



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU CLARIFIES MINIMUM REQUIREMENTS FOR STATES SEEKING TO OPT OUT OF NATIONAL LIFELINE ACCOUNTABILITY DATABASE

WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45

In this public notice, the Wireline Competition Bureau (Bureau) provides guidance to states regarding the process of opting out of the National Lifeline Accountability Database (Database) established in the *Lifeline Reform Order* (Order).<sup>1</sup>

In the *Lifeline Reform Order*, the Commission established the Database to detect and eliminate duplicative Lifeline support provided to individuals and households and imposed specific requirements on ETCs, such as the requirement to query the Database prior to signing up a subscriber to determine if that subscriber or a member of that subscriber's household is already receiving Lifeline support from another ETC.<sup>2</sup> The Commission, however, recognized that states may have their own systems for eliminating individual or household support on which ETCs could rely and established a process through which states could file a request seeking to "opt out" of the Database.<sup>3</sup> To opt out of the Database, the state's system must be comprehensive and at least as robust as the processes adopted by the Commission in the *Lifeline Reform Order*.<sup>4</sup> In states that meet this standard and exercise their opt-out rights, ETCs will not have to separately comply with national requirements regarding the Database.<sup>5</sup>

Pursuant to the Order, if a state or state regulatory authority intends to opt out of the Database, it is required to make a one-time request by November 1, 2012 that the state has a comprehensive system in place to check for duplicative Lifeline support.<sup>6</sup> We now provide a limited waiver, until December 1,

<sup>1</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or Order). The Commission directed the Bureau to release a public notice providing additional guidance to the states regarding the opt-out process. See *id.* at 6572, para. 221, n.582. On August 13, 2012, the Universal Service Administrative Company (USAC) released a request for proposals to construct the Database. See USAC, RFP-NLAD.pdf, available at [http://www.usac.org/\\_res/documents/about/pdf/rfp/RFP-NLAD.pdf](http://www.usac.org/_res/documents/about/pdf/rfp/RFP-NLAD.pdf).

<sup>2</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6734-55, paras. 179-225; 47 C.F.R. § 54.404.

<sup>3</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221; 47 C.F.R. § 54.404(a).

<sup>4</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6737-46, 6747-52, paras. 188-208, 212-220.

<sup>5</sup> See *id.*, 27 FCC Rcd at 6752, para. 221.

<sup>6</sup> See *id.* 47 C.F.R. § 54.404 was subject to Office of Management and Budget (OMB) approval of information collection requirements, and became effective May 1, 2012 upon Federal Register publication of OMB approval. See *Wireline Competition Bureau Provides Notice Regarding The Effective Date of Certain Rules Adopted In The Lifeline Reform Order*, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, Public Notice, 27 FCC Rcd 4875 (WCB 2012); 77 FR 25609 (2012) (announcing that OMB has approved the information collection requirements of certain rules, including 47 C.F.R. § 54.404). States are required to file opt-out certifications within six months of the

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2012, of the date by which states must file their opt-out request, to enable states to take into account the guidance provided in this public notice regarding the showing that a state must make in order to opt out of the database.<sup>7</sup> Any state which has already filed a request with the Commission may amend the request, or withdraw its request and re-file without prejudice, in order to provide the specific information described below.<sup>8</sup>

To opt out of the Database, a state must list the obligations on ETCs to comply with the state system (*e.g.*, the ETC must transmit its subscriber information to the database).<sup>9</sup> An opt-out request will only be granted when a state demonstrates it has systems that cover all ETCs operating in the state and all subscribers of those ETCs.<sup>10</sup>

The opt-out request should itemize with particularity the functionality of the state's system that corresponds to the federal processes set forth in the Order, as described below.<sup>11</sup> Specifically, the state should demonstrate that the system on which it bases the opt-out request:

- can facilitate a process to scrub individual and household duplicates from ETCs' subscriber rolls.<sup>12</sup> The state system must be sufficiently capable of handling whatever functions, if any, are necessary to implement the scrubbing process. The state should file any data in its possession regarding the individual and/or household duplicate rate in its state to demonstrate that the process in the state has, in fact, successfully scrubbed individual and household duplicates from ETCs' subscriber rolls.
- will prevent ETCs from signing up individuals or households which are already receiving a Lifeline benefit. This includes a means for ETCs and/or other authorized users (*e.g.*, state Administrators) to query the system prior to enrolling the subscriber to determine if

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effective date of the rule. *See* 47 C.F.R. § 54.404(a). Therefore, opt-out certifications currently are due no later than November 1, 2012.

<sup>7</sup> Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WALT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166. The Commission has granted limited waivers of implementation deadlines for regulatory requirements on numerous occasions. *See, e.g., Local Number Portability Porting Interval and Validation Requirements*, WC Dkt. No. 07-244, CC Dkt. No. 95-116, Order, 23 FCC Rcd 2425 (2008) (waiving deadline for complying with local number portability validation process).

<sup>8</sup> *See* Texas Public Utility Commission, Petition and Certification to Opt Out of the National Database Pursuant to 47 C.F.R. § 54.404(a) by the Public Utility Commission of Texas, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45 (filed Sept. 13, 2012); Nebraska Public Service Commission, Petition and Certification of the Nebraska Public Service Commission to Opt Out of the National Lifeline Accountability Database, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45 (filed Oct. 1, 2012).

<sup>9</sup> This list should include regulatory and statutory citations as applicable.

<sup>10</sup> 47 C.F.R. § 54.404(a).

<sup>11</sup> *See Lifeline Reform Order*, 27 FCC Rcd at 6752, para 221.

<sup>12</sup> *See id.*, 27 FCC Rcd at 6748-49, paras. 214-216.

the subscriber or anyone in the subscriber's household is already receiving duplicative support.<sup>13</sup>

- has a means of standardizing and verifying addresses submitted to the system. The system and any related processes must also be able to accommodate non-traditional addresses, such as addresses on Tribal lands not recognized by the U.S. Postal Service.<sup>14</sup>
- has a means of verifying a subscriber's identity at the time a system query is made.<sup>15</sup> In response to the query, the system must indicate whether the subscriber's identity can be verified, and, if not, provide error codes to indicate why the identity could not be verified.
- includes a dispute resolution process to ensure that subscribers are not wrongfully denied benefits,<sup>16</sup> including those cases where a subscriber fails the automated identity check or where the subscriber's address is incapable of being recognized by the U.S. Postal System.
- is able to receive and process information including the name, address and phone number of each Lifeline subscriber.<sup>17</sup>
- captures the address and date of service initiation to which Tribal Link Up support applied if Link Up support is offered in the state.<sup>18</sup>
- has a process to manage "exceptions" to the definition of "duplicative support" rules and to deal with situations, such as non-standardized addresses, that may not be able to be resolved through mechanized means.<sup>19</sup>
- retains all data related to consumers who have received Lifeline and Link Up for ten years after the consumer receives Link Up or de-enrolls from Lifeline.<sup>20</sup>
- has the capability of receiving updates from ETCs both in real-time and in periodic batches.<sup>21</sup>
- includes safeguards to ensure that the data in the system is only used to check for duplicative support and related functions and for no other purpose, including marketing or subscriber retention.<sup>22</sup> In addition, the state should demonstrate that the system includes sufficient safeguards to protect proprietary and personal information in the system from theft or loss.<sup>23</sup>
- will permit the FCC and USAC to access records necessary for oversight and for audits.<sup>24</sup>

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<sup>13</sup> See *id.*, 27 FCC Rcd at 6743-44, para. 203.

<sup>14</sup> See *id.*, 27 FCC Rcd at 6738-39, 6743, paras. 193, 201.

<sup>15</sup> See *id.*, 27 FCC Rcd at 6743, para. 201.

<sup>16</sup> See *id.*, 27 FCC Rcd at 6749, para. 217.

<sup>17</sup> See *id.*, 27 FCC Rcd at 6741, para. 198.

<sup>18</sup> See *id.*, 27 FCC Rcd at 6739-40, para. 195.

<sup>19</sup> See *id.*, 27 FCC Rcd at 6747-48, paras. 212-213.

<sup>20</sup> See *id.*, 27 FCC Rcd at 6740, para. 195.

<sup>21</sup> See *id.*, 27 FCC Rcd at 6741, para. 198.

<sup>22</sup> See *id.*, 27 FCC Rcd at 6751-52, para. 220.

<sup>23</sup> See *id.*, 27 FCC Rcd at 6745, para. 207.

<sup>24</sup> See *id.*, 27 FCC Rcd at 6754-55, para. 225.

Consistent with the Commission's directive in the *Lifeline Reform Order*, if the Bureau does not act to deny the request within 90 days, subject to the conditions explained above, it will be granted.<sup>25</sup>

Action by the Chief, Wireline Competition Bureau.

For further information, please contact Jonathan Lechter, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7387 or TTY (202) 418-0484.

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<sup>25</sup> *See id.*, 27 FCC Rcd at 6752, para. 221. With respect to those states which have already filed their opt-out requests prior to the release of this public notice and which subsequently amend or re-file their request prior to December 1, 2012, the request will be approved if the Bureau does not act to deny the request within 90 days of the amendment or re-filing date.