

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
Telecommunications Carriers Eligible for Universal) WC Docket No. 09-197
Service Support)
Connect America Fund) WC Docket No. 10-90

ORDER

Adopted: December 18, 2017

Released: December 18, 2017

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part the Michigan Public Service Commission’s (Michigan) request to extend an existing waiver giving Michigan additional time to implement Lifeline federal eligibility program changes in sections 54.400(j) and 54.409(a) of the Commission’s rules.1 Based on the record before us, we find that good cause exists to extend the waiver through the earlier of June 30, 2018, or the date on which Michigan has aligned its eligibility criteria with the Commission’s Lifeline eligibility rules and updated its eligibility database accordingly.

2. In the 2016 Lifeline Order, the Commission adopted changes to the Lifeline program’s eligibility rules.2 These changes took effect on December 2, 2016 and included removing certain federal programs as qualifying programs for Lifeline eligibility;3 adding the Veterans and Survivors Pension Benefit as a qualifying program;4 and removing state-specific Lifeline eligibility criteria.5 These changes were made to simplify enrollment in the Lifeline program, to focus enrollment on the most highly-used eligibility programs, and to foster long-term technical solutions with the National Verifier.6

3. Michigan maintains a database that allows ETCs to determine subscriber eligibility for the Lifeline Program.7 In December 2016, the Bureau provided Michigan a waiver until December 31,

1 Request for Lifeline Waiver Extension for Michigan, WC Docket Nos. 11-42 et al. (filed Nov. 30, 2017) (Michigan Extension Request). See also Lifeline and Link Up Reform and Modernization, Order, 31 FCC Rcd 12718, 12718, para. 1 (WCB 2016) (Waiver Order). The Waiver Order did not waive the inclusion of the Veterans and Survivors Pension Benefit Program as a qualifying program. Id. at 12719, para. 2.

2 Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4021-40, paras. 167-216 (2016) (2016 Lifeline Order).

3 Id. at 4021, para. 167.

4 Id.

5 Id. at 4038, para. 212.

6 Id. at 4022, para. 168.

7 Waiver Order, 31 FCC Rcd at 12726, para. 23.

2017 to implement the streamlined federal eligibility criteria.⁸ In support of the original waiver request, Michigan stated that technical changes would be required to update the Michigan Lifeline Eligibility Database (MLED) and that the Michigan legislature would also need to make statutory eligibility changes.⁹ Michigan also provided information on the potential costs of updating the MLED.¹⁰

4. On November 30, 2017, Michigan filed another request asking that the Bureau extend the previously granted waiver until December 31, 2018 to allow more time for a legislative fix and to make necessary changes to the MLED.¹¹ On December 11, 2017, Michigan submitted an *ex parte* stating that it needed the entire year extension because any final legislative changes would not be made until after November 2018.¹² The Telecommunications Association of Michigan filed a letter supporting Michigan's request.¹³

5. Generally, the Commission's rules may be waived for good cause shown.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ 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.¹⁷

6. We find there is good cause to extend the Bureau's previously granted waiver for Michigan through June 30, 2018, or until Michigan has aligned its eligibility criteria with the Commission's Lifeline eligibility rules and updated its eligibility database accordingly, whichever is sooner. Michigan's database does not provide ETCs with the specific program that qualified the subscriber for Lifeline.¹⁸ As a result, an ETC relying on Michigan's database would risk enrolling a customer who is only eligible for the Michigan state subsidy but not for the federal subsidy. Accordingly, absent a waiver, ETCs in Michigan would need to manually verify every potential subscriber's eligibility for the federal Lifeline discount. Rendering Michigan's eligibility database unusable could create

⁸ *Waiver Order*, 31 FCC Rcd at 12726, para. 23.

⁹ *Waiver Order*, 31 FCC Rcd at 12722, para. 10; Comments of the Michigan Public Service Commission, WC Docket No. 11-42 et al., at 3, 5 (filed Oct. 21, 2016).

¹⁰ *Waiver Order*, 31 FCC Rcd at 12722, para. 10; Comments of the Michigan Public Service Commission, WC Docket No. 11-42 et al., at 4 (filed Oct. 21, 2016).

¹¹ Michigan Extension Request at 3.

¹² Letter from Sally A. Talberg, Chairman, Michigan Public Service Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Dec. 11, 2017). Michigan further states that “[d]uring 2017, there have been discussions among interested stakeholders, but nothing formal has yet been drafted or introduced by the Legislature” and describes its discussions with the Universal Service Administrative Company (USAC) concerning the “possible creation of a new database or access to an existing database to be used by USAC to verify federal eligibility of consumers.” *Id.* at 1-2.

¹³ Letter from Michael A. Holmes, General Counsel, Telecommunications Association of Michigan, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 3 (filed Dec. 7, 2017) (Agreeing with Michigan's assertions that the inconsistencies in Michigan's state statutory eligibility criteria and the federal eligibility criteria will *inter alia* “increase the administrative burden for Lifeline providers and the state level administrators (like TAM) of Lifeline programs”).

¹⁴ 47 CFR § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ See Michigan Extension Request at 2-3.

significant burdens on consumers and ETCs and introduce substantial inefficiency to the enrollment and eligibility determination process, and would also undermine the state's investment in an eligibility verification database. We accordingly find that the potential harm that could result from failing to extend the Bureau's previously-granted waiver for Michigan outweighs the desire to bring about these eligibility changes sooner. Based on the record, extending the waiver for this period will have minimal financial impact on the Fund.¹⁹

7. At the same time, we decline to grant Michigan's request to extend the waiver through December 31, 2018.²⁰ We find that based on the record before us, continuing the Bureau's waiver for Michigan through June 30, 2018 at the latest is an appropriate extension that provides Michigan sufficient additional time to make the changes necessary to implement the federal eligibility criteria while ensuring the eligibility changes are not unreasonably delayed.

8. Additionally, we clarify that if Michigan does not update its database such that ETCs may rely on that database to determine whether a consumer is eligible for Lifeline under the revised federal eligibility rules by June 30, 2018,²¹ ETCs will be responsible for ensuring that subscribers enrolled or recertified after that date are eligible under the Commission's revised eligibility criteria. As in other states, ETCs may elect to rely on the Universal Service Administrative Company (USAC) to conduct the eligibility recertification process. We also direct USAC to conduct outreach to ETCs operating in Michigan so that they may be prepared to conduct eligibility determinations without relying on Michigan's eligibility database if that database is not updated by the expiration of this waiver period.

9. 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 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that the request for Lifeline waiver extension filed by the Michigan Public Service Commission is GRANTED IN PART and DENIED IN PART.

10. 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 CFR §§ 0.91, 0.291, 1.3, that sections 54.400(j) and 54.409(a) of the Commission's rules, 47 CFR §§ 54.400(j) and 54.409(a) ARE WAIVED to the limited extent provided herein.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

¹⁹ Letter from Sally A. Talberg, Chairman, Michigan Public Service Commission, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Dec. 11, 2017) (stating that based on generalizing USAC national eligibility program data to Michigan, "[t]he financial impact appears to be minimal if Michigan's waiver were extended one year.").

²⁰ Michigan Extension Request at 3.

²¹ We note that Michigan's eligibility database can satisfy the revised eligibility rules by informing ETCs whether a prospective subscriber is eligible for the federal Lifeline benefit under the revised eligibility criteria even if the database does not inform the ETC of the specific program through which the subscriber's eligibility was verified.

