

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

In the Matter of)
Lifeline and Link Up Reform and) WC Docket No. 11-42
Modernization)
TracFone Wireless, Inc. Petition for Declaratory)
Rulemaking or in the alternative, Petition for)
Waiver of Section 54.410(f) of the Commission's)
Rules)
Smith Bagley, Inc. Petition for Limited Waiver)
i-wireless, LLC Petition for Waiver of)
Section 54.410(f) of the Commission's Rules)
PR Wireless, Inc. d/b/a Open Mobile Petition for)
Waiver of Section 54.410(f) of the Commission's)
Rules)
Petition for Waiver of Sprint Nextel Corporation)
Amended Petition for Waiver of Affordable Phone)
Services, Inc.)
Amended Petition for Wavier of Absolute Home)
Phones, Inc.)
Verizon's Emergency Petition for Waiver of 2012)
Lifeline Eligibility Recertification Deadlines Due)
to Hurricane Sandy)

ORDER

Adopted: November 30, 2012

Released: November 30, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver from section 54.410(f) of the Commission's rules¹ and the 2012 re-certification requirement set forth in the Lifeline Reform Order² to i-wireless, Inc. (i-wireless),³ PR Wireless, Inc. (PR Wireless),⁴ and TracFone Wireless,

1 47 C.F.R. § 54.410(f).

2 Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (Lifeline Reform Order).

3 i-wireless, LLC Petition for Waiver of Section 54.410(f) of the Commission's Rules, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Jul. 23, 2012) (i-wireless Petition).

Inc. (TracFone),⁵ as we find these carriers took sufficient steps to check the eligibility of certain subscribers when the subscribers enrolled in Lifeline in 2012, alleviating the need for these ETCs to re-certify the eligibility of such subscribers in 2012.⁶ We further grant a limited waiver from section 54.410(f) of the Commission's rules to Absolute Home Phone, Inc. (Absolute),⁷ Affordable Phone Services, Inc. (Affordable),⁸ and Sprint Nextel Corporation (Sprint),⁹ as specified herein.¹⁰ We decline to waive section 54.410(f) for Smith Bagley, Inc. (SBI) as we do not find that SBI ever verified the eligibility of any of its Lifeline subscribers, and SBI has not demonstrated why a waiver of the 2012 re-certification requirement is justified.¹¹ We do, however, grant SBI a 90-day extension to complete the re-certification requirement and report its findings to the Universal Service Administrative Company (USAC) by April 30, 2013. We also grant Verizon New York, Inc.'s and Verizon New Jersey, Inc.'s (collectively, Verizon) petition for a 90-day extension to complete the re-certification requirement for its subscribers in New York and New Jersey due to the hardships faced by Hurricane Sandy victims.¹² The waivers granted in this Order are limited, one-time waivers of section 54.410(f) and paragraph 130 of the *Lifeline Reform Order*.¹³

II. BACKGROUND

A. Annual Lifeline Re-Certification Reporting Requirements

2. *2012 Re-Certification Requirement.* In the *Lifeline Reform Order*, the Commission adopted a set of uniform re-certification procedures that all Eligible Telecommunications Carriers (ETCs) must perform annually to verify the ongoing eligibility of their Lifeline subscribers.¹⁴ Section 54.410(f) requires that ETCs annually re-certify the eligibility of their subscribers.¹⁵ To comply with the annual requirement for 2012, all ETCs and, where applicable, state Lifeline administrators or an agent of the

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⁴ PR Wireless, Inc. d/b/a Open Mobile Petition for Waiver of Section 54.410(f) of the Commission's Rules, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Aug. 16, 2012) (PR Wireless Petition).

⁵ Petition for Declaratory Ruling or, in the Alternative, For Waiver of Section 54.410(f) of the Commission's Rules, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed May 18, 2012) (TracFone Petition).

⁶ See 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, paras. 130-32. Most of the *Lifeline Reform Order* rules became effective June 1, 2012. For the same reasons, we grant a partial waiver to TracFone for certain of its subscribers, but we also deny TracFone's waiver request for its subscribers enrolled or re-certified using an insufficient certification form and for its subscribers in states where eligibility may be determined using a state database, as discussed below.

⁷ Amended Petition for Waiver of Absolute Home Phones, Inc., WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 20, 2012) (Absolute Amended Petition).

⁸ Amended Petition for Waiver of Affordable Phone Services, Inc., WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 20, 2012) (Affordable Amended Petition).

⁹ Petition for Waiver of Sprint Nextel Corporation, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Aug. 28, 2012) (Sprint Petition).

¹⁰ 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6897, App. C.

¹¹ Smith Bagley, Inc. Petition for Limited Waiver, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Jun. 26, 2012) (SBI Petition).

¹² Verizon's Emergency Petition for Waiver of 2012 Lifeline Eligibility Re-Certification Deadline Due to Hurricane Sandy, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Nov. 21, 2012) (Verizon Petition).

¹³ See *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, 6897, paras. 130-32, App. C; 47 C.F.R. § 54.410(f).

¹⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6714-22, paras. 129-48; 47 C.F.R. § 54.410(f).

¹⁵ See 47 C.F.R. § 54.410(f).

state (collectively, “state agencies”) must re-certify the eligibility of their Lifeline subscriber base as of June 1, 2012, by the end of 2012 and report the results to USAC by January 31, 2013 (2012 re-certification requirement).¹⁶ The 2012 re-certification requirement is intended to work in lock step with the new certification of eligibility requirements established in the *Lifeline Reform Order*.¹⁷ The Commission found that the upfront documentation requirement upon enrollment would be a sufficient initial check of subscriber eligibility, and the annual subscriber self-certification would assist in obtaining updated subscriber information for use in populating the National Lifeline Accountability Database (NLAD).¹⁸ The requirement for ETCs to annually re-certify their Lifeline subscribers ensures that only eligible subscribers remain in the program.¹⁹ Any subscribers that fail to respond to the ETC’s or state agency’s re-certification efforts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in the Commission’s rules.²⁰

3. ETCs and state agencies have the option of re-certifying subscribers in one of two ways, as described in 47 C.F.R. § 54.410(f).²¹ First, to the extent that a database is available to verify program or income-based eligibility, ETCs or state agencies must query the database to confirm the subscriber’s continued eligibility.²² In the absence of a database, the ETC or state agency must re-certify the continued eligibility of a subscriber by obtaining a signed certification from the subscriber that meets the requirements of 47 C.F.R. § 54.410(d).²³ The *Lifeline Reform Order* makes clear that “[r]egardless of the format used to re-certify the subscriber’s continued eligibility for Lifeline, ETCs [or a state agency] must convey all of the required information set forth in the amended section 54.410(d) and obtain from the subscriber an individual certification for each requirement set forth in the rule.”²⁴ In order to obtain a signed certification from the subscriber, the ETC or state agency must send a notice to the subscriber separate from the subscriber’s bill seeking information sufficient to re-certify the subscriber, and notifying the subscriber that he or she will be de-enrolled within 30 days unless the subscriber re-certifies that the subscriber is eligible to receive Lifeline.²⁵ ETCs or state agencies may contact and receive re-certification responses from subscribers in writing, by phone, by text message, by e-mail, by Interactive Voice Response (IVR), or otherwise through the Internet using an electronic signature.²⁶ If an ETC or

¹⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132; 47 C.F.R. § 54.416(b).

¹⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6717-18, para. 134. The 2012 re-certification process requires that ETCs re-certify their base of Lifeline subscribers as of June 1, 2012. The new documentation requirements, under which subscribers show proof of eligibility upon enrollment, became effective June 1, 2012. Therefore, the two requirements are designed to ensure that all Lifeline subscribers’ eligibility will be verified in 2012.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 47 C.F.R. §§ 54.405(e), 54.410(f)(5).

²¹ 47 C.F.R. § 54.410(f).

²² See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 131; 47 C.F.R. §§ 54.410(f)(2)(i)-(ii), 54.410(f)(3)(i)-(ii).

²³ See 47 C.F.R. §§ 54.410(f)(2)(iii), 54.410(f)(3)(iii); *Lifeline Reform Order*, 27 FCC Rcd at 6715, 6897, para. 130, App. C.

²⁴ *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. Electronic signatures may be used to satisfy the re-certification requirement.

²⁵ 47 C.F.R. § 54.405(e)(1).

²⁶ See 47 C.F.R. § 54.419; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130. Any text messages sent for the purpose of re-certification must be sent to the phone number associated with the supported service and responses must be sent from that phone number. *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. When utilizing phone or IVR, a subscriber must be prompted to certify to each individual requirement set forth in section 54.410(d). *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. If the state agency or third party is responsible for performing the annual re-certification functions, the state or its agent must provide the ETC with a copy of the

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state agency is unable to re-certify a subscriber because the subscriber did not respond to the re-certification request, the ETC must de-enroll the subscriber.²⁷ If an ETC or state agency receives a response from the subscriber that the subscriber is no longer eligible, the subscriber must be de-enrolled within five business days.²⁸

4. Each ETC must report the results of its re-certification process to the Commission and USAC by January 31, 2013, using FCC Form 555.²⁹ The re-certification process is not considered “complete” until the ETC has de-enrolled all subscribers that either failed to respond to a re-certification request or state that they are no longer eligible, or where a database query by the ETC or state agency indicates the subscriber is no longer eligible and the ETC de-enrolls that subscriber.

B. Petitions for Waiver

5. *Absolute Home Phones and Affordable Phone Service Petitions for Waiver.* Absolute seeks a waiver for 1,322 Absolute residential Lifeline subscribers in Alabama, Florida, Kentucky, and North Carolina, and Affordable seeks a waiver for 5,912 wireline Lifeline subscribers in Alabama, Florida, Kentucky, North Carolina, and South Carolina. Both carriers seek a waiver only for the Lifeline subscribers they serve on AT&T’s network.³⁰ Absolute and Affordable each assert that as of December 31, 2012, they will no longer serve any wireline subscribers by reselling AT&T service, and, therefore, it is not necessary for them to re-certify the eligibility of subscribers they will not serve at the end of 2012.³¹

6. *Sprint-Nextel Petition for Waiver.* Sprint seeks a waiver from the 2012 re-certification requirement for 544 post-paid Lifeline subscribers.³² Sprint states that it will relinquish its high-cost ETC designations as of December 31, 2012, and will no longer serve Lifeline subscribers in those

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completed re-certification form. *Id.* at 6715, para. 131 n.341. The ETC or state agency must also notify the subscriber in writing that failure to respond to the re-certification request could result in de-enrollment. *Id.* at 6720, para. 142.

²⁷ See 47 C.F.R. § 54.405(e)(4).

²⁸ See 47 C.F.R. § 54.405(e)(1). If the state agency is performing the re-certification, the ETC must de-enroll the subscriber within 5 business days of receiving notice from the state agency that the subscriber was unable to be re-certified.

²⁹ See *id.*; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132; 47 C.F.R. § 54.416(b). The Office of Management and Budget approved FCC Form 555 is posted on USAC’s website at <http://www.usac.org/res/documents/li/pdf/forms/FCC-form-555.pdf>. See also *Wireline Competition Bureau Reminds Carriers That They Must Re-Certify Eligibility of All Subscribers By December 31, 2012*, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, Public Notice, DA 12-1626 (Wireline Comp. Bur. rel. Oct. 31, 2012).

³⁰ See Absolute Amended Petition at 1-2; Affordable Amended Petition at 1-2.

³¹ Absolute and Affordable both assert that because the carriers have provided disconnect notices to these subscribers, these subscribers will be confused, and possibly agitated, if they are required to re-certify their continued eligibility after they receive service discontinuation notices. Absolute Amended Petition at 3-4; Affordable Amended Petition at 3-4. See also Letter from John Heitmann, Counsel for Absolute Home Phones, Inc., to Marlene H. Dortch, FCC, dated Nov. 8, 2012 (explaining that all Lifeline subscribers discontinued from Absolute’s service will have available choices of alternate Lifeline providers); Letter from John Heitmann, Counsel for Affordable Phone Services, Inc., to Marlene H. Dortch, FCC, dated Nov. 8, 2012 (explaining that all Lifeline subscribers discontinued from Affordable’s service will have available choices of alternate Lifeline providers).

³² See Sprint Petition at 1-3; *Sprint Corporation Designation as an Eligible Telecommunications Carrier in Alabama, Georgia, New York and Virginia*, WC Docket Nos. 09-197, 96-45, Order, DA 12-1849 (Wireline Comp. Bur. Nov. 16, 2012) (*Sprint Designation Order*).

jurisdictions.³³ Sprint plans to provide written notice to each of its Lifeline subscribers advising them that it will no longer provide Lifeline service discounts as an ETC, and informing them that the Lifeline discount will be discontinued within 45 days of notice.³⁴ Sprint subscribers that will be discontinued due to Sprint's relinquishment of its ETC designation will either have to forgo their Lifeline discount, or enroll via an alternate provider *de novo*.³⁵ Sprint states that this waiver petition does not apply to Sprint's Assurance Wireless pre-paid subscribers.³⁶

7. *i-wireless Petition for Waiver*. i-wireless seeks a one-time waiver with respect to 154,000 Lifeline subscribers it enrolled between January 1, 2012 and May 31, 2012.³⁷ i-wireless argues that it started offering Lifeline service in 2012 pursuant to its Bureau-approved Compliance Plan, which required that it establish the eligibility of all subscribers.³⁸ i-wireless notes that its certification form is missing two requirements set forth in section 54.410(d) of the Commission's rules, but explains that it has already collected such information from subscribers or will collect it in 2013.³⁹

8. *PR Wireless Petition for Waiver*. PR Wireless seeks a limited waiver of the 2012 Lifeline re-certification requirement with respect to its subscribers enrolled or re-certified between January 1, 2012 and May 31, 2012.⁴⁰ PR Wireless asserts that its subscribers enrolled or re-certified during this period have undergone rigorous vetting for duplicate checks, have made substantially all of the section 54.410(d) certifications, and have demonstrated their eligibility by providing program or income eligibility documentation.⁴¹ PR Wireless asserts that while its forms do not contain all the requirements of section 54.410(d) of the Commission's rules, it commits to collecting certain information by January 31, 2013, and ensuring that the remaining requirements will be met when the subscriber renews service or during the 2013 re-certification process.⁴²

³³ *Sprint Designation Order* at 2-3.

³⁴ *Id.* at 3.

³⁵ *Id.* at 4.

³⁶ *Id.* at 1 n.1.

³⁷ i-wireless Petition at 1.

³⁸ *Id.* See also Letter from John Nakahata, Counsel for i-wireless, to Marlene H. Dortch, FCC, dated Aug. 17, 2012 (*i-wireless Ex Parte Letter*); i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), CC Docket No. 96-45, WC Docket No. 09-197, Compliance Plan (filed September 9, 2011).

³⁹ i-wireless's pre-June 2012 certification form did not include the certification that the subscriber will notify i-wireless within 30 days of moving to a new address, and i-wireless proposes to address this by sending a text to its subscribers once per quarter through the end of 2013 informing subscribers that they are required to provide an updated address. i-wireless commits to this measure as a condition of waiver. i-wireless further states that it has collected all necessary subscriber information to report to USAC in order to populate the NLAD. i-wireless has agreed to notify subscribers of the need to consent to providing the subscribers' data to USAC and to allow its subscribers to opt out of sharing their data, and to re-certify all its subscribers by each subscriber's anniversary date, no later than May 31, 2013. See *i-wireless Ex Parte Letter*.

⁴⁰ PR Wireless Petition at 1.

⁴¹ PR Wireless has enrolled approximately 26,117 subscribers and re-certified approximately 17,120 of its subscribers between January 1, 2012 and May 31, 2012. Letter from David La Furia, Counsel for PR Wireless, to Marlene H. Dortch, FCC, dated Oct. 4, 2012. (*PR Wireless Ex Parte Letter*).

⁴² *Id.* at 6. PR Wireless acknowledges that it did not obtain consent from subscribers to share their information with USAC and commits to receiving such necessary subscriber consent by January 31, 2013, by IVR, telephone inquiries or in person during store visits. *Id.* at 3. PR Wireless states that all of its subscribers will have provided their date of birth to PR Wireless by January 31, 2012. Letter from David La Furia, Counsel for PR Wireless, to Marlene H. Dortch, FCC, dated Nov. 6, 2012 (*PR Wireless Date of Birth Commitment Ex Parte Letter*).

9. *TracFone Petition for Waiver.* TracFone requests a declaratory ruling that TracFone is in substantial compliance with the annual re-certification requirement. In the alternative, TracFone requests a one-time waiver of section 54.410(f) of the Commission's rules for those TracFone Lifeline subscribers whom TracFone re-certified prior to June 1, 2012 pursuant to its existing compliance plan, as well as those subscribers TracFone enrolled between January 1, 2012 and May 31, 2012.⁴³ TracFone asserts that its certification form substantially complies with section 54.410(d) of the Commission's rules and those subscribers have already re-certified or recently signed up using an amended TracFone certification form.⁴⁴ TracFone argues that its pre-June 1, 2012 annual re-certification forms encompass most, if not all, of the additional requirements, and its certification form in use on or about April 1, 2012 contains all of the information and subscriber certifications required by section 54.410(d) of the Commission's rules.⁴⁵ TracFone further states that in select states, it established the eligibility of its subscribers because those states required proof of eligibility prior to the *Lifeline Reform Order*.⁴⁶ TracFone also asserts that it verified the eligibility of certain subscribers in states with databases.⁴⁷

10. *Smith Bagley Petition for Waiver.* SBI, an ETC providing Lifeline service in Arizona, New Mexico and Utah, including on five Tribal lands (Navajo, Hopi, Ramah Navajo, Zuni and White Mountain Apache) seeks a waiver of the re-certification requirement for its base of 72,000 Lifeline subscribers.⁴⁸ SBI argues that it needs a waiver because the cost of complying with the re-certification rules is extraordinary and outweighs any minimal benefits to the Lifeline program.⁴⁹ In support, SBI explains that it has re-certified approximately 23,000 of its 72,000 Lifeline subscriber base, and of those it has only had to de-enroll 49 subscribers for ineligibility.⁵⁰ SBI argues that because many of its Tribal subscribers reside in remote locations without direct mail delivery, mailing re-certification forms would be a fruitless exercise for SBI.⁵¹ SBI requests that it be given a waiver so that it can re-certify the eligibility of a subscriber when the subscriber visits SBI for products or services or upon the expiration of the subscriber's 40-month service contract.⁵²

11. *Verizon Petition for Waiver.* Verizon seeks a limited waiver of the 2012 re-certification requirement so that it may extend the deadline for de-enrolling its subscribers in New York and New

⁴³ TracFone Petition at 1.

⁴⁴ *Id.* at 2; 47 C.F.R. § 54.410(d), (f).

⁴⁵ TracFone Petition at 5. TracFone acknowledges that its certification form used for subscribers who enrolled or re-certified for TracFone's Lifeline service in 2012 is missing several certifications, and it proposes to provide those subscribers with a letter of notice enumerating each of the missing certifications. See Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, dated Aug. 7, 2012 (*TracFone Subscriber Notice Letter Ex Parte*).

⁴⁶ Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, dated Oct. 18, 2012. Specifically, TracFone argues that Missouri, South Carolina, Kentucky, Rhode Island, Puerto Rico, Indiana and Texas required proof of eligibility prior to June 1, 2012, and therefore all subscribers it signed up there prior to June 1, 2012 should be eligible for a waiver of section 54.410(f) of the Commission's rules.

⁴⁷ *Id.* at 2. TracFone argues that it checked the eligibility of subscribers it enrolled in Wisconsin, Maryland, Florida and Washington using state databases, and therefore it should not be required to re-certify those subscribers.

⁴⁸ SBI Petition at 2.

⁴⁹ *Id.* at 10.

⁵⁰ Letter from David LaFuria, Counsel for SBI, to Marlene H. Dortch, FCC, dated Sep. 20, 2012 (*SBI Ex Parte Letter*).

⁵¹ SBI Petition at 8.

⁵² *Id.* at 11; see also *SBI Ex Parte Letter*, Appendix "Key Challenges." SBI asserts that it is willing to reduce its Lifeline contract term to 36-month service contracts. *SBI Ex Parte Letter* at 2.

Jersey because some subscribers may not be able to verify their continued Lifeline eligibility due to the effects of Hurricane Sandy.⁵³ Verizon provides wireline Lifeline service to 181,345 subscribers in New York and 69,367 subscribers in New Jersey.⁵⁴ Verizon states that the hurricane, which hit New York and New Jersey on October 29, 2012, caused major damage and could affect its subscribers' ability to receive or respond to re-certification requests.⁵⁵ Verizon is concerned that subscribers displaced from their homes are not likely to receive mail sent to their residences or calls placed to their wireline telephones.⁵⁶ Given the low response rate to Verizon's re-certification efforts in the areas affected by the storm, Verizon is concerned that it will be forced to de-enroll Lifeline subscribers in New York and New Jersey who have suffered extensive damage to their homes due to Hurricane Sandy.⁵⁷ Verizon seeks a limited waiver of the 2012 re-certification requirement for three months to provide additional time to re-certify its Lifeline wireline customers in New York and New Jersey and report its findings 30 days thereafter.⁵⁸

III. DISCUSSION

12. Generally, the Commission's rules may be waived for good cause shown.⁵⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶¹ Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁶²

13. *Sprint, Affordable, and Absolute Waivers of Section 54.410(f)*. The Bureau grants a limited waiver of section 54.410(f) of the Commission's rules and paragraph 130 of the *Lifeline Reform Order* to Absolute, Affordable, and Sprint only insofar as these carriers have relinquished or have filed with state commissions to relinquish their ETC designations by December 31, 2012, with respect to the discrete group of Lifeline subscribers identified in their petitions.⁶³ Because Absolute, Affordable, and Sprint will no longer serve such Lifeline subscribers after December 31, 2012, we find good cause for granting a limited one-time waiver from the 2012 re-certification requirement. Requiring these subscribers to re-certify their eligibility would likely cause confusion and frustration, and is not necessary because the remedy for identifying an ineligible subscriber is to de-enroll that subscriber—which effectively is happening in any event because these ETCs will no longer provide Lifeline service to these groups.⁶⁴ We note that we condition our one-time waiver on each carrier relinquishing its ETC designation in the areas

⁵³ Verizon Petition at 1. Verizon's petition for waiver applies to Verizon New York, Inc. and Verizon New Jersey, Inc., both of which are Verizon local exchange carriers that are separately designated ETCs. Verizon is not requesting a waiver for other Verizon ETC entities, including Verizon Wireless. Verizon Petition at 1 n.1.

⁵⁴ *Id.* at 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 4. Verizon states that only 12 percent of its New Jersey Lifeline subscribers and 5 percent of its New York Lifeline subscribers have responded to re-certification efforts.

⁵⁸ *Id.* at 5.

⁵⁹ 47 C.F.R. § 1.3.

⁶⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁶¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁶² See *Northeast Cellular*, 897 F.2d at 1166.

⁶³ 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130.

⁶⁴ See *Sprint* Petition at 1, 3; *Absolute Amended Petition* at 2; *Affordable Amended Petition* at 2.

where that carrier has requested relief.⁶⁵ We do so in part because Absolute and Affordable have an ongoing obligation to offer Lifeline service in the areas where they are designated ETCs,⁶⁶ and carriers cannot enjoy the benefits of remaining ETCs without fulfilling the accompanying duties. We note that Absolute and Affordable may seek designation in these same areas in the future and may attempt to re-enroll these subscribers in the future, but if they do so, they must document the eligibility and obtain a valid certification form for each subscriber in compliance with Commission rules.⁶⁷

14. *i-wireless and PR Wireless Limited Waiver of Section 54.410(f)*. The Bureau finds that good cause exists to grant a limited one-time waiver of the 2012 Lifeline re-certification requirement to i-wireless and PR Wireless for the subscribers they enrolled or re-certified in 2012 who demonstrated their eligibility for the Lifeline program. These carriers established the eligibility of the subscribers enrolled or re-certified between January 1, 2012 through May 31, 2012 and used certification forms containing the majority of the certifications required in section 54.410(d) of the Commission's rules. We condition this waiver on the carriers' commitments to obtain by January 31, 2013, subscriber consent to share information with USAC, and to obtain any missing certifications required in section 54.410(d) of the Commission's rules.⁶⁸ Consistent with the Commission's determination in the *Lifeline Reform Order*, these carriers may collect this data using a written format, text messages, or IVR.⁶⁹ We find that a limited waiver for re-certifying these subscribers is warranted under these circumstances.⁷⁰

15. Budget PrePay argues that i-wireless and TracFone are not uniquely situated, and whatever action the Commission takes should apply to all similarly situated carriers.⁷¹ We disagree. The Bureau has carefully considered the fact-specific arguments of each carrier seeking a waiver from the 2012 Lifeline re-certification requirement. i-wireless and PR Wireless have demonstrated that they implemented procedures to eliminate waste, fraud, and abuse prior to the *Lifeline Reform Order* rules becoming effective.⁷² Both carriers checked the eligibility of their subscribers upon enrollment by reviewing documentary proof of eligibility, and enrolled subscribers using a certification form that meets the requirements of section 54.410(d) certifications, with limited exceptions. Furthermore, i-wireless was required to adhere to the requirements of its Bureau-approved Compliance Plan prior to when i-wireless enrolled the subscribers at issue.⁷³ Similarly, PR Wireless required its subscribers to provide

⁶⁵ See 47 C.F.R. § 54.205(a) (permitting relinquishment by an ETC in any area served by another ETC).

⁶⁶ See 47 C.F.R. § 54.405.

⁶⁷ See 47 C.F.R. § 54.410.

⁶⁸ There are limited instances where these carriers failed to collect certain certifications; however, both carriers commit to obtaining the subscribers' consent to share information with USAC by January 31, 2013, and to obtain any remaining certifications by the subscribers' anniversary date in 2013. PR Wireless commits to collecting all of its subscribers' date of birth information by January 31, 2013. See *PR Wireless Date of Birth Commitment Ex Parte Letter*. i-wireless commits to sending a text to its subscribers once per quarter through the end of 2013 as to the need to provide an updated address. See *i-wireless Ex Parte Letter*; *PR Wireless Ex Parte Letter* at 3, 6.

⁶⁹ *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, para. 132.

⁷⁰ See 47 C.F.R. § 54.410(d); *Lifeline Reform Order*, 27 FCC Rcd at 6895-97, App. C.

⁷¹ Reply Comments of Budget PrePay, Inc., WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 24, 2012).

⁷² As noted above, each carrier has required its subscribers enrolled in 2012 to provide proof of eligibility documentation prior to enrollment in the Lifeline program.

⁷³ i-wireless commits to the following conditions in its compliance plan: explaining in prominent, plain, easily comprehensible language to all new and potential subscribers that no subscriber is permitted to receive more than one Lifeline subsidy; emphasizing the one-per-household limitation in all marketing materials; requiring each eligible Lifeline subscriber to self-certify, under penalty of perjury, that to the best of his or her knowledge, he or she is not receiving Lifeline-supported service from any other Lifeline provider, and listing as examples the brand

(continued...)

documentation of eligibility upon enrollment as well as documentation of continued eligibility during the annual re-certification process.⁷⁴ Both carriers have effectively achieved the goals of the new re-certification rules, and requiring their subscribers to recertify at this point is not necessary because the subscribers proved eligibility when they enrolled in Lifeline earlier this year. We decline to issue a blanket waiver as suggested by Budget PrePay.

16. *TracFone Limited Waiver of Section 54.410(f)*. We grant a partial limited waiver to TracFone for its subscribers enrolled or re-certified from April thru June 2012 in Missouri, South Carolina, Kentucky, Rhode Island, Puerto Rico, Indiana, and Texas using its certification form developed pursuant to the *Lifeline Reform Order* (current certification form), or its April 2012 certification form, which it filed in the record of this proceeding.⁷⁵ We find that because TracFone checked proof of eligibility upon enrollment for the subscribers in the states listed above, and because its current certification form and its April 2012 certification form contain the certifications required in section 54.410(d), with limited exceptions, waiver for this group of subscribers is warranted.⁷⁶ This waiver is conditioned, however, on TracFone obtaining consent from its subscribers to share their information with USAC by January 31, 2013.⁷⁷

17. The Bureau declines to grant a waiver of the 2012 Lifeline re-certification requirement to TracFone for any of its other subscribers enrolled or re-certified in any state prior to June 2012 using TracFone's January 2012 certification form.⁷⁸ While TracFone has reviewed proof of documentation of eligibility for its subscribers in Missouri, South Carolina, Kentucky, Rhode Island, Puerto Rico, Indiana, and Texas, we find that TracFone's January 2012 certification form in use in these states from January through April 2012 lacks many of the necessary certifications contained in section 54.410(d) of the Commission's rules.⁷⁹ We decline to accept TracFone's proposal in the *TracFone Subscriber Notice*

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names of at least the leading wireline and leading two wireless Lifeline providers in the area; providing state commissions, the FCC or USAC, upon request, with data that will enable that state, the FCC or USAC to determine whether subscribers are enrolled in more than one Lifeline program; requiring that all subscribers present proof of eligibility; and immediately de-activating a subscriber's Lifeline service and no longer reporting that subscriber to USAC if it is determined that the subscriber receives more than one Lifeline service in violation of the Commission's rules. *See Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 26 FCC Rcd 14508 (Wireline Comp. Bur. 2011).

⁷⁴ Reply Comments of PR Wireless, Inc. d/b/a Open Mobile, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 at 3, 6 (filed Sep. 24, 2012). The Telecommunications Regulatory Board of Puerto Rico (the Board) filed comments clarifying its comprehensive efforts to protect the Lifeline program in Puerto Rico, including taking steps to reduce duplicate Lifeline claims per person or family unit. *See The Telecommunications Regulatory Board of Puerto Rico's Response to Petition for Waiver of Section 54.410(f) of the Commission's Rules Filed by PR Wireless, Inc., d/b/a Open Mobile*, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 10, 2012).

⁷⁵ *See* Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, dated June 26, 2012, Attachs. 2 and 3 (*TracFone Ex Parte Certification Forms*).

⁷⁶ *See id.*

⁷⁷ *See Lifeline Reform Order*, 27 FCC Rcd at 6897, App. C; 47 C.F.R. § 54.404(b)(6). TracFone's April 2012 certification form is missing the subscriber consent to share information with USAC. *TracFone Ex Parte Certification Forms*, Attach. 2.

⁷⁸ *See TracFone Ex Parte Certification Forms*, Attach. 1.

⁷⁹ TracFone's January certification form is missing the following: a notification that residential addresses may not contain P.O. Boxes, as this requirement is important in populating the NLAD and eliminating ineligible subscribers; language that Lifeline is available for only one supported service per household, and a notification that a violation of the one-per-household rule constitutes a violation of the Commission's rules and will result in the subscriber's de-

(continued...)

Letter Ex Parte because we find that notifying subscribers in a letter listing a majority of the section 54.410(d) certification requirements does not comply with the requirement in the *Lifeline Reform Order* of having the subscriber acknowledge that he or she agrees to and understands these certifications.⁸⁰ An important aspect of reforming the Lifeline program to require these initial and annual certifications is to ensure that subscribers understand the program rules.⁸¹ TracFone may re-certify its subscribers not subject to this waiver using a written format, text messages, or IVR.⁸²

18. We also decline to extend a waiver to TracFone for its subscribers enrolled in states with eligibility databases available for re-certification efforts. TracFone enrolled its subscribers in Wisconsin, Maryland, Florida, and Washington by accessing state databases.⁸³ The Commission's rules on re-certification are clear that carriers operating in states with eligibility databases must query the appropriate database to confirm the subscriber's continued eligibility.⁸⁴ Because TracFone enrolled its subscribers in Wisconsin, Maryland, Florida, and Washington using a state database, it is feasible for TracFone to re-certify the eligibility of those subscribers using the same databases, and TracFone has not otherwise demonstrated why there is good cause to deviate from the Commission's rules in this context.

19. *SBI Petition for Waiver*. Finally, we decline to grant SBI's request to re-certify its subscribers upon expiration of the subscriber's contract or when the subscriber visits an SBI store front because we conclude that such a broad waiver would undermine implementation of the Commission's Lifeline reforms.⁸⁵ We do, however, grant SBI an extension of 90 days to re-certify its subscribers living on Tribal lands because SBI has demonstrated that it needs additional time to complete its ongoing outreach efforts to educate its subscribers on the re-certification requirement and to obtain re-certification forms pursuant to section 54.410(f) of the Commission's rules.⁸⁶

20. The purpose of the new Lifeline rules is to ensure that an ETC's entire base of Lifeline subscribers' eligibility is either established at enrollment pursuant to section 54.410(d) or re-certified pursuant to the 2012 annual re-certification requirement. Rather than re-certifying its subscriber base by the end of the year, SBI proposes to re-certify its subscribers on a rolling basis when they either visit the

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enrollment from the program; the subscriber's acknowledgment that the subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline, and that the subscriber understands this requirement and may be subject to penalties for failure to comply with this requirement; language that if the subscriber moves to a new address, he or she will provide that new address to the carrier within 30 days; the subscriber acknowledges that he or she may be required to re-certify his or her continued eligibility for Lifeline and failure to re-certify will result in de-enrollment and termination of the subscriber's Lifeline benefits; and language obtaining the subscriber's consent and acknowledgment that the carrier will provide the subscriber's information to USAC and/or its agents. *See id.*; 47 C.F.R. § 54.410(d); *Lifeline Reform Order*, 27 FCC Rcd 6895-97, App. C.

⁸⁰ *See* 47 C.F.R. § 54.410(d); *Lifeline Reform Order*, 27 FCC Rcd at 6713, para. 123.

⁸¹ *See Lifeline Reform Order*, 27 FCC Rcd 6713, para. 123 (explaining that the initial and annual certification forms must explain the requirements to the subscriber so the subscriber understands what he or she is signing and what the subscriber must do to comply with the program rules).

⁸² *See* 47 C.F.R. § 54.410(f); *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, paras. 132-33.

⁸³ *See* TracFone Petition at 2.

⁸⁴ *See* 47 C.F.R. § 54.410(f)(2)(i),(ii).

⁸⁵ *See* 47 C.F.R. §§ 54.405(e), 54.410(a)-(d).

⁸⁶ SBI must complete the 2012 re-certification requirement by March 31, 2013 and report its findings to USAC by April 30, 2013.

SBI store or upon expiration of their 40-month contract.⁸⁷ We are concerned that SBI's proposal to re-certify subscribers at an indeterminate time in 2013 or 2014, or upon the expiration of a 40-month (or 36-month) contract, would undermine timely efforts to load accurate information regarding SBI's customer base into the Lifeline duplicates database. SBI's proposal to re-certify subscribers when they visit store fronts is too uncertain because there is no guarantee that a subscriber will visit the store for products or services anytime in the next twelve months, or that SBI will be able to re-certify the subscriber once at the store.⁸⁸ We are also concerned that re-certification upon the expiration of a 40-month pre-paid contract for Lifeline service would create a situation whereby potentially ineligible subscribers continue to participate in the Lifeline program. Furthermore, we agree with Hopi Telecommunications, Inc. and Frontier Communications (Frontier) that the re-certification requirement is important to ensuring that subscribers receive only one Lifeline discount per household, and to providing a means for a subscriber to certify that his or her residence consists of multiple households.⁸⁹

21. We acknowledge concerns of the Navajo Nation Telecommunications Regulatory Counsel's (NNTRC) and the National Congress of American Indians' (NCAI) that qualified recipients may lose Lifeline service because a carrier is unable to re-certify eligibility for the program.⁹⁰ At the same time, it is important that all ETCs, including those serving eligible Tribal residents, re-certify their entire subscriber base in compliance with Commission's rules.⁹¹ We emphasize that if a de-enrolled qualified subscriber wishes to re-enroll in the Lifeline program by showing proof of eligibility documentation and signing a certification form that meets the requirements of section 54.410(d) of the Commission's rules, SBI may re-enroll the subscriber in accordance with the Lifeline rules.⁹²

22. Rather than granting a broad waiver, we conclude that it is reasonable to provide SBI some limited relief from the re-certification requirement. SBI has demonstrated that it is making progress in its efforts to re-certify its existing subscribers while confronted with obstacles unique to serving Tribal subscribers.⁹³ SBI's efforts to re-certify subscribers consist of multiple channels for re-certification, including an auto-call divert mechanism, a re-certification awareness campaign, and expanded call centers.⁹⁴ SBI states that when re-certifying subscribers via IVR, most subscribers want the certifications

⁸⁷ See SBI Petition at 11. SBI states that it is willing to reduce its Lifeline contract term to 36-month service contracts. *SBI Ex Parte Letter* at 2.

⁸⁸ SBI asserts that out of 12,563 subscribers entering a store, only 5,808 re-certified their eligibility. *SBI Ex Parte Letter*, Appendix, "Key Challenges." SBI states that its subscribers do not visit stores regularly and are often not compelled to visit stores for new product offerings. Reply Comments of Smith Bagley, Inc., WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 24, 2012) (SBI Reply Comments).

⁸⁹ Comments of Hopi Telecommunications, Inc. and Frontier Communications, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 10, 2012).

⁹⁰ Comments of the Navajo Nation Telecommunications Regulatory Commission in Response to Smith Bagley, Inc. Waiver Request, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Sep. 10, 2012); Letter from Jacqueline Johnson Pata, National Congress of American Indians, to Marlene H. Dortch, FCC, dated Sep. 10, 2012.

⁹¹ This is particularly true given that ETCs serving Tribal lands receive additional support, thus creating a larger financial risk to the Universal Service Fund of potential errors. ETCs providing Lifeline support on Tribal lands receive up to an additional \$25 per month of federal Lifeline support in addition to the \$9.25 flat rate support. See 47 C.F.R. § 54.403.

⁹² See 47 C.F.R. §§ 54.409, 54.410.

⁹³ SBI outlines obstacles for re-certifying Tribal subscribers, such as SBI's inability to contact subscribers because some subscribers keep their phone turned off in order to save minutes, to reserve the phone's battery due to lack of power or because the subscriber is located in an out of coverage area. See *SBI Ex Parte Letter*, Enc. "Progress Report."

⁹⁴ SBI Reply Comments at 2.

explained to them by the customer service agent, and that live conversation explaining each certification is a timely process.⁹⁵ We encourage SBI to continue with its marketing and outreach efforts to comply with the 2012 re-certification requirement. We grant SBI a 90-day extension until March 31, 2013 to complete the 2012 re-certification process. SBI must file the results of its 2012 re-certification process with the Commission, USAC and the relevant state or Tribal governments no later than April 30, 2013.

23. *Verizon Petition for Waiver*. The Bureau grants a limited waiver of sections 54.405(e)(4) and 54.416(b) of the Commission's rules, and paragraph 130 of the *Lifeline Reform Order*, for Verizon's wireline subscribers in New York and New Jersey.⁹⁶ Verizon states that it has complied with the Commission's requirement that an ETC contact all of its Lifeline subscribers to re-certify their continued eligibility.⁹⁷ Given the low response rate from Verizon subscribers in the storm affected regions,⁹⁸ and due to the unforeseen damage and extensive hardships faced by the victims of Hurricane Sandy, we find that it is in the public interest to extend the deadline for Verizon to de-enroll Lifeline subscribers that fail to re-certify and the deadline to report the findings of its re-certification efforts.⁹⁹ We grant Verizon's request for a 90-day extension of the re-certification requirement. Verizon must complete the re-certification requirement for its wireline Lifeline subscribers in New York and New Jersey by March 31, 2013, and report its findings to the Commission, USAC, and the relevant state or Tribal governments by April 30, 2013.

24. ETCs are required to annually provide the results of their re-certification efforts performed pursuant to section 54.410(f) to the Commission and USAC.¹⁰⁰ Because we grant a waiver of section 54.410(f) to Absolute, Affordable, Sprint, i-wireless, PR Wireless and TracFone for the subscribers described above, we waive on our own motion section 54.416(b) of the Commission's rules requiring these carriers to report the results of the 2012 re-certification requirement.¹⁰¹ Absolute, Affordable, Sprint, i-wireless, PR Wireless and TracFone must submit a cover letter to USAC by January 31, 2013, detailing the number of subscribers in each state that are subject to waiver of the 2012 re-certification requirement.

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154, 254, sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, sections 54.410(f) and 54.416(b) of the Commission's rules, 47 C.F.R. §§ 54.410(f),

⁹⁵ *Id.* at 7.

⁹⁶ See 47 C.F.R. §§ 54.405(e)(4), 54.416(b); *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130.

⁹⁷ See Verizon Petition at 3, 4; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130.

⁹⁸ See Verizon Petition at 4.

⁹⁹ See generally *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, 20 FCC 16883 (2005) (granting various forms of relief in the wake of Hurricane Katrina); *Federal-State Joint Board on Universal Service, Pine Belt Cellular, Inc. Petition for Waiver of Section 54.313 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9175 (Wireline Comp. Bur. 2006) (waiving certification deadline due to Hurricane Ivan).

¹⁰⁰ See 47 C.F.R. § 54.416(b) (requiring that ETCs annually provide the results of their re-certification efforts to the Commission and the Administrator [USAC], as well as the relevant Tribal authority, if applicable. ETCs designated as such by one or more states pursuant to § 54.201 must also report the results of their re-certification efforts to the designating state commission(s)).

¹⁰¹ See 47 C.F.R. § 54.416(b). These ETCs must provide the results of their recertification efforts for subscribers not subject to this waiver.

54.416(b), and paragraph 130 of FCC 12-11 ARE WAIVED to the extent described above AND CONDITIONED with respect to Absolute Home Phone, Inc. and Affordable Phone Services, Inc. as described herein.

26. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, the petitions filed by Absolute Home Phone, Inc., Affordable Phone Services, Inc. and Sprint Nextel Corporation ARE GRANTED as described above.

27. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and the delegation of authority in paragraph 130 of FCC 12-11, the petitions filed by i-wireless, LLC, and PR Wireless, Inc. ARE GRANTED AND CONDITIONED as described above, and the petition filed by TracFone Wireless, Inc. IS GRANTED IN PART AND CONDITIONED, AND DENIED IN PART, as described above.

28. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the petition filed by Smith Bagley, Inc. IS DENIED and an extension IS GRANTED as described above.

29. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, the petition filed by Verizon New York, Inc., and Verizon New Jersey, Inc. IS GRANTED as described above.

30. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau