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 30, 2020 **Released: March 30, 2020**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The coronavirus COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.[1] Efforts to slow the spread of the disease and mitigate strain on the nation's healthcare system have resulted in the dramatic disruption of many aspects of Americans' lives, including social distancing measures to prevent person-to-person transmission that require the closure of schools and workplaces. Across the country, people are turning to telemedicine, telework, and online learning to enable social distancing measures, which has only increased the importance of access to affordable communications services for low-income households.

2. To help Americans stay connected during the pandemic, the Wireline Competition Bureau has already waived a number of rules and deadlines.[2] In this Order, the Bureau takes several actions to help ensure that no Lifeline subscribers are involuntarily de-enrolled from the Lifeline program during this unprecedented national pandemic. First, the Bureau temporarily waives, on its own motion, the Lifeline program's usage requirements[3] and general de-enrollment procedures,[4] until May 29, 2020.[5] Second, we extend, on our own motion, our previous waiver of the Lifeline program's recertification and reverification rules[6] to May 29, 2020 to ensure that all of the waiver periods for Lifeline's de-enrollment rules will have the same duration.[7] Third, we direct the Universal Service Administrative Company

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[1] *See* Centers for Disease Control and Prevention, Coronavirus (COVID-19) (last visited Mar. 30, 2020), https://www.cdc.gov/coronavirus/2019-ncov/index.html.

[2] *See, e.g.*, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-285 (WCB Mar. 17, 2020) (temporarily waiving Lifeline recertification and reverification requirements) (*Lifeline Recertification and Reverification Waiver Order*); *Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, DA 20-290 (WCB Mar. 18, 2020) (temporarily waiving the Commission's gift rules for the Rural Health Care and E-Rate programs).

[3] 47 CFR §§ 54.405(e)(3) and 54.407(c)(2).

[4] 47 CFR § 54.405(e)(1).

[5] 47 CFR § 1.3.

[6] 47 CFR §§ 54.405(e)(4) and 54.410(f).

[7] *See Lifeline Recertification and Reverification Waiver Order*. Consistent with our previous waiver, in the states of California, Oregon, and Texas, where the state administrator conducts the recertification process and certain de-enrollment processes, we encourage the state administrator to pause and extend recertification and other de-enrollment deadlines in those states as quickly as possible. We direct eligible telecommunications carriers in those states to continue to follow the state administrator's processes and direction in implementing this waiver.

(USAC) to pause any involuntary de-enrollment of existing subscribers. Based on the record before us, we find that good cause exists to temporarily waive these rules, as provided herein, to assist Lifeline program participants potentially affected by the coronavirus and community efforts to slow its spread. We will continue to monitor the situation to determine whether any additional extension of these waivers and directives is needed.

II. BACKGROUND

3. The Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service to help ensure that all Americans have access to affordable communications service.[8] Under the Federal Communications Commission's rules, Lifeline providers must only claim reimbursement from the Lifeline program for those subscribers who are actual qualifying low-income consumers.[9]

4. Lifeline providers are required by the program rules to de-enroll any Lifeline subscriber who the carrier has a reasonable basis to believe is no longer eligible for the program.[10] A Lifeline provider who believes that a subscriber is no longer eligible for the program must provide that subscriber with written notice, and the subscriber then has 30 days to demonstrate their continued eligibility, or else be de-enrolled from the program.[11] For Lifeline subscribers who do not pay a fee for their Lifeline-supported service, the subscriber's eligible telecommunications carrier (ETC) may only claim reimbursement from the Lifeline program for those subscribers who have used their Lifeline service in the past 30 days.[12] If a Lifeline subscriber receiving a free-to-end-user service does not use their service for 30 days, the ETC must notify the subscriber that they have 15 days to "cure" the non-usage or they will be de-enrolled from the Lifeline program.[13] Subscribers who do not use the service during the cure period must then be de-enrolled.

5. Lifeline subscribers are also required to certify their continued eligibility for the program, and may also be required to provide proof of eligibility for USAC's National Verifier eligibility determination system.[14] In light of the challenges posed by the COVID-19 pandemic, the Bureau, on March 17, 2020, granted a 60-day waiver of these certification requirements to ensure that no Lifeline subscriber would be de-enrolled for failing to certify or verify their continued eligibility.[15]

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.[16] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance

[8] *See Bridging the Digital Divide for Low-Income Consumers*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019) (*2019 Lifeline Order*).

[9] *See* 47 CFR § 54.407(a).

[10] 47 CFR § 54.405(e)(1).

[11] *Id.*

[12] 47 CFR § 54.407(c)(2).

[13] 47 CFR § 54.405(e)(3).

[14] *See* 47 CFR §§ 54.405(e)(4) and 54.410(f).

[15] *Lifeline Recertification and Reverification Waiver Order* at 2, para. 6.

[16] 47 CFR § 1.3.

inconsistent with the public interest.[17] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.[18]

7. Based on the record before us, we find that good cause exists to waive for 60 days section 54.405(e)(1) of the Commission's rules, which requires Lifeline providers to de-enroll, pending written notice and a dispute resolution process, any Lifeline subscriber for whom the Lifeline provider has a reasonable basis to believe that the subscriber is no longer eligible for the program. We also find that good cause exists to waive for 60 days sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules, which require Lifeline subscribers who do not pay a fee for their Lifeline-supported service to use the service every 45 days or be de-enrolled. This waiver will prevent the de-enrollment of any Lifeline subscriber, including those who are in the 15 day cure period, who would otherwise have been de-enrolled for non-usage over the next 60 days.[19] We direct ETCs to restart calculating Lifeline subscribers' non-usage periods after the end of the waiver period on May 29, 2020, so no Lifeline subscriber could be de-enrolled for non-usage until 45 days after the waiver period ends. Similarly, we direct ETCs and USAC to refrain from sending any new 30-day notices pursuant to section 54.405(e)(1) until after the waiver period ends.

8. We find that, in light of the coronavirus pandemic and community efforts to slow its spread, including recent shelter-in-place orders and guidelines on social distancing,[20] requiring Lifeline subscribers to potentially leave their homes either to gather the necessary documentation to prove their continued eligibility in the program or to re-enroll in the Lifeline program after being de-enrolled for non-usage would create a potential risk to public health and be contrary to the public interest. Additionally, as Lifeline provider Smith Bagley, Inc. (SBI) points out, Lifeline subscribers who are de-enrolled for non-usage often return to carriers' retail stores to re-enroll, but many of those stores are currently closed: "With SBI's stores now closed, virtually all customers de-enrolled for non-usage would be unable to re-enroll in the near future."[21] Because we recognize the importance of connectivity for all Americans during this pandemic, we believe that the public interest will be best served by allowing Lifeline subscribers to continue to receive service even if they have not used that service in the past 45 days, so that they will continue to have access to a ready connection to communications service should the need arise.

9. We will continue to monitor the situation to determine whether any additional waiver of these rules and deadlines is needed and we otherwise direct carriers to send non-usage notifications, as needed, to subscribers impacted by the waiver who have continued not to use their Lifeline service at the end of the waiver period. We also note, however, that while we are suspending de-enrollment rules to ensure that no current Lifeline subscriber involuntarily loses service during the waiver period, the Lifeline eligibility rules will remain in effect, and those who are not eligible for the program may not enroll and receive service.[22]

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

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

[19] *See* 47 CFR § 54.405(e)(3).

[20] *See, e.g.*, Centers for Disease Control and Prevention, How To Protect Yourself https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html; Sarah Mervosh, Denise Lu, and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home* (Mar. 27, 2020) https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html (stating that as of March 28, at least 229 million people in 26 states are being urged to stay at home).

[21] *See* Letter from David A. LaFuria and Steven M. Chernoff, Counsel to Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 4-5 (filed Mar. 24, 2020) (requesting a temporary suspension of the non-usage rule for this reason).

[22] 47 CFR § 54.409(a).

10. For the same reasons that we conclude relief from the general de-enrollment and non-usage rules is warranted, we also conclude that it is appropriate to extend our recent waiver of Lifeline's recertification and reverification rules for the same duration.[23] The circumstances necessitating the initial waiver of those rules and deadlines have not changed,[24] and it is therefore appropriate to extend relief to all Lifeline subscribers for the same period.

11. This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier over the next 60 days. Because the National Verifier sends recertification notices to subscribers 90 days prior to their anniversary dates, this waiver will impact Lifeline subscribers with anniversary dates that fall on or between April 14, 2020 and August 27, 2020.[25] Similarly, USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber around the time that the National Verifier is hard launched in a state or territory. We direct USAC to not de-enroll any Lifeline subscriber for failure to successfully respond to a reverification documentation request for those subscribers with documentation deadlines falling on or before May 29, 2020. We also direct USAC to not open any new reverification documentation requests until after May 29, 2020 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

12. Since 2017, USAC has been conducting periodic, targeted reviews to identify and de-enroll ineligible subscribers, deceased subscribers, subscribers in oversubscribed addresses, phantom subscribers, and duplicate subscribers.[26] These reviews often require ETCs or subscribers to respond to inquiries and requests for documentation from USAC in the course of the review. These reviews remain a critical tool in combating waste, fraud, and abuse in the program. Due to this unprecedented nationwide public health crisis, we find that the benefits of these reviews are outweighed by the public interest for a limited period of time to ensure that low-income consumers stay connected during the coronavirus pandemic. We therefore direct USAC to pause until May 29, 2020 these periodic reviews, and to begin them again after the waiver period has ended. USAC should not involuntarily de-enroll any subscriber nor seek additional documentation from an ETC or subscriber as part of these reviews for 60 days.

13. Finally, we do not waive section 54.405(e)(5) of our de-enrollment rules, which requires a carrier to de-enroll a Lifeline subscriber upon the subscriber's request. Waiving this rule would frustrate the subscriber's intent to switch providers or otherwise change service and would force the subscriber to remain with a provider that is not providing the preferred service. Permitting these subscriber-requested de-enrollments to continue will preserve consumer choice.

14. *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 waivers described herein, service providers remain otherwise subject to audits and investigations to determine compliance with Lifeline program rules and requirements. We will require 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

[23] 47 CFR §§ 54.405(e)(4) and 54.410(f).

[24] *Lifeline Recertification and Reverification Waiver Order* at 3, para. 7

[25] Any subscriber with an anniversary date prior to April 14, 2020 has already completed their 60-day recertification notice period prior to the adoption of this Order.

[26] *See 2019 Lifeline Order*, 34 FCC Rcd at 10895-96, 10925, paras. 21-23, 93.

our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

15. 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 sections 47 CFR §§ 54.405(e)(1), 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules are waived to the limited extent provided herein.

16. 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