

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: February 9, 2018

Released: February 9, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies Sprint’s Petitions for Reconsideration¹ of the Bureau’s *Waiver Extension Orders*, which granted California, New York, and Michigan additional time to implement the revised Lifeline qualifying programs set forth in sections 54.400(j) and 54.409(a)(2) of the Commission’s rules.² We affirm the *Waiver Extension Orders* and find that Sprint’s arguments do not warrant reconsideration of the language requiring Lifeline providers to conduct eligibility determinations and recertifications for Lifeline subscribers in California, New York, and Michigan if these states do not change their eligibility verification process or databases to comply with the revised federal eligibility criteria by the state’s waiver deadline.³

II. BACKGROUND

2. On October 25, November 27, and December 18, 2017, the Bureau partially granted requests from California, New York, and Michigan, respectively, to extend previously granted waivers and give those states additional time to implement the federal eligibility program changes in sections 54.400(j) and 54.409(a) of the Commission’s rules.⁴ States without a waiver were required to implement the federal

¹ See Petition for Reconsideration of Sprint Corporation, WC Docket No. 11-42 (filed Nov. 22, 2017) (Sprint California Petition); Petition for Reconsideration of Sprint Corporation, WC Docket No. 11-42 et al. (filed Dec. 27, 2017) (Sprint New York and Michigan Petition).

² *Lifeline Link Up Reform and Modernization*, Order, 32 FCC Rcd 7684 (WCB 2017) (*California Waiver Extension Order*); *Lifeline Link Up Reform and Modernization*, Order, 32 FCC Rcd 10099 (WCB 2017) (*New York Waiver Extension Order*); *Lifeline Link Up Reform and Modernization*, Order, 32 FCC Rcd 10349 (WCB 2017) (*Michigan Waiver Extension Order*) (collectively *Waiver Extension Orders*). See also 47 CFR §§ 54.400(j) and 54.409(a)(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 See *California Waiver Extension Order* at 7686, para. 8; *New York Waiver Extension Order* at 10101, para. 8; *Michigan Waiver Extension Order* at 10351, para. 8.

⁴ *California Waiver Extension Order* at 7684, 7686, paras. 1, 7 (extending California’s waiver through April 30, 2018); *New York Waiver Extension Order* at 10099, 10101, paras. 1, 8 (extending New York’s waiver through April (continued....))

eligibility program changes on December 2, 2016.⁵ The existing waivers for New York, Michigan, and California at issue in this Order have extended that deadline by approximately a year and a half, providing a total of two years from the release of the *2016 Lifeline Order* to implement the revised rules.

3. California's third-party administrator handles Lifeline verifications and recertifications for all eligible telecommunications carriers (ETCs) in California, while New York and Michigan maintain eligibility databases that ETCs must use to determine a consumer's eligibility for the federal Lifeline program.⁶ California's process and Michigan and New York's eligibility databases include programs that are no longer qualifying programs for the federal Lifeline program and do not provide ETCs with sufficient information to determine whether a consumer participates in one of the revised qualifying programs for the federal Lifeline benefit.⁷ Absent the Bureau waiver, until these states make necessary system changes to accommodate the changed eligibility criteria, ETCs are unable to rely on California's process and Michigan and New York's databases to ensure only eligible subscribers are enrolled in Lifeline.

4. Pursuant to the Bureau's *Waiver Extension Orders*, if California, New York, or Michigan do not update their process or databases to comply with the federal eligibility criteria by the state's respective waiver deadline, "ETCs will be responsible for ensuring that subscribers enrolled or recertified after that date are eligible under the Commission's revised eligibility criteria."⁸ The *Waiver Extension Orders* further provide that Lifeline providers in those states "may elect to rely on the Universal Service Company (USAC) to conduct the eligibility recertification process."⁹

5. On November 22, 2017, Sprint filed a Petition for Reconsideration of the language in the *California Waiver Extension Order* requiring Lifeline providers to conduct eligibility verifications and recertifications if California does not change its process to comply with the revised federal eligibility criteria by the waiver deadline. Sprint asserts that this requirement is "unreasonable" and that "it is highly unusual – perhaps unprecedented – for the FCC to hold a third party responsible in the event that the party at which an order is directed is unwilling or unable to comply with such order, especially when the third party has no control over the second party."¹⁰ Sprint also asserts that in order to comply with the *California Waiver Extension Order*, Lifeline providers would have to make "process and system changes" and "incur the associated costs" including one-time costs of "several hundred thousand dollars."¹¹ Sprint further argues that the Commission should instead "monitor the situation carefully, and continue to work with California to help ensure that the April 30 deadline is met" and should not "foreclose on the possibility that an additional waiver extension might be warranted..."¹² Finally, Sprint requests that if the

(Continued from previous page) _____

30, 2018); *Michigan Waiver Extension Order* at 10349-50, paras. 1, 6 (extending Michigan's waiver through June 30, 2018).

⁵ *Wireline Competition Bureau Announces Effective Dates Following Approval by the Office of Management and Budget of Lifeline Rules in the Lifeline Modernization Order*, 31 FCC Rcd 10982, 10982-83 (WCB 2016).

⁶ *California Waiver Extension Order* at 7684-85, para. 3; *New York Waiver Extension Order* at 10099-10100, para. 3; *Michigan Waiver Extension Order* at 10349-50, para. 3.

⁷ *California Waiver Extension Order* at 7685-86, para. 6; *New York Waiver Extension Order* at 10100-10101, para. 6; *Michigan Waiver Extension Order* at 10350-51, para. 6.

⁸ *California Waiver Extension Order* at 7686, para. 8; *New York Waiver Extension Order* at 10101, para. 8; *Michigan Waiver Extension Order* at 10351, para. 8.

⁹ *California Waiver Extension Order* at 7686, para. 8; *New York Waiver Extension Order* at 10101, para. 8; *Michigan Waiver Extension Order* at 10351, para. 8.

¹⁰ Sprint California Petition at 2.

¹¹ *Id.* at 3-5.

¹² *Id.* at 5.

“FCC forecloses the possibility of considering an additional waiver request” the FCC should “direct that the National Verifier rather than ETCs be responsible for making the initial Lifeline eligibility determinations and for the recertification process if California is unable to do so consistent with FCC rules.”¹³ On December 27, 2017, Sprint filed a Petition for Reconsideration of the same service provider requirement in the *Michigan and New York Waiver Extension Orders* and raises the same arguments raised in its Petition for Reconsideration of the *California Waiver Extension Order*.¹⁴

6. On December 7, 2017, the Bureau issued a Public Notice seeking comment on Sprint’s November 22, 2017 Petition for Reconsideration.¹⁵ The California Lifeline Coalition and TruConnect Communications Inc. (“Commenters”) filed comments supporting Sprint’s Petition and cited to the need to change their processes and the associated costs to comply with the *California Waiver Extension Order*.¹⁶ The Commenters agree with Sprint’s suggestion that the Commission should instead work with California and California Lifeline providers to help ensure the deadline is met and not “foreclose the possibility of granting additional short-term waivers if appropriate.”¹⁷ However, the Commenters disagree that the National Verifier should handle eligibility verifications and recertifications if California does not meet the waiver deadline because this would present “a number of logistical challenges in California that cannot be addressed before the deadline.”¹⁸ On January 23, 2018, Sprint filed reply comments agreeing that the “simpler, more cost-effective” approach is for the Commission to “continue to work closely with California and ‘grant additional short-term waivers’ if necessary.”¹⁹

III. DISCUSSION

7. We conclude that Sprint has failed to present any argument that warrants reconsideration of the language in the *Waiver Extension Orders* requiring Lifeline providers to perform eligibility verifications and recertifications for Lifeline subscribers in California, Michigan, and New York if the state process or database does not comply with the revised federal eligibility criteria by the state’s waiver deadline. As an initial matter, we reject Sprint’s argument that the *Waiver Extension Orders’* reliance on service providers’ existing obligations under the Commission’s rules is “unreasonable” and “highly unusual.”²⁰ It is reasonable and consistent with Lifeline program rules to require Lifeline providers to conduct eligibility verifications and recertifications if California’s process or Michigan or New York’s database are not compliant with the revised federal eligibility criteria after the state’s waiver deadline.

8. Lifeline providers have primary responsibility for ensuring the eligibility of individuals for which they claim federal Lifeline support.²¹ Consistent with this responsibility, Lifeline providers must

¹³ *Id.* at 6.

¹⁴ Sprint New York and Michigan Petition at 2-6.

¹⁵ *Wireline Competition Bureau Seeks Comment on Sprint Petition for Reconsideration*, Public Notice, WC Docket No. 11-42 (rel. Dec. 7, 2017).

¹⁶ Comments of California Lifeline Coalition and TruConnect Communications Inc. on Sprint Corporation’s Petition for Reconsideration, WC Docket. No. 11-42, at 3-4 (filed Jan. 8, 2018) (California Lifeline Coalition and TruConnect Comments).

¹⁷ California Lifeline Coalition and TruConnect Comments at 5-6.

¹⁸ California Lifeline Coalition and TruConnect Comments at 4-5.

¹⁹ Sprint Reply Comments at 2 (filed Jan. 23, 2018).

²⁰ Sprint California Petition at 2; Sprint New York and Michigan Petition at 2-3.

²¹ See *Wireline Competition Bureau Reminds Eligible Telecommunications Carriers of Their Ongoing Responsibility to Claim Lifeline Support Only for Eligible Low-Income Consumers*, Public Notice, 32 FCC Rcd 5129, 5129 (WCB 2017) (reminding Lifeline providers of their “primary responsibility to ensure the eligibility of Americans seeking Lifeline support”). See also 47 CFR § 54.407(a) (Lifeline reimbursement “shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves ...”); 47 CFR § 54.407(d) (“In order to receive universal service support reimbursement, an officer of each

(continued....)

conduct eligibility verifications and recertifications for Lifeline subscribers except in states where the state Lifeline administrator or other state agency conducts Lifeline eligibility verifications or recertifications.²² In the eligibility verification or recertification process, ETCs must access available eligibility databases to verify applicants' eligibility, but absent a waiver, ETCs may not rely on a database that cannot return information that would enable an ETC to accurately verify an applicant's participation in one of the Lifeline qualifying programs.²³ Although California handles eligibility verifications and recertifications, and Michigan and New York provide eligibility databases for Lifeline providers, Lifeline providers remain primarily responsible for ensuring the eligibility of individuals seeking Lifeline support in those states.²⁴ If California, New York, or Michigan do not change their process or databases to comply with the revised federal eligibility criteria by the state's waiver deadline, Lifeline providers cannot rely on the state process or databases for purposes of the federal Lifeline program. Thus, if California, New York, or Michigan does not meet its respective waiver deadline, Lifeline providers must handle eligibility verifications and recertifications for Lifeline subscribers in that state until the state process or database complies with FCC rules or the National Verifier is implemented in that state.

9. We also are not persuaded by Sprint's argument that Lifeline providers would need to make numerous process and system changes and incur costs to perform eligibility verifications and recertifications for Lifeline subscribers in California, New York, or Michigan if the states' respective waivers lapsed.²⁵ Lifeline providers' costs in conducting eligibility verification and recertification do not outweigh the interest in ensuring that Lifeline program support is directed only to qualifying low-income consumers, as defined by the Commission's rules. Lifeline providers, including the Petitioner, currently conduct eligibility determinations and recertifications for Lifeline subscribers in states where there is no state eligibility process or available database. Further, Lifeline providers may minimize recertification-related costs by having USAC conduct recertifications for subscribers in the states at issue.²⁶ We also conclude that Lifeline providers have sufficient time before the waiver deadlines to develop eligibility verification and recertification processes for Lifeline subscribers in California, New York, and Michigan.

10. While Sprint and the Commenters argue that the Commission should remove the service provider requirements and not "foreclose the possibility of granting additional short-term waivers if appropriate,"²⁷ the states at issue do not have any pending waiver requests before the Commission and any such future requests would be subject to the good cause standard.²⁸ Additionally, taking a "wait and see" approach without clarifying service providers' obligations in the event that a state does not update its

(Continued from previous page) _____

[ETC] must certify ... that [t]he [ETC] is in compliance with all of the rules in this subpart"); 47 CFR § 54.409 (establishing consumer qualifications for the Lifeline benefit); 47 CFR § 54.410(a) (requiring all ETCs to "implement policies and procedures" to ensure that all of their Lifeline subscribers are eligible to receive Lifeline service).

²² See 47 CFR § 54.410(c)(1); USAC Website, Verification Process by State, <http://www.usac.org/li/program-requirements/verify-eligibility/process-by-state.aspx> (last visited Jan. 24, 2018) (indicating that Lifeline providers are responsible for eligibility determinations in Colorado, Mississippi, Montana, New Mexico, Vermont and Wyoming and for California broadband-only Lifeline subscribers).

²³ See 47 CFR § 54.410(c)(1)(i).

²⁴ See 47 CFR §§ 54.410(c)(1)(ii), (c)(2)(i), 54.417(a) (requiring Lifeline providers relying on a state eligibility process or database to retain documentation demonstrating the subscriber's eligibility (e.g., a copy of the state's eligibility determination results or the name of the database and copy of the results of the database query)).

²⁵ See Sprint California Petition at 3-4; Sprint New York and Michigan Petition at 4-5.

²⁶ *California Waiver Extension Order* at 7686, para. 8; *New York Waiver Extension Order* at 10101, para. 8; *Michigan Waiver Extension Order* at 10351, para. 8.

²⁷ California Lifeline Coalition and TruConnect Comments at 6. See also Sprint California Petition at 5-6.

²⁸ 47 CFR § 1.3.

processes or database before that state's waiver ends would risk that some Lifeline providers would be unprepared to implement eligibility verification and recertification processes if the state does not meet its extended waiver deadline.²⁹

11. Finally, we reject Sprint's suggestion to use the National Verifier to conduct eligibility verifications and recertifications for Lifeline subscribers in California, Michigan, and New York if the state process or databases do not comply with the revised federal eligibility requirements by the state's waiver deadline. This solution is not feasible because implementing the National Verifier in any one of these states would require extensive systems work and state coordination that cannot be completed by the respective waiver deadlines. While USAC continues to make progress in developing the National Verifier, the Commission did not require USAC to launch the National Verifier in all states until December 31, 2019—three years and nine months after the adoption of the revised eligibility criteria at issue in the states' waiver requests.³⁰

12. For the foregoing reasons, we affirm our decision in the *Waiver Extension Orders* and deny Sprint's Petitions for Reconsideration.

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 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, 1.106, that Sprint's Petitions for Reconsideration are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁹ See Sprint California Petition at 5 and Sprint New York and Michigan Petition at 5 (stating that the system and process changes "cannot be implemented overnight").

³⁰ 2016 *Lifeline Order* at 4020-21, para. 164.