

## STATE OF FLORIDA

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## PUBLIC SERVICE COMMISSION

August 15, 2000

### VIA ELECTRONIC FILING

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW - TW-A325  
Washington, DC 20554

Re: CC Docket No. 96-45, Federal-State Joint Board on Universal Service;  
Promoting Deployment and Subscribership in Unserved and Underserved  
Areas, Including Tribal and Insular Areas

Dear Ms. Salas:

Forwarded herewith is a Florida Public Service Commission Petition for  
Reconsideration in the above-noted docket.

Sincerely,

/s/

Cynthia B. Miller, Esquire  
Bureau of Intergovernmental Liaison

CBM:tf

Attachment

cc: Brad Ramsay, National Association of Regulatory Utility Commissioners

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matters of )  
 )  
Federal-State Joint Board on )  
Universal Service; Promoting Deployment )  
and Subscribership in Unserved )  
and Underserved Areas, Including )  
Tribal and Insular Areas )  
 )  
Western Wireless Corporation, )  
Crow Reservation in Montana ) CC Docket No. 96-45  
 )  
Smith Bagley, Inc. )  
 )  
Cheyenne River Sioux Tribe Telephone )  
Authority Western Wireless Corporation, )  
Wyoming )  
 )  
Cellco Partnership d/b/a Bell Atlantic )  
Mobile, Inc. )  
 )  
Petitions for Designation as )  
an Eligible Telecommunications Carrier )  
and for Related Waivers to Provide )  
Universal Service )

**FLORIDA PUBLIC SERVICE COMMISSION  
PETITION FOR RECONSIDERATION**

Pursuant to Federal Communications Commission (FCC) Rule 1.429 on Petitions for Reconsideration, the Florida Public Service Commission (FPSC) seeks reconsideration of the order in the above dockets.

The FCC has stated that its goal in adopting revisions to the universal services rules was to increase access to telecommunications services and subscribership among low-income individuals living on American Indian and Alaska Native lands. Specifically, the FCC created a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving

Florida Public Service Commission  
CC Docket 96-45

qualifying low-income individuals living on tribal lands consisting of up to an additional \$25.00 per month, per primary residential connection for each qualifying low-income individual.

As a net contributor state to the Federal Universal Service funds, we are concerned about the ever-increasing size of the programs.<sup>1</sup> The funding of additional social programs, while noble, may not be expressly authorized by the Federal Telecommunications Act of 1996.

Commissioner Michael Powell's partial dissent sets out one legal basis for rejecting this decision. We share his concerns.

He states:

[A]s a government agency, the Commission cannot do just anything, no matter how well-intended or politically appealing. We must take action based on an adequate record and a thorough and logical examination of what the record does and does not tell us. Further, we need to balance carefully the interests of those who would benefit directly from our actions against the interests of those who would be affected indirectly. I believe it is incumbent upon me to carry out these responsibilities even when my personal sympathies would allow me to accept a weaker justification for our actions.

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<sup>1</sup> Florida was a net contributor in 1999 of approximately \$95,000,000 for the high cost fund, \$20,600,000 for the low income (Lifeline and Link-up) fund, and \$40,530,000 for the schools and libraries program.

He states that given the state of the record before the FCC he cannot conclude that the FCC has satisfied its responsibility to substantiate certain portions of the Order. The universal service funding should be sufficient to satisfy the statute, but should not be more than is necessary. "Yet this Order is hardly faithful to that principle; we have failed to show why increases in Lifeline funding are, in fact, necessary."

Repeatedly, Commissioner Powell states, "commenters noted that one central problem on tribal lands is that residents fail to avail themselves of the existing Lifeline program, thereby leaving money to which they should be eligible on the table." The reason identified is that tribal members often do not participate in the state or federal programs that the FCC uses as proxies for low income (e.g., SSI, federal housing assistance, etc.). Instead, many subscribe to programs administered by tribal governments. Commissioner Powell suggests the possibility that establishing new and more appropriate proxies for income, which the FCC has done, will sufficiently offset the cost of service. This would increase penetration, without adding new money to the program. He concludes, "The record simply does not offer any solid justification for actually expanding the program given this possibility. To expand the program without substantiation of need contravenes the limiting principle we purport to abide by when considering expansion of funding."

The FPSC also questions whether there is any discriminatory impact by singling out the Native American and Alaskan tribal areas for the benefit of up to an additional \$25.00 per primary residential line. If the goal is to increase subscribership for these populations, we respectfully suggest first increasing efforts to enroll qualified low-income Native Americans and Alaska Natives in the already existing Lifeline and Link Up programs. The effectiveness of the program should be assessed; if there are problems with the existing program, efforts should be made to address them. Creating a special tier just for these groups raises the question of discrimination. Other low income groups, who do not fall within this specific category, would not benefit. There are other pockets of low telephone penetration rates outside tribal lands.

In conclusion, the FPSC believes the FCC is in error. We urge you to reconsider this decision. Adding more and more programs for universal service funding, and increasing the size of the funds, may be for a noble purpose. Yet, these expansions may be without clear statutory authority. In the case herein, the expansion also appears to be without clear support in the record and may raise issues of discrimination. Reconsideration is indeed warranted.

Respectfully submitted,

/s/

Cynthia B. Miller, Esquire

Florida Public Service Commission  
CC Docket 96-45

Bureau of Intergovernmental Liaison

FLORIDA PUBLIC SERVICE COMMISSION  
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DATED: August 15, 2000

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Public Service Commission will be furnished to the parties on the attached list.

/s/

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Cynthia B. Miller, Esq.  
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DATED: August 15, 2000

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