

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

ORDER

Adopted: November 16, 2018

Released: November 16, 2018

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants the petition filed by the Florida Public Service Commission (Florida PSC) on October 30, 2018 requesting a temporary four-month waiver of the Lifeline program's non-usage and recertification rules for subscribers in 12 counties in Florida affected by Hurricane Michael starting October 10, 2018.

2. On October 10, 2018, Hurricane Michael made landfall on the Florida Panhandle as a high-end Category 4 hurricane. The Federal Emergency Management Agency (FEMA) subsequently designated the counties of Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Taylor, Wakulla, and Washington to be eligible for individual assistance through the agency's programs.

1 See Florida Public Service Commission Petition for Temporary Waiver, WC Docket No. 11-42 (filed Oct. 30, 2018) (Petition). The counties included in Florida's request are: Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Taylor, Wakulla, and Washington. Petition at 1-3.

2 Id., at 1.

3 Petition at 1; FEMA, Florida Hurricane Michael (DR-4399), https://www.fema.gov/disaster/4399 (last visited Nov. 16, 2018).

4 Petition at 1; Florida Division of Emergency Management, October 11, 2018 News Release, isasterhttps://www.floridadisaster.org/news-media/news/20181011-gov.-scott-president-trump-declares-major-disaster-in-florida-as-state-responds-to-hurricane-michael/.

5 Florida Division of Emergency Management, Shelter Status, https://www.floridadisaster.org/shelter-status/ (last visited Nov. 16, 2018).

6 Florida PSC, Hurricane Season Power Outage Reports for November 6, 2018, http://www.psc.state.fl.us/Home/HurricaneReport (showing that the power was reported as fully restored in the affected counties on Nov. 6, 2018).

3. In its petition, the Florida PSC requests a four-month waiver of the Commission's non-usage and recertification rules for the aforementioned 12 counties.⁷ The Florida PSC argues that a waiver of the non-usage rules is justified because subscribers may not have been able to use their Lifeline-supported service during the evacuation or their phones may be inoperable due to extended power and cell site outages.⁸ The Florida PSC contends that a temporary waiver limited to the 12 Florida counties named in its petition would enable continued service for those low-income subscribers who may need to replace mobile devices lost or destroyed during the hurricane or to re-establish communications services.⁹

4. The Florida PSC also argues that a temporary waiver of the recertification rules is justified because recertification packets sent prior to the hurricane may have been destroyed or may not be deliverable to residents who needed to relocate. Additionally, Lifeline subscribers seeking to complete their recertification online may lack broadband access.¹⁰

5. Generally, the Commission's rules may be waived for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹³ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁴

6. To help facilitate continued access to telecommunications services for those in the identified Florida counties, we find that it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules for four months in the 12 aforementioned counties. Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service within 30 days. A temporary waiver of these rules will help Lifeline-supported consumers in the counties hardest hit by the hurricane retain access to emergency communications services and allow ETCs to continue providing Lifeline service to residents of these counties without requiring them to de-enroll and re-enroll impacted Lifeline subscribers in the program just as those subscribers are continuing to recover from the devastation of Hurricane Michael. After the expiration of this waiver period, Lifeline subscribers in these 12 counties who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission's rules before being subject to de-enrollment from the program. To the extent subscribers in the 12 counties were de-enrolled or not claimed for support during the relevant waiver period, ETCs may claim federal Lifeline support for qualifying service provided during the waiver period and continue providing Lifeline-supported service to impacted subscribers.

7. We also find good cause to temporarily waive for four months the recertification requirements in sections 54.405(e)(4) and 54.410(f) of the Commission's rules for ETCs with subscribers in the affected 12 Florida counties, for all subscribers whose service anniversary dates fall between October 10, 2018 and February 10, 2019.¹⁵ Waiver of these rules will allow ETCs serving Lifeline subscribers in those counties additional time to complete the recertification process. Damage to

⁷ Petition at 1.

⁸ *Id.*, at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 CFR § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *Id.*, 897 F.2d at 1166.

¹⁴ *Id.*

¹⁵ Petition at 2-3.

residential buildings and infrastructure due to the hurricane makes it difficult, if not impossible, for Lifeline subscribers to receive and respond to mailed recertification forms from ETCs or from USAC.¹⁶ At the expiration of the waiver period, subscribers in those counties whose service anniversary dates fell during the waiver period will have 60 days to respond to their ETC's recertification efforts. Subscribers whose anniversary date falls within the waiver period but who have already recertified their eligibility, or are recertified through an eligibility database, are not required to undergo an additional recertification at the end of the waiver period; subscribers who had previously de-enrolled from the program, however, must re-enroll pursuant to the Commission's rules.

8. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs, including the Lifeline program. Although we grant the limited waivers of our Lifeline rules described herein, service providers remain otherwise subject to audits and investigations to determine compliance with USF program rules and requirements. We will require USAC to recover funds that we discover were not used properly through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

9. ACCORDINGLY, IT IS ORDERED, that 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, and 1.3, that the request for waiver filed by the Florida Public Service Commission IS GRANTED.

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, and 1.3, that sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules, 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) 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

¹⁶ See *id.*, at 2.