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August 31, 2004 – **VIA ELECTRONIC MAIL**

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040604-TL
Adoption of the National School Lunch Program and an income-based criterion at
or below 135% of the Federal Poverty Guidelines as eligibility criteria for the
Lifeline and Link-up programs

Dear Ms. Bayo:

Please find enclosed for filing Verizon Florida Inc.'s Protest and Request for Formal
Hearing in the above matter. Service has been made as indicated on the Certificate of
Service. If there are any questions regarding this filing, please contact me at 813-483-
1256.

Sincerely,

/s/ Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that a copy of Verizon Florida Inc.'s Protest and Request for Formal Hearing in Docket No. 040604-TL was sent via U.S. mail on August 31, 2004 to

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

/s/ Richard A. Chapkis

Richard A. Chapkis

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of the National School Lunch) Docket No. 040604-TL
Program and an income-based criterion at or) Filed: August 31, 2004
below 135% of the Federal Poverty Guidelines)
as eligibility criteria for the Lifeline and)
Link-up programs)
_____)

**VERIZON FLORIDA INC.'S PROTEST
AND REQUEST FOR FORMAL HEARING**

Pursuant to Rules 25-22.029 and 28-106.201, Florida Administrative Code, Verizon Florida Inc. (Verizon) submits this Petition protesting Proposed Agency Action (PAA) Order No. PSC-04-0781-PAA-TL and requesting a formal hearing.

I. INTRODUCTION

1. Verizon, like this Commission, firmly believes that it is important to develop a plan that is sustainable over the long-term to help ensure that Florida families do not drop off the network because they cannot afford telephone service. And Verizon commends the Commission for its continued efforts to ensure the availability of telecommunications service to low-income consumers.

2. However, Verizon protests the PAA Order for two independent reasons. First, the Commission derives its power from the Legislature, and the Legislature must grant the Commission the power to expand the Lifeline eligibility criteria – something the Legislature has not yet done. Second, even if the Commission had statutory authority to support its decision, the PAA Order is not based on a sufficient factual record.

3. If the Commission intends substantially to expand Lifeline eligibility, it must address the issue of funding as a first priority. As the Commission itself has recognized, it is not appropriate to require LECs to subsidize lifeline in a competitive environment.

4. Accordingly, the Commission should halt its unauthorized attempts to expand the Lifeline eligibility criteria. If the Commission is still considering expanding the Lifeline program – notwithstanding the lack of statutory authority – it should convene hearings so that it can understand the impact that this would have on Florida ratepayers and the industry.

II. PETITIONER INFORMATION

5. Verizon received notice of the PAA Order from the Commission’s website.

6. All notices, pleadings, staff recommendations, orders or other documents served in this docket should be provided to the following representatives:

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7. As explained in detail below, Verizon’s interests would be substantially affected if the proposals set forth in the PAA Order were adopted, because the Order would impose significant additional unfunded mandates and administrative burdens on the Company.

III. THE COMMISSION HAS NO STATUTORY AUTHORITY TO EXPAND THE LIFELINE PROGRAM

8. The proposed unfunded expansion of the Lifeline program does not satisfy the basic principle that the Commission’s actions must be grounded in statutory authority. There is nothing in Chapter 364 that gives the Commission the power to impose this unfunded mandate on incumbents and, therefore, the Commission must reverse the PAA Order.

9. The Commission derives its power from the Florida Legislature. United Tel. Co. of Fla. v. Pub. Serv. Comm'n, 496 So. 2d 116, 118 (1986), citing Fla. Bridge Co. v. Bevis, 363 So. 2d 799, 802 (1978). Actions by the Commission inconsistent with legislative purposes or beyond the scope of the Commission's authority are ultra vires and without legal effect. Burris, Administrative Law, 1987 Survey of Florida Law, 12 Nova L. Rev. 299, 316 (1988). See also State Dep't of Insurance v. Ins. Svcs. Office, 434 So.2d 908 (Fla. 1st DCA 1983). If there is a reasonable doubt regarding whether the Legislature has delegated a particular power to the Commission, the further exercise of the power should be arrested. United Tel., supra, at 118.

10. Here, the Commission's attempts to expand the Lifeline eligibility criteria should be arrested. As shown above, the Commission cannot take any action beyond the scope of authority granted by the Florida Legislature, and the Legislature has not given this Commission the authority to adopt the rules set forth in the PAA Order. Indeed, the Commission does not cite any authority, nor is there any statute in Chapter 364, that even suggests – let alone expressly states – the Commission has the power to adopt the National School Lunch (NSL) Program as an eligible program criterion, establish an income-based program of 135% of Federal Poverty Guidelines (FPG), or create a self-certification process for all Eligible Telecommunications Carriers (ETCs) operating in the state. Accordingly, the Commission cannot establish the new Lifeline eligibility rules set forth in the PAA Order until the Legislature grants the Commission that power.

IV. THE PAA ORDER IS NOT BASED ON A SUFFICIENT FACTUAL RECORD

11. The current state of the record is inadequate. It does not allow the Commission to analyze the financial impact to subscribers and the industry of adding the new eligibility criteria, nor does it allow the Commission to understand what effect, if any, the new criteria will have on subscribership levels. The Commission must convene hearings to garner this critical information.

12. For example, the PAA Order would allow customers to self-certify that they are Lifeline eligible. Under the Order, a subscriber that proves Lifeline eligibility would receive \$13.50 in support, and a self-certified subscriber would receive \$8.25 in support. However, there is no record that shows that this expansion of the Lifeline criteria will further the Commission's goals.

13. The Commission needs to develop a record that will allow it to carefully consider whether reliance on a self-certification mechanism will invite fraud and abuse of lifeline funds, and whether the costs of fraud and abuse will outweigh the benefits of a streamlined certification process. Indeed, in its own comments to the FCC, the FPSC expressed reservations about a self-certification enrollment process, explaining that "the FPSC has reservations that a verification process that relies on end-users validating their eligibility can be effective at minimizing waste, fraud and abuse." *FPSC Comments Regarding the Federal-State Joint Board on Universal Service Lifeline and Link-Up Recommended Decision*, WC Docket No. 03-109, at 5 (August 10, 2003). Commissioner Jaber expressed similar concerns in her dissent to the PAA Order, emphasizing that "there are concerns with accountability and verification involved in a self-certification

program that have not been resolved.” PAA Order at 12. Clearly, unresolved concerns over fraud and abuse are a serious issue that merit examination.

14. Second, the Commission should investigate the costs – aside from increased levels of fraud and abuse – of implementing the self-certification process. For example, the Commission should understand how much it would cost to staff call centers with representatives qualified to answer customer questions about this proposed two-tiered benefit structure. And the Commission should understand how much it would cost to monitor and audit the system to ensure that the state is not being subjected to egregious fraud and abuse. Commissioner Deason articulated this point well in his dissent to the PAA Order: “I feel the costs associated with the revisions, which could ultimately be passed on to consumers, have not been fully examined at this time.” PAA Order at 12.

15. Third, the Commission should develop a record to ensure that self-certification will actually further the goals of the Lifeline program. The PAA Order contains no evidence on what effect, if any, the addition of this criterion will have on Florida telephone penetration rates.¹ This is an important point because the goal of Lifeline support is not to increase the number of subscribers who receive subsidies; rather, it is to increase telephone subscribership among low-income Floridians. Obviously, Commissioner Jaber is not convinced from the existing record that self-certification – and other means of increasing the base of eligibility – is the answer:

¹ This is particularly true because Florida’s telephone penetration rates are already high. Indeed, Florida has a low-income (under \$10,000) penetration rate of 91%, and that percentage steadily increases for higher income brackets. Overall, Florida telephone penetration is 95.1% (source: FCC Telephone Penetration Report).

I wholeheartedly support efforts to strengthen Florida's lifeline program and increase the subscribership of eligible citizens. However, I do not believe that just increasing the base of eligibility is going to improve the penetration rate. My preference is to ensure that the lifeline program as it exists today is more effective. I believe our emphasis at this time should be on identifying and implementing effective outreach efforts to educate the public on the availability of the lifeline and link-up programs and assist qualified persons in obtaining this support as quickly and efficiently as possible.

PAA Order at 12. The Commission must develop the record to understand whether these concerns are well founded. Only after the Commission has all the facts will it be able to make efficient and effective modifications to the Lifeline program.

16. The factual record is also insufficient regarding the effects of adding the NSL program to the Lifeline eligibility criteria. For example, the PAA Order states that "adding the NSL program will benefit Florida by increasing the number of eligible consumers for the Lifeline and Link-Up programs." However, the Order does not provide any evidence about how much, if at all, adding this program will increase subscribership levels.

17. The PAA Order also states that "upon adoption of the NSL program, our staff plans to coordinate with the Florida Department of Education, Florida Association of School Superintendents, and other organizations to incorporate the program into Florida's current Lifeline and Link-Up outreach initiatives." PAA Order at 3-4. But, the PAA Order fails to flesh out the details of how this program will be incorporated into the existing paradigm, and how much that will cost the industry and/or ratepayers.

18. There is a similar problem with the addition of the 135% eligibility criterion. The PAA Order does not address any of the administrative details required to implement this standard, or the significant administrative and financial issues that may impact

consumers, the industry, and other state agencies. In the rate rebalancing proceeding, Verizon voluntarily agreed to accept customers at or below 135% of the FPG as soon as its rate rebalancing tariffs are approved by the Commission. Verizon will, of course, abide by that agreement.

19. In sum, it would be premature to adopt the proposed eligibility criteria at this point. The Commission must convene hearings so that it obtains sufficient information to make an informed decision.

V. IF THE COMMISSION DECIDES TO EXPAND THE LIFELINE ELIGIBILITY CRITERIA, WHICH IT SHOULD NOT, THE COMMISSION SHOULD PROVIDE FOR COST RECOVERY

20. Even if the Commission had the requisite statutory authority to expand the Lifeline eligibility criteria, which it does not, and, even if the PAA Order were based on an adequate factual record, which it is not, the PAA Order should be modified to allow incumbents to recover the increased costs that would be imposed by the new Lifeline eligibility criteria.

21. Florida law makes clear that incumbents should not be required to fund a disproportionate share of the Lifeline program, as is currently mandated in the PAA Order. Section 364.025, Florida Statutes, provides in pertinent part:

The interim mechanism shall be applied in a manner that ensures that each **competitive** local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. . . . ***The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. . . .***

22. In its report on “Universal Service in Florida,” which was provided to the Governor and the Legislature in December 1996, the Commission likewise explained

that, in today's competitive marketplace, it is not appropriate for one class of carriers to bear a disproportionate share of Lifeline funding:

At present, no universal service funding at the state level is provided for Lifeline . . . assistance. While this lack of funding may have been appropriate under rate of return regulation, under which a LEC could apply for rate increases if needed, we believe it is less appropriate in a competitive climate. Those companies with qualifying customers could provide a disproportionate share of the funding for those customers, while companies with no customers would not contribute anything. This would be a disadvantage to the company serving the most low-income customers. Therefore, we believe provisions should be made to allow future funding of these programs through the state universal service fund, to the extent not funded through federal programs.

If needed, a Lifeline fund could be established as part of a permanent state Universal Service mechanism. Lifeline could also be funded by other means, such as a surcharge like that used to fund the Telecommunications Relay System. (Page 47.)

23. As written, the PAA Order violates Section 364.025 and the Commission's own prior decisions because it requires incumbents to bear the administrative costs of expanding the Lifeline eligibility requirements and, in some instances, a portion of each Lifeline customer's total benefit. Therefore, if the Commission decides to expand the Lifeline eligibility criteria -- notwithstanding that it lacks the power to do so and the paucity of the existing factual record -- the Commission must at a minimum allow the incumbents to recover the costs imposed by its mandate.

24. One way to accomplish this goal would be to allow Verizon to recover these costs from its own customers through a small surcharge on all R-1 and B-1 access lines in its territory. Because of Verizon's significant customer base, this would result in only a small increase to existing customers.

VI. CONCLUSION

25. For the reasons stated above, the Commission should cease its unauthorized attempts to expand the Lifeline eligibility criteria. If the Commission still wishes to expand the eligibility criteria – even though it lacks the requisite statutory authority – it should convene hearings so that it can determine whether the cost of adding these criteria outweigh the benefits, and explore alternative means of accomplishing its objectives.

Respectfully submitted,

/s/ Richard A. Chapkis

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August 31, 2004