

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: March 13, 2018

Released: March 13, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part the request of the Oglala Sioux Tribe for a temporary waiver of the Lifeline recertification rules.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 residing on the Pine Ridge Reservation.²

II. BACKGROUND

2. The Pine Ridge Reservation is one of the largest reservations in the country, and it also has one of the lowest population densities and per-capita incomes of any Tribal area. The unemployment rate exceeds 80 percent, and more than half of the Reservation’s 40,000 residents live below the poverty line.³ Over 3,000 Pine Ridge residents participate in Lifeline, with the vast majority of those participants subscribing to AT&T Mobility, LLC (AT&T), which, in June of 2016, unveiled a new Lifeline offering targeted to Pine Ridge Reservation residents.⁴ The remaining Lifeline subscribers on the Pine Ridge Reservation are customers of Golden West Telecommunications Cooperative (Golden West).

3. Lifeline providers are required to recertify their customers’ continued Lifeline eligibility every 12 months.⁵ Providers may elect to have the Universal Service Administrative Company (USAC) conduct the recertification process on the provider’s behalf.⁶ While Golden West conducts its own recertification, AT&T has opted to have USAC conduct its recertification on the Pine Ridge Reservation.

¹ See Letter from Troy S. Weston, President, Oglala Sioux Tribe, to Ajit V. Pai, Chairman, Federal Communications Commission, WC Docket No. 11-42 (sent Aug. 29, 2017) available at <https://ecfsapi.fcc.gov/file/10309861507905/MA-39.pdf> (August 29th Letter); Letter from Jonathan E. Canis, Counsel to the Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al. (filed Nov. 6, 2017) (Oglala Sioux Tribe November *Ex Parte*); Letter from Jonathan E. Canis, Counsel to the Oglala Sioux Tribe, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al. (filed Feb. 14, 2018) (Oglala Sioux Tribe February *Ex Parte*).

² See 47 CFR §§ 54.405(e)(4); 54.410(f).

³ August 29th Letter at 2.

⁴ *Id.* at 1.

⁵ 47 CFR § 54.410(f).

⁶ See USAC-Elected Recertification, <http://www.usac.org/li/tools/usac-elected-recertification.aspx> (last visited Mar. 9, 2018).

4. In its August 29, 2017 letter, the Oglala Sioux Tribe states that recertifying subscribers has proved more challenging due to a series of circumstances that make recertification on the Pine Ridge Reservation uniquely difficult.⁷ As a result, a number of subscribers have already been de-enrolled, while others are facing imminent de-enrollment. The Oglala Sioux Tribe, whose Office of the President is located on the Pine Ridge Reservation, therefore requested that the Commission “extend the recertification deadline for all Lifeline services provided on the Pine Ridge Reservation until June 30, 2018,” to prevent subscribers from being de-enrolled, and to allow the Oglala Sioux Tribe more time to develop solutions to facilitate more efficient recertification.⁸ On February 13, 2018, the Oglala Sioux Tribe met with Chairman Pai to discuss the unique challenges that recertification poses for Pine Ridge Reservation residents.⁹

III. DISCUSSION

5. Generally, the Commission’s rules may be waived for good cause shown.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹²

6. The Oglala Sioux Tribe has requested an extension of the recertification deadlines to prevent impacted residents from losing vital communications services and to allow additional time for the Tribe to “develop and implement an accurate and reliable recertification procedure that is appropriate for Pine Ridge.”¹³ Many Pine Ridge residents have encountered difficulties recertifying their continued eligibility for the Lifeline program due to the unique challenges that subscribers residing on the Pine Ridge Reservation face. These challenges include: harsh weather during the winter months; a lack of English-language fluency for many subscribers, who only speak Lakota; and the great distances Pine Ridge residents need to cover to recertify in person.¹⁴ The unique, simultaneous combination of these circumstances resulted in a sudden and dramatic decrease in successful recertifications on the Pine Ridge Reservation beginning in September 2017. A temporary waiver would allow subscribers who have not been de-enrolled to retain their eligibility.

7. Additionally, granting the requested extension of the recertification deadlines will give Tribal leaders time to pursue automated eligibility verification directly with Tribal-specific programs.¹⁵ Because of these compelling and unique circumstances, we find good cause to waive for 150 days sections 54.405(e)(4) and 54.410(f) of the Commission’s rules for all eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing on the Pine Ridge Reservation, in the Study Area Codes (SACs) listed in Appendix A to this Order.

8. We find that good cause exists to grant a temporary waiver for 150 days of the Lifeline recertification rules because of the unique difficulties residents of the Pine Ridge Reservation face when recertifying their Lifeline eligibility. This waiver will provide more time for Pine Ridge Reservation

⁷ August 29th Letter at 2.

⁸ *Id.* at 3.

⁹ Oglala Sioux Tribe February *Ex Parte* at 1.

¹⁰ 47 CFR § 1.3.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *Northeast Cellular*, 897 F.2d at 1166.

¹³ August 29th Letter at 3.

¹⁴ *Id.* at 2.

¹⁵ See Oglala Sioux Tribe February *Ex Parte*, Attach. at 8 (describing proposal and ongoing efforts to verify subscribers’ continued eligibility directly through eligibility programs).

residents whose Lifeline services have not been deactivated to ensure that they continue to receive service.

9. Lifeline subscribers are normally given 60 days to respond to recertification efforts if their eligibility cannot be verified through an eligibility database.¹⁶ With this Order, subscribers on the Pine Ridge Reservation will be given 210 days, instead of the customary 60 days, to recertify their continued eligibility before de-enrollment from the program. We also direct USAC to provide additional reminders to subscribers on the Pine Ridge Reservation about their impending recertification deadline to better facilitate recertification response rates from eligible subscribers. This additional time will also allow the Tribal government to develop processes that will allow for more efficient and reliable recertification by directly confirming residents' participation in Tribal-specific eligibility programs, and will allow those residents of the Pine Ridge Reservation who wish to remain enrolled in Lifeline the opportunity to do so while those efforts are still pending.

10. *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 waiver 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

11. 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)(4) and 54.410(f) of the Commission's rules are waived to the limited extent provided herein.

12. 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 Oglala Sioux Tribe IS GRANTED to the extent provided herein.

13. 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 47 CFR § 54.405(e)(4).

APPENDIX A

SAC	Company
399015	AT&T (USAC-elected)
391659	Golden West Telecommunications
391686	Golden West Telecommunications