

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

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REBUTTAL TESTIMONY

OF

JOHN E. MITUS

ON BEHALF OF

SPRINT NEXTEL

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ECR
GCL 2
OPC
RCP
SSC
SGA
ADM
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1 **Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH SPRINT NEXTEL**
2 **AND YOUR BUSINESS ADDRESS.**

3 A. My name is John E. Mitus. I am employed by Sprint Nextel Corporation (“Sprint” or
4 “Company”) as ETC Program Manager. My business address is 6300 Sprint Parkway,
5 Overland Park, Kansas 66251.

6

7 **Q. ARE YOU THE SAME JOHN MITUS THAT FILED DIRECT TESTIMONY IN**
8 **THIS CASE?**

9 A. Yes.

10

11 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12 A. There are several issues in Mr. Casey’s testimony that require additional discussion. Mr.
13 Casey and I clearly have a difference of opinion in interpretation of Section 47 C.F.R.
14 §54.403(b), as he believes that this paragraph makes all wireless service plans eligible for
15 lifeline discount despite the clearly-stated limitation to only the lowest priced plan. Mr.
16 Casey also implies that the USF High Cost program is tied in some manner to the Lifeline
17 program, which it is not. Federal USF High Cost receipts are only to be used for
18 improving and maintaining the recipient’s network and Sprint Nextel uses the high cost
19 support it receives for that purpose and to the benefit of Florida consumers. Lifeline
20 funding is separate from High Cost funding.

21

22 **Q: PLEASE DESCRIBE YOUR INTERPRETATION OF SECTION 47 C.F.R.**
23 **§54.403(B).**

24 A: This section is the linchpin in this docket. Section 47 C.F.R. §54.403(b) reads:

1
2 *Eligible telecommunications carriers that charge federal End User*
3 *Common Line charges* or equivalent federal charges shall apply Tier-
4 One federal Lifeline support to waive the federal End-User Common
5 Line charges for Lifeline consumers. Such carriers shall apply any
6 additional federal support amount to a qualifying low-income
7 consumer's intrastate rate, if the carrier has received the non-federal
8 regulatory approvals necessary to implement the required rate
9 reduction. *Other eligible telecommunications carriers* shall apply the
10 Tier-One federal Lifeline support amount, plus any additional support
11 amount, to reduce their *lowest* tariffed (or otherwise generally
12 available) residential rate for the services enumerated in §54.101(a)(1)
13 through (a)(9), and charge Lifeline consumers the resulting amount.
14 (emphasis added).
15

16 As emphasized above, the rule differentiates between eligible telecommunications
17 carriers ("ETCs") that charge an End User Common Line charge ("EUCL") and those
18 that do not. The EUCL is a fixed charge implemented by ILECs as an explicit substitute
19 for some of the implicit local-service subsidies formerly embedded in interstate access
20 charges. As a commercial mobile radio service provider, Sprint has never charged and
21 received subsidies such as the EUCL. Accordingly, Sprint clearly falls into the "other
22 eligible telecommunications carriers" portion of this paragraph. Other ETCs must apply
23 Tier-One Lifeline support to reduce their lowest tariffed rate, or if no tariff is available,
24 then their lowest generally available rate. As a wireless, "other" ETC, Sprint generally
25 does not file tariffs with state regulatory Commissions, and so applies its discount to its
26 lowest generally available rate as required by Section 47 C.F.R. §54.403(b). As set forth
27 in the FCC's universal service rules at 47 C.F.R. §54.401, Lifeline "means *a retail local*
28 *service offering*" (emphasis added) that is available only to qualifying low income
29 consumers, for which they pay reduced charges as a result of the Lifeline discount
30 described in 47 C.F.R. §54.403, and which includes the services enumerated in 47 C.F.R.
31 §54.101 (a)(1) through (a)(9). The rules do not describe Lifeline as consisting of *all*

1 retail service offerings and requiring application of the discount to all. In other words, an
2 ETC may only apply federal Lifeline support to reduce the cost of the carrier's lowest
3 cost residential service offering that includes the services enumerated in 47 C.F.R.
4 §54.101 (a)(1) through (a)(9), not all offerings that include those services.

5 **Q: WHY DO YOU DISAGREE WITH MR. CASEY'S BELIEF THAT THE PHRASE**
6 **"OR OTHERWISE GENERALLY AVAILABLE," REQUIRES A WIRELESS**
7 **ETC TO APPLY ITS LIFELINE DISCOUNT TO REDUCE ONE OF TWO**
8 **RATES: (1) ITS LOWEST TARIFFED RESIDENTIAL RATE; OR (2) ANY**
9 **OTHERWISE GENERALLY AVAILABLE RATE?**

10 A: The parenthetical phrase "or otherwise generally available" is meant to modify or qualify
11 the term "tariffed", not negate the word "lowest." As described in my direct testimony, if
12 the FCC wanted the discount to be applied to any rate then they would not have included
13 the word "lowest" in the paragraph. A tariff is a public document setting forth the rates,
14 terms and conditions of services that are generally available to the public. Increasingly,
15 as with wireless, the rates, terms and conditions of generally available services are set by
16 contract instead of tariff. For such carriers who are also ETCs, the FCC added the
17 parenthetical ("or otherwise generally available") to clarify that such carriers who do not
18 have a tariff from which to draw a lowest generally available residential rate shall use the
19 lowest residential rate that is otherwise generally available to which to apply the Lifeline
20 discount. Mr. Casey's interpretation that "otherwise generally available" negates the
21 term "lowest" and applies the Lifeline discount to all generally available residential rates
22 makes no sense. Why would the FCC apply the Lifeline discount to only the *lowest*
23 *tariffed* residential rate but apply it to *all* "otherwise generally available" rates as long as
24 they are not tariffed? If the intent was to apply the Lifeline discount to all residential rate
25 plans as Mr. Casey urges, the rule would require ETCs to "reduce their ~~lowest~~ tariffed (or

1 otherwise generally available) residential rates.” Sprint does not have a tariff in Florida,
2 thus is it is required to apply lifeline discounts to its *lowest generally available* rate.

3

4 **Q: HAS SPRINT FILED LIFELINE TARIFFS IN ANY STATE?**

5 A: Yes. In Arizona, Hawaii, Indiana, Iowa, Louisiana, Mississippi, Texas and West
6 Virginia, Sprint has filed informational tariffs in connection with its designation as an
7 ETC. These tariffs provide general terms and conditions and lists our lowest generally
8 available rate as the Lifeline rate.

9

10 **Q: MR. CASEY ASSERTS THAT BUNDLED SERVICES SHOULD NOT BE**
11 **DENIED TO LIFELINE CUSTOMERS. PLEASE COMMENT.**

12 A: Mr. Casey appears to imply that customers who receive Lifeline service cannot receive
13 vertical features in addition to a carrier’s Lifeline product. This is not the case. In Order
14 FCC 04-87, issued April 29, 2004, the FCC declined “to adopt rules prohibiting
15 Lifeline/Link-Up customers from purchasing vertical services, such as Caller ID, Call
16 Waiting, and Three-way Calling,” stating that “we believe any restriction on the purchase
17 of vertical services may discourage qualified consumers from enrolling and may serve as
18 a barrier to participation in the program.” (¶53) Although the FCC determined that
19 Lifeline customers should be allowed to purchase vertical services, it made no such
20 determination with regard to bundled services. Subscribers are free to purchase vertical
21 services in addition to Lifeline products, and Sprint notes that its Lifeline customers have
22 always received vertical services, such as Caller ID, Call Waiting, 3-way Calling and
23 Voicemail, as part of the lowest priced generally available service.

24

1 **Q: MR. CASEY SUGGESTS THAT SPRINT IS SOMEHOW ACTING**
2 **IMPROPERLY BY REQUIRING “ADDITIONAL VALIDATION**
3 **PROCEDURES” FROM LIFELINE CUSTOMERS WHO ENROLL THROUGH**
4 **THE AUTOMATIC ENROLLMENT PROCEDURE. HOW DO YOU RESPOND**
5 **TO THAT ACCUSATION?**

6 The accusation is wrong. For Sprint, this case involves a controversy regarding the
7 interpretation of Federal Lifeline rules, specifically whether the rules require the Lifeline
8 discount be applied to the lowest generally available residential rate for service that
9 includes the enumerated services or to all such generally available residential rates. Thus
10 far the Commission’s proposed agency action supporting the latter interpretation is not in
11 effect. Sprint’s position throughout is that it may apply the Lifeline discount only to its
12 lowest priced generally available rate as required by the FCC. Thus Sprint has been and
13 continues to act in a manner consistent with what it believes to be required by federal
14 law. This means that existing Sprint customers in Florida who apply for Lifeline must all
15 be subscribed to Sprint’s lowest priced plan in order to receive the Lifeline discount. If
16 Sprint were to switch customers’ plans to the lowest priced plan without notice of the
17 terms of the plan and without receiving their consent as Mr. Casey apparently proposes it
18 do upon notification from the PSC that a consumer has been approved for DCF benefits
19 and is requesting the Lifeline discount, many customers likely would view it as slamming
20 or cramming. Then state regulatory agencies might be investigating Sprint for slamming
21 or cramming a customer.

22
23 Even assuming the Lifeline discount must be applied to all generally available residential
24 rate plans, there have been and remain other circumstances in which additional contact is
25 required with the applicant. For instance, FCC rules state that Lifeline customers are
26 only allowed one Lifeline discount per household. Since wireless services are still

1 considered by many as secondary services to wireline, the Company must ensure that the
2 household is not currently receiving a Lifeline discount, which required an additional
3 customer contact. Until this month when the Florida Staff revised the Lifeline
4 application by adding a checkbox by which the customer must indicate whether he or she
5 already receives the Lifeline discount that information was not provided. Therefore
6 Sprint had to have additional contact with the customer to obtain that information.
7 Another example of when additional contact with Lifeline applicant is required before
8 Lifeline service can be established is when the applicant does not already have Sprint
9 service. Although the automatic enrollment process is intended to enroll customers who
10 already have service with a particular ETC and qualify for the Lifeline discount, it has
11 been Sprint's practice to attempt to enroll all applicants referred through the automatic
12 enrollment process, including those who may check Sprint as their service provider (and
13 thus their requested ETC) but who do not already have Sprint service. When there is no
14 existing service account with Sprint, one must be established which requires additional
15 customer contact. It is Sprint's understanding from comments by Mr. Casey during the
16 rule development workshop on November 5, 2008 that he believes an ETC may have
17 additional contact with a Lifeline applicant to establish an account if the applicant does
18 not currently have service with the ETC. (November 5, 2008 Workshop transcript, p. 33.
19 lines 3-17.)

20
21 For these reasons the assertion that Sprint is acting "contrary to Florida's Lifeline
22 simplified certification and automatic enrollment process", as Mr. Casey alleges at page
23 38 of his testimony, is incorrect. To the contrary, Sprint has cooperated with Staff and

1 worked to balance the objectives of the automatic enrollment process with federal
2 Lifeline rules and intends to continue to do so.

3
4 **Q: MR. CASEY ALSO COMMENTS ON THE RELATIVELY FEW NUMBER OF**
5 **LIFELINE CUSTOMERS THAT SPRINT CURRENTLY SERVES. HOW DO**
6 **YOU RESPOND?**

7 A: Sprint supports the Lifeline program, actively seeks to serve this market segment, and
8 invests in getting the word out about its Lifeline program. Sprint advertises in general
9 publication newspapers, has a dedicated Lifeline page on its website, and potential
10 customers can find Sprint listed as a provider on the USAC website. In October Sprint
11 participated in Lifeline Awareness Week in Orlando and West Palm Beach, and of course
12 Sprint participates in the auto-enrollment process.

13
14 Importantly, Sprint is not a designated ETC throughout the entire state of Florida, and can
15 only serve customers within its designated territory. However, the automatic enrollment
16 process permits any Florida customer to “enroll” in Sprint’s Lifeline service even though
17 they live outside Sprint’s designated area. Mr. Casey failed to mention on page 39 of his
18 testimony that the number of “Lifeline eligible applications” that he says Sprint received
19 through the auto-enrollment process includes customers outside of Sprint’s designated
20 territory, to whom Sprint cannot provide Lifeline service.

21
22 **Q: SHOULD THE FACT THAT SPRINT RECEIVES A PARTICULAR AMOUNT**
23 **OF HIGH COST SUPPORT HAVE ANY IMPACT ON THE OUTCOME OF**
24 **THIS DOCKET?**

25 A: No. This docket is about Lifeline requirements and how to interpret them in a manner
26 consistent with FCC rules. As I explained above, High Cost support should not be

1 confused with Lifeline support. With regard to use of High Cost funds, “Sprint is
2 obligated under section 254(e) of the Act to use high-cost support ‘only for the provision,
3 maintenance, and upgrading of facilities and services for which support is intended’”
4 (FCC Order DA 04-3617 ¶ 20). However, on page 26, line 8, of his direct testimony,
5 Mr. Casey states that “ETC designation is a privilege not a requirement,” seeming to
6 imply that Sprint may not deserve such a privilege by virtue of its positions on the
7 Lifeline discount and issues addressed in this docket. What he fails to mention is that
8 Sprint spent \$26.3 million in high-cost support from 2006, through November 2008 to
9 provision (i.e., to expand the footprint), maintain and upgrade the network for 2.1 million
10 Sprint customers. This is documented in compliance filings made pursuant to the FCC’s
11 designation order.

12
13 **Q: MR. CASEY IS CONCERNED THAT FLORIDA IS A NET PAYER INTO THE**
14 **USF. DO YOU AGREE WITH HIS ANALYSIS?**

15 **A:** Yes. As noted in Mr. Casey’s testimony “(a)ccording to the latest Universal Service
16 Monitoring Report, in 2007, Florida contributed \$481,258,000 into the universal service
17 fund, but only received \$183,382,000 from the fund”. What would concern me as a net
18 payer into the fund is that Mr. Casey is asking Sprint to relinquish its \$7.6 Million in
19 annual high cost receipts because we do not agree with the Commission’s interpretation
20 of federal Lifeline rules. Mr. Casey stated on page 26, line 9 that “Sprint-Nextel and
21 ALLTEL have the ability to relinquish their ETC status if they choose, however by doing
22 so they would forgo receipt of any high-cost subsidies from the USF.”

1 Of course, relinquishment has not been raised as an issue in this case. But because Mr.
2 Casey seems to suggest relinquishment as a positive alternative, it bears discussing
3 briefly. If Florida loses a designated ETC, it loses the high cost funding brought into the
4 state by that ETC. The Commission must determine if there is a benefit to having \$7.6
5 million reinvested into the infrastructure of Florida or to have designated ETCs relinquish
6 their designation altogether, thereby causing the high cost funds to leave the state and
7 thereby further widening the amount by which Florida is a USF net payer.

8
9 **Q: MR. CASEY STATES “I NOT ONLY BELIEVE THAT IT IS IN THE PUBLIC**
10 **INTEREST TO ENSURE THAT LIFELINE-ELIGIBLE CONSUMERS ARE NOT**
11 **LIMITED TO THE CHOICE OF ONE PLAN, BUT I BELIEVE THAT ETCS**
12 **THAT DO NOT PROVIDE A LIFELINE DISCOUNT ON BUNDLED SERVICE**
13 **OFFERINGS WHICH CONTAIN A LOCAL USAGE FUNCTIONALITY ARE**
14 **PRACTICING A DISCRIMINATORY POLICY.” CAN YOU PLEASE**
15 **COMMENT ON THIS STATEMENT?**

16 **A:** Mr. Casey is correct in the fact that qualifying Lifeline customers should not be pigeon-
17 holed into one rate plan; however he is only looking at this one company at a time versus
18 the competitive marketplace. Much like competition for non-Lifeline customers, there
19 are different options for Lifeline eligible customers. For example, the Commission
20 praises TracFone for adding 65,000 lifeline customers while offering a prepaid plan that
21 credits 68 minutes of use every month in return for its Lifeline support¹ and this is the
22 only plan for which TracFone offers Lifeline. For \$16.49 plus taxes, Sprint provides 200
23 anytime minutes plus unlimited nights and weekends starting at 9PM along with the
24 vertical features of Call Waiting, Caller ID, 3 Way Calling and Voicemail. Sprint’s local
25 calling scope is the whole of the United States, as it offers long distance as part of its

¹ Numbers of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, prepared by the Florida Public Service Commission, December 2008. Page 14.

1 lowest priced generally available rate. The ILECs in the areas that Sprint is designated as
2 an ETC generally offer Unlimited Local calling for a set price as a Lifeline option. Thus,
3 Lifeline consumers have three options between companies and this is what competition is
4 all about. It should be up to the end user to determine whether unlimited local calling via
5 the ILEC, the ability to call nationwide for a shorter period of time via Sprint, or a free 68
6 minutes through TracFone is more beneficial.

7
8
9 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

10 **A:** Yes.

11

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.

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CERTIFICATE OF SERVICE

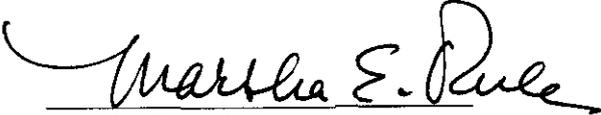
I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of John E. Mitus has been furnished by U.S. mail and where indicated, by email, on January 27, 2009, to the following parties:

Charles W. Murphy, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Email: cmurphy@psc.state.fl.us

Dulaney L. O'Roark III
Verizon Florida LLC
P.O. Box 110, 37th Floor
MC FLTC0007
Tampa, FL 33601-0110
Email: de.oroark@verizon.com

Denise Collins
Stephen Rowell
Alltel Communications, LLC
1410 Market Street
Tallahassee, FL 32312
Email: denise.collins@alltel.com
Email: stephen.b.rowell@alltel.com

J.R. Kelly/Patricia Christensen
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: 850-488-9330


Marsha E. Rule