

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

In the Matter of
Lifeline and Link Up Reform and Modernization
Petition of the Utah Public Service Commission
WC Docket No. 11-42

ORDER

Adopted: February 8, 2013

Released: February 8, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver, from sections 54.410(f) and 54.416(b) of the Commission's rules and the deadlines established in paragraphs 130-32 of the Lifeline Reform Order, to the Utah Public Service Commission (Utah PSC) and wireline Eligible Telecommunications Carriers (ETCs) in the state of Utah.

2. The Utah PSC is responsible for recertifying the eligibility of Lifeline subscribers for wireline ETCs in the state of Utah. The Utah PSC reports that, despite good faith efforts, it will not be able to complete the 2012 recertification process in Utah for wireline ETCs until mid-February 2013. As a result, wireline ETCs in Utah will be unable to comply with section 54.416(b) of the Commission's rules and file their annual recertification report (Form 555) by January 31, 2013. We find that good cause has been shown to grant (1) the Utah PSC a waiver from section 54.410(f) and the December 31, 2012 recertification deadline in paragraph 130 of the Lifeline Reform Order, until February 14, 2013; and (2) wireline ETCs in Utah a waiver from section 54.416(b) and the annual reporting deadline in paragraph 132, until March 17, 2013. The waivers granted in this Order are limited, one-time waivers of section

1 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, 6715-16, paras. 130-32 (Lifeline Reform Order).

2 See 47 C.F.R. §§ 54.410(f), 54.416(b); Lifeline Reform Order, 27 FCC Rcd 6656, 6715-16, paras. 130-32; Petition of the Utah Public Service Commission, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Dec. 18, 2012) (Petition)

3 See Petition at 5.

4 See 47 C.F.R. § 54.410(f); Lifeline Reform Order, 27 FCC Rcd at 6715, para. 130 n.337 (setting December 31, 2012 deadline for the 2012 recertification).

5 See 47 C.F.R. § 54.416(b); Lifeline Reform Order, 27 FCC Rcd at 6715, para. 132 (setting January 31, 2013 deadline for the filing of Form 555).

6 The wireline ETCs subject to this waiver are All West Utah, Inc.; Bear Lake Communications; Beehive Telecom, Inc.; Carbon - Emery Telecom Inc.; Central Utah Telephone; CenturyTel of Eagle, Inc.; Citizens Telecommunications Company of Utah; Direct Communications Cedar Valley, LLC; Emery Telephone; Gunnison Telephone Company; Hanksville Telecom, Inc.; Manti Telephone Company; Navajo Communications Company, Inc (UTAH); Qwest Communication, QC d/b/a CenturyLink QC; Skyline Telecom; South Central Utah Telephone Association, Inc.; UBTA-UBET Communications, Inc. (Unitah Basin Telephone Association). See Letter of Utah

(continued...)

54.410(f), section 54.416(b) and the deadlines in paragraphs 130 through 132 of the *Lifeline Reform Order*.⁷

II. BACKGROUND

A. Annual Lifeline Recertification Reporting Requirements

3. *2012 Recertification Requirement.* In the *Lifeline Reform Order*, the Commission adopted a set of uniform recertification procedures that all ETCs must perform annually to verify the ongoing eligibility of their Lifeline subscribers.⁸ Section 54.410(f) requires that ETCs annually recertify the eligibility of their subscribers.⁹ To comply with the annual requirement for 2012, all ETCs and, where applicable, state Lifeline administrators or an agent of the state (collectively, “state agencies”) were required to recertify by the end of 2012 the eligibility of their Lifeline subscriber base as of June 1, 2012, and report the results to the Commission and the Universal Service Administrative Company (USAC) by January 31, 2013 (2012 recertification requirement).¹⁰ The 2012 recertification requirement was intended to work in lock step with the new certification of eligibility requirements established in the *Lifeline Reform Order*.¹¹ 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.¹² The requirement for ETCs to annually recertify their Lifeline subscribers ensures that only eligible subscribers remain in the program.¹³ Any subscribers that fail to respond to the ETC’s or state agency’s recertification efforts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in the Commission’s rules.¹⁴

4. In the absence of an eligibility database, the ETC or state agency must recertify 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).¹⁵ The *Lifeline Reform Order* makes clear that “[r]egardless of the format used to recertify 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

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Public Utilities Commission, WC Docket No. 11-42 (filed Dec. 27, 2012). According to USAC, three additional companies listed in the letter, Albion Telephone Company, Farmer’s Telephone Company, and Union Telephone Company, do not receive Federal support and are therefore not subject to this waiver.

⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, 6897, paras. 130-32, App. C.

⁸ See *id.* at 6714-22, paras. 129-48.

⁹ See 47 C.F.R. § 54.410(f).

¹⁰ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132.

¹¹ See *id.* at 6716-17, para. 134. The 2012 recertification process required that ETCs recertify 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 were designed to ensure that eligibility was verified in 2012 for all Lifeline subscribers.

¹² *Id.*

¹³ See *id.* at 6717, para. 135.

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

¹⁵ See 47 C.F.R. §§ 54.410(d), 54.410(f)(2)(iii), 54.410(f)(3)(iii); *Lifeline Reform Order*, 27 FCC Rcd at 6715, 6897, para. 130, App. C.

subscriber an individual certification for each requirement set forth in the rule.”¹⁶ 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 recertify the subscriber, and notifying the subscriber that he or she will be de-enrolled within 30 days unless the subscriber recertifies that the subscriber is eligible to receive Lifeline.¹⁷ ETCs or state agencies may contact and receive recertification 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.¹⁸ If an ETC or state agency is unable to recertify a subscriber because the subscriber did not respond to the recertification request, or the 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.¹⁹

5. Each ETC must report the results of its 2012 recertification process to the Commission and USAC by January 31, 2013, using FCC Form 555.²⁰ The recertification process is not considered “complete” until the ETC has de-enrolled all subscribers that either failed to respond to a recertification request or stated 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 has de-enrolled that subscriber.²¹

6. The Utah PSC is managing the recertification process for wireline ETCs in Utah.²² In its waiver request, the Utah PSC argues that due to circumstances outside of its control, it was unable to complete the recertification process by December 31, 2012.²³ The Utah PSC therefore seeks a 45-day waiver of the obligation to complete the recertification process for wireline ETCs until February 14, 2013, and for wireline ETCs in Utah to file Form 555 until March 17, 2013.²⁴

¹⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. Electronic signatures may be used to satisfy the recertification requirement.

¹⁷ 47 C.F.R. § 54.405(e)(1).

¹⁸ See 47 C.F.R. § 54.419; *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. Any text messages sent for the purpose of recertification 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 6716, 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). *Id.* If the state agency or third party is responsible for performing the annual recertification functions, the state or its agent must provide the ETC with a copy of the completed recertification 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 recertification request could result in de-enrollment. *Id.* at 6720, para. 142.

¹⁹ See 47 C.F.R. § 54.405(e). If the state agency is performing the recertification, 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 recertified.

²⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6716, 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 Recertify Eligibility Of All Lifeline Subscribers by December 31, 2012*, WC Docket No. 11-42 et al., CC Docket No. 96-45, Public Notice, 27 FCC Rcd 12327, 12328 (Wireline Comp. Bur. 2012) (*Recertification Reminder PN*).

²¹ *Recertification Reminder PN*, 27 FCC Rcd at 12328.

²² See Petition at 1-2.

²³ See *id.* at 5.

²⁴ See *id.* (seeking a 45 day waiver of both the December 31, 2012 recertification deadline and the January 31, 2013 deadline to file Form 555).

7. In order to comply with the Commission's recertification requirements, the Utah PSC utilized a state eligibility verification database.²⁵ The Utah PSC however, was unable to use the database until late in 2012 due to the legislature's reorganization of the relevant state agencies.²⁶ When the Utah PSC submitted wireline ETCs' Lifeline subscribers' names to the database, a significant number of subscribers could not be recertified.²⁷ The Utah PSC sent recertification notices to those subscribers that it could not recertify through the database. Because of resource constraints, the Utah PSC asserts that it could not send these notices until December 7, 2012.²⁸ Utah rules require 60 days between (1) the mailing to a subscriber of a recertification form accompanied by a notice of de-enrollment for failure to respond; and (2) the de-enrollment of the subscriber.²⁹ As a result, the soonest that an ETC could de-enroll a subscriber under Utah rules for a non-response to the recertification attempt would be February 5, 2013, 60 days after the notice of de-enrollment for failure to recertify.³⁰ Wireline ETCs in Utah will not receive the subscriber de-enrollment information from the Utah PSC necessary to fill-out and submit Form 555 until at least February 6, 2013.³¹ The Utah PSC argues that despite its best efforts, it cannot complete the recertification process and provide the necessary information for wireline ETCs in Utah to file Form 555 by the deadlines set forth in the Commission's rules, and asserts that there is good cause for a 45-day waiver of the Commission's deadlines to fully come into compliance with sections 54.410(f), 54.416(b) and paragraphs 130-32 of the *Lifeline Reform Order*.³²

III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.³³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁵ 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.³⁶

²⁵ See *id.* at 5-6.

²⁶ See *id.* at 8-9.

²⁷ See *id.* at 6.

²⁸ See *id.* ("Because there were significantly more mailings necessary than had been initially expected, the supply of materials to complete the mass mailing was insufficient"); Letter of Chris Parker et al., Utah PSC, to Marlene H. Dortch, FCC, WC Docket No. 11-42, CC Docket No. 96-45 (filed Dec. 27, 2012) (UPSC Letter).

²⁹ See Petition at 2 n.3 ("Utah Amin. Code R. 746-341-4(C)(2)(c) requires 'at least 40 days to demonstrate continued eligibility.' In the event that the subscriber fails to respond, a notice [of] intent to discontinue is issued and rule 746-341-4(D)(1) requires an additional 20 day period within which [] Lifeline may not be discontinued."). In contrast, the Commission only requires a 30-day period between notice of recertification and subscriber de-enrollment for failure to respond. See 47 C.F.R. § 54.405(e)(4). We reach no conclusion at this time as to whether the Utah rule requiring 60 days notice is pre-empted by section 54.405(e)(4). However, we find that it was not unreasonable for Utah to follow its existing 60-day rule in light of the Commission's 2012 rule revisions, and that, at the present time, requiring less than 60 days notice for Utah subscribers would add to consumer confusion.

³⁰ See UPSC Letter.

³¹ See *id.*

³² See Petition at 9.

³³ See 47 C.F.R. § 1.3.

³⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁵ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁶ See *Northeast Cellular*, 897 F.2d at 1166.

9. The Bureau grants the Utah PSC a limited, 45 day waiver of section 54.410(f) and paragraph 130 of the *Lifeline Reform Order* until February 14, 2013, and the wireline ETCs in Utah a limited, 45 day waiver of section 54.416(b) and paragraph 132 of the *Lifeline Reform Order* until March 17, 2013.³⁷ We find that the unique circumstances preventing timely Utah PSC access to an eligibility database provide good cause to grant this waiver.³⁸ Moreover, because a majority of Lifeline subscribers in Utah are served by wireless ETCs (which are not subject to this waiver), the relief provided will cover well under half of the Lifeline subscribers in the Utah.³⁹ In addition, we note that the relief we grant only delays, but not does permanently waive, wireline ETCs' and the Utah PSC's compliance with their recertification obligations; by early 2013, all subscribers in Utah subject to the 2012 recertification requirement will be recertified and all ETCs in Utah will file Form 555. For the foregoing reasons, we conclude that a limited waiver is appropriate in this case.

IV. ORDERING CLAUSES

10. IT IS 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 the Utah Public Service Commission is GRANTED to the extent described above.⁴⁰

11. 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

³⁷ A 45 day waiver would provide relief until March 17, 2013. Because March 17, 2013 falls on a Sunday, a Commission holiday, wireline ETCs in Utah may file their Form 555 by March 18, 2013. See 47 C.F.R. § 1.4(j).

³⁸ See *supra* para. 7.

³⁹ According to USAC data from October 2012, of the 118,675 Lifeline subscribers in Utah, 96,163, or over 80 percent, are served by wireless ETCs not subject to this petition.

⁴⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130 n.338.