aware of pending FCC action, we stated in our order that we may wish to retain provision of toll control as a requirement in Florida, as indicated by the following discussion:

Several companies also pointed out that petitions have been filed with the FCC asking it to reconsider its toll limitation requirements. Although the requirements for federal funding may be changed, we may still wish to retain toll control as part of

Florida's lifeline plan. We support the toll limitation requirements as currently framed in the FCC's Order. Accordingly, we believe that ETCs should continue with plans for implementation of full toll limitation services regardless of the FCC's decision on the matter. (Order No. PSC-98-0026-FOF-TP, p. 5)

It is this portion of our order that the carriers have protested. Sprint and other ETCs have requested a waiver of the federal requirement to provide toll control due to lack of feasibility, especially with regard to real-time billing capability.

After our vote on this matter, the FCC addressed the toll limitation issue in its Fourth Order on Reconsideration in CC Docket No. 96-45, In the Matter of Federal-State Board on Universal Service, FCC Order 97-420, issued on December 30, 1997. In that order, the FCC concluded:

. . . that giving consumers such an option is not viable at this time. Based on the record before us, we find that an overwhelming number of carriers are technically incapable of providing both toll-limitation services, especially toll-control, at this time.
(FCC Order 97-420, ¶114)

. . . [W]e define toll-limitation services as either toll blocking or toll control and require telecommunications carriers to offer only one, and not necessarily both, of those services at this time in order to be designated as eligible telecommunications carriers. We note, however, that if, for technical reasons, a carrier cannot provide any toll limitation service at this time the carrier must seek a time-limited waiver of this requirement to be designated as eligible for support during the period it takes to make the network changes needed to provide one of those toll-limitation services [W]e plan to monitor and revisit this issue if we determine that technological impediments to carriers' ability to offer toll limitation have been reduced or eliminated.
(Id. at ¶115)

In order to provide toll control, LECs would need to receive recording and rating information from the interexchange companies (IXCs) on a real-time basis. Without this information, LECs claim that it is impossible to provide toll control, as they would have no way of determining when the customer's dollar limit had been reached. According to the companies, systems must be developed to collect this information. It appears that provision of toll control is not feasible at this time.

It is clear that a waiver is no longer needed to retain ETC status under the FCC's Fourth Reconsideration Order, as long as one of the toll limitation services is provided. All Florida ETCs can provide toll blocking. Accordingly, waiver requests should no longer be required so long as one of the services can be provided.

Although the FCC is not requiring the provision of both types of service at this time, the requirement has been suspended rather than eliminated. One of the primary reasons Lifeline subscribers lose access to telecommunications services is disconnection for failure to pay toll bills. These low-income customers may, nevertheless, have a need to make some amount of toll calls. Accordingly, we believe that it is appropriate for ETCs to notify us as soon as it is technically feasible for them to provide toll control services to Lifeline customers.

Upon consideration, ETCs shall report to us as soon as toll control becomes technically feasible. We will no longer require ETCs to file waivers for the toll control provision, as long as toll blocking can be provided.

The issues addressed in this Order are specific to protests filed relative to Docket No. 970744-TP. No protests have been filed on issues that are specific to Docket No. 970644-TP. Accordingly, if a protest is filed on the issues contained in this Order, only Docket No. 970744-TP shall remain open to address any such protests. Therefore, Docket No. 970644-TP shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that eligible telecommunications carriers (ETCs) are hereby required to report to the Florida Public Service Commission when toll control becomes technically feasible. It is further

ORDERED that eligible telecommunications carriers (ETCs) shall no longer be required to file waivers from the provision of toll control, as long as toll blocking can be provided. It is further

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ORDERED that Docket No. 970744-TP shall be closed unless a person whose substantial interests are affected by this Proposed Agency Action Order files a protest within 21 days of the issuance date of the Order. It is further


ORDERED that the provisions of this Order relative to Docket No. 970744-TP, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, Docket No. 970744-TP shall be closed. It is further

ORDERED that Docket No. 970644-TP is closed.

By ORDER of the Florida Public Service Commission this 1st day of June, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein in Docket No. 970744-TP is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 22, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order,

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pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in Docket No. 970644-TP may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas, or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.