

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 Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

ORDER

Adopted: December 20, 2018

Released: December 20, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Since 2016, the Michigan Public Service Commission (Michigan) has requested and received a waiver and waiver extensions giving it additional time to implement the streamlined federal Lifeline eligibility criteria in sections 54.400(j) and 54.409(a) of the Commission’s rules, which originally took effect on December 2, 2016. The current waiver is scheduled to expire on December 31, 2018. Michigan has not yet implemented the current federal Lifeline eligibility criteria and has requested an additional six-month extension through June 28, 2019, to allow it and the Universal Service Administrative Company (USAC) additional time to complete work necessary to establish an automated connection between a Michigan eligibility database and the National Lifeline Eligibility Verifier (National Verifier) that will comply with the federal Lifeline eligibility criteria.¹

2. Based on the record before us, we find that good cause exists to extend the waiver through the earlier of June 28, 2019, or the date on which the National Verifier is fully launched in Michigan. As explained below, Michigan states that it has been working closely with USAC and has made significant progress on technical and legal work on a connection between the National Verifier and the state eligibility database. Accordingly, we expect that the National Verifier will launch in Michigan in the near future.

II. BACKGROUND

A. Legal Background

3. 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

¹ Request for Additional Lifeline Waiver Extension for Michigan, WC Docket Nos. 11-42 et al. (filed December 6, 2018) (Michigan Third Extension Request).

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.

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

B. Factual Background

4. Michigan maintains the Michigan Lifeline Eligibility Database (MLED), which allows Eligible Telecommunications Carriers (ETCs) to determine subscriber eligibility for the Lifeline Program.⁷ Since 2016, Michigan has requested and received several waivers from the Bureau to implement the streamlined federal Lifeline eligibility criteria.⁸ In support of its waiver requests, Michigan stated that technical changes would be required to update the MLED and that the Michigan legislature would also need to make statutory eligibility changes to update the MLED.⁹ Michigan also provided information on the potential costs of updating the MLED.¹⁰ The Bureau's most recent waiver expires on December 31, 2018.¹¹

5. On December 6, 2018, Michigan filed a request for an additional waiver extension through June 28, 2019.¹² Michigan states that it has made great progress on technical and legal work on a connection between the National Verifier and the state eligibility database¹³ and that this project "could possibly be completed sometime in the spring of 2019 and then be included in the National Verifier."¹⁴ Michigan also states that the extension would provide enough time to "complete the process with USAC to finalize the project."¹⁵ Michigan further explains that the MLED will not be aligned with the new federal eligibility criteria by December 31, 2018 because there has been no legislative movement to change the Michigan lifeline eligibility criteria, and that absent an additional waiver extension, "ETCs operating in Michigan will be required to essentially use two different methods to check the consumer eligibility" and the differences in the federal and state criteria "may create confusion for both Lifeline

⁴ *Id.*

⁵ *Id.* at 4038, para. 212.

⁶ *Id.* at 4022, para. 168.

⁷ *Lifeline and Link Up Reform and Modernization*, Order, 31 FCC Rcd 12718, 12726, para. 23 (WCB 2016) (*Waiver Order*).

⁸ *Waiver Order*, 31 FCC Rcd at 12718, para. 1; *Lifeline and Link Up Reform and Modernization*, Order, 32 FCC Rcd 10349, 10349, para. 1 (WCB 2017) (*Waiver Extension Order*); *Lifeline and Link Up Reform and Modernization*, Order, 33 FCC Rcd at 6017, 6017, para. 1 (WCB 2018) (*Second Waiver Extension Order*). The 2016 *Waiver Order* and subsequent waiver extension orders did not waive the inclusion of the Veterans and Survivors Pension Benefit Program as a qualifying program. *Waiver Order*, 31 FCC Rcd at 12719, para. 2; *Waiver Extension Order*, 32 FCC Rcd at 10349, para. 1 & n.1.

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); Request for Additional Lifeline Waiver Extension for Michigan, WC Docket No. 11-42 et al., at 2 (filed May 2, 2018); Request for Lifeline Waiver Extension for Michigan, WC Docket Nos. 11-42 et al. at 2-3 (filed Nov. 30, 2017); 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 1-2 (filed Dec. 11, 2017).

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 *Second Waiver Extension Order*, 33 FCC Rcd at 6017, para. 1.

¹² Michigan Third Extension Request at 1.

customers, as well as Michigan designated ETCs.¹⁶ The Telecommunications Association of Michigan filed a letter supporting Michigan's request for an additional waiver extension.¹⁷

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.¹⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ 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.²¹

7. We find there is good cause to extend the Bureau's previous waiver for Michigan through June 28, 2019, or until the National Verifier is fully launched in Michigan, whichever is sooner. First, we anticipate that the National Verifier will be able to establish an automated connection to the state eligibility database in Michigan before June 28, 2019 and there will not be need of any additional waivers for Michigan. In addition, Michigan's MLED database does not provide ETCs with the specific program that qualified the subscriber for Lifeline.²² As a result, an ETC relying on Michigan's MLED database would risk enrolling a customer who is only eligible for the Michigan state subsidy but not for the federal subsidy. Accordingly, absent an additional waiver extension, ETCs in Michigan would need to manually verify every potential subscriber's eligibility for the federal Lifeline discount. Rendering Michigan's MLED database unusable could open the program to additional risks of fraudulent behavior, create significant burdens on consumers and ETCs, introduce substantial inefficiency to the enrollment and eligibility determination process, and undermine the state's investment in an eligibility verification database. We find that the potential harm that could result from failing to extend the waiver for Michigan outweighs the desire to bring about these eligibility changes sooner. Additionally, extending the waiver for this limited additional period will have minimal financial impact on the Universal Service Fund.²³ During the additional waiver extension period, we expect Michigan to continue fully cooperating with USAC's efforts to implement the National Verifier in Michigan.

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¹³ Michigan Third Extension Request at 2 ("There has been great process made in the discussions...regarding access to an existing Michigan [Department of Health and Human Services] database to be used by USAC to verify federal eligibility of consumers" and "Michigan has been working with USAC on the technical parameters, financial costs, time required for construction and testing and contractual issues.").

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2.

¹⁷ 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. 11, 2018) (agreeing with Michigan's assertions that administrative burdens and consumer confusion may occur if an additional waiver is not granted).

¹⁸ 47 CFR § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²¹ *Northeast Cellular*, 897 F.2d at 1166.

²² See Request for Lifeline Waiver Extension for Michigan, WC Docket Nos. 11-42 et al., at 2-3 (filed Nov. 30, 2017).

²³ See 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").

8. We clarify that during this additional waiver extension period, Michigan ETCs may continue using existing Lifeline enrollment and recertification forms and are not required to use the universal forms to verify or recertify the eligibility of Michigan consumers for the federal Lifeline benefit because the eligibility programs listed on those forms do not match the eligibility criteria under this extended waiver.²⁴ However, after the additional waiver extension period ends (i.e. the earlier of June 28, 2019, or the full launch of the National Verifier in Michigan), Michigan ETCs must use the universal forms for enrolling and recertifying Lifeline subscribers for the federal Lifeline benefit.

9. Additionally, if the National Verifier is not fully launched in Michigan by June 28, 2019, ETCs will be responsible for ensuring that subscribers enrolled or recertified after that date are eligible under the Commission's revised eligibility criteria without relying on the National Verifier or MLED results.²⁵ As in other states, ETCs may elect to rely on 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 MLED database if Michigan has not yet been integrated into the National Verifier by the waiver deadline.

IV. ORDERING CLAUSES

10. 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 additional Lifeline waiver extension filed by the Michigan Public Service Commission is GRANTED.

11. 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.

12. 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

²⁴ See *Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program*, Public Notice, DA 18-161 (WCB Feb. 20, 2018) (requiring ETCs to begin using the universal forms to verify and recertify subscriber eligibility for the federal Lifeline program beginning July 1, 2018).

²⁵ See *Waiver Extension Order*, 32 FCC Rcd at 10351, para. 8; *Lifeline and Link Up Reform and Modernization*, et al., Order, 33 FCC Rcd 1302, 1302, 1304, paras. 1, 7 (WCB 2018) (affirming the requirement that Michigan ETCs ensure the eligibility of subscribers enrolled or recertified after the waiver extension deadline under the Commission's revised eligibility criteria).