

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

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

ORDER

Adopted: June 25, 2013

Released: June 25, 2013

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) underscores certain compliance requirements that are contained in the Lifeline Reform Order and its accompanying rules. The Bureau codifies the Commission’s requirement that eligible telecommunications carriers (ETCs) verify a Lifeline subscriber’s eligibility for Lifeline service before activating such service, pursuant to the authority delegated in the Lifeline Reform Order.

2. Despite the directives provided in the Lifeline Reform Order, some ETCs may be activating phones that they represent enable use of Lifeline-supported service for consumers prior to fully verifying the eligibility of such consumers. For this reason, the Bureau reminds ETCs that they must verify the eligibility of a low-income consumer prior to providing Lifeline service to that consumer, and may not provide an activated device intended to enable access to Lifeline service to a consumer until that consumer’s eligibility is fully verified and all other necessary enrollment steps are completed. We take this action in pursuit of the Commission’s goal to combat any and all forms of waste, fraud, and abuse.

1 Lifeline and Link Up Reform et al., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6857, para. 507 (Lifeline Reform Order) (delegating to the Bureau the authority to make rule revisions as necessary to ensure that the reforms adopted in that order are properly reflected in the rules).

2 See, e.g., Jennifer Loren, “Oklahoma is Ground Zero for Government Cell Phone Fraud,” Oklahoma’s Own News on 6, http://www.newson6.com/story/19914572/oklahoma-is-ground-zero-for-government-cell-phone-fraud (last viewed June 18, 2013); Justin Lewis, “Arkansas Congressman Wants to Wipe Out Free Cell Phones,” http://www.katv.com/story/21641674/arkansas-congressman-making-strides-to-wipeout-free-cell-phones?clienttype=generic&mobilecbypass (last viewed June 18, 2013) (retells story of a phone being sent to a dead Arkansas resident and stories of people with multiple phones – meaning no household eligibility check was done).

3 In this regard, we note that the Lifeline subsidy covers only the provision of voice telephony service. See Lifeline Reform Order, 27 FCC Rcd at 6678, para. 47.

## II. DISCUSSION

3. In the *Lifeline Reform Order*, the Commission adopted several rules to ensure the eligibility of low-income consumers for Lifeline service.<sup>4</sup> Specifically, the Commission promulgated section 54.410(a), which requires ETCs to “implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”<sup>5</sup> Similarly, section 54.416(a)(1) requires an officer of each ETC to “certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services.”<sup>6</sup> As discussed below, these rules, read in conjunction with the *Lifeline Reform Order* and other Commission rules, make clear that the ETC must determine whether a Lifeline subscriber is eligible to receive Lifeline service, and that the ETC must have processes and policies in place to make the eligibility determination *prior* to activating service for that consumer.

4. Section 54.410(b) and (c) of the Commission’s rules makes clear that ETCs must make this eligibility determination for “prospective subscriber[s].”<sup>7</sup> To give meaning to the distinct term “Lifeline subscribers” in section 54.410(a), “prospective subscriber[s]” in section 54.410(b) and (c) must be understood to require an ETC to determine eligibility for consumers that have not yet had Lifeline service activated, but are merely seeking to do so by enrolling in the ETC’s Lifeline offering. Similarly, when an ETC holds itself out as offering Lifeline service, as required by section 54.405(c), a subscriber seeking to enroll in Lifeline service with that ETC would reasonably consider him/herself to be a “Lifeline subscriber” from the moment that, for example, the certification form is completed and the handset is activated for voice telephony service.<sup>8</sup>

5. The framework for determining eligibility and enrolling consumers adopted in the *Lifeline Reform Order* also demonstrates that an ETC must determine eligibility before service activation. The Commission stated in the *Lifeline Reform Order* that ETCs must make the required determination of eligibility “*prior* to enrolling a new subscriber in Lifeline.”<sup>9</sup> The enrollment process involves consumers signing up for service and making the required certifications via a certification form.<sup>10</sup> Prior Commission forbearance conditions, which formed part of the basis for the enrollment rules adopted in the *Lifeline Reform Order*, prohibited ETCs from activating service before obtaining the required consumer certifications.<sup>11</sup> Against that backdrop, the *Lifeline Reform Order* should be understood as imposing on

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<sup>4</sup> See generally *Lifeline Reform Order*.

<sup>5</sup> 47 C.F.R. § 54.410(a).

<sup>6</sup> 47 C.F.R. § 54.416(a)(1).

<sup>7</sup> 47 C.F.R. § 54.410(b), (c).

<sup>8</sup> See 47 C.F.R. § 54.405(c) (requiring ETCs to indicate on all materials describing the Lifeline service that the service “is a Lifeline service”).

<sup>9</sup> *Lifeline Reform Order*, 27 FCC Rcd at 6701, para. 98 (emphasis added); see also *id.* at 6704-05, 6709, paras. 103, 111. To determine if a prospective subscriber is eligible for Lifeline, the ETC must conduct an eligibility determination by either examining documentation of eligibility, querying an eligibility database, or receiving notice from a state administrator that the consumer is eligible. See 47 C.F.R. § 54.410(b)-(c). Providing proof of eligibility prior to enrollment helps ensure that only qualified consumers benefit from the Lifeline program. See *Lifeline Reform Order*, 27 FCC Rcd at 6701, para. 98.

<sup>10</sup> See, e.g., *Lifeline Reform Order*, 27 FCC Rcd at 6697-98, para. 91.

<sup>11</sup> *Id.* at 6713-14, para. 124 & n.329 (concluding that the certification requirements “will not impose unreasonable burdens on ETCs, including ETCs considered to be small businesses” in part by noting “that some ETCs already request similar certifications from their subscribers” pursuant to conditions in forbearance orders); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2787, para. 47 (2011) (observing that “the Commission required each wireless ETC granted forbearance to

(continued...)

all ETCs the requirement that they may not activate Lifeline service until completing the entire enrollment process. Because the determination of eligibility must be made before the enrollment process is completed, it also must occur before the ETC may activate any phone that the ETC indicates will be used for Lifeline service. We also take this opportunity to reiterate the Commission's rule that Lifeline is a "non-transferable retail service offering," a fact that must be disclosed to the consumer and included on the certification form.<sup>12</sup> We note that, pursuant to the *Lifeline Reform Order*, a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.<sup>13</sup>

6. Pursuant to sections 54.410(a) and 54.416(a)(1) of the Commission's rules, an ETC must have processes and policies in place to make the eligibility determination prior to activating Lifeline service for a consumer. An ETC therefore may not provide a service that it represents to be Lifeline service, even on an interim basis while the consumer's application is being processed, before verifying eligibility. And in particular, an ETC may not provide an activated handset to a consumer whose eligibility has not been fully verified.

7. Pursuant to the authority delegated to the Bureau in paragraph 507 of the *Lifeline Reform Order*, we codify the requirement described above by amending section 54.410(a) of the Commission's rules as provided in the Appendix below.

### III. PROCEDURAL MATTERS

#### A. Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>14</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>15</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>16</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>17</sup> 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).<sup>18</sup>

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obtain certifications from Lifeline customers *at the time of service activation* and annually thereafter") (emphasis added).

<sup>12</sup> 47 C.F.R. § 54.401(a). *See also* 47 C.F.R. § 54.410(d)(1)(vi) ("Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person").

<sup>13</sup> *See Lifeline Reform Order*, 27 FCC Rcd at 6897, App. C.

<sup>14</sup> The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>15</sup> 5 U.S.C. § 605(b).

<sup>16</sup> 5 U.S.C. § 601(6).

<sup>17</sup> 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."

<sup>18</sup> Small Business Act, 15 U.S.C. § 632.

9. Underscoring these compliance requirements does not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *Lifeline Reform Order*.<sup>19</sup> Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to SBREFA.<sup>20</sup> In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>21</sup>

**B. Congressional Review Act**

10. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>22</sup>

**IV. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5(c), 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, sections 0.91, 0.291, 1.1, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.1, 1.427, and the delegation of authority in paragraph 507 of FCC 12-11, this Order is ADOPTED.

12. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in the Appendix, and such rule amendments shall be effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

13. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Carol Matthey  
Deputy Chief  
Wireline Competition Bureau

<sup>19</sup> *Lifeline Reform Order*, 27 FCC Rcd at 6859, 6910-30, para. 512, App. J (Final Regulatory Flexibility Analysis).

<sup>20</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>21</sup> See 5 U.S.C. § 605(b).

<sup>22</sup> See 5 U.S.C. § 801(a)(1)(A).

**APPENDIX**  
**Final Amended Rule**

Amend section 54.410(a) to read as follows:

**§ 54.410 Subscriber eligibility determination and certification.**

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has (1) confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and (2) completed the eligibility determination and certification required by this section and §§ 54.404-54.405, and completed any other necessary enrollment steps.

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