

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

In the Matter of)
Lifeline and Link Up Reform and)
Modernization) WC Docket No. 11-42

WAIVER ORDER

Adopted: December 21, 2012

Released: December 21, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part a Petition for Waiver of the United States Telecom Association (USTelecom Petition) as well as petitions from individual state commissions. Specifically, we grant a limited waiver of sections 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) similar to that previously granted by the Bureau to allow more time for those states to implement a process to share consumer eligibility certifications with Eligible Telecommunications Carriers (ETCs). The waiver will run from the release date of this order until June 1, 2013 for the US Virgin Islands and the states of California, Colorado, Florida, Idaho, Oregon, Utah, and Vermont, subject to the conditions described below. We emphasize that state administrators must still obtain eligibility certifications from consumers signing up for Lifeline, a critical component of the Commission's rules to protect against waste, fraud and abuse.

II. BACKGROUND

2. In the Lifeline Reform Order, the Commission adopted rules requiring that any state responsible for determining the eligibility of Lifeline subscribers provide to each ETC a copy of the certification form prior to the ETC seeking reimbursement from the universal service fund (Fund). In a

1 See Lifeline and Link Up Reform and Modernization et al., Petition for Waiver of the United States Telecom Association, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 29, 2012) (USTelecom Petition).

2 See Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Waiver Order, 27 FCC Rcd 5941 (2012) (USTelecom Waiver Order).

3 See Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Report and Order and Further Notice of Rulemaking, 27 FCC Rcd 6656 (2012) (Lifeline Reform Order). In those states where the state Lifeline administrator or another state agency is responsible for the initial determination of subscribers' eligibility, ETCs must obtain notice of eligibility and certification forms from the administrator or the applicable agency for each Lifeline subscriber before the ETC seeks reimbursement from the Fund for providing Lifeline services to that subscriber. See 47 C.F.R. § 54.410(b)(2), (c)(2). Section 54.407(d) requires an ETC to certify, as part of each request for reimbursement, that it is in compliance with all of the Lifeline rules, and, to the extent required, has obtained a valid certification and recertification form from each of the subscribers for whom it seeks reimbursement. See 47 C.F.R. § 54.407(d). Section 54.410(e) requires state Lifeline administrators that are

(continued...)

petition filed on April 25, 2012, USTelecom sought a waiver on behalf of ETCs in select states of ETCs' obligation to obtain from the state a signed certification from a subscriber prior to seeking reimbursement for that subscriber.⁴ USTelecom limited its request to the subset of ETCs and/or programs for which the state makes initial eligibility determinations.⁵ Subsequent to filing the petition, USTelecom withdrew its request for waiver for certain states.⁶

3. On May 31, 2012, the Bureau conditionally granted in part and denied in part USTelecom's narrowed request for relief for 11 states, the District of Columbia and the Virgin Islands.⁷ Specifically, the Bureau granted a waiver from sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) with respect to ETCs in those states in which the state Lifeline administrator or other state agency manages subscriber eligibility and was unable to modify, in the short term, its processes for ETCs to come into compliance with these rules.⁸ On its own motion, the Bureau also provided a waiver in these states from section 54.410(e).⁹ For the duration of the waiver, the ETCs in these states could seek reimbursement without having received certification forms from the state.¹⁰ The waiver was granted until

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responsible for the initial determination of a subscriber's eligibility to provide a copy of the certification form to the ETCs in that state. See 47 C.F.R. § 54.410(e).

⁴ *Lifeline and Link Up Reform and Modernization et al.*, Petition for Waiver of the United States Telecom Association, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 2 (filed April 25, 2012) (*USTelecom April Petition*) (seeking a waiver in particular states from sections 54.407(d), 54.410(b)(2), and 54.401(c)(2) of the Commission's rules). After filing its petition, USTelecom withdrew its request for a waiver from the requirement that ETCs obtain notification of eligibility from the state. See Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 11-42 et al., CC Docket No. 96-45 at 2 (filed May 16, 2012) (withdrawing request for waiver from section 54.410(b)(2)(i) and 54.410(c)(2)(i)).

⁵ See *USTelecom April Petition* at 2.

⁶ USTelecom also narrowed its original request for relief from 20 states to 13 states. See Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 1 (filed May 14, 2012) (withdrawing request for waiver in Kansas, Tennessee and New Jersey); Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, at 1 (filed May 16, 2012) (withdrawing request for New York); Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 1 (filed May 21, 2012) (withdrawing request for Arizona); Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 1 (filed May 24, 2012) (withdrawing request for Ohio and Texas).

⁷ *USTelecom Waiver Order*, 27 FCC Rcd at 5942, para. 2 (noting that the jurisdictions covered by the narrowed waiver request were California, Colorado, District of Columbia, Florida, Idaho, Montana, Nevada, Oregon, the U.S. Virgin Islands, Utah, Vermont, and Washington state); *Lifeline and Link Up Reform and Modernization et al.*, Erratum, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (rel. June 4, 2012) (adding Nebraska).

⁸ In the *USTelecom Waiver Order*, the Bureau waived only the portion of section 54.407(d) that requires the ETC to have obtained a valid certification form from each of its subscribers for whom it is receiving reimbursement in those instances where the state makes the initial eligibility determination. ETCs in the waiver states were required to remain in compliance with all of the Commission's other rules, including the obligation to obtain subscriber certifications from consumers prior to seeking reimbursement in those instances not covered by the scope of our waiver. See *USTelecom Waiver Order*, 27 FCC Rcd at 5943, para. 3 n.9; 47 C.F.R. § 54.407(d).

⁹ See 47 C.F.R. § 54.410(e).

¹⁰ See *USTelecom Waiver Order*, 27 FCC Rcd at 5942, para. 3. The Bureau clarified that, as narrowed by USTelecom, these waivers as granted did not apply to states or the ETCs in those states in those instances where the state does not make the initial determination of subscriber eligibility for income or a qualifying program. For example, in Florida, the state only makes eligibility determinations with respect to income, SNAP, TANF and Medicaid, but not other programs such as Federal Public Housing assistance. See AT&T Comments at 8. Therefore, the waiver was only applicable to Florida when subscribers qualify based on income, SNAP, TANF and Medicaid. See *USTelecom Waiver Order*, 27 FCC Rcd at 5943, para. 3 n.11.

December 1, 2012 or until the states' processes were modified to allow for compliance with the rules, whichever occurred sooner.¹¹ The Bureau explained that to the extent that a state obtaining a waiver required additional time to come into compliance, the state or ETCs operating within that state may file an additional request for relief.¹²

4. On November 28, 2012, three days before the waiver was set to expire, USTelecom sought an extension of the waiver for an additional six months, until June 1, 2013 or until a state is able to come into compliance with section 54.410(e).¹³ USTelecom states that a waiver is no longer necessary in the District of Columbia or Nebraska, but it seeks a continued waiver for California, Colorado, Florida, Idaho, Oregon, Utah and Vermont.¹⁴ USTelecom explains that these states will not be able to provide ETCs in their states with copies of subscriber certification forms by December 1, 2012 as required by section 54.410(e) and require additional time to come into compliance.¹⁵ Similar requests for relief were filed separately by Vermont, Oregon, Utah and the US Virgin Islands arguing that these jurisdictions would be unable to come into compliance by December 1, 2012.¹⁶ According to the California Public Utilities Commission and USTelecom, the California Lifeline administrator is unable to separate the documentary proof of eligibility from subscribers' certification forms.¹⁷ As a result, California ETCs cannot yet comply with the rule prohibiting ETCs from retaining copies of a subscriber's proof of eligibility if the administrator provides such proof along with the certification forms.¹⁸ USTelecom therefore seeks, in the alternative, a waiver of the rules prohibiting ETCs from retaining documentary proof of eligibility in California.¹⁹

¹¹ *See id.*

¹² Pursuant to the *USTelecom Waiver Order*, USTelecom provided an update to the Bureau on July 31, 2012 regarding the states' progress in coming into compliance with our rules. *See* Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 1-2 (filed July 31, 2012) (noting that California, Colorado, the District of Columbia, Florida, Idaho, Nebraska, Oregon, Tennessee, U.S. Virgin Islands, Washington state, Utah and Vermont required a continued waiver). On August 30, 2012 USTelecom filed an ex parte letter removing Washington state from the list of states receiving a waiver. *See* Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 1 (filed Aug. 30, 2012). Therefore, waivers remained in effect in California, Colorado, the District of Columbia, Florida, Idaho, Oregon, Nebraska, the U.S. Virgin Islands, Utah and Vermont until December 1, 2012.

¹³ *See generally USTelecom Petition.*

¹⁴ *See id.* at 3-4 n.10

¹⁵ *See id.* at 3-8.

¹⁶ *See Lifeline and Link Up Reform and Modernization et al.*, Petition for Waiver of the Public Utility Commission of Oregon and the Oregon Telecommunications Association, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 30, 2012); *Lifeline and Link Up Reform and Modernization et al.*, Petition for Clarification and Waiver of the Virgin Islands Telephone Corp., WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 29, 2012); *Lifeline and Link Up Reform and Modernization et al.*, Request for Extension of Waiver Order of the Idaho Public Utilities Commission, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 28, 2012); *Lifeline and Link Up Reform and Modernization et al.*, Request for Extension of Waiver of the Utah Public Service Commission, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 21, 2012); Letter of John Cray of the Public Utility Commission of Oregon and Brant Wolf, Executive Vice President, OTA, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 (filed Nov. 16, 2012); *Lifeline and Link Up Reform and Modernization et al.* Petition and Certification of the Vermont Department of Public Service to Opt-Out of the National Lifeline Database and for Waiver of § 54.410 (filed Nov. 1, 2012).

¹⁷ *See USTelecom Petition* at 6-7; Letter of Sindy J. Yun, California Public Utilities Commission, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 et al., CC Docket No. 96-45 at 2 (filed Dec. 3, 2012).

¹⁸ *See USTelecom Petition* at 6-7.

¹⁹ *See id.* at 8 (seeking a waiver of sections 54.410(b)(1)(ii) and 54.410(c)(1)(ii) in the alternative).

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²³

6. We find good cause to grant a limited waiver of sections 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) equivalent to that previously granted for the states of California, Colorado, Florida, Idaho, Oregon, Utah, and Vermont, as well as the US Virgin Islands, subject to the conditions described below. The waiver will run from the release date of this order until June 1, 2013 or once the state or territory has come into compliance with the rules, whichever is sooner.²⁴ We believe that these jurisdictions continue to act in good faith in partnership with the Commission to implement the *Lifeline Reform Order* and find that a limited waiver is necessary for these jurisdictions to fully come into compliance with the requirement to transmit the certification forms to ETCs. We also find that this waiver, coupled with necessary safeguards described below, will help ensure that eligible consumers will continue to receive Lifeline service while at the same time protecting the Fund against waste, fraud and abuse.

7. The conditions originally adopted in the *USTelecom Waiver Order* will remain in place in California, Colorado, Florida, Idaho, Oregon, Utah, Vermont and the US Virgin Islands for the duration of this waiver. Specifically, in these jurisdictions, the state Lifeline administrators or other state agencies must obtain executed certification forms from Lifeline subscribers pursuant to section 54.410(d).²⁵ During the waiver period, in accordance with sections 54.410(b)(2)(i) and 54.410(c)(2)(i), these jurisdictions must provide notice to ETCs that new subscribers have complied with the Lifeline eligibility requirements, as well as provide notice to the ETCs that new subscribers have executed a certification form.²⁶ We remind ETCs in these jurisdictions that they must maintain records to document compliance with all Commission and state requirements governing the Lifeline program and must be prepared, upon request, to produce copies of such state notifications to the Universal Service Administrative Company or this Commission.²⁷ To the extent that a jurisdiction obtaining a waiver as set forth in this section requires additional time to come into compliance with the requirement to transfer the form to the ETC, the jurisdiction or ETCs operating within that jurisdiction may file an additional request for relief. Any ETC or jurisdiction seeking further relief should include in its request an explanation of the specific challenges faced by the relevant jurisdiction in coming into compliance with this aspect of the Commission's Lifeline certification rules and a firm timetable for coming into compliance with those rules.

²⁰ 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown").

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ *Northeast Cellular*, 897 F.2d at 1166.

²⁴ Because we grant the waiver as explained above, we need not rule on USTelecom's request in the alternative to waive sections 54.410(b)(1)(ii) and 54.410(c)(1)(ii) in California. See *supra* n.19.

²⁵ See 47 C.F.R. § 54.410(d).

²⁶ See 47 C.F.R. § 54.410(b)(2)(i), 54.410(c)(2)(i).

²⁷ See 47 C.F.R. § 54.417.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by USTelecom is GRANTED to the extent described herein.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by the Public Utility Commission of Oregon and the Oregon Telecommunications Association is GRANTED to the extent described herein.

10. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by the Vermont Department of Public Service is GRANTED to the extent described herein.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by the Idaho Public Utilities Commission is GRANTED to the extent described herein.

12. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by the Utah Public Service Commission is GRANTED to the extent described herein.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver filed by the US Virgin Islands Telephone Corp. is GRANTED to the extent described herein.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that sections 54.410(b)(2)(ii), 54.410(c)(2)(ii), 54.410(e) and portions of 54.407(d) of the Commission's rules, 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.410(e), ARE WAIVED to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach, Chief
Wireline Competition Bureau