

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

In the Matter of)
Lifeline and Link Up Reform and)
Modernization) WC Docket No. 11-42
Puerto Rico Telephone Company's Emergency)
Petition for Temporary Waiver of 2012 Lifeline)
Eligibility Recertification Deadline)

ORDER

Adopted: January 25, 2013

Released: January 25, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver from sections 54.405(e)(4) and 54.410(f) of the Commission's rules... The Bureau grants PRTC a limited, 20-day extension to complete the 2012 recertification process and waives the requirement that PRTC de-enroll subscribers that did not recertify by December 31, 2012 for those subscribers that subsequently completed a certification by January 20, 2013.

II. BACKGROUND

A. Annual Lifeline Recertification Reporting Requirements

2. 2012 Recertification Requirement. In the Lifeline Reform Order, the Commission adopted a set of uniform recertification procedures that all Eligible Telecommunications Carriers (ETCs) must

1 47 C.F.R. §§ 54.405(e)(4), 54.410(f).

2 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, 6715-16, paras. 130-32 (Lifeline Reform Order).

3 Puerto Rico Telephone Company's Emergency Petition for Temporary Waiver of 2012 Lifeline Eligibility Recertification Deadline, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Dec. 26, 2012) (PRTC Petition).

4 See 47 C.F.R. 54.405(e)(4).

5 See Lifeline Reform Order, 27 FCC Rcd at 6715-16, 6897, paras. 130-32, App. C; 47 C.F.R. §§ 54.505(e)(4), 54.410(f).

perform annually to verify the ongoing eligibility of their Lifeline subscribers.⁶ Section 54.410(f) requires that ETCs annually recertify the eligibility of their subscribers.⁷ 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).⁸ The 2012 recertification requirement was intended to work in lock step with the new certification of eligibility requirements established in the *Lifeline Reform Order*.⁹ 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 (database).¹⁰ The requirement for ETCs to annually recertify their Lifeline subscribers ensures that only eligible subscribers remain in the program.¹¹ 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.¹²

3. 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).¹³ 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 subscriber an individual certification for each requirement set forth in the rule.”¹⁴ 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.¹⁵ 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.¹⁶ If an ETC or state

⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6714-22, paras. 129-48; 47 C.F.R. § 54.410(f).

⁷ See 47 C.F.R. § 54.410(f).

⁸ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132; 47 C.F.R. § 54.416(b).

⁹ See *Lifeline Reform Order*, 27 FCC Rcd 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.

¹⁰ *Id.*

¹¹ See *id.* at 6717, para. 135.

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

¹³ See 47 C.F.R. § 54.410(f)(2)(iii), 54.410(f)(3)(iii); *Lifeline Reform Order*, 27 FCC Rcd at 6715, 6897, para. 130, App. C.

¹⁴ *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. Electronic signatures may be used to satisfy the recertification requirement.

¹⁵ 47 C.F.R. § 54.405(e)(1).

¹⁶ See 47 C.F.R. § 54.419; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130. 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). *Lifeline Reform Order*, 27 FCC Rcd at 6716, para. 132. 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

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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.¹⁷

4. Each ETC must report the results of its recertification process to the Commission and USAC by January 31, 2013, using FCC Form 555.¹⁸ 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.¹⁹

B. PRTC Petition for Waiver

5. PRTC sought a limited, 20-day waiver, until January 20, 2013, to complete the 2012 Lifeline recertification process for subscribers that did not respond to PRTC’s attempts to recertify them by December 31, 2012.²⁰ In addition, PRTC sought a limited, 20-day extension of the date by which it must de-enroll subscribers who did not respond to PRTC’s recertification attempts.²¹ PRTC argued that a limited, temporary waiver of these requirements is necessary due to circumstances unique to Puerto Rico. According to PRTC, the Puerto Rico Telecommunications Regulatory Board (TRB) annual renewal process coincides with the timing of the Commission’s recertification process.²² The TRB process required many PRTC subscribers to provide proof of eligibility and make many of the certifications required by section 54.410(d).²³ PRTC argued that consumers did not respond to recertification requests because of the TRB process.²⁴ PRTC proposed to not seek reimbursement from the Universal Service Fund for support in January for any subscribers that did not complete the recertification process by

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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.

¹⁷ 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.

¹⁸ 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*, 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*).

¹⁹ *Recertification Reminder PN*, 27 FCC Rcd at 12328.

²⁰ In its petition, PRTC sought waiver for approximately half of its over 134,000 subscribers. See PRTC Petition at 3. Approximately 47,000 of its subscribers had not completed the recertification process by December 31, 2012 and are subject to the waiver request. See Letter from Thomas J. Navin, Counsel for PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed Jan. 10, 2013) (Jan. 10 *ex parte*).

²¹ See PRTC Petition at 4; 47 C.F.R. § 54.405(e)(4).

²² See Jan. 10 *ex parte* at 2.

²³ See *id.* In addition, a number of subscribers who were mistakenly de-enrolled by PRTC earlier in the year had to re-apply, recertify and provide proof of eligibility at the time of re-enrollment. See *id.*

²⁴ See *id.*

January 20, 2013.²⁵ In addition, PRTC proposed to obtain the necessary consent from its subscribers to provide information to the database by July 31, 2013 if the TRB's petition to opt out of the database is not granted.²⁶

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.²⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁹ 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.³⁰

7. The Bureau finds that good cause exists to grant to PRTC a limited waiver, until January 20, 2013, of sections 54.405(e)(4) and 54.410(f) of the Commission's rules³¹ and the 2012 recertification requirement set forth in the *Lifeline Reform Order*.³² Given the limited scope of the waiver and in light of the timing of the annual TRB recertification process, we find that a waiver would serve the public interest under these circumstances. We accept PRTC's representation that many of its subscribers may have been confused by the overlap between the TRB and FCC processes, and we find that in these unique circumstances, it would serve the public interest to allow an additional 20 days for PRTC to complete the recertification process.³³ PRTC subscribers who completed the recertification process by January 20, 2013 are not required to be de-enrolled from Lifeline. Subscribers that did not recertify by January 20, 2013 must be de-enrolled from Lifeline, and support cannot be sought for those subscribers for the month of January.³⁴

²⁵ See Letter from Thomas J. Navin, Counsel for PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (filed Dec. 31, 2012).

²⁶ See Letter from Thomas J. Navin, Counsel for PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed Jan. 24, 2013) (Jan. 24 *ex parte*) (committing to obtaining the necessary consent to transmit the information to the database by July 31, 2013); The Telecommunications Regulatory Board of Puerto Rico's Petition To Opt Out Of the National Lifeline Accountability Database, WC Docket No. 11-42, CC Docket No. 96-45 (filed Nov. 30, 2012).

²⁷ 47 C.F.R. § 1.3.

²⁸ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁰ See *Northeast Cellular*, 897 F.2d at 1166.

³¹ 47 C.F.R. §§ 54.405(e)(4), 54.410(f).

³² Puerto Rico Telephone Company's Emergency Petition for Temporary Waiver of 2012 Lifeline Eligibility Recertification Deadline, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45 (filed Dec. 26, 2012) (PRTC Petition).

³³ See Jan. 10 *ex parte* at 3-4 (noting a jump in the number recertification forms received since the petition was filed).

³⁴ See 47 C.F.R. 54.405(e)(4); see also Jan. 10 *ex parte* at 1 (committing to not seek reimbursement for subscribers that fail to recertify by January 20).

8. We condition this waiver on PRTC's commitment to not seek reimbursement for January for any subscriber who did not complete the recertification process by January 20, 2013.³⁵ In addition, PRTC must, by July 31, 2013, obtain consent from all its subscribers to submit the required personal information to the database.³⁶ Consistent with the Commission's determination in the *Lifeline Reform Order* regarding the collection of required personal information,³⁷ PRTC may obtain such consent using a written format, text messages, or IVR.

IV. ORDERING CLAUSES

9. Accordingly, 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 Puerto Rico Telephone Company IS GRANTED AND CONDITIONED as described above.

10. 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

³⁵ Subscribers who failed to recertify by January 20, 2013 and who wish to continue to receive Lifeline benefits from PRTC or another ETC must re-enroll in Lifeline, make the necessary certifications and provide proof of eligibility.

³⁶ See Jan. 24 *ex parte*. If the Bureau grants TRB's request to opt out of the database, the condition that PRTC must obtain consent from its subscribers to transmit the required information to the database will not be applicable.

³⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, para. 132.