



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

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## FCC ENFORCEMENT ADVISORY

### LIFELINE PROVIDERS REMAIN LIABLE FOR ENSURING THE ELIGIBILITY OF THEIR SUBSCRIBERS TO RECEIVE LIFELINE SERVICE

The Enforcement Bureau issues this Enforcement Advisory to emphasize that eligible telecommunications carriers (ETCs) receiving federal Universal Service Fund (USF or Fund) support for the Lifeline program remain responsible for claiming Lifeline support only for eligible low-income consumers. While the Federal Communications Commission (FCC or Commission) has created systems, including the National Lifeline Accountability Database (NLAD) and the National Verifier, to enhance the overall integrity of the Lifeline program and combat waste, fraud, and abuse, the Enforcement Bureau reiterates that these efforts do not relieve ETCs of their responsibilities to submit accurate claims for Lifeline reimbursement.

#### What Should ETCs Know?

Neither the NLAD nor the National Verifier creates a “safe harbor” that relieves ETCs of their responsibility for only claiming Lifeline consumers who are actually eligible for the program under the Commission’s rules.<sup>1</sup> The Commission created the NLAD to “detect and prevent duplicative support” in the Lifeline program<sup>2</sup> and it similarly created the National Verifier to make Lifeline subscriber eligibility determinations based on information and documentation provided by ETCs and consumers applying for or recertifying their eligibility for the Lifeline program. In the *2016 Lifeline Order*, the Commission identified several key functions of the National Verifier, operating in conjunction with the NLAD. These functions included, among other things, determining subscriber eligibility; populating the Lifeline Eligibility Database; and supporting the Lifeline payments process.<sup>3</sup> The *2016 Lifeline Order* discussed

<sup>1</sup> 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).

<sup>2</sup> *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6734, para. 179 (2012).

<sup>3</sup> See *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, 4009-16, para. 132-144 (2016) (*2016 Lifeline Order*).

how the National Verifier would replace the patchwork of eligibility systems in various states, serving as a centralized eligibility verification system and allowing ETCs to streamline their administrative costs through this centralization effort.<sup>4</sup> The National Verifier and the NLAD do not, however, eliminate ETCs' obligations to comply with the Lifeline program rules, and ETCs remain responsible for the accuracy and completeness of the information provided to the National Verifier for the completion of eligibility reviews finalized by the National Verifier.

To that end, ETCs must comply with their obligations in the Commission's Lifeline eligibility rules and are required to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."<sup>5</sup> If an ETC's policies, when implemented in conjunction with the NLAD and National Verifier, are found to be inadequate for ensuring that a subscriber is eligible to receive Lifeline services, then that ETC may be subject to action from the Commission's Enforcement Bureau or Office of Inspector General. ETCs remain fully liable if they provide false, misleading, or fraudulent information during their course of participation in the Lifeline program and when submitting Lifeline claims for reimbursement. Beyond ETCs' eligibility-specific requirements, the NLAD and National Verifier also do nothing to remove or limit ETCs' obligations to act in accordance with all of the Commission's Lifeline rules and any other Commission rules that may apply to an ETC in the program.<sup>6</sup>

### **What Must an ETC Do?**

All ETCs must implement policies and procedures that ensure that their Lifeline subscribers are eligible to receive Lifeline services. These efforts should include specific steps to ensure the accuracy of the information submitted as part of the initial Lifeline eligibility validation process, the Lifeline recertification process, and the Lifeline claims reimbursement process. ETCs must also maintain all relevant Lifeline documentation to clearly document compliance with all Commission and state requirements governing the Lifeline program, and if ETCs do not maintain sufficient documentation, they will be exposing themselves to potential enforcement action. We caution that the following elements do not represent an exhaustive summary of the Lifeline rules applicable to ETCs. All ETCs are required to comply with all applicable rules and orders.

*Eligibility Verification.* As we have noted, ETCs "must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."<sup>7</sup> Where the National Verifier has fully launched, these policies and procedures must include receiving an affirmative eligibility result from the National Verifier.<sup>8</sup> When interacting with the National Verifier, ETCs' policies and procedures must ensure that the ETC and its employees, agents, contractors, and representatives are not providing false information to the National Verifier during the eligibility verification process.

*Enrollment and Reimbursement.* After a Lifeline applicant receives an affirmative eligibility result from the National Verifier, an ETC must "claim" the subscriber in the NLAD (a component of the National Verifier) to receive Lifeline support.<sup>9</sup> In seeking Lifeline support for its subscribers, an ETC must certify that it is in compliance with the Lifeline program rules, so an ETC may not claim support for a subscriber

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<sup>4</sup> See 2016 Lifeline Order, 31 FCC Rcd at 4008-09, para. 130.

<sup>5</sup> 47 CFR § 54.410(a).

<sup>6</sup> See 47 CFR § 54.400 *et seq.*

<sup>7</sup> 47 CFR § 54.410(a).

<sup>8</sup> See 47 CFR § 54.410(b)(2), 54.410(c)(2)

<sup>9</sup> See 47 CFR § 54.404(b)(6). This requirement does not apply in states that have provided the Commission an approved valid certification under 47 CFR § 54.404(a).

if it received an affirmative eligibility result from the National Verifier for that subscriber by providing false or fraudulent information.<sup>10</sup>

*De-Enrollment.* Even if a Lifeline subscriber has received an affirmative eligibility result from the National Verifier, if an ETC has a reasonable basis to believe that a Lifeline subscriber does not meet the criteria to be a qualifying low-income consumer, the ETC must notify the subscriber, provide the subscriber 30 days to demonstrate continued eligibility, and de-enroll any subscriber who fails to do so within five additional business days past the initial 30-day window for corrected eligibility showings.<sup>11</sup>

*Document Retention.* Even where the National Verifier is fully implemented, ETCs must maintain records to document compliance with all Commission and state rules governing the Lifeline program.<sup>12</sup> These records must be retained for as long as the subscriber receives Lifeline service from that ETC but for no less than the three full preceding calendar years and make them available to the Commission and USAC upon request.<sup>13</sup> This requirement includes the retention of any documentation an ETC reviewed to verify subscriber eligibility.<sup>14</sup> If a subscriber is enrolled in the Lifeline program with an ETC prior to the implementation of the National Verifier in that state, the ETC must continue to retain documentation related to that eligibility verification and enrollment.<sup>15</sup>

ETCs are liable for violations of these and other Lifeline rules—and *their liability extends to violations on the part of their agents, contractors, and representatives.*<sup>16</sup> Therefore, if an ETC retains an agent, contractor or representative to check eligibility documentation, record details regarding the documentation applicants provide, obtain applicant certifications, or engage in any other work related to the Lifeline program, the ETC itself would be liable for any act, omission, or failure on the part of the agent, contractor, or representative that violates the Lifeline rules.

### **What Happens if an ETC Does Not Meet Its Obligations?**

If an ETC is found to have violated an applicable Commission rule, then they may be subject to the penalties authorized by the Communications Act, including, but not limited to, substantial monetary fines.<sup>17</sup> Any such amounts would be in addition to the recovery of identified fraudulently obtained Lifeline reimbursements. Additionally, such individuals may be subject to further penalties from state regulatory entities and the U.S. Department of Justice.<sup>18</sup>

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<sup>10</sup> 47 CFR § 54.407(a).

<sup>11</sup> 47 CFR § 54.405(e)(1).

<sup>12</sup> 47 CFR § 54.417(a).

<sup>13</sup> *Id.*

<sup>14</sup> 47 CFR § 54.404(b)(11).

<sup>15</sup> *See* 47 CFR § 54.417(a).

<sup>16</sup> *See Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6708-09, para. 110 (2012) (“The Commission has consistently found that ‘[I]censees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,’ and has held the regulated party responsible for violations of the Commission’s rules committed by agents.”); FCC Enforcement Advisory, Lifeline Providers are Liable if Their Agents or Representatives Violate the FCC’s Lifeline Program Rules, Enf. Advisory No. 2013-4 (EB June 25, 2013).

<sup>17</sup> *See* 47 U.S.C. § 503(b) (detailing the Commission’s forfeiture capabilities under the Communications Act, as amended).

<sup>18</sup> *See* 31 U.S.C. § 3729 (outlining the United States’ ability to pursue additional civil actions against individuals that have knowingly made false claims to the government).

**Need More Information?**

Questions about the substantive obligations outlined in this Enforcement Advisory should be directed to Kalun Lee, Enforcement Bureau, at (202) 418-0796 or [kalun.lee@fcc.gov](mailto:kalun.lee@fcc.gov), or Nicholas Page, Wireline Competition Bureau, at (202) 418-2783 or [nicholas.page@fcc.gov](mailto:nicholas.page@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, or audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory.

Issued by: Chief, Enforcement Bureau