

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
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)	

ORDER

Adopted: June 3, 2005

Released: June 6, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we grant the California Public Utilities Commission's and the People of the State of California's (CPUC) request to extend the date to establish certification and verification procedures pursuant to the Commission's *Lifeline Order* until March 1, 2006. We find that CPUC has shown good cause for this departure from the existing schedule. We also reject commenters' suggestions that we grant a blanket waiver of Section 45.410(a) of our rules for eligible telecommunications carriers (ETCs).

2. On April 29, 2004, the Commission released the *Lifeline Order* establishing certification and verification procedures to minimize potential abuse in the low-income universal service support program.¹ Under the terms of the *Lifeline Order*, all states must have their certification and verification procedures in place by June 22, 2005.² On March 22, 2005, CPUC petitioned the Commission for an extension of time to comply with sections 54.409(a) and 54.415(a) of the Commission's rules. On April 21, 2005, the Commission released a Public Notice seeking comment on CPUC's petition.³

3. In its Request for Extension of Time, CPUC states that, although it has started the process of implementing the federal requirements, it will not be in full compliance with the *Lifeline Order* by June 22, 2005. CPUC states that, as an administrative agency, it is statutorily required to provide the public with notice and an opportunity to comment before instituting changes to its Lifeline/Link-Up program. Further, CPUC contemplates using a third-party administrator to develop and manage third-party verifications of the eligibility certification and

¹ *In the Matter of Lifeline and Link-Up*, WCB Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*Lifeline Order*). The Lifeline and Link-Up programs are designed to ensure that quality telecommunications services are available to low-income consumers at just, reasonable, and affordable rates. 47 C.F.R. § 54.410.

² CPUC requested an extension of that deadline until March 1, 2006.

³ *Wireline Competition Bureau Seeks Comment on CPUC Request for an Extension of Time Established in Sections 54.409(a) and 54.415(a) of the Commission's Rules*, WC Docket No. 03-109 and DA 05-1114, Public Notice (rel. April 21, 2005).

verification process. According to CPUC, the contract for the third-party administrator must be competitively bid, which is a time-consuming process. Finally, California contends that successful implementation of the new program will require more time for education and training of stakeholders. Thus, CPUC requests an extension of time to March 1, 2006.

4. The Commission may grant a waiver for good cause shown.⁴ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁵ In addition, the Commission may take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.⁶ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁷

5. We conclude that it is in the public interest to waive our June 22 deadline for CPUC and grant the request for extension of time. The record demonstrates that CPUC has acted timely in initiating the process to move towards compliance; however, much still needs to be done. Typically, CPUC issues General Orders to set rules for all utilities or for a specific industry. General Order 153 governs the administration of California's Universal Lifeline Telephone Service.⁸ CPUC has explained that, as an administrative agency, it is required to follow certain procedures to amend General Order 153, including providing the public with notice and an opportunity to comment.⁹ CPUC has also instituted a series of workshops to revise and update General Order 153 to comply with the requirements of the *Lifeline Order*. Additionally, we are mindful of the time and resources necessary to comply with state procurement requirements in connection with the CPUC's decision to establish a third-party administrator to develop and manage the eligibility certifications and verification requirements. We therefore find that CPUC has demonstrated that special circumstances exist to justify a waiver of the June 22 deadline.

6. Certain commenters have suggested that the Commission grant a blanket waiver of section 54.410.¹⁰ Section 54.410 identifies certification and verification requirements necessary to qualify for Lifeline support, and provides that ETCs comply with such certification procedures by June 22, 2005. The commenters have not presented adequate justification for granting such a blanket waiver. We note that certain states as well as many ETCs have complied or will be in compliance with the requirements of the *Lifeline Order* by the deadline.¹¹ Accordingly, we

⁴ 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵ *WAIT Radio*, 418 F.2d at 1157.

⁶ *Id.*

⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁸ CPUC General Order 153 "Procedures for the Administration of the Moore Universal Telephone Service Act."

⁹ *Id.* at Appendix C § 2 (requiring that substantive changes to General Order 153 may only be made by CPUC decisions and resolutions, and then only after notice and an opportunity to comment, or evidentiary hearing).

¹⁰ Joint Comments of the Independent Telephone & Telecommunications Alliance, National Telecommunications cooperative Association, Organization for the Promotion and Advancement of Small telecommunications companies, United States Telecom Association, and Western Telecommunications Alliance, at 4; Comments of the California Small LECs at 6; Comments of Surewest Telephone and Surewest Televideo at 5.

¹¹ For example, as of the date of this Order, seven ETCs have submitted results of their verification surveys to USAC. In addition, many states have issued orders setting out state procedures for certification and verification.

decline to grant such a waiver. Instead, we will review requests for waiver of the *Lifeline Order* implementation deadline on a case-by-case basis. Parties that anticipate filing for a waiver are encouraged to do so quickly so that the Commission may act on their petitions in a timely fashion prior to the June 22 implementation date.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and section 1.3 of the Commission rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that CPUC's petition for waiver of the deadline for state implementation of Lifeline/Link-Up certification and verification procedures set out in the *Lifeline Order* and an extension until March 1, 2006, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones
Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

See Order Adopting Amendments, Iowa Utilities Board, Docket No. RMU -05-5, (April 22, 2005); *In the Matter of the Review of Implementation of FCC Requirements for Lifeline and Link-Up Programs and the Development of Additional Outreach Efforts*, South Dakota Public Utilities Commission, TC05-058 (April 15, 2005).