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 ORDER NO. PSC-09-0095-PHO-TP ISSUED: February 13, 2009

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on February 9, 2009, in Tallahassee, Florida, before Commissioner Nathan A. Skop, as Prehearing Officer.

APPEARANCES:

DULANEY L. O'ROARK III, ESQUIRE, P.O. Box 110, 37th Floor, MC FLTC0007, Tampa, Florida 33601-0110
On behalf of VERIZON FLORIDA LLC (Verizon).

MARSHA E. RULE, ESQUIRE, Rutledge, Ecenia & Purnell, P.O. Box 551, Tallahassee, Florida 32302-0551, and
DOUGLAS C. NELSON, ESQUIRE, Sprint Nextel, 233 Peachtree Street NE, Suite 2200, Atlanta, Georgia 30339-3166
On behalf of SPRINT NEXTEL (Sprint Nextel).

STEPHEN ROWELL, ESQUIRE, Alltel Communications, LLC, 1 Allied Drive, Little Rock, Arkansas 72202
On behalf of ALLTEL COMMUNICATIONS, LLC (Alltel).

CHARLIE BECK, DEPUTY PUBLIC COUNSEL, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of Office of Public Counsel (OPC).

CHARLES W. MURPHY, ESQUIRE and TIMISHA J. BROOKS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service Commission, General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
As Advisor to the Commission.

PREHEARING ORDER

I. CASE BACKGROUND

On June 23, 2008, the Florida Public Service Commission ("Commission") issued its Order on Application of the Lifeline Discount to Bundled Service Packages (Proposed Agency Action Order No. PSC-08-0417-PAA-TP). On July 14, 2008, Verizon Florida LLC (Verizon), NPCR, Inc. d/b/a Nextel Partners and Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS (Sprint Nextel), and Alltel Communications, LLC (Alltel) each filed timely requests for formal proceedings. On July 16, 2008, the Office of Public Counsel (OPC) filed its Notice of Intervention which was acknowledged on August 8, 2008, by Commission Order No. PSC-08-0505-PCO-TP. An issue identification meeting was held on September 3, 2008. On September 15, 2008, the Commission issued Order No. PSC-08-0594-PCO-TP, establishing procedure in this Docket. On December 24, 2008, the Commission issued Order No. PSC-08-0834-PCO-TP, by which, certain dates for testimony and prehearing statements were extended. On February 9, 2009, a Prehearing Conference was held. By Order No. PSC-09-0087-PCO-TP (Second Order Modifying Procedure), issued on February 9, 2009, the Commission rescheduled the hearing in this Docket to March 2, 2009, and extended the date for post hearing briefs to April 3, 2009. By Order No. PSC-09-0085-CFO-TP, also issued on February 9, 2009, the Commission granted Verizon's Request for Confidential Treatment and Motion for Protective Order for specified information provided by Verizon in response to a Staff interrogatory.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter pursuant to 47 U.S.C. § 254(f), 47 C.F.R. § 54.401(d), and by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 119.07(1), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be

returned to the person providing the information within the time period set forth in Section 364.183, F.S.. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the

exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

Witness	Proffered By	Issues #
Direct		
+Paul B. Vasington	Verizon	1, 3
+John E. Mitus	Sprint	2, 4
Robert J. Casey	Staff	1, 2, 3, 4

VII. BASIC POSITIONS

VERIZON: Eligible Telecommunications Carriers ("ETCs") may not be required to apply the Lifeline discount to bundled services as a matter of law and should not be required to do so as a matter of policy.

Federal law does not require that the Lifeline discount be applied to bundled services. Federal regulations define "Lifeline" to mean "a retail local service offering" that is (i) available only to qualifying low-income consumers, (ii) provides the applicable discount, and (iii) includes the services or functionalities enumerated in C.F.R. § 54.101, which substantially correspond to basic local telecommunications service under Florida law. Although the FCC does not prohibit Lifeline customers from ordering additional vertical services on an a la carte basis,[1] it does not require ETCs to offer vertical services to Lifeline customers, nor does it require ETCs to apply the Lifeline discount to bundled services.

Florida law does not authorize the Commission to require ETCs to exceed this federal requirement. Under Florida law, ETCs must apply the Lifeline discount to basic service only. Section 364.10(2)(a) provides that an ETC is required to

[1] In the Matter of Lifeline and Link-up, WC Docket No. 03-109 (released April 29, 2004) at § 53.

"provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff or price list." Under federal regulations, state commissions are required to file or require ETCs to file information with the federal universal service fund administrator "demonstrating that the carrier's *Lifeline plan* meets the criteria set forth" in federal law.[2] The Florida requirement that ETCs provide a Lifeline Assistance Plan thus implements the federal requirement that ETCs have Lifeline plans that meet federal criteria, including a Lifeline discount that applies to basic service. Florida law does not authorize the Commission to require ETCs to implement Lifeline programs that apply the discount to other services.

The Commission may not circumvent these clear limitations by requiring ETCs to apply the Lifeline discount to individual components of a bundled service. Such a requirement would violate Florida law, which makes a bright-line distinction between basic and nonbasic services. Under Florida law, a service must either be a basic service or a nonbasic service; it cannot be both. Florida law provides that basic service consists of the following elements:

> voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.[3]

As relevant here, nonbasic service is defined as "any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service."[4] In other words, a nonbasic service is any retail service consisting of a different set of elements than basic service. Thus, by definition, when a telecommunications service is offered as a bundle -- that is, as a group of services offered at a single price, which necessarily includes nonbasic

[2] 47 C.F.R. § 54.401(d)(emphasis added).
[3] Fl. Stat. § 364.02(1).
[4] Fl. Stat. § 364.02 (10).

service elements -- that service, including all its component parts, is nonbasic. The Commission therefore may not require an ETC to apply the Lifeline discount to a component part of a bundled service.

Moreover, as a matter of public policy the Commission should not require a Lifeline discount on bundles. The underlying public policy goal of the Lifeline and Link-up programs is the "preservation and advancement of universal service."[5] Mandating Lifeline discounts for bundles would not increase subscribership because its principal effects would be to encourage Lifeline customers who already have basic service to upgrade to nonbasic service packages and to make the Lifeline discount available to Lifeline-eligible customers who are already subscribing to nonbasic-service packages. In other words, the mandate would not increase network subscribership, but would merely provide a Lifeline discount to additional customers who already have telephone service. Thus, such a requirement would not advance universal service.

Mandating the discount for bundles would be bad public policy for the additional reason that it would put ETCs like Verizon at a competitive disadvantage against their unregulated competitors, who are not required to provide a Lifeline discount. This disadvantage is significant because Verizon is not reimbursed for $3.50 of the discount. Thus, if the requirement were imposed Verizon would have to fund a subsidy for bundled services that Bright House and other competitors do not have to bear.

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 wireless ETCs to apply the Lifeline discount to all of their 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 C.F.R. 54.101(a)(1)-(9).

Nor does Florida law provide the Commission with authority to impose this requirement. Commercial mobile radio service ("CMRS") providers like Sprint Nextel are not "telecommunications companies" subject to the Commission's general jurisdiction, and in fact, are specifically exempted from such jurisdiction.

[5] See e.g., In the Matter of Lifeline and Link-up, WC Docket No. 03-109 (released April 29, 2004) at § 3.

See §§ 364.011 and 364.02(14)(c), Florida Statutes. Further, Chapter 364's Lifeline provisions apply only to "eligible telecommunications carriers" as defined in § 364.10(2)(a), which expressly excludes wireless providers.[6] Thus, neither § 364.10 nor any other section of Chapter 364 delineates Commission jurisdiction over wireless ETCs. Applicable law with regard to Sprint Nextel thus is limited to federal law because the Commission has no jurisdiction to regulate CMRS providers except "as specifically authorized by federal law." § 364.011, Florida Statutes.

By definition, Sprint Nextel does not offer "basic local telecommunications service" as set forth in § 364.02)(1), Florida Statutes. However, even assuming, *arguendo,* that Sprint Nextel's service fits within the definition found in § 364.02(1), and further assuming that federal law did not limit the Lifeline discount to a CMRS provider's lowest generally available residential rate, § 364.02(1) 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.

ALLTEL: As the issue in this proceeding is a narrow and strictly legal question, specifically, "whether the Commission erroneously interpreted 47 CFR 54.403(b)", Alltel has not prefiled testimony and does not presently intend to call any witnesses. However, Alltel may cross examine witnesses to the extent they have addressed any questions of law relevant to this matter and will file post hearing briefs and present any oral argument desired by and helpful to the Commission.

This proceeding concerns various parties', including Alltel, challenge to the Commission's determination in Order No. PSC-08-0417-PAA-TP issued June 23, 2008 (the "Order") that Federal Communication Commission rule codified at 47 CFR § 54.403(b) (the "Rule") mandates 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". (Order page 12). The Commission erred in ignoring the plain unambiguous language of the Rule that Lifeline is required to be applied to the "lowest tariffed

[6] Section 364.10(2)(a) defines "eligible telecommunications carrier" as "*a telecommunications company, as defined by s. 364.02,* which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201." (Emphasis added).

(or otherwise generally available) rate plan". This Commission did not adopt its conclusion through a rule making in accordance with Florida Statutes Section 120.54 or reach it based on a conclusion that Florida law requires that result. It is, therefore, irrelevant in this proceeding whether it may or should impose lifeline discounts on all rate plans or even whether such is good or bad policy. This proceeding is not a rule making where the Commission is asked to impose or is considering imposing such a requirement. This is a challenge to its erroneous interpretation of an FCC rule. Therefore, the only issue relevant in this proceeding is whether the Commission erroneously interpreted the FCC rule as requiring such, as that was the sole basis for its decision. Clearly the Commission did err by ignoring the plain unambiguous language of the rule. The conclusion of the Order is therefore inconsistent with federal law.

The Commission also erred as its conclusion violates both federal and Florida law. Federal law precludes states from both the regulation of entry and rates of wireless carriers. 47 USC § 332(c). The result that the Commission reached in this matter in combination with other rules that the Commission now apparently believes are applicable attempts to alter and dictate the rates of wireless carriers. Wireless carriers like Alltel offer many rate plans for consumers and no one plan is or can be defined as "basic" in the former wireline sense of the word. Wireline basic service has historically been is easily identified as it was tariffed as dial tone with unlimited local calling in a defined local calling area. Wireless plans on the other hand vary by numbers of minutes included in the set price and the local calling area differs depending on the customer's need. Wireless carriers do not simply add vertical features to a local unlimited plan to create bundles. The concept of "basic service" and the ability to distinguish a "basic service" within wireless rate plans make little sense; alternatively, the entire plan is basic.

Another example is the sale of a smart phone which includes the ability to send and receive emails and data. The customer is paying for the instrument, use, and various measured services depending on the plan selected. If the customer does not pay the entire bill, it is simply not possible to conclude he has or has not paid enough to cover "basic service," and if he has not paid enough to cover the pro-rated hand set costs (again not a defined amount), then the company can not be expected to allow the consumer to retain the services or the handset. Simply stated, even if this were a rule making, which it is not, the wireline concept of "basic service" does not transfer to wireless, and the Commission's action is an attempt to dictate changes in the rates and rate structure of wireless carriers. This action is clearly preempted and unlawful.

OPC: Telephone service provides a vital link to emergency services, government services, and surrounding communities, and Lifeline helps to provide that link to many low-income citizens of Florida. The Commission will promote participation in the Lifeline program, consistent with the provisions of Section 364.10, Florida Statutes, by requiring all ETCs to enable Lifeline/Linkup

customers to subscribe to the carriers' bundled service offerings while continuing to receive the Lifeline and Linkup benefits.

AT&T and Embarq already provide Lifeline benefits to persons who subscribe to their bundled service offerings. According to the Commission's December, 2008, Lifeline report, AT&T increased the number of their Lifeline subscribers from 87,291 in September, 2006, to 93,337 in September, 2007, and 104,506 in June, 2008. Embarq increased the number of their Lifeline subscribers from 23,104 to 30,016 and 34,803 during these same time periods. Yet the number of customers taking Lifeline from Verizon actually *declined* during this time period, dropping from 26,428 Lifeline subscribers in September, 2006, to 23,918 in September, 2007, and 22,720 in June, 2008. Requiring Verizon to provide Lifeline to eligible persons who wish to subscribe to its bundled service offerings will help reverse this negative trend.

Wireless ETCs should also be required to provide Lifeline benefits to eligible persons who wish to subscribe to any service offerings that include the equivalent of basic local exchange service access. Since inception of the Lifeline automatic enrollment process in April, 2007, Sprint-Nextel received over 10,350 Lifeline applications from eligible customers, yet it reports only 78 Lifeline customers as of June, 2008. This extremely poor take rate will be improved if the Commission requires Sprint-Nextel and other wireless ETCs provide Lifeline to eligible persons who wish to subscribe to their bundled service offerings.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

TESTIFYING STAFF POSITION: It is in the best interest of Florida for this Commission to require all eligible telecommunications carriers 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.

VIII. ISSUES AND POSITIONS

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?

POSITIONS

VERIZON: No. Under federal law, ETCs only are required to apply the Lifeline discount to the equivalent of basic service, not to other, nonbasic services, including bundled services. Florida law requires ETCs to provide a Lifeline plan meeting this federal requirement, and does not authorize the Commission to impose obligations exceeding that requirement.

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

ALLTEL: See Basic Position above.

OPC: Yes. No state or federal law precludes the Commission from such action. Requiring ETC's to offer Lifeline in bundled service offerings is consistent with the goals and principles of universal service, is in the public interest, and will foster increased participation in the Florida Lifeline program.

STAFF: Staff has no position at this time.

TESTIFYING STAFF POSITION: Yes. The Commission can 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.

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?**

POSITIONS

VERIZON: No position.

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)

ALLTEL: See Basic Position above.

OPC: Yes. Sprint misinterprets 47 C.F.R. § 54.403(b). 47 C.F.R. § 54.403(b) is not a restriction on Lifeline consumers' choice of calling services at comparable terms, but rather is a prescriptive rule directed at ETC's to assure that federal support is passed through to low-income eligible consumers in its entirety. No state or federal law precludes the Commission from requiring ETCs to provide the Lifeline discount to bundled service offerings.

STAFF: Staff has no position at this time.

TESTIFYING STAFF POSITION: Yes. The Commission can 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.

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?**

POSITIONS

VERIZON: No. Even if the Commission were legally authorized to impose such a requirement (which it is not), the Commission should not do so because it would not promote the goal of universal service and it would put ETCs at a competitive disadvantage against their unregulated competitors.

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

ALLTEL: See Basic Position above.

OPC: Yes. The dwindling number of Lifeline customers served by Verizon, compared to growing number of Lifeline customers served by AT&T and Embarq, demonstrates the need to require ETC's to apply the Lifeline discount to bundled service offerings.

STAFF: Staff has no position at this time.

TESTIFYING STAFF POSITION: Yes. Denying or limiting Lifeline benefits on bundled service offerings to eligible Lifeline consumers has created a barrier to Lifeline enrollment in Florida. Requiring 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, is in the public interest and will further the goals of the universal service program.

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?**

POSITIONS

VERIZON: No position.

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)

ALLTEL: See Basic Position above.

OPC: Yes. The small number of Lifeline customers served by Sprint and Alltel demonstrates the need to require ETC's to apply the Lifeline discount to bundled service offerings.

STAFF: Staff has no position at this time.

TESTIFYING STAFF POSITION: Yes. Denying or limiting Lifeline benefits on bundled service offerings to eligible Lifeline consumers has created a barrier to Lifeline enrollment in Florida. Requiring 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, is in the public interest and will further the goals of the universal service program.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Robert J. Casey	Staff	RJC-1	Verizon Florida LLC, General Services Tariff, 14th revised Page 11.0.2
Robert J. Casey	Staff	RJC-2	November 30, 2000, Letter from Ms. Michelle Robinson, Verizon Director-Regulatory Affairs to Mr. Walter D'Haeseleer, PSC Director of Competitive Services

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties stipulate that all witnesses may offer opinion testimony within the scope of their prefiled testimony except that no witness is offered as a legal expert. The parties agree not to object to any prefiled testimony on the grounds that it expresses an opinion and by stipulating, no party is conceding the relevance of any portion of the testimony.

Non-confidential interrogatory responses will be entered into the record as hearing exhibits.

XI. PENDING MOTIONS

None.

XII. PENDING CONFIDENTIALITY MATTERS

None.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be

included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed five minutes per party.

It is therefore,

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 13th day of February, 2009.

NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

CWM

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.