

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: February 15, 2013

Released: February 15, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) conditionally grants the certification of the Vermont Department of Public Service (VDPS) to opt out of the National Lifeline Accountability Database (national database).¹ The VDPS has demonstrated that, subject to the conditions described below, its system is comprehensive and at least as robust as the processes adopted by the Commission in the *Lifeline Reform Order*, and is capable of detecting and eliminating duplicative support.²

II. BACKGROUND

2. In the *Lifeline Reform Order*, the Commission established the national database to detect and eliminate duplicative Lifeline support provided to individuals and households, and imposed specific requirements on eligible telecommunications carriers (ETCs), such as the requirement to query the database prior to signing up a subscriber to determine if that subscriber or a member of that subscriber’s household is already receiving Lifeline support from another ETC.³ The Commission, however, recognized that states may have their own systems for eliminating duplicative Lifeline support, and established a process through which states could file a request seeking to “opt out” of the national database.⁴

¹ See Petition and Certification of the Vermont Department of Public Service to Opt Out of the National Lifeline Database and Petition for Waiver of § 54.410, Vermont Department of Public Service Commission, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Nov. 19, 2012); Amendment to the Petition and Certification of the Vermont Department of Public Service to Opt Out of the National Lifeline Database, Vermont Department of Public Service, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Feb. 4, 2013) (Amendment); Letter of Tamara Pariseau, VDPS, to Marlene H. Dortch, FCC, WC Docket No. 11-42 (filed Feb. 12, 2013) (Vermont Letter).

² See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6752, para. 221 (2012) (*Lifeline Reform Order*).

³ See *id.* at 6734-55, paras. 179-225; 47 C.F.R. § 54.404.

⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221; 47 C.F.R. § 54.404(a).

3. On October 11, 2012, the Bureau released a public notice providing guidance to states regarding the opt out process.⁵ To opt out, the state's system must be comprehensive and at least as robust as the processes adopted by the Commission in the *Lifeline Reform Order*.⁶ In states where the system meets this standard and the state successfully exercises its opt out rights, ETCs operating in that state must comply with the state requirements for interfacing with the state database and will be relieved of any obligation to comply with requirements regarding the national database.⁷

4. In its public notice, the Bureau also provided a waiver of the deadline by which states must file their opt out certification, until December 1, 2012.⁸ Vermont and four other states filed their opt out certifications on or before December 1, 2012, and the Bureau sought comment on the certifications.⁹ The Bureau must act on the certifications within 90 days of being filed, or they will be granted automatically.¹⁰

5. The VDPS filed its certification on November 19, 2012, and supplemented its certification on February 4, 2013 and again on February 12, 2013.¹¹ The VDPS explains that to enroll in the Lifeline program in Vermont, subscribers submit Lifeline applications to the Vermont Department of Children and Families (VDCF).¹² ETCs are not permitted to submit certifications on behalf of subscribers.¹³ The VDCF performs a check of state systems to determine if the prospective subscriber (1) is receiving a benefit that qualifies the subscriber for Lifeline; and (2) is already receiving a Lifeline benefit.¹⁴ The VDCF performs this check within one business day of receiving the application.¹⁵ ETCs can proactively

⁵ *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking To Opt Out Of The National Lifeline Accountability Database*, WC Docket No. 11-42 *et al.*, CC Docket No. 96-45, Public Notice, 27 FCC Rcd 12321 (Wireline Comp. Bur. 2012) (*Guidance PN*).

⁶ *See Lifeline Reform Order*, 27 FCC Rcd at 6737-46, 6747-52, paras. 188-208, 212-20. An opt out request will only be granted when a state demonstrates it has systems that cover all ETCs operating in the state and all subscribers of those ETCs. The opt out request must itemize with particularity the functions of its system that correspond to the federal processes adopted in the *Lifeline Reform Order*. *See id.* at 6752, para. 221; *Guidance PN*, 27 FCC Rcd at 12322.

⁷ *See Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221.

⁸ *See Guidance PN*, 27 FCC Rcd at 12321-22.

⁹ *See* Petition of the State of California Public Utilities Commission and the People of the State of California to Opt Out of National Lifeline Accountability Database, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Dec. 3, 2012); Petition of the Puerto Rico Telecommunications Board to Opt Out of the National Lifeline Accountability Database, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Nov. 30, 2012); Petition and Certification of the Public Utility Commission of Oregon to Opt-Out of the National Lifeline Database, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Nov. 30, 2012); Amendment to the Petition To Opt-Out of the National Database Pursuant to CFR 47 § 54.404(a) by the Public Utility Commission of Texas, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Nov. 16, 2012) (amending Petition To Opt-Out of the National Database Pursuant to CFR 47 § 54.404(a) by the Public Utility Commission of Texas; WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45 (filed Sept. 16, 2012)); *see also Wireline Competition Bureau Seeks Comment on State Certifications to Opt-Out of the National Lifeline Accountability Database*, WC Docket Nos. 11-42 *et al.*, CC Docket No. 96-45, Public Notice, 27 FCC Rcd 15274 (Wireline Comp. Bur. 2012).

¹⁰ *See Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221.

¹¹ *See supra* n.1.

¹² *See* Amendment at 2.

¹³ *See id.* at 5.

¹⁴ *See id.*

¹⁵ *See id.*

contact the VDCF thereafter to determine if the subscriber's application has been accepted or rejected.¹⁶ However, ETCs are not permitted to interact directly with the VDCF system due to state privacy restrictions.¹⁷ If the ETC does not proactively contact the VDCF regarding a subscriber's enrollment status, ETCs will learn prospective subscribers' enrollment status from a monthly VDCF report.¹⁸ In addition, on a monthly basis, the VDCF and ETCs exchange information so that any additions, disconnections, account, name or address changes are recorded on the ETCs' and the state's systems.¹⁹ While the system has not yet received Lifeline enrollment applications from prospective subscribers of prepaid wireless providers, the VDPS explains that two prepaid wireless providers have recently been designated as ETCs by the state, and there is an additional pre-paid wireless designation application pending.²⁰ The VDPS states that the Vermont system has the capacity to handle the applications from subscribers of such providers, and that it has signed memorandums of understanding with both providers to utilize the Vermont system.²¹

III. DISCUSSION

6. The Bureau finds that, subject to the conditions explained below, the VDPS has demonstrated that its system is comprehensive and at least as robust as the system adopted by the Commission, and is capable of detecting and eliminating duplicative support. The Commission appreciates the efforts of states that have moved proactively against waste by implementing a system to check for subscriber eligibility and duplicative support.²² We find that the public interest would be served by allowing Vermont to continue these efforts through its state-specific system.

7. Despite the inability of Vermont's system to immediately respond to an ETC query as to whether a prospective subscriber is already receiving Lifeline service, we do not find that this limitation prevents the Vermont system from being as "robust" as the national system.²³ As an initial matter, state privacy restrictions make it infeasible for Vermont to create a process that would permit ETCs to query the Vermont system for duplicates and receive an immediate response.²⁴ Moreover, we do not expect this one difference in capability to make the system any less able to detect and eliminate duplicative Lifeline support. We also note that the Vermont system has the ability to check for subscriber eligibility.²⁵ The VDPS states that, absent the approval of its opt out certification, it would no longer be able to perform this eligibility function.²⁶ As the Commission explained in the *Lifeline Reform Order*, eligibility

¹⁶ See *id.*

¹⁷ See *id.* at 8 (no ETC has direct access to the state databases); Vermont Letter (explaining privacy restrictions).

¹⁸ See Amendment at 4.

¹⁹ See *id.* at 3.

²⁰ See *id.*

²¹ See *id.* at 3-4.

²² See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221.

²³ In the *Lifeline Reform Order*, the Commission concluded that the national database "must be capable of providing verification *upon query* from an eligible querying party whether a prospective subscriber is currently receiving Lifeline support." *Id.* at 6741-42, para. 199 (emphasis added). This capability allows "ETCs [to be able] to determine if a prospective subscriber is already receiving a Lifeline benefit at the time the prospective subscriber requests service or seeks a Lifeline benefit from that ETC." *Id.*; see also *Guidance PN*, 27 FCC Rcd at 12322 (requiring opt out requests to demonstrate that a state's system includes a means "to query the system prior to enrolling the subscriber" and "has a means of verifying a subscriber's identity at the time a system query is made").

²⁴ See Vermont Letter.

²⁵ See Amendment at 9.

²⁶ See *id.* at 8.

databases provide substantial benefits to both consumers and ETCs.²⁷ Under these circumstances, we find that, subject to the conditions described below, Vermont has demonstrated that its system is comprehensive and at as least as robust as the national system.

8. The Bureau is concerned, however, that ETCs in Vermont may have to wait for a month for notice from the VDCF that a prospective subscriber has been successfully enrolled in Lifeline or rejected due to duplicative support.²⁸ This substantial delay may cause administrative problems for ETCs and prospective subscribers. Although ETCs may contact the VDCF to determine the status of a subscriber's application one business day after the VDCF receives the application, the VDPS has not adequately demonstrated that this procedure is capable of handling large volumes. Therefore, subscribers may not know for up to a month after their applications whether they can receive Lifeline phone service. We conclude that, for Vermont's system to be as robust as the national database, it must be capable of affirmatively notifying ETCs of whether a subscriber's Lifeline application has been accepted, or rejected due to duplicative support within five business days of the VDCF receiving the prospective subscriber's Lifeline application.

9. Therefore, the Bureau conditions approval of the VDPS national database opt out certification on the establishment of a means of affirmatively providing ETCs in Vermont with electronic notice of whether a prospective subscriber has been accepted, or rejected due to duplicative support, within five business days of the VDCF receiving the prospective subscriber's Lifeline application.²⁹ The VDPS must file with the Bureau a description of this process by June 1, 2013, have the process in place by August 1, 2013, and confirm in writing to the Bureau by August 10, 2013 that the process is in place and operational. If the VDPS does not comply with these conditions, its certification will be deemed denied without any further action by the Bureau.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority delegated in sections 0.91, 0.291, and 54.404 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.404, and in paragraph 221 of FCC 12-11, the certification filed by the Vermont Department of Public Service IS CONDITIONALLY GRANTED as described above.

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

²⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6753, para. 223.

²⁸ See Amendment at 4.

²⁹ We note that the VDCF makes a determination of whether the applicant is already receiving support from another ETC within one business day of receiving a Lifeline application. See *id.* at 5. We therefore encourage the VDPS to establish a process to provide notice to ETCs of duplicative support in less than five business days after the VDCF receives an application.