

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: February 9, 2018

Released: February 9, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part the California Public Utilities Commission's (CPUC) two petitions requesting temporary waivers of the Lifeline program's non-usage and recertification rules for subscribers in thirteen counties affected by the California wildfires that occurred in October and December 2017.1 Based on the record before us, we find that good cause exists to temporarily waive these rules and deadlines, as provided herein, to assist Lifeline program participants in the areas affected by the recent California wildfires.2

II. BACKGROUND

2. In October 2017, multiple wildfires broke out in Northern California throughout Butte, Mendocino, Napa, Nevada, Solano, Sonoma, Lake, Orange, and Yuba counties. These fires caused 42 deaths, damaged or destroyed 8,700 structures, and burned 227,000 acres.3 In its Petition, the CPUC states that the fires also caused power outages and damage to communications services.4 The Governor of California declared a state of emergency in the aforementioned counties and shortly thereafter, on October 10, the Federal Emergency Management Agency (FEMA) declared these counties as major disaster areas.5

3. With respect to these fires, the CPUC requests a four-month suspension of the Commission's non-usage rules for Lifeline subscribers residing in the affected counties. The CPUC contends that a

1 See Petition of the California Public Utilities Commission for Temporary Waiver, WC Docket No. 11-42, at 1 (filed Nov. 8, 2017) (Petition) (listing Butte, Mendocino, Napa, Nevada, Solano, Sonoma, Lake, Orange, and Yuba counties as the affected counties); and Supplement to Petition of the California Public Utilities Commission for Temporary Waiver, WC Docket No. 11-42, at 1 (filed Dec. 21, 2017) (Supplemental Petition) (listing Los Angeles, Santa Barbara, San Diego, and Ventura counties as additional affected counties). See generally Jennifer Medina, Scenes of Devastation from California's Latest Wildfire, New York Times (Dec. 5, 2017), https://www.nytimes.com/2017/12/05/us/california-wildfire-ventura.html

2 See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f).

3 Petition at 1-2; see also CAL FIRE, California Statewide Fire Summary (Oct. 30, 2017), http://calfire.ca.gov/communications/communications_StatewideFireSummary

4 Petition at 1-2.

5 Id. at 2 (citing Office of Governor, Governor Brown Issues Executive Order to Help Cut Red Tape, Expedite Recovery Efforts in Communities Impacted by Wildfires (Oct. 18, 2017), https://www.gov.ca.gov/2017/10/18/news20035/); see also FEMA, California Wildfires (DR-4344), https://www.fema.gov/disaster/4344 (last visited Feb. 1, 2018).

temporary waiver would enable continued communications service for those who may need to replace mobile devices lost or destroyed in the fires or to re-establish communications services.⁶

4. CPUC also requests a temporary waiver of the Commission's Lifeline recertification requirements for Lifeline subscribers residing in the affected counties.⁷ California Lifeline Program recertification forms are typically delivered by mail to the subscriber's original service address.⁸ The CPUC argues that if a subscriber had to relocate if his or her house was damaged or destroyed in the fires, the subscriber would have no way to receive the recertification forms.⁹ Moreover, recertification forms already delivered to subscribers during the requested waiver period could have been lost or destroyed in the fires before the subscriber had an opportunity to return them.¹⁰ Accordingly, the CPUC requests that the Commission's renewal and recertification rules be temporarily waived for subscribers living in counties impacted by the October 2017 wildfires and whose service anniversary dates fall between October 1, 2017 and January 31, 2018.¹¹ The CPUC requests that those subscribers receiving a waiver be permitted to begin their recertification process again on February 1, 2018.¹²

5. In December 2017, several counties in Southern California – Los Angeles, Santa Barbara, San Diego, and Ventura – were also affected by wildfires, which caused power outages, disruptions to communications services, and destroyed thousands of structures.¹³ The Governor of California declared a state of emergency for these four counties and FEMA issued an emergency declaration for the area on December 8, 2017.¹⁴ Similar to its initial Petition, the CPUC's Supplemental Petition seeks a waiver of the Commission's non-usage and recertification rules until March 31, 2018 for the four additional counties, citing the destruction that the December 2017 fires caused in those areas.¹⁵

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹⁸ We grant in part the petitions for waiver of the Commission's non-usage and recertification rules and target our relief to areas most likely to have sustained damage from the wildfires.

7. Together, the petitions request a four-month-waiver of the Commission's Lifeline program's non-usage and recertification rules for thirteen counties affected by the October and December 2017

⁶ Petition at 2-3.

⁷ See 47 CFR §§ 54.405(e)(4) and 54.410(f).

⁸ Petition at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2-3.

¹² *Id.* at 4.

¹³ Supplemental Petition at 1-2.

¹⁴ *Id.* (citing FEMA, California Wildfires (EM-3396), <https://www.fema.gov/disaster/3396> (last visited Feb. 1, 2018)).

¹⁵ *Id.*

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

wildfires in California.¹⁹ Based on the record before us, we find that good cause exists to waive through February 15, 2018 sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for all ETCs serving Lifeline subscribers residing in the Census tracts identified as affected by the October 2017 wildfires that are the subject of the Petition, as listed in Appendix B to this Order.²⁰ We also waive through March 31, 2018 sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for all ETCs serving Lifeline subscribers residing in the Census tracts identified as affected by the December 2017 wildfires that are the subject of the Supplemental Petition, as listed in Appendix C to this Order.

8. These Census tracts coincide with the areas identified by the California Department of Forestry and Fire Protection (CAL FIRE) as impacted by the October and December 2017 California wildfires and the counties requested by the CPUC.²¹ CAL FIRE tracks all major incidents where resources are deployed and identifies coordinating local and federal administrative units. Based on its analysis of the CAL FIRE maps, the Bureau estimates that approximately 12,000 Lifeline subscribers reside in these areas. Given the extraordinary damage caused by these wildfires, strict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers during the recovery efforts to rebuild in the aftermath of the fires.

9. To promote the maintenance and rebuilding of communities affected by the wildfires and to facilitate continued access to telecommunications services for disaster victims, we find good cause to temporarily waive the usage requirements in sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules for ETCs with subscribers in the Census tracts identified in Appendix B and Appendix C of this Order. 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 for 30 consecutive days.²² A temporary waiver of these rules will help Lifeline-supported consumers retain access to emergency communications services during this disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the affected areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to rebuild from the devastation of these wildfires. After the expiration of the waiver periods specified in Appendix A of this Order, Lifeline subscribers 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 that subscribers 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.

10. We also find good cause to temporarily waive the recertification requirements in sections 54.405(e)(4) and 54.410(f) of the Commission's rules for ETCs with subscribers in the Census tracts identified in Appendix B of this Order whose service anniversary dates fall on or between October 1, 2017 and January 31, 2018; and subscribers in the Census tracts identified in Appendix C of this Order whose service anniversary dates fall on or between December 1, 2017 and March 31, 2018.²³ Waiver of these rules will allow ETCs serving Lifeline subscribers in these areas additional time to complete the recertification process for those subscribers most likely to have been impacted by the wildfires. Damage

¹⁹ Petition at 1; Supplemental Petition at 1-2.

²⁰ We grant this temporary waiver for two additional weeks beyond the time period requested in the Petition to allow the CPUC to update its procedures and give any necessary guidance to impacted ETCs.

²¹ CAL FIRE, a California state agency, releases maps identifying the areas in the state that were impacted by wildfires based on its incident information database. *See* CAL FIRE, California Statewide Fire Map, <http://www.calfire.ca.gov/general/firemaps> (last visited Feb. 5, 2018); CAL FIRE, Incident Information, http://cdfdata.fire.ca.gov/incidents/incidents_archived (last visited Feb. 5, 2018).

²² *See* Petition at 1; Supplemental Petition at 1-2.

²³ 47 CFR §§ 54.405(e)(4), 54.410(f). *See also* Appendix A.

to residential buildings and infrastructure resulting from the wildfires will make it difficult, if not impossible, for Lifeline subscribers to receive and respond to mailed recertification forms from the California LifeLine Program.²⁴ At the expiration of the waiver period, we expect that the California LifeLine administrator will begin recertification efforts promptly, as described in the Petition and Supplemental Petition. Any subscriber whose anniversary date falls within the waiver period but has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period.

11. While the Bureau acknowledges the magnitude of the October and December 2017 California wildfires, the Bureau finds that the CPUC's request for waivers on a countywide basis is overly broad and would likely encompass hundreds of thousands of Lifeline subscribers who were not personally impacted by the wildfires. By the CPUC's own estimation, granting the requested waivers on a countywide basis would encompass a total of 1.54 million Lifeline subscribers,²⁵ but neither the CPUC's submissions nor external sources indicate that that number of consumers have been evacuated, lost communications services, or otherwise have been impacted by the wildfires so significantly as to justify a waiver of the rules. The Bureau finds that limiting relief to subscribers in the Census tracts corresponding to the areas identified by CAL FIRE as being at least partially impacted by the wildfires would target relief to those who were most likely to be impacted by the wildfires and for whom relief would be needed.

12. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Although we grant the limited waivers described herein, service providers remain otherwise subject to audits and investigations to determine compliance with USF Program rules and requirements. We will require the Universal Service Administrative Company (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 Lifeline program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 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 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f), of the Commission's rules are waived to the limited extent provided herein.

14. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 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 California Public Utility Commission IS GRANTED IN PART AND DENIED IN PART to the extent provided herein.

²⁴ See Petition at 2-3; Supplemental Petition at 2.

²⁵ See Petition at 1; Supplemental Petition at 2.

15. 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

APPENDIX A**Application of Temporary Waiver of Non-Usage Rules**

Geographic Area	Non-Usage Waiver Period
Appendix B Census tracts	October 1, 2017 – February 15, 2018
Appendix C Census tracts	December 1, 2017 – March 31, 2018

Application of Temporary Waiver of Recertification Rules

Geographic Area	Subscriber Anniversary Date	Recertification Process Begins
Appendix B Census tracts	October 1, 2017 – January 31, 2018	February 15, 2018
Appendix C Census tracts	December 1, 2017 – March 31, 2018	April 1, 2018

APPENDIX B

Census Tracts for October 2017 Wildfires Waiver Period

Census Tract	County
06007001600	Butte
06007002100	Butte
06007002200	Butte
06007002500	Butte
06007003300	Butte
06007003700	Butte
06033000600	Lake
06033000701	Lake
06033000702	Lake
06045010600	Mendocino
06045010801	Mendocino
06045010802	Mendocino
06045010900	Mendocino
06055200900	Napa
06055201003	Napa
06055201102	Napa
06055201200	Napa
06055201401	Napa
06055201402	Napa
06055201403	Napa
06055201500	Napa
06055201800	Napa
06055201900	Napa
06057000200	Nevada
06057000300	Nevada
06057000401	Nevada
06057000402	Nevada
06057000502	Nevada
06059021826	Orange
06059021912	Orange
06059021917	Orange
06059021923	Orange
06059021924	Orange

Census Tract	County
06059052419	Orange
06059052420	Orange
06059075605	Orange
06095252201	Solano
06095252310	Solano
06095252903	Solano
06095252904	Solano
06097150100	Sonoma
06097150202	Sonoma
06097150303	Sonoma
06097150306	Sonoma
06097150500	Sonoma
06097150612	Sonoma
06097151309	Sonoma
06097151502	Sonoma
06097151503	Sonoma
06097151601	Sonoma
06097151602	Sonoma
06097152100	Sonoma
06097152400	Sonoma
06097152502	Sonoma
06097152600	Sonoma
06097152701	Sonoma
06097152702	Sonoma
06097152801	Sonoma
06097152802	Sonoma
06097152905	Sonoma
06097152906	Sonoma
06097153807	Sonoma
06097154100	Sonoma
06097154303	Sonoma
06115041000	Yuba
06115041100	Yuba

APPENDIX C

Census Tracts for December 2017 Wildfires Waiver Period

Census Tract	County
06037103101	Los Angeles
06037103200	Los Angeles
06037103300	Los Angeles
06037104124	Los Angeles
06037104204	Los Angeles
06037106111	Los Angeles
06037106112	Los Angeles
06037121102	Los Angeles
06037262200	Los Angeles
06037262301	Los Angeles
06037920106	Los Angeles
06037920107	Los Angeles
06037920200	Los Angeles
06037920326	Los Angeles
06037920339	Los Angeles
06037930101	Los Angeles
06037930200	Los Angeles
06037980021	Los Angeles
06037980026	Los Angeles
06073018611	San Diego
06073018700	San Diego
06073018802	San Diego
06073018803	San Diego
06073019101	San Diego
06073020903	San Diego
06073021100	San Diego
06083000501	Santa Barbara
06083000700	Santa Barbara

Census Tract	County
06083001500	Santa Barbara
06083001706	Santa Barbara
06083001800	Santa Barbara
06083001901	Santa Barbara
06083001906	Santa Barbara
06083002809	Santa Barbara
06083002932	Santa Barbara
06083003102	Santa Barbara
06111000100	Ventura
06111000200	Ventura
06111000304	Ventura
06111000400	Ventura
06111000800	Ventura
06111000901	Ventura
06111000902	Ventura
06111000903	Ventura
06111001001	Ventura
06111001002	Ventura
06111001102	Ventura
06111001204	Ventura
06111001206	Ventura
06111001700	Ventura
06111001800	Ventura
06111001900	Ventura
06111002000	Ventura
06111002102	Ventura
06111002200	Ventura
06111002300	Ventura