

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: March 8, 2019**

**Released: March 8, 2019**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we address a Petition for Waiver filed by USTelecom – The Broadband Association, CTIA, and ITTA – The Voice of America’s Broadband Providers (collectively, the Petitioners) requesting a one-time waiver of the Federal Communications Commission’s (Commission’s) rules requiring a biennial audit of certain Eligible Telecommunications Carriers (ETCs). Specifically, the Petitioners seek a one-time waiver of the biennial audit requirement for ETCs that are also subject to a forensic audit by the Universal Service Administrative Company (USAC), where those two audits cover the same time period, namely calendar year 2017.<sup>1</sup> Petitioners contend that these audits are duplicative and impose an unnecessary burden on those ETCs that are subject to both audits, while not advancing the public interest.<sup>2</sup>

2. We conclude that the two audit requirements are not wholly duplicative. For this reason, as further discussed below, we grant in part a waiver of the Commission’s biennial audit requirement for certain Lifeline providers.<sup>3</sup> We otherwise deny in part the Petitioners’ waiver request.

**II. BACKGROUND**

3. In the *2012 Lifeline Order*, the Commission adopted a biennial audit requirement, finding that “stepped-up enforcement will strengthen our existing low-income oversight process to reduce improper payments and mitigate the potential for program violations.”<sup>4</sup> The biennial audit requirement directed each Lifeline provider receiving \$5 million or more annually in Lifeline disbursements to hire an

<sup>1</sup> See Petition for Waiver of USTelecom, CTIA, and ITTA Regarding Biennial Audit Requirements, WC Docket No. 11-42, at 1 (filed Dec. 6, 2018), <https://ecfsapi.fcc.gov/file/1206156460978/USTelecom-ITTA-CTIA-Lifeline-Audit-Waiver-Petition-FINAL.pdf> (USTelecom Petition).

<sup>2</sup> See USTelecom Petition at 6.

<sup>3</sup> See 47 CFR § 54.420.

<sup>4</sup> *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6670, para. 285 (2012) (*2012 Lifeline Order*).

independent auditing firm to “assess the ETC’s overall compliance with the program’s requirements.”<sup>5</sup> The biennial audits are intended to focus on a provider’s “overall compliance program and internal controls regarding Commission requirements implemented on a nationwide basis.”<sup>6</sup>

4. In September 2017, out of concern about the Lifeline program’s use of funds, United States Senators Ron Johnson and Claire McCaskill requested that USAC and the Commission complete and review forensic audits of the top 30 ETCs in the Lifeline program.<sup>7</sup> In response to this request, the Commission’s Office of Managing Director and Wireline Competition Bureau (Bureau) worked with USAC to develop a forensic audit plan.<sup>8</sup> These forensic audits are to be completed by USAC in 2019 and will cover an ETC’s activity during calendar year 2017.

### III. DISCUSSION

5. Generally, the Commission’s rules may be waived for good cause shown.<sup>9</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>10</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>11</sup> 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.<sup>12</sup>

6. The Commission adopted the biennial audit requirement as part of its efforts to address “growing concerns with waste, fraud, and abuse in the [Lifeline] program . . . .”<sup>13</sup> While the Bureau recognizes the administrative burdens outlined by the Petitioners and borne by certain ETCs subject to both audit requirements,<sup>14</sup> we must balance the burdens on ETCs with the need to ensure that Lifeline funds are being used appropriately. Here, we find that a waiver of the biennial audit requirement in its entirety, as Petitioners request, would undermine the Commission’s objective in establishing the requirement.

7. We find that while there is some overlap in both audit requirements, the biennial audit requirement is not identical to nor completely redundant of the forensic audit requirement. As such, a full waiver of the biennial audit requirement for ETCs subject to a forensic audit would limit the Commission’s insight into certain ETC policies and procedures. For instance, the biennial audit requirement uniquely includes a review of an ETC’s practices regarding consumer outreach, employee training, and officer certification of Lifeline reimbursement requests. Fully removing an ETC’s

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<sup>5</sup> *Id.* at 6782, para. 291.

<sup>6</sup> *Id.* at 6782-83, para. 292.

<sup>7</sup> See Letter from Senator Ron Johnson, Chairman, and Senator Claire McCaskill, Ranking Member, U.S. Senate Committee on Homeland Security and Government Affairs, to Ajit Pai, Chairman, Federal Communications Commission, at 1 (Sept. 15, 2017), <https://www.hsgac.senate.gov/imo/media/doc/2017-09-15%20RHJ-CM%20to%20Chairman%20Pai%20re%20Lifeline.pdf> (HSGAC Letter).

<sup>8</sup> See Letter from Ajit Pai, Chairman, Federal Communications Commission, to Senator Ron Johnson, Chairman, and Senator Claire McCaskill, Ranking Member, U.S. Senate Committee on Homeland Security and Government Affairs, at 1 (Nov. 21, 2017), <https://www.fcc.gov/document/chairman-response-regarding-lifeline-audit>.

<sup>9</sup> 47 CFR § 1.3.

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *2012 Lifeline Order*, 27 FCC Rcd at 6780, para. 284.

<sup>14</sup> See USTelecom Petition at 6.

obligation to comply with an audit of such practices risks undiscovered noncompliance or improper payments—contrary to the objective of the biennial audit requirement and the public interest.

8. We recognize, however, that there are some aspects of the biennial audit and forensic audit requirements that are duplicative and therefore, in order to avoid the unnecessary costs associated with duplicative requirements,<sup>15</sup> we believe that a partial waiver that encompasses only specific sections of the Biennial Audit Plan is appropriate. Specifically, we hereby waive the biennial audit procedures related to: Form 497/NLAD analyses (Objective II, 2 and 3); review of eligibility documentation, recertification, and certification forms for completeness and compliance with Lifeline rules (Objective III, 2); and analysis of data reported on the Form 555 (Objective IV, 4-6). We find that a waiver of the requirement to address these provisions of the Biennial Audit Plan for ETCs that are also subject to a USAC forensic audit covering the same time period eases the burdens placed on impacted ETCs, while ensuring that the Commission and USAC receive the information necessary to serve as effective stewards of program funds and thereby serve the public interest.

9. This waiver is limited strictly to the provisions of the Biennial Audit Plan identified above. Impacted ETCs are still required to complete a biennial audit that addresses the other provisions of the Biennial Audit Plan, in addition to their obligation to comply with USAC's forensic audits. Further, this waiver only applies to those ETCs that are required to complete both a biennial audit and forensic audit that covers ETC operations in calendar year 2017 and does not apply to any future audit reporting years.

#### 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, and 1.3, that the USTelecom Petition is GRANTED IN PART AND DENIED IN PART.

11. 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

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<sup>15</sup> See USTelecom Petition at 6-7.