



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE REGARDING THE 2013 LIFELINE RECERTIFICATION PROCESS

WC Docket No. 11-42

1. In this public notice, the Wireline Competition Bureau (Bureau) provides guidance regarding the 2013 Lifeline recertification process. The Bureau clarifies that all active Lifeline subscribers enrolled or recertified in a calendar year must be recertified the next calendar year and in every calendar year thereafter. The Bureau also describes the process by which eligible telecommunications carriers (ETCs) can elect to have the Universal Service Administrative Company (USAC) perform the recertification process.

I. BACKGROUND

2. In the 2012 *Lifeline Reform Order*, the Commission required ETCs and, where applicable, state Lifeline administrators, a state agency or an agent of the state (collectively, “state agency”) to recertify the eligibility of ETCs’ base of subscribers “annually.”¹ The requirement that ETCs annually recertify their Lifeline subscribers ensures that subscribers are enrolled in the Lifeline program only as long as they remain eligible.² Starting in June 2012, the Commission required potential subscribers to produce eligibility documentation upon enrollment, and determined this new requirement would be a sufficient initial check of subscriber eligibility. As a result, ETCs were only required to initially recertify subscribers enrolled in the program prior to June 2012 and for which the ETC sought reimbursement on their May 2012 Form 497.³ After calendar year 2012, the Commission’s rules require that all subscribers be recertified annually.⁴

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6715, para. 130 n.337 (2012) (*Lifeline Reform Order*).

² See 47 C.F.R. § 54.410(f)(2), (3) (stating that an ETC or, where applicable, state agency must query an eligibility database or obtain an attestation of the subscriber’s continued eligibility in order to recertify the subscriber).

³ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 131.

⁴ See 47 C.F.R. § 54.410(f)(1) (“All eligible telecommunications carriers must annually re-certify all subscribers...”).

II. CLARIFICATIONS REGARDING RECERTIFICATION

3. On October 1, 2012, GCI filed a petition seeking clarification of the recertification process after 2012 and the requirement that subscribers be recertified “annually.”⁵ GCI argues that the Commission should clarify that the subscribers subject to the annual recertification are only those subscribers that have not provided an initial certification in the same calendar year.⁶ GCI argues that “annual” means that ETCs recertify subscribers once every calendar year, not every twelve months from the subscriber’s initial certification or last recertification.⁷ Most commenters agreed that requiring recertification once each calendar year is the most administratively efficient option and is consistent with the *Lifeline Reform Order*.⁸

4. We agree with GCI and clarify that ETCs must recertify each new subscriber in the calendar year following the year in which the subscriber initially enrolled in the Lifeline program. We also clarify that ETCs are required to recertify subscribers each calendar year.⁹ As discussed in more detail below, if a subscriber is either initially enrolled with or recertified by an ETC in a particular calendar year (*e.g.*, 2013), the subscriber must be recertified by that ETC the next calendar year (*e.g.*, 2014).¹⁰

5. Permitting recertification during the next calendar year, after both initial certification and recertification, is consistent with the Commission’s approach in the *Lifeline Reform Order* to balance the need for a recertification requirement with minimizing the burden of the recertification process on ETCs and consumers. In the *Lifeline Reform Order*, in order to eliminate ineligible consumers from the program, the Commission required ETCs to obtain proof of eligibility and certifications for all new subscribers enrolled after June 1, 2012.¹¹ Subscribers that signed up prior to June 1, 2012, and therefore did not provide proof of eligibility because that requirement was not yet effective, had to be recertified by

⁵ See GCI Petition for Clarification of the Annual Recertification Rule, WC Docket No. 11-42 et al. (filed Oct. 1, 2012) (GCI Petition). See also *Wireline Competition Bureau Seeks Comment on GCI’s Petition for Clarification of Annual Recertification Rule*, WC Docket No. 11-42 et al., Public Notice, 27 FCC Rcd 13260 (Wireline Comp. Bur. 2012).

⁶ See GCI Reply Comments in Support of Petition for Clarification of Annual Recertification Rule, WC Docket No. 11-42 et al., at 3 (filed Dec. 10, 2012) (GCI Reply Comments) (“The regulation is silent on whether the [recertification] requirement applies literally to ‘all subscribers’ or whether it should be understood to apply only to those subscribers who have not otherwise provided exactly the same information earlier in the calendar year” — the Commission should clarify that subscribers that provided an initial certification earlier in the year are not subject to recertification); *id.* (noting that TracFone implies that a subscriber would have to be recertified in the same year in which the subscriber initially enrolled) (citing Comments of TracFone Wireless, Inc. on GCI Petition for Clarification of Annual Recertification Rule, WC Docket No. 11-42 et al., at 7-8 (filed Nov. 21, 2012) (TracFone Comments)).

⁷ See GCI Petition at 3.

⁸ See Comments of Alaska Communications Systems, WC Docket No. 11-42 et al., at 4 (filed Nov. 23, 2012); Comments of the United States Telecom Association, WC Docket No. 11-42 et al., at 2 (filed Nov. 23, 2012); Reply Comments of the USA Coalition, WC Docket No. 11-42 et al., at 2 (filed Dec. 10, 2012); see generally TracFone Comments.

⁹ For the purpose of this notice, once per “calendar year” means an ETC must recertify every Lifeline subscriber one time between January 1 and December 31 each year. For example, recertification on March 13, 2013 and again on May 25, 2014 would meet this standard.

¹⁰ See GCI Reply Comments at 3-4.

¹¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6702, 6709, paras. 100, 111.

the end of 2012.¹² Operating together, these two requirements ensured that by the end of 2012, ETCs would obtain from all subscribers either proof of eligibility or a certification from each subscriber that he or she was eligible.¹³ As the Commission explained, the recertification rule balances the need to identify and de-enroll ineligible subscribers with imposing fewer burdens on ETCs and consumers than other, more onerous, recertification requirements.¹⁴ Consistent with that approach, this clarification that ETCs must recertify Lifeline subscribers during the next calendar year balances the importance of the recertification rule with minimizing the burdens and costs on ETCs and consumers, while also providing ETCs with greater flexibility to tailor the recertification process to their particular business processes.

6. Next, in order to provide additional guidance to ETCs and to further reduce the burden on ETCs, consumers, and USAC, we direct ETCs to use the FCC Form 497 filed in February of each year to establish the baseline of subscribers who must be recertified. To illustrate, an ETC must recertify in 2013 all subscribers enrolled prior to January 1, 2013 and for which the ETC sought reimbursement on its February 2013 Form 497.¹⁵ We conclude that a snapshot of consumers remains necessary to facilitate the recertification process, and in the absence of a snapshot with a stated baseline of subscribers subject to recertification, it would be difficult for the Commission or auditors to determine the number of subscribers subject to recertification or how many subscribers de-enrolled prior to the recertification attempt. A snapshot also provides a way to closely compare the number of subscribers subject to recertification and the number of subscribers de-enrolled for non-usage by month. When the Commission instituted the recertification requirement in the *Lifeline Reform Order*, it implemented a similar snapshot requirement for ETCs by requiring ETCs to use the May 2012 Form 497. While this snapshot was appropriate for the initial recertification round for the reasons described above, using an ETC's February Form 497 going forward ensures that nearly all subscribers subject to recertification in 2013 (*i.e.*, those that enrolled or recertified prior to January 1, 2013) are included in the snapshot.¹⁶ A snapshot taken early in the year also allows ETCs the flexibility of starting their recertification process sooner and permits ETCs to further space-out the process as resources permit.¹⁷ We also conclude that a February snapshot, unlike a snapshot from December 31 of the prior year,¹⁸ ensures that subscribers de-enrolled

¹² *See id.* at 6715, para. 130.

¹³ *See id.* Some ETCs argued that because they certified their subscribers prior to the June 1, 2012 effective date of the rules, these subscribers need not have been recertified *in 2012*. *See, e.g.*, Comments of General Communication, Inc. on Cricket's Petition for Waiver, WC Docket No. 11-42 et al., at 1-2 (filed Nov. 21, 2012); Cricket Petition for Waiver of Section 54.410(f) of the Commission's Rules, WC Docket No. 11-42 et al. (filed Oct. 16, 2012). We note however, that these ETCs did not assert that their pre-June 2012 certification process complied with each of the Commission's rules or that they obtained proof of subscribers' eligibility.

¹⁴ *See Lifeline Reform Order*, 27 FCC Rcd at 6718, para. 138. We note that, under this approach, subscribers could not be recertified more than once at intervals substantially longer than once every 12 months. *See, e.g.*, Comments of AT&T, WC Docket No. 11-42 et al., at 2 (filed Nov. 23, 2012). For example, if a subscriber is recertified in January of 2014 and again in December 2015, the subscriber would have to be recertified again no more than 12 months later by December 2016.

¹⁵ In this illustration, subscribers enrolled in Lifeline by an ETC in January or February 2013 and who appeared on the ETC's February 2013 Form 497 need not be recertified until 2014.

¹⁶ We note that it is possible that some subscribers who would otherwise be subject to recertification in 2013 may have de-enrolled prior to the February 2013 snapshot (*e.g.*, de-enrolled sometime in January 2013).

¹⁷ *See* Comments of Cox, WC Docket No. 11-42 et al., at 4 (filed Nov. 23, 2012) (arguing that the May 2012 Form 497 snapshot served a unique purpose and that the Commission should establish an earlier snapshot going forward).

¹⁸ *But see id.* at 4 (arguing for a January 1 snapshot using December Form 497 data).

from the prior year's recertification process will not be subject to recertification in 2013. This same February snapshot will apply to subsequent years.¹⁹

7. Finally, we note that Sprint supports an option that would allow ETCs to recertify subscribers within twelve months from a subscriber's enrollment or anniversary date.²⁰ Sprint argues that allowing this approach, in addition to a once per calendar year approach, will minimize subscriber confusion and be less administratively burdensome.²¹ The approach we adopt herein does not preclude an ETC from recertifying its subscribers every twelve months,²² and we encourage Sprint and other ETCs to recertify subscribers as soon and as often as is practicable, consistent with the clarifications we provide herein. For the reasons set forth above, however, we require only that a subscriber be recertified during the calendar year following the year in which the subscriber initially enrolled in the Lifeline program or was last recertified.

III. USAC RECERTIFICATION PROCESS

8. Starting in 2013, ETCs have the option of having USAC conduct the annual recertification process on their behalf.²³ The Commission delegated to the Bureau the authority to establish, in coordination with USAC, a process for USAC to recertify subscribers.²⁴ We describe this process below.

9. USAC will recertify subscribers by mailing each subscriber a letter that provides the subscriber the notice required by section 54.405(e)(4) of the Commission's rules,²⁵ informing the subscriber that the subscriber has 30 days to recertify the subscriber's continued eligibility to receive Lifeline service or the subscriber will be de-enrolled from the Lifeline program. The letter will also explain the recertification process and how the subscriber may confirm his or her eligibility.²⁶ Subscribers will also receive a call or text message during the 30-day period to prompt a response.²⁷ Any

¹⁹ The Commission will make the appropriate amendments to Form 555 (ETCs' annual recertification reporting form) in order to reflect the shift from a snapshot using the May Form 497 data month to the February Form 497 data month.

²⁰ See Comments of Sprint, WC Docket No. 11-42 et al., at 2 (filed Nov. 23, 2012).

²¹ See *id.*

²² See GCI Reply Comments at 2 ("If a carrier recertifies a subscriber within twelve months of the subscriber's enrollment or more recent recertification, then by definition they will be recertifying no less frequently than once per calendar year, which would be fully compliant . . .").

²³ See *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 133. ETCs electing USAC to perform the recertification may not recertify subscribers on their own.

²⁴ See *id.* at 6716, para. 133 n.346.

²⁵ 47 C.F.R. § 54.405(e)(4).

²⁶ Pursuant to section 54.405(e)(4), subscribers must respond within 30 days of receiving notice that they must recertify or they will be de-enrolled within five business days after expiration of the 30-day response deadline.

²⁷ ETCs electing to have USAC conduct the recertification process on their behalf may not assess fees for text messages or minutes used by subscribers to complete the recertification process. USAC shall provide the ETCs with the number of text messages made and airtime minutes utilized in calls to such subscribers. In addition, we clarify that any inbound calls to subscribers from USAC, its third-party vendor or the ETC will not constitute "usage" for the purpose of the non-usage rule. See 47 C.F.R. § 54.405 (e)(3) (if a subscriber fails to use his or her pre-paid Lifeline service for 60 consecutive days, an ETC must provide the subscriber 30 days' notice that he or she must use the Lifeline service within the 30-day notice period, or the Lifeline service will be terminated).

subscriber response submitted after the 30-day deadline will not be processed and the subscriber will be considered ineligible for the program and will be de-enrolled.²⁸

10. USAC will provide subscribers with three methods to respond to the letter and recertify their eligibility. First, USAC will accept consumer calls made to a toll-free number, during which consumers will be able to recertify eligibility through an Inter-Active Voice Response (IVR). Second, USAC will allow consumers to verify their identity, read the certification language, and submit a response indicating they are recertifying their eligibility through a website maintained by USAC. Third, subscribers may also recertify by signing a recertification form provided by USAC and mailing the signed form to a receiving address designated by USAC.

11. ETCs must provide notice to USAC that they will elect the USAC recertification process by June 21, 2013.²⁹ ETCs not making an election by the deadline will be presumed to have not elected to use USAC. The election is final for 2013 and will remain in place for future years unless affirmatively revoked by the ETC. This election must be made on an operating company basis and applies to all states and study area codes covered by the operating company.

12. ETCs that elect to have USAC recertify their Lifeline subscribers must provide USAC with a subscriber list based on their February 2013 Form 497 in a standardized format by July 15, 2013, that includes first name, last name, address, Lifeline telephone number, date of birth, and last four digits of social security number for each subscriber (in order to validate the certifications received).³⁰ To the extent that a state agency conducts recertification for all or a portion of an ETC's subscribers, the ETC may not elect to utilize USAC for recertifying those subscribers subject to recertification by the state agency.³¹ Therefore, prior to transmittal to USAC, the ETC should remove from its subscriber list those subscribers that are subject to the state agency's recertification process.³² Each ETC that selects USAC to perform the recertification process will provide a toll-free number that USAC can provide to the ETC's consumers who have questions about their service.

²⁸ See 47 C.F.R. § 54.405(e)(4).

²⁹ ETCs should perform their election by sending an e-mail to telcolifeline@usac.org with a re: line that indicates the name of the ETC by operating company, and states that the ETC is "Electing USAC for 2013 Recertification."

³⁰ USAC will provide ETCs with guidance regarding the necessary format. If any subscribers on an ETC's Form 497 are no longer active by the time the ETC provides the subscriber list to USAC, the ETC should note such subscribers when transmitting the list to USAC. The ETC should also note which, if any, of these subscribers were de-enrolled due to non-usage. We note that this transmission of subscriber data to USAC in order to identify and eliminate duplicative support does not violate section 222 of the Communications Act of 1934, as amended, or the Commission's Customer Proprietary Network Information rules. See *Lifeline Reform Order*, 27 FCC Rcd at 6750, para. 219 n.568. The Commission has also concluded that the transmission of subscriber data to USAC for the purpose of eliminating duplicative support does not implicate other Federal privacy laws. See *id.* at 6750-51, para. 219.

³¹ For example, if a state performs the recertification only for subscribers qualifying under the Supplemental Security Income program and the Supplemental Nutrition Assistance Program (SNAP), these subscribers could not be subject to the USAC recertification process. However, subscribers qualifying under the other uniform eligibility criteria in that state could be subject to the USAC recertification process if the ETC so elects. We direct ETCs and state agencies to work together so that only those subscribers signed up prior to 2013 and who are on an ETC's February 2013 Form 497 are subject to state agency recertification.

³² We encourage state agencies notify the Bureau and USAC whether they are recertifying subscribers and under what circumstances (*e.g.*, only those subscribers receiving SNAP benefits).

13. USAC will complete the recertification process over a series of months, by grouping the ETCs that elect to have USAC complete the process into phases so that the influx of responses can be staggered. This grouping will be done randomly and staggered based upon USAC capacity.³³

14. USAC will compile the responses and provide each ETC with a record of the subscriber recertification. USAC will provide each ETC with a list of subscribers that did not recertify, and therefore must be de-enrolled,³⁴ and provide ETCs with sufficient information to compile their FCC Form 555 at least 30 days before the annual January 31 due date. ETCs must de-enroll subscribers within five days of receiving notice that the subscriber has failed to recertify.³⁵ As noted above, all active subscribers enrolled in Lifeline prior to 2013 and for which the ETC sought reimbursement on its February 2013 Form 497 are subject to recertification in 2013.

15. We conclude that good cause exists to make the procedures established in this Public Notice effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.³⁶ We find good cause based on the need for the procedures to be in place and available to ETCs in time for ETCs to be able to submit their elections to USAC, and provide USAC with a subscriber list in time to comply with the procedures we adopt here.

IV. FINAL REGULATORY FLEXIBILITY CERTIFICATION

16. The Regulatory Flexibility Act (“RFA”) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”³⁷ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³⁹ A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁰

17. We hereby certify that the clarification and procedures announced in this Public Notice will not have a significant economic impact on a substantial number of small entities. In this Public Notice, the Commission eases the regulatory compliance burden on ETCs by allowing for greater flexibility to recertify their subscribers and by outlining the procedures for ETCs to have USAC perform recertifications on their behalf. This Public Notice does not modify any of our reporting requirements. The Commission will send a copy of this Public Notice, including this certification, to the Chief Counsel

³³ USAC will provide additional guidance to ETCs regarding grouping after it has received all elections.

³⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6420, para. 142; 47 C.F.R. § 54.405(e)(4).

³⁵ See *id.*

³⁶ 5 U.S.C. § 553(d)(3).

³⁷ 5 U.S.C. § 605(b).

³⁸ 5 U.S.C. § 601(6).

³⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁴⁰ Small Business Act, 15 U.S.C. § 632.

for Advocacy of the SBA.⁴¹ In addition, the Public Notice (or a summary thereof) and certification will be published in the Federal Register.⁴²

18. For further information, please contact Jonathan Lechter, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7387 or TTY (202) 418-7340; jonathan.lechter@fcc.gov.

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⁴¹ *Id.*

⁴² *Id.*