

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

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

ORDER

Adopted: August 30, 2013

Released: August 30, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part a petition for waiver filed by the United States Telecom Association, as well as petitions from individual state commissions and a state carrier association, regarding the Lifeline rules. Specifically, 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) of the Commission's rules, which govern the requirements for state Lifeline administrators to provide subscriber certification forms to Eligible Telecommunications Carriers (ETCs) and for ETCs to obtain such forms prior to seeking reimbursement from the federal universal service fund (Fund). The waiver is provided to California, Colorado, Florida, Idaho, Nebraska, Oregon, Utah, Vermont, and ETCs operating in those states subject to the conditions described below, to allow more time for those states to implement a process to share copies of consumer eligibility certifications for Lifeline support with ETCs. As described below, this waiver will help ensure that eligible consumers continue to receive Lifeline service,

1 See Petition for Waiver of the United States Telecom Association, WC Docket Nos. 11-42 et al. (filed May 6, 2013) (2013 USTelecom Petition). See also Public Utility Commission of Oregon and Oregon Telecommunications Association Comments in Support of USTelecom Petition for Waiver and Petition for Extension of Waiver, WC Docket Nos. 11-42 et al. (filed May 15, 2013) (Oregon Petition); Petition for Waiver of the Nebraska Public Service Commission, WC Docket Nos. 11-42 et al. (filed May 13, 2013) (Nebraska Petition); Notice and Petition for Waiver of the Utah Public Service Commission, WC Docket Nos. 11-42 et al. (filed May 28, 2013) (Utah Petition); Notice of Ex Parte for Clarification by the Public Service Commission of Utah at the Request of FCC Staff, WC Docket No. 11-42 (filed June 11, 2013) (UPSC Ex Parte); Letter from Sindy Yun, Staff Counsel, California Public Utilities Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (filed May 31, 2013) (California Letter); Letter from Tamera Pariseau, Chief of Consumer Affairs & Public Information, Vermont Department of Public Service, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (filed May 29, 2013) (Vermont Letter) (requesting a permanent waiver); Idaho Public Utilities Commission Comments in Support of USTelecom Petition for Waiver and Petition for Extension of Waiver, WC Docket Nos. 11-42 et al. (filed May 31, 2013) (Idaho Petition) (requesting a permanent waiver); Letter of Adam J. Teitzman, Attorney Supervisor, Florida Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (filed May 31, 2013) (Florida Letter).

2 See Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., Waiver Order, 27 FCC Rcd 5941 (Wireline Comp. Bur. 2012) (May 2012 USTelecom Waiver Order); Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Waiver Order, 27 FCC Rcd 15922 (Wireline Comp. Bur. 2012) (Dec. 2012 USTelecom Waiver Order). We note that, over time, more states have come into compliance with these rules. In the instant petition, USTelecom requested relief for only eight states and the ETCs in those states, whereas USTelecom's initial request for similar relief in 2011 covered 20 states. See infra n.8.

while at the same time, protecting the Fund against waste, fraud and abuse. The waiver will run from June 1, 2013 until the sooner of February 1, 2014, or when the state either comes into full compliance with these rules, or no longer requires a waiver because the ETCs in that state collect necessary Lifeline certification forms directly from consumers.<sup>3</sup>

## II. BACKGROUND

2. In the *Lifeline Reform Order*, the Commission adopted rules that permit states, rather than ETCs, to determine whether subscribers to Lifeline are eligible to participate in the program.<sup>4</sup> In states where the state Lifeline administrator or another state agency is responsible for the initial determination of subscribers' eligibility, ETCs must obtain 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.<sup>5</sup>

3. Previous Waivers. In a petition filed on April 25, 2012, USTelecom sought a waiver on behalf of ETCs in select states of the ETCs' obligation to obtain from the state a signed certification from a subscriber prior to seeking reimbursement for that subscriber.<sup>6</sup> USTelecom limited its request to the subset of ETCs and/or programs for which the state makes initial eligibility determinations.<sup>7</sup> USTelecom later withdrew its request for waiver for certain states.<sup>8</sup> On May 31, 2012, the Bureau conditionally granted in part and denied in part USTelecom's revised request for relief for 11 states, the District of Columbia and the Virgin Islands.<sup>9</sup> For the duration of the waiver, the ETCs in these states could seek

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<sup>3</sup> As explained below, the waiver for Colorado and the ETCs in that state runs from June 1, 2013 until July 1, 2013 because, as of July 1, 2013, the Colorado PUC stopped administering the Lifeline program and ETCs had to collect certification forms directly from consumers.

<sup>4</sup> See *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 (2012) (*Lifeline Reform Order*).

<sup>5</sup> See 47 C.F.R. § 54.410(b)(2), (c)(2). Section 54.407(d) of the Commission's rules 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 for 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 or other state agencies that are responsible for the initial determination of a subscriber's eligibility to provide a copy of the certification form to the subscriber's ETC in that state. See 47 C.F.R. § 54.410(e).

<sup>6</sup> Petition for Waiver of the United States Telecom Association, WC Docket Nos. 11-42 et al., at 2 (filed Apr. 25, 2012) (USTelecom April 2012 Petition) (seeking for particular states a waiver of sections 54.407(d), 54.410(b)(2), and 54.410(c)(2) of the Commission's rules). After filing its petition, USTelecom withdrew its request for waiver of the requirement that ETCs obtain notification of eligibility from the state, thus limiting its request for waiver to the requirements to obtain certification forms from the state (and to certify that such forms have been obtained). See Letter of David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 11-42 et al., at 2 (filed May 16, 2012) (withdrawing request for waiver of section 54.410(b)(2)(i) and 54.410(c)(2)(i)).

<sup>7</sup> See USTelecom April 2012 Petition at 2.

<sup>8</sup> USTelecom 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., 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., 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., 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., at 1 (filed May 24, 2012) (withdrawing request for Ohio and Texas).

<sup>9</sup> Specifically, the Bureau granted a waiver of section 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) with respect to ETCs in states in which the state Lifeline administrator or other state agency managed subscriber eligibility and was unable to modify, in the short term, its processes for ETCs to come into compliance with these rules. The jurisdictions subject to the waiver were California, Colorado, District of Columbia, Florida,

(continued...)

reimbursement without having received certification forms from the state, and state administrators were not required to provide certification forms to the ETCs.<sup>10</sup> The waiver was granted until December 1, 2012 or until the states' processes were modified to allow for compliance with the rules, whichever occurred sooner.<sup>11</sup>

4. On December 21, 2012, the Bureau conditionally granted an additional USTelecom request for waiver of these same requirements for a subset of the states that had previously received a waiver, until June 1, 2013 or until the states' procedures were modified to allow for compliance with the rules, whichever came sooner.<sup>12</sup> For the duration of the waiver, the states or state administrators were required to provide ETCs notice that new subscribers complied with the Lifeline eligibility requirements and executed a certification form.<sup>13</sup> The Bureau explained that ETCs or jurisdictions that needed additional time to come into compliance should file a detailed explanation of the specific issues delaying compliance with the rules.<sup>14</sup>

5. On May 6, 2013, USTelecom sought an additional six month waiver of sections 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.410(e) until December 1, 2013, for the states of Florida, Idaho, Oregon, Utah, and Vermont, and a seven month waiver until January 1, 2014 for California.<sup>15</sup> Separate petitions for waiver and letters in support of the 2013 USTelecom Petition were also filed subsequently by individual states and a state carrier association.<sup>16</sup> USTelecom and the state entities argue generally that an additional waiver is necessary because the subject states have not yet been able to modify their processes to come into compliance with the Commission's requirement to provide certification forms to ETCs.

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Idaho, Montana, Nebraska, Nevada, Oregon, the U.S. Virgin Islands, Utah, Vermont, and Washington State. On its own motion, the Bureau also waived section 54.410(e) in these states. *See May 2012 US Telecom Waiver Order*, 27 FCC Rcd at 5942, para. 2.

<sup>10</sup> *See May 2012 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 did not make the initial determination of subscriber eligibility based on income or a qualifying program. For example, in Florida, the state only makes eligibility determinations with respect to income, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Medicaid, but not other programs such as Federal Public Housing assistance. *See Comments of AT&T on Petitions for Waiver of Lifeline Eligibility Rules*, WC Docket Nos. 11-42 et al., at 8 (filed May 15, 2012). Therefore, the waiver was applicable to ETCs in Florida only in circumstances where subscribers qualified based on income, SNAP, TANF and Medicaid. *See May 2012 USTelecom Waiver Order*, 27 FCC Rcd at 5943, para. 3 n.11.

<sup>11</sup> *See May 2012 USTelecom Waiver Order*, 27 FCC Rcd at 5943, para. 4.

<sup>12</sup> *See Dec. 2012 USTelecom Waiver Order*, 27 FCC Rcd at 15925, para. 6.

<sup>13</sup> *See id.* at 15925, para. 7.

<sup>14</sup> *See id.*

<sup>15</sup> *See 2013 USTelecom Petition*. USTelecom also sought a waiver of these rules for Colorado, but only until July 1, 2013, when the state would cease to administer the federal Lifeline program. *See id.* Pursuant to new legislation in Colorado, as of July 1, 2013, ETCs in Colorado were to obtain certification forms directly from consumers. *See id.* at 3-4.

<sup>16</sup> Petitions and letters were filed by the Public Utility Commission of Oregon and the Oregon Telecommunications Association, the Nebraska Public Service Commission, the Utah Public Service Commission, the California Public Utilities Commission (CPUC), the Vermont Department of Public Service, the Florida Public Service Commission and the Idaho Public Utilities Commission. *See supra* n.1.

### III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.<sup>17</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> 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.<sup>20</sup>

7. We find good cause to grant a waiver of portions of section 54.407(d), and sections 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e), for California, Colorado, Florida, Idaho, Nebraska, Oregon, Utah, and Vermont, and the ETCs providing Lifeline service in these states, subject to the conditions described below. We conclude that this waiver, coupled with these conditions, will help ensure that eligible consumers continue to receive Lifeline service, while at the same time protecting the Fund against waste, fraud and abuse. This waiver is in effect from June 1, 2013 until the earlier of February 1, 2014, or once the state has come into compliance with the Commission's rules, or no longer requires a waiver because the ETCs in that state collect certification forms directly from consumers.<sup>21</sup>

8. These jurisdictions continue to act in good faith in partnership with the Commission to implement the *Lifeline Reform Order*, and the Bureau finds that a limited waiver is necessary to give these jurisdictions time to come into compliance with the Commission's rules. These states have taken the lead in establishing systems for determining eligibility of Lifeline subscribers, and this waiver will allow these states to preserve such systems and processes while they take additional steps to come into compliance.<sup>22</sup> As explained above, the number of states seeking a limited waiver from these rules has declined from twenty to eight over the past year,<sup>23</sup> which indicates that states continue to make progress towards implementing a mechanism to provide certification forms to ETCs, and these efforts continue in the states subject to the waiver at issue in this Order. In particular, California, which has more than half of the Lifeline subscribers subject to this waiver, has taken significant steps towards putting in place processes to come into compliance by the end of the waiver period.<sup>24</sup> Moreover, based on information provided by other states subject to this waiver, we believe other states will also come into compliance and

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<sup>17</sup> 47 C.F.R. § 1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>21</sup> As explained above, as of July 1, 2013, Colorado ceased to administer the federal Lifeline program, and therefore no longer collected certification forms from consumers; ETCs now obtain the forms directly from consumers. See *supra* n.15. Therefore, the waiver for Colorado and the ETCs in that state runs from June 1, 2013 to July 1, 2013.

<sup>22</sup> See 2013 USTelecom Petition at 3-4 (for description of Colorado's process prior to July 1, 2013); California Letter at 2; Florida Letter at 1; Idaho Petition at 2-3; Nebraska Petition at 3; Oregon Petition at App. C; Utah Petition at 5-6; Vermont Letter at 2.

<sup>23</sup> See *supra* n.2.

<sup>24</sup> See Universal Service Administrative Company, FCC Filings, 2013 Fourth Quarter, <http://www.usac.org/about/tools/fcc/filings/2013/Q4/LI08%20Lifeline%20Subscribers%20by%20State%20or%20Jurisdiction.xlsx> (last viewed Aug. 28, 2013) (California's subscribers as of March 31, 2013 represent approximately 55% of the total subscribers affected by the present waiver). While California's third party state Lifeline administrator can provide certification forms to ETCs, the CPUC explains that the state has to amend its contract with its information technology vendor to enable ETCs to be in full compliance with the Commission's requirements. See 2013 USTelecom Petition at 6; California Letter at 2. California anticipates this process to be complete and the new system fully implemented by January 1, 2014. See California Letter at 2.

no longer require a waiver of these rules by the end of the waiver period.<sup>25</sup> We also note that the requirements that we waive here are subject to a petition for reconsideration asking the Commission to eliminate these requirements. That petition remains pending.<sup>26</sup> During the pendency of the waiver, the Bureau will continue to work with states to achieve compliance.

9. The conditions originally adopted in the two prior orders granting a waiver of these requirements will remain in place for California, Colorado, Florida, Idaho, Nebraska, Oregon, Utah, and Vermont for the time periods set forth in this waiver. Specifically, in these states, the state Lifeline administrators or other state agencies must obtain executed certification forms from Lifeline subscribers pursuant to section 54.410(d).<sup>27</sup> During the waiver period, in accordance with section 54.410(b)(2)(i) and 54.410(c)(2)(i), these states 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.<sup>28</sup> Notwithstanding the relief provided in this waiver, states must provide ETCs all of the necessary information required for ETCs to transmit the information to the National Lifeline Accountability Database.<sup>29</sup> We remind ETCs in these states 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 to the Universal Service Administrative Company or the Commission copies of notifications from the state that new subscribers have both complied with the Lifeline eligibility requirements and have executed a certification form.<sup>30</sup> In addition, no later than November 1, 2013, each state still subject to this waiver must file a status update with the Bureau explaining the steps it has taken to bring its processes into compliance, and, if applicable, why it is unable to come into compliance by the end of the waiver period.

10. We strongly encourage states and ETCs requiring additional time to come into compliance with the rules to file a request for further relief far in advance of the expiration of this waiver. Any ETC or state seeking further relief must include in its request a detailed explanation of the specific challenges faced in coming into compliance with these aspects of the Commission's Lifeline certification rules, and a firm timetable for coming into compliance with those rules. In addition, if an ETC or state believes that it will be unable to come into compliance and seeks a permanent waiver from the rules, it must provide in its request for permanent relief an explanation for why such relief is appropriate.

#### IV. ORDERING CLAUSES

11. 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 and 254, and sections

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<sup>25</sup> See, e.g., Utah Petition at 6-7; UPSC Ex Parte (noting that Utah is moving away from utilizing a state administrator by the end of 2013).

<sup>26</sup> Petition for Reconsideration and Clarification of the United States Telecom Association, WC Docket Nos. 11-42 et al., at 5-7 (filed Apr. 2, 2012); see also Idaho Petition at 6; Oregon Petition at 4 (asking the Commission to reconsider the rules).

<sup>27</sup> See 47 C.F.R. § 54.410(d); see also, e.g., *Lifeline Reform Order*, 27 FCC Rcd at 6710-12, paras. 113, 115-16, 120.

<sup>28</sup> See 47 C.F.R. § 54.410(b)(2)(i), 54.410(c)(2)(i).

<sup>29</sup> See 47 C.F.R. § 54.404(b)(6) (required information that must be transmitted to the National Lifeline Accountability Database). State Lifeline administrators are permitted to populate and query the database. To the extent that the state agency will not do so, or the state has not exercised its opt-out rights, the state agency must provide this information to the ETCs so that the ETCs can maintain compliance with the rules. See *Lifeline Reform Order*, 27 FCC Rcd at 6735, para. 182 n.482; *id.* at 6751, para. 221.

<sup>30</sup> See 47 C.F.R. § 54.417.

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.

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 Public Utility Commission of Oregon and the Oregon Telecommunications Association 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 Idaho Public Utilities Commission 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 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.

15. 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 Nebraska Public Service Commission IS GRANTED to the extent described herein.

16. 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 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.

17. 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