

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

FILED: January 27, 2009

COMMISSION
CLERK

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SPRINT NEXTEL'S PREHEARING STATEMENT

NPCR, Inc. d/b/a Nextel Partners and Sprint Corporation k/n/a Sprint Nextel Corporation d/b/a Sprint Nextel ("Sprint Nextel"), pursuant to Order No. PSC-08-0594-PCO-TP, hereby files the following Prehearing Statement:

- (a) **The names of all known witnesses that may be called by the party, and the subject matter of their testimony.**

Witness

John E. Mitus

Subject Matter

Direct Testimony: Sprint Nextel's Lifeline Program, how Sprint applies the lifeline discount, and why it applies the discount in such fashion (Issues 2 and 4)

Rebuttal Testimony: Sprint Nextel's interpretation of Section 47 C.F.R. §54.403(b), purpose of USF High Cost program support, rebuttal of issues raised by Mr. Casey (Issues 2 and 4).

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Additionally, Sprint Nextel reserves the right to call witnesses to respond to any Florida Public Service Commission inquiries not addressed in direct and rebuttal testimony and to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing Conference in this docket.

(b) A description of all known exhibits that may be used by the party, (including individual components of a composite exhibit) and the witness sponsoring each.

None. However, Sprint Nextel reserves the right to utilize any exhibit introduced by any other party or Staff. Sprint Nextel also reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination or impeachment at the final hearing or for use by additional witnesses as set forth in section (a) above.

(c) A statement of the party's basic position in the proceeding.

SPRINT NEXTEL: This case presents legal and policy issues. Order No. PSC-08-0417-PAA-TP proposed to interpret federal law as requiring the Lifeline discount to be applied to "bundled service packages." This interpretation is not correct, and the Commission is not authorized by federal or state law to require Sprint Nextel to apply the Lifeline service discount to "bundled service packages." Further, Section 120.54, Florida Statutes, requires statements of general applicability, such as those proposed herein, to be considered and adopted in a rulemaking proceeding.

Federal law does not authorize the PSC to require Sprint to apply the Lifeline discount to bundled service packages. Pursuant to 47 C.F.R. § 54.403(b), federal Lifeline support may only be applied to reduce Sprint Nextel's lowest generally available residential rate for the services enumerated in 47 CFR 54.101(a)(1)-(9). As set forth in the Federal Communications

Commission's ("FCC") universal service rules, Lifeline is defined, in part, as "*a retail local service offering*: (1) [t]hat is available only to qualifying low-income consumers; (2) [f]or which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in [47 C.F.R. §] 54.403." 47 C.F.R. § 54.401(a) (emphasis added). Under Florida law, commercial mobile radio service ("CMRS") providers, like Sprint Nextel, are excluded from the Commission's regulatory jurisdiction as they are not considered "telecommunications companies" under the State statutes. *See* Fl. Stat. § 364.02(14)(c). Thus applicable law with regard to Sprint is limited to federal law because the Commission has no jurisdiction to regulate CMRS providers "except as authorized by federal law." Accordingly, Section 364.02(1) is not applicable to Sprint.

Even assuming *arguendo* that Section 364.02(1) is applicable to Sprint, the statute does not support application of the Lifeline discount to "bundled service packages." Pursuant to Section 364.10(2)(a), a telecommunications company designated as an eligible telecommunications carrier is required to "provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff or price list . . ." (Emphasis added). This Lifeline Assistance Plan shall consist of "basic local exchange telephone service." *See, e.g.*, Fla. Stat. § 364.10(d)-(f). Section 364.10 thus contemplates that an ETC's Lifeline Assistance Plan shall be the carrier's basic local exchange service offering (in other words, a single service offering) reduced by the Lifeline service credits approved by the Commission. Customers are free to purchase additional vertical services if they desire.

d) A statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue.

ISSUE 1: Under applicable law, may the Commission require Florida ETCs that charge federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to bundled service offerings which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

SPRINT NEXTEL: Sprint is not an ETC that assesses federal EUCL charges and therefore does not take a position on this issue.

ISSUE 2: Under applicable law, may the Commission require Florida ETCs that do not charge federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to bundled service offerings which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

SPRINT NEXTEL: No. Section 364.02(1) is not applicable to Sprint. The Commission may not require non-EUCL ETCs to apply the lifeline discount to bundled service offerings as stated because 47 CFR 54.403(b) unequivocally states that the discount may be applied only to the lowest generally available residential rate for the services enumerated in 47 CFR 54.101(a)(1)-(9). (Witness: John E. Mitus)

ISSUE 3: Should the Commission require each Florida ETC that charges federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to its bundled services which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

SPRINT NEXTEL: Sprint is not an ETC that assesses federal EUCL charges and therefore does not take a position on this issue.

ISSUE 4: Should the Commission require each Florida ETC that does not charge federal End User Common Line charges, or equivalent federal charges, to apply the lifeline discount to its bundled services which include functionality that is comparable to that described at 47 CFR 54.101(a)(1)-(9) or Section 364.02(1), Florida Statutes?

SPRINT NEXTEL: No. Such a requirement applied to non-EUCL ETCs is

clearly contrary to federal law. The purpose of the Lifeline Program is to provide low cost service that low-income individuals can afford to maintain. Further, such a requirement is not necessary to ensure Lifeline customers have access to vertical services as required by the FCC because those vertical services are provided already as part of Sprint Nextel's lowest generally available rate plans.

(Witness: John E. Mitus)

(e) A statement of issues to which the parties have stipulated.

None at this time.

(f) A statement of all pending motions or other matters the party seeks action upon.

None at this time.

(g) A statement identifying the parties' pending requests or claims for confidentiality.

None at this time.

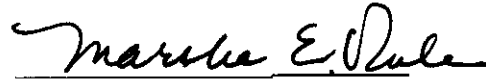
(h) Any objections to a witness's qualifications as an expert.

Pursuant to Section 90.702, Florida Statutes, a witness qualified as an expert may testify in the form of opinion if his or her specialized knowledge "will assist the tier of fact in understanding the evidence or in determining a fact issue" The issues herein present questions of law (Nos. 1 and 2) as well as state and federal policy (Nos. 3 and 4). Sprint Nextel objects to Mr. Casey's qualifications to testify as an expert regarding the analysis or interpretation of state or federal law and regarding the federal Universal Service program.

(k) A statement as to any requirement set forth in the Order Establishing Procedure that cannot be complied with, and the reasons therefore.

None at this time.

Respectfully submitted this 27th day of January, 2009.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. mail and where indicated, by email, on January 27, 2009, to the following parties:

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