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RECORDS AND REPORTING

DATE: NOVEMBER 18, 1999
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF COMMUNICATIONS (MARSH) *ben*
DIVISION OF LEGAL SERVICES (FORDHAM) *C.F.F. BK*
RE: DOCKET NO. 990694-TL - JOINT PETITION OF CITIZENS OF FLORIDA; ROBERT A. BUTTERWORTH, ATTORNEY GENERAL OF THE STATE OF FLORIDA; AND AMERICAN ASSOCIATION OF RETIRED PERSONS TO EXPAND LIFELINE ASSISTANCE PLAN ELIGIBILITY CRITERIA SO CUSTOMERS WITH EXISTING DEBTS TO LOCAL EXCHANGE COMPANIES MAY NO LONGER BE DENIED LIFELINE SERVICE AS LONG AS THEY SUBSCRIBE TO TOLL BLOCKING
AGENDA: 11/30/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE - PROPOSED AGENCY ACTION
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\CMU\WP\990694.RCM

CASE BACKGROUND

On May 28, 1999, the Citizens of Florida; Robert A. Butterworth, Attorney General of the State of Florida; and American Association of Retired Persons (collectively Joint Petitioners) filed a petition to expand Lifeline Assistance Plan eligibility criteria so that customers with existing debts to local exchange companies (LECs) may no longer be denied Lifeline service as long as they subscribe to toll blocking.

Effective in 1995, Section 364.10(2), Florida Statutes, mandated that the carrier of last resort provide Lifeline service to qualified residential subscribers. BellSouth had already implemented its program in 1994 as part of its rate stabilization plan. The remaining LECs implemented the program with tariff filings in 1995. Subsequently, the FCC instituted several changes to the existing Lifeline program in its Report and Order on Universal Service (CC Docket No. 96-45, FCC Order 97-157, released

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May 8, 1997) (Order). The FPSC adopted those requirements in Docket No. 970744-TP, Order No. PSC-97-1262-FOF-TP, issued October 14, 1997. Among the provisions was a requirement that local service for Lifeline customers may not be disconnected for non-payment of toll charges (no disconnect rule); however, toll service may be disconnected for non-payment of toll charges.

On July 30, 1999, the United States Court of Appeals for the Fifth Circuit found that the FCC "exceeded its jurisdiction when it imposed the 'no disconnect' rule." (Order No. 97-60421, p. 50) Accordingly, that portion of the FCC's Universal Service Order was reversed.

However, Section 364.604(4), Florida Statutes, also prohibits disconnection of Lifeline service for nonpayment, stating that "[a] billing party shall not disconnect a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid." Thus, it goes one step further than the former federal "no disconnect" rule, in that a Lifeline subscriber cannot be disconnected for nonpayment of any charges other than those specifically related to basic local service. It appears that if a Lifeline subscriber has Caller ID, for example, and has not paid the bill for that service, basic local service cannot be disconnected. This does not seem to preclude disconnection of the Caller ID, however. This and other provisions of Section 364.604 are currently the subject of rulemaking in Docket No. 990994-TP. Unless a hearing is requested, the rule is slated to be filed for adoption on March 31, 2000.

On July 22, 1999, FPSC staff met with interested parties in this matter to discuss a possible resolution of the issues raised in the subject petition and related matters. It seemed that parties reached an accord on most points that were discussed. However, a proposal circulated by staff subsequent to the meeting was not fully accepted by the parties. Of particular concern was the handling of reconnected customers with outstanding debts once they were no longer eligible for Lifeline. Additionally, there was a question as to how many times a customer could invoke the reconnection provision. That is, once the customer was reconnected, if nonpayment occurred resulting in disconnection, could the company then collect all outstanding debts before providing the customer with service? One party, Sprint, expressed a preference to explore the issues at hearing. The petitioners themselves did not agree to accept the proposal until nearly two months after the meeting, and then only with a number of caveats.

The resolution herein is adapted from the proposal circulated after meeting with the parties, and incorporates their comments and concerns along with issues that arose later. In spite of the mixed results from the attempt to settle the issues in this case, staff is hopeful that the matter can be resolved without a hearing. If

not, this proposed agency action may narrow the issues that remain to be resolved. In that spirit, staff sets forth the recommended action below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission require the LECs to provide Lifeline service to eligible customers who have been previously disconnected for nonpayment of their telephone bills, as long as these customers also subscribe to toll blocking service?

RECOMMENDATION: Yes. Staff recommends that the Commission require the LECs to provide Lifeline service to eligible customers who have been previously disconnected for nonpayment of their telephone bills, with the provisions enumerated in the staff analysis. These requirements should be implemented within ninety (90) days of the issuance of the order. (MARSH)

STAFF ANALYSIS: The current Lifeline plan provides a credit of up to \$10.50 on the local telephone bill to eligible customers. Subscribers with only basic local service and toll blocking would receive a bill of less than \$5, plus applicable taxes. However, the Joint Petitioners point out that "[a]lternative carriers are proliferating in Florida to provide toll-blocked local service to such customers at up to \$59.95 per month." (Petition, p. 3) They believe this is a result of previously incurred unpaid debts which are preventing eligible persons from receiving Lifeline service.

The Joint Petitioners stated that

Our experience indicates that the refusal of local telecommunications companies in Florida to provide lifeline service to customers with preexisting debts is a huge obstacle to expanding subscribership of lifeline service in Florida. Some companies have discretionary internal policies allowing customers with past debts to obtain lifeline service if (1) the past-due debt has not been sent to a bill collection agency, (2) the customer begins a plan to pay off the debt over a 4 to 6 month period, and (3) the customer agrees to toll limitation or toll restriction. However, this practice still uses the prospect of local phone service as leverage to obtain payment for past charges, including past-due long distance charges, and does not go far enough to encourage lifeline service in Florida.

Potential users of lifeline service have often been disconnected in the past for nonpayment of long distance charges. Lifeline provides little use for these persons

if the local exchange companies refuse to provide them lifeline service on account of the previous debt. Both the Joint Board and the Federal Communications Commission have found that disconnection for nonpayment of long distance charges is a significant cause of low subscribership among low-income consumers. (Petition, p. 4)

Data provided by BellSouth for a four-year period from July 1994 through June 1998 show that 81,526 Lifeline customers were disconnected for nonpayment. This was by far the most prevalent reason for disconnection, representing some 58 percent of all Lifeline disconnects. The second most common reason was moving out of the region, at 8.3 percent. No data are available for other LECs.

The Joint Petitioners believe the need for action is great. They point out that the penetration rates in Florida are dropping, stating that in 1995, 93.9 percent of the households in Florida subscribed to telephone service. The percentages dropped steadily over the ensuing years to 92.6 percent in 1998, as reported by the FCC in its report, *Telephone Subscribership in the United States*, May 1999. They further note that the national average in 1998 was 94.1 percent.

To help reverse this undesirable trend, the Joint Petitioners ask that past debts "no longer be used by the LECs as a basis for denying Lifeline service to subscribers who would otherwise be eligible for the service." (Petition, p. 5)

Section 364.604(4), Florida Statutes, which deals with disconnection of a Lifeline subscriber's basic local service, does not address customers who were disconnected for nonpayment prior to becoming eligible for Lifeline. Nevertheless, fairness would dictate that such customers should be treated in the same manner as a customer who is already subscribing to Lifeline when the bill becomes delinquent.

Although staff's attempt to aid parties in reaching a settlement was not entirely successful, parties were generally in agreement on a number of points. The following enumerated items are adapted from the discussions at the meeting with the parties and subsequent correspondence which indicated the issues parties were and were not in agreement with. Staff believes these requirements should be implemented within ninety (90) days of the issuance of the order.

1. LECs will not refuse to connect, reconnect, or provide Lifeline service because of unpaid toll charges or local charges other than basic local service.
2. LECs may require payment arrangements to be made for

outstanding debt associated with basic local service and associated taxes and fees. Such arrangements will be made in a manner consistent with the company's tariff. If there are no tariffed provisions, payment arrangements are to be made for a period of not less than four months.

3. LECs will not require payment arrangements to be made on other unpaid amounts as a condition of receiving basic local service. This provision should not preclude LECs from collecting other portions of the outstanding debt by using any other methods as are customary for non-Lifeline subscribers.

4. Any payment made by the customer on the past-due amount will first be credited to unpaid basic local service charges.

5. If a Lifeline customer fails to pay charges for basic local service, the customer's Lifeline service may be disconnected. The customer will then be treated in the same manner as any other existing Lifeline subscriber with regard to reconnection after a disconnect for nonpayment; i.e., if Lifeline customers are required to pay outstanding basic local service charges before reconnection, this provision would apply to all Lifeline customers equally regardless of previous outstanding debts.

6. LECs may decline to provide other local services, including ancillary services, if the customer has outstanding debt for local service. Such service may not be declined for nonpayment of toll service.

7. LECs may require toll blocking if the customer has prior unpaid toll charges.

8. For customers subject to mandatory toll blocking as a result of unpaid toll charges, LECs may require payment of all unpaid toll charges and an adequate deposit prior to the removal of toll blocking.

9. LECs will publicize the availability of Lifeline for customers with prior unpaid bills in the same manner as they publicize Lifeline in general. In particular, companies are required to include information about Lifeline in their directories and provide a bill message/insert on an annual basis, pursuant to FPSC Order No. PSC-07-1262-FOF-TP, in Docket No. 970744-TP, issued October 14, 1997. Provided below are some suggestions for language to be considered, as appropriate.

You may be eligible to receive Lifeline service

at a reduced rate, even if you have prior unpaid telephone bills and do not have telephone service today.

Or:

If you know someone who does not have telephone service that may be eligible for Lifeline, tell them they may be eligible for the reduced rate, even if they have prior unpaid telephone bills.

In addition to the requirement that LECs include the new information in their advertising on Lifeline, such information will also be added to the FPSC Lifeline brochure as soon as is practicable.

These provisions will have limited applicability to ALECs. Section 364.10(2) requires the carrier of last resort to provide Lifeline; thus, it is not mandatory for ALECs to provide this service so long as they do not serve as carrier of last resort. Additionally, LECs in Florida have been designated as eligible telecommunications carriers (ETCs) for purposes of the federal universal service programs, including Lifeline. No ALEC in Florida currently has that designation; thus, no ALEC can receive federal funding for Lifeline. Data received from the LECs indicates that resale of Lifeline is negligible, with fewer than 100 access lines for Lifeline being resold. Section 364.604(4), Florida Statutes, prohibiting disconnection for nonpayment of any charges other than for basic local service, applies to all billing parties, and could apply to ALECs. Typically, service provided by ALECs is a prepaid local service with toll blocking, making it unlikely that ALECs will have unpaid past due bills for toll or other services. Additionally, staff believes that if the requirements laid out in this recommendation are adopted, the primary reason for Lifeline subscribers to seek out service with an ALEC will be eliminated.

Staff believes the provisions above will provide an opportunity to many former customers to obtain Lifeline service, and reestablish their credit with the telephone companies. The alternative for these customers currently is to obtain service from alternative providers at many times the Lifeline amount, or to do without service. The unpaid debts of the past are an insurmountable obstacle for many in obtaining service. Given the low subscribership to Lifeline in Florida, and the overall declining penetration rate, something clearly needs to be done if universal service for Floridians is to be preserved.

Accordingly, staff recommends that the Commission require the LECs to provide Lifeline service to eligible customers who have been previously disconnected for nonpayment of their telephone bills, with the provisions enumerated in the staff analysis. These

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requirements should be implemented within ninety (90) days of the issuance of the order.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. If no timely protest is filed, this docket should be closed. (FORDHAM)

STAFF ANALYSIS: If the Commission adopts staff's recommendations in Issue 1, this docket should be closed unless a person whose substantial interests are affected files a protest within 21 days of the issuance of this Order. The protest must state specifically what requirement(s) are being protested. If no timely protest is filed, this docket should be closed.