

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: June 14, 2018

Released: June 14, 2018

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants the Michigan Public Service Commission’s (Michigan) request to extend an existing waiver giving Michigan additional time to implement Lifeline federal eligibility program changes in sections 54.400(j) and 54.409(a) of the Commission’s rules.¹ Based on the record before us, we find that good cause exists to extend the waiver through the earliest of December 31, 2018, or the date on which the National Verifier is enrolling Lifeline subscribers in Michigan, or the date on which Michigan has aligned its eligibility criteria with the Commission’s Lifeline eligibility rules and updated its eligibility database accordingly.

2. 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 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

3. Michigan maintains the Michigan Lifeline Eligibility Database (MLED), which allows Eligible Telecommunications Carriers (ETCs) to determine subscriber eligibility for the Lifeline

¹ Request for Additional Lifeline Waiver Extension for Michigan, WC Docket Nos. 11-42 et al. (filed May 2, 2018) (Michigan Second Extension Request). *See also 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, 31 FCC Rcd 12718, 12718, para. 1 (WCB 2016) (*Waiver Order*). The *Waiver Order* 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.

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.

⁴ *Id.*

⁵ *Id.* at 4038, para. 212.

⁶ *Id.* at 4022, para. 168.

Program.⁷ In December 2016, the Bureau provided Michigan a waiver until December 31, 2017 to implement the streamlined federal eligibility criteria.⁸ In support of the original waiver request, 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.⁹ Michigan also provided information on the potential costs of updating the MLED.¹⁰

4. On November 30, 2017, Michigan filed another request asking that the Bureau extend the previously granted waiver until December 31, 2018 to allow more time for a legislative amendment and to make necessary changes to the MLED.¹¹ On December 11, 2017, Michigan submitted an *ex parte* stating that it needed the entire year extension because any final legislative changes would not be made until after November 2018.¹² The Telecommunications Association of Michigan filed a letter supporting Michigan's request.¹³ No parties opposed Michigan's request. In December 2017, the Bureau provided Michigan a waiver until June 30, 2018 to implement the streamlined federal eligibility criteria.¹⁴

5. On May 2, 2018, Michigan filed a request asking that the Bureau further extend the previously granted waiver until December 31, 2018 to allow more time for Michigan to continue working with USAC to integrate Michigan into the National Verifier and to allow Michigan stakeholders to pursue pending statutory changes in the relevant sections of Michigan state law.¹⁵ Michigan states that it is working with USAC on technical work and other projects to implement the National Verifier in Michigan.¹⁶ Michigan also states that there has not been any legislative movement on Michigan's statutory eligibility criteria and that, as a result, the MLED will not be aligned with the federal eligibility criteria by June 30, 2018.¹⁷ Michigan further states that absent an additional waiver extension, Michigan ETCs would need to use a manual document review process to determine subscriber eligibility under the federal criteria and an automated eligibility check to determine eligibility under the Michigan criteria, and that the differences in the federal and Michigan eligibility criteria may create confusion for Lifeline

⁷ *Waiver Order*, 31 FCC Rcd at 12726, para. 23.

⁸ *Id.*

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).

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

¹² 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). Michigan further states that “[d]uring 2017, there have been discussions among interested stakeholders, but nothing formal has yet been drafted or introduced by the Legislature” and describes its discussions with the Universal Service Administrative Company (USAC) concerning the “possible creation of a new database or access to an existing database to be used by USAC to verify federal eligibility of consumers.” *Id.* at 1-2.

¹³ 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. 7, 2017) (agreeing with Michigan's assertions that the inconsistencies in Michigan's state statutory eligibility criteria and the federal eligibility criteria will *inter alia* “increase the administrative burden for Lifeline providers and the state level administrators (like TAM) of Lifeline programs”).

¹⁴ *Waiver Extension Order*, 32 FCC Rcd 10349, 10350, paras. 1, 6.

¹⁵ Michigan Second Extension Request at 1-3.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 1.

customers and Michigan ETCs.¹⁸ The Telecommunications Association of Michigan filed a letter supporting Michigan's request for an additional waiver extension.¹⁹ No parties opposed Michigan's May 2 request.

6. Generally, the Commission's rules may be waived for good cause shown.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² 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.²³

7. We find there is good cause to extend the Bureau's previous waiver for Michigan through December 31, 2018, or until the National Verifier is enrolling Lifeline subscribers in Michigan, or until Michigan has aligned its eligibility criteria with the Commission's Lifeline eligibility rules and updated its eligibility database accordingly, whichever is sooner. Michigan's MLED database does not provide ETCs with the specific program that qualified the subscriber for Lifeline.²⁴ 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 accordingly 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. Based on the record, extending the waiver for this additional period will have minimal financial impact on the Universal Service Fund.²⁵ During the additional waiver extension period, we expect Michigan to continue fully cooperating with USAC's efforts to implement the National Verifier in Michigan.

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.²⁶ However, after the additional waiver extension deadline, Michigan ETCs must use the universal forms for enrolling and recertifying Lifeline subscribers for the federal Lifeline benefit.

¹⁸ Michigan Second Extension Request at 2.

¹⁹ 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 May 7, 2018) (agreeing with Michigan's assertions that administrative burdens and consumer confusion may occur if an additional waiver is not granted).

²⁰ 47 CFR § 1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ *Northeast Cellular*, 897 F.2d at 1166.

²⁴ See Michigan First Extension Request at 2-3.

²⁵ 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").

²⁶ 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).

9. Additionally, if the National Verifier is not enrolling Lifeline subscribers in Michigan by December 31, 2018 and Michigan does not update its MLED database such that ETCs may rely on that database to determine whether a consumer is eligible for Lifeline under the revised federal eligibility rules by December 31, 2018,²⁷ 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.²⁸ 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 that database is not updated by the expiration of this additional waiver period and Michigan has not yet been integrated into the National Verifier by the waiver deadline.

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

²⁷ We note that Michigan's MLED database can satisfy the revised eligibility rules by informing ETCs whether a prospective subscriber is eligible for the federal Lifeline benefit under the revised eligibility criteria even if the database does not inform the ETC of the specific program through which the subscriber's eligibility was verified.

²⁸ See *Waiver Extension Order*, 32 FCC Rcd at 10351, para. 8; *Lifeline and Link Up Reform and Modernization, et al.*, Order, DA 18-129, at 1, 3 paras. 1, 7 (WCB Feb. 9, 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).