



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES NOTICE REGARDING THE EFFECTIVE DATE OF CERTAIN RULES ADOPTED IN THE LIFELINE REFORM ORDER

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

In this Public Notice, the Wireline Competition Bureau (WCB) announces the effective dates of certain rules adopted in the *Lifeline Reform Order*¹ that include information collection provisions and were therefore subject to approval by the Office of Management and Budget (OMB).² As described in more detail below, May 1, 2012 is the effective date for most of the rules containing information collections that were approved by OMB.³ This Public Notice also announces that, with respect to the new \$9.25 basic support amount for Lifeline subscribers, the Bureau is providing Eligible Telecommunications Carriers (ETCs) with additional flexibility to transition to the new support amount over the next three months. Such flexibility will not affect the savings target established in the *Lifeline Reform Order* and the Commission's commitment to fiscal responsibility for the Lifeline program.

Low-Income Support. The *Lifeline Reform Order* established an interim, flat-rate support amount of \$9.25 per line per month beginning with April 2012 disbursements.⁴ ETCs seek Lifeline

¹ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

² The Federal Communications Commission (Commission) sought and received approval from OMB, for six months, for certain of the information collection requirements adopted as part of the *Lifeline Reform Order*. See Notice of OMB Action, OMB Control Number 3060-0819 (Apr. 13, 2012) (*OMB Notice of Action*). In addition to the rules addressed in this notice, the Commission initially sought, but later withdrew its request for, temporary approval for the biennial audit requirement of 47 C.F.R. § 54.420(a), the temporary address confirmation and recertification requirements of 47 C.F.R. § 54.410(g) and the portion of 47 C.F.R. § 54.405(e)(4) relating to temporary address de-enrollment. In addition, the Commission has not yet sought approval of the portion of 47 C.F.R. § 54.405(c) relating to marketing disclosures describing the service, although OMB has approved similar language on the customer certification form as required by 47 C.F.R. §§ 54.410 and 54.405(c). WCB anticipates that the Commission will seek approval of the remaining information collection provisions arising from the *Lifeline Reform Order* in the near future.

³ See 77 FR 25609, May 1, 2012 (announcing that OMB has approved the information collection requirements of certain rules.)

⁴ *Lifeline Reform Order* at para. 58.

support from USAC using the FCC Form 497. The FCC Form 497 has been revised to reflect new rules adopted in the *Lifeline Reform Order*.⁵ OMB has approved revisions to the FCC Form 497, which includes a reference to the \$9.25 flat-rate basic support amount established by the revised section 54.403(a)(1). To address concerns raised by some parties that it may take additional time for them to implement the new \$9.25 flat-rate support amount,⁶ but also recognizing the fact that some ETCs relied on the *Lifeline Reform Order's* directive to seek \$9.25 in support for April, we now, on our own motion, issue a temporary waiver of the requirement that all ETCs seek \$9.25 flat-rate support on the revised Form 497 to allow this change to be phased in, as discussed below.⁷ For service provided from April 1 through July 31, 2012, ETCs *may*, at their own election, seek support under either the previous Tiers 1-3 structure or the new \$9.25 flat-rate support amount. Regardless of whether an ETC seeks support under the prior Tiers 1-3 structure or the \$9.25 flat-rate support amount, ETCs must use the existing Form 497 posted on USAC's webpage.⁸ For service provided on August 1, 2012 and thereafter, all ETCs *must* utilize the revised FCC Form 497 and seek \$9.25 flat-rate support.

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ We find that a temporary waiver to allow ETCs the flexibility to implement the \$9.25 flat-rate support amount is appropriate in this case. Giving ETCs additional time to come into compliance will allow them to make necessary filings, provide customers with sufficient notice, and make changes to their

⁵ See, e.g., section 54.403(a) (setting the basic support amount at \$9.25); section 54.403(c) (support for Toll Limitation Service); section 54.407(d) (requiring ETC certification with each request for reimbursement that the ETC is in compliance of all of the Lifeline rules and has, to the extent necessary, obtained valid certification and recertification forms from each subscriber for whom the ETC is seeking reimbursement).

⁶ For example, incumbent LECs argue that they need time to file the necessary tariffs and notices, provide advance notice to their customers, and modify their billing and other back-office systems in order to transition to a \$9.25 disbursement rate. See generally Petition for Waiver and Clarification of the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association, WC Dkt. Nos. 11-42 *et al.* CC Dkt. No. 96-45 (filed Mar. 9, 2012) (*USTelecom et al., Petition*). Pre-paid wireless carriers also assert that the necessary regulatory requirements and systems modifications will take time to implement. See, e.g., TracFone Comments on *US Telecom et al., Petition* at 3.

⁷ In a March 29, 2012 Public Notice, we explained that we would provide additional time after OMB approval for ETCs to come into compliance with the new \$9.25 flat-rate support amount. Wireline Competition Bureau Provides Guidance Regarding the Effective Date of Certain Rules Adopted in the Lifeline Reform Order, Public Notice, WC Dkt. No. 11-42 *et al.*, CC Dkt. No. 96-45, DA 12-493 (Wireline Comp. Bur. Mar. 29, 2012).

⁸ We direct USAC to provide ETCs with clear instructions on how they can seek \$9.25 in support utilizing the existing Form 497. Regardless of the option chosen by the ETC, the ETC must pass through the full support amount to the Lifeline subscriber. See 47 C.F.R. § 54.403(a)(1). We note that this requirement pre-dates the *Lifeline Reform Order*. See e.g., *Lifeline Reform Order*, paras. 53, 270, n.179.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

systems.¹¹ Permitting those ETCs that are ready to transition immediately to the \$9.25 flat-rate support amount to do so, however, will allow those ETCs who moved expeditiously to implement the *Lifeline Reform Order* to implement the new support amount.¹² This temporary waiver of the \$9.25 flat-rate will not affect the Commission's 2012 savings target and its ongoing commitment to fiscal responsibility.¹³

Other Lifeline Rules. OMB also approved the information collection requirements of the following rules adopted or amended in the *Lifeline Reform Order*:¹⁴

54.202(a)	Required Showings For ETC Designation
54.401(d)	Required Filings with Administrator For State ETC Designations
54.403	Lifeline Support Amount
54.404	National Lifeline Accountability Database ¹⁵
54.405	Carrier Obligation to Offer Lifeline (except for portions of section 54.405(c) (Required Disclosures) ¹⁶ and section 54.405(e)(4) (De-enrollment for failure to re-certify)) ¹⁷
54.407	Requirements for Obtaining Reimbursement and Usage Requirement
54.410(a) through (f)	Subscriber Eligibility Determination and Certification
54.416	Annual ETC Certifications
54.417	Recordkeeping Requirements

¹¹ ETCs indicate that most notification and tariff filings require several weeks for preparation and, in most cases, 30 days or less between filing and the effective date, subject to protest. While some ETCs argue that it will take longer than 30 days to modify their systems to implement the new flat-rate support, others believe it will take less time. ETCs estimate that customer notifications will take less than 90 days to prepare and send out. *See, e.g.,* CenturyLink Comments *USTelecom et al., Petition* at 3-7; ACS Comments on *USTelecom et al., Petition* at 3; AT&T Comments on *USTelecom et al., Petition* at Attach. We also note that the *Lifeline Reform Order* was released on February 6, 2012. Therefore, ETCs will have well over five months to take steps to transition to the new flat-rate support amount.

¹² *See, e.g.,* AT&T Comments on *USTelecom et al., Petition* at n.3 (regarding changes already implemented by AT&T Mobility).

¹³ The savings target established in the *Lifeline Reform Order* is not affected by the level of monthly support because the \$9.25 support amount established in the Order is the nationwide average support level for all non-Tribal Lifeline subscribers as of September 2011. *See Lifeline Reform Order* para 53.

¹⁴ *See OMB Notice of Action.*

¹⁵ ETCs are not obligated to comply with any of the requirements of section 54.404 until the database is operational. ETCs' initial duty under section 54.404 is their obligation to transmit the required subscriber information to the database. As described in the *Lifeline Reform Order*, ETCs must provide this information with respect to new subscribers within 60 days of the Bureau providing notice that the database is ready to accept the data. *See Lifeline Reform Order* at para. 184.

¹⁶ As noted above, the Commission has not yet sought approval for the portion of section 54.405(c) relating to marketing disclosures. OMB has approved similar language on the customer certification form as required by sections 54.410 and 54.405(c).

¹⁷ The portion of section 54.405(e) relating to de-enrollment for subscribers who fail to re-certify their temporary address is not yet effective.

54.420(b)
54.422

Audit Requirements for New ETCs
Annual Reporting Requirements

These rules, with the exception of section 54.410(a)-(f), and except as described herein with regard to phasing in the \$9.25 support amount, are effective May 1, 2012. Section 54.410(a) through (f) will be effective on June 1, 2012.¹⁸

Accordingly, pursuant to 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, the Wireline Competition Bureau hereby WAIVES paragraph 58 of FCC 12-11 and section 54.403(a)(1) of the Commission's rules, as amended in FCC 12-11, to the extent described above.

Action by the Chief, Wireline Competition Bureau

For further information, please contact Kimberly Scardino, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

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¹⁸ See Lifeline and Link Up Reform and Modernization, Final Rule, Correction, 77 Fed. Reg. 19,125 (2012).