

**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: February 24, 2021

Released: February 24, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In response to the impact of the COVID-19 pandemic in the United States, the Wireline Competition Bureau has waived certain Lifeline program rules in six previous Orders to provide necessary relief for low-income households. The COVID-19 pandemic continues to have a significant impact on daily life in the United States, underscoring the importance of access to affordable communications services for low-income consumers. In light of the ongoing pandemic, we find good cause to extend, on our own motion, our prior waivers of the Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, recertification, reverification, general de-enrollment, and income documentation through June 30, 2021.¹ However, we decline to further extend the existing waiver of the Commission's Lifeline usage requirement beyond May 1, 2021. We will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate.

II. DISCUSSION

2. The Commission's rules may be waived for good cause shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.⁴

¹ See *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 2729 (WCB Mar. 17, 2020) (*First Lifeline Waiver Order*) (temporarily waiving Lifeline recertification and reverification requirements); *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 2950 (WCB Mar. 30, 2020) (*Second Lifeline Waiver Order*) (temporarily waiving Lifeline usage and general de-enrollment requirements and directing the Universal Service Administrative Company (USAC) to suspend periodic reviews); *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 4482 (WCB Apr. 29, 2020) (*Third Lifeline Waiver Order*) (temporarily waiving three-month documentation requirement for subscribers to demonstrate income eligibility); *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 5510 (WCB June 1, 2020) (*Fourth Lifeline Waiver Order*) (temporarily waiving documentation requirements for subscribers residing in rural areas on Tribal lands); *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 8791 (WCB Aug. 17, 2020) (*Fifth Lifeline Waiver Order*) (extending prior waivers through November 30, 2020); *Lifeline and Link Up Reform and Modernization*, Order, 35 FCC Rcd 12954 (Nov. 16, 2020) (*Sixth Lifeline Waiver Order*) (extending prior waivers through February 28, 2021).

² 47 CFR § 1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

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.⁵ We find that good cause exists to extend through June 30, 2021 our recent waivers of certain Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, recertification, reverification, general de-enrollment, and income documentation.⁶ The circumstances necessitating those prior waivers have not materially changed, and we therefore find that this extension is warranted to ensure that no Lifeline subscribers are involuntarily de-enrolled from the Lifeline program during this unprecedented national pandemic. A further extension of the existing waivers is warranted based on the recent surge in COVID-19 cases that occurred during November and December 2020 and January 2021⁷, which have resulted in further challenges to low-income consumers, including consumers living in rural areas on Tribal lands.⁸ Extending the waivers to June 30, 2021 will help ensure that students benefiting from Lifeline service while engaging in online learning continue to have access to broadband service through the end of the spring school semester/term. Extending the waivers will also allow additional time for the benefits of the ongoing COVID-19 vaccination effort to take hold in communities across the country.⁹

4. Extension of the waiver of the recertification and reverification rules will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Lifeline Eligibility Verifier (National Verifier) during the waiver period. 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 September 28, 2021. 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

⁵ 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*).

⁶ *Second Lifeline Waiver Order*, 35 FCC Rcd at 2952-53, paras. 7-11.

⁷ According to Centers for Disease Control and Prevention (CDC) data, the number of COVID-19 cases reported daily nationwide was 27,222 on April 1, 2020 and on December 1, 2020 had reached 181,774 cases nationwide. The highest number of reported cases in the U.S. to date, according to CDC data, was on January 8, 2021, when the number of daily reported cases reached 314,106. CDC COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited 2/24/2021).

⁸ Smith Bagley, Inc. filed a request for the COVID-19 waivers to be extended for an additional six months, citing the significant ongoing challenges faced by those living in the Tribal areas they serve. Smith Bagley, Inc., Request for Six-Month Extension of COVID-19 Lifeline Relief, WC Docket No. 11-42 (filed Jan. 13, 2021) (SBI Request). SBI argues, “Because the effects of the COVID-19 pandemic have been particularly severe in the Tribal areas SBI serves, and because the health crisis and resulting economic disruptions are unlikely to begin to ease until at least late summer 2021, SBI requests a six-month extension of these waivers, through August 31, 2021.” (SBI Request at ii). SBI points to the fact that the number of COVID-19 infections in Arizona, New Mexico, and Utah have surged in the last few months (SBI Request at 4-5). According to SBI, thousands of Lifeline consumers in the Tribal areas it serves would face de-enrollment in March and April once the current COVID-19 waivers expire (SBI Request at 10). At this time, based on current circumstances and factors discussed herein, we decline to adopt a six-month extension as SBI requests, but we do adopt a four-month extension, which is longer than the previous extension periods.

⁹ While vaccination efforts are now underway, information about the availability of the vaccine is rapidly evolving. Because the initial supply of the vaccine was expected to be limited, the CDC advised prioritizing vaccination rollout to those populations that are most vulnerable. See *When Vaccine is Limited, Who Should Get Vaccinated First?* (Updated Jan. 8, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations.html>. It may be several months before the wider public has access to the vaccine in most states and, once available, vaccines must be administered in multiple doses and are not immediately effective.

failure to successfully respond to a reverification documentation request for those subscribers with documentation deadlines falling on or before June 30, 2021. We also direct USAC to not open any new reverification documentation requests on or before June 30, 2021 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

5. As we noted in our last extension of these waivers, the Lifeline rule waivers necessitated by the pandemic have resulted or will result in recertification delays for a majority of Lifeline program subscribers and re-starting the recertification process for most of the Lifeline population simultaneously at the end of the waiver period would present an unreasonable administrative challenge for USAC and the three state administrators. We also note that, on October 13, 2020, an amendment to the Lifeline recertification rule took effect, requiring that Lifeline subscribers' annual recertifications be completed by the end of each calendar year instead of by each subscriber's anniversary date.¹⁰ To provide USAC and the state administrators with enough time to reasonably stagger the beginning of recertifications again after the expiration of the waiver granted in this Order, and consistent with the amended rules' requirement that Lifeline subscribers undergo one recertification per calendar year, we clarify that subscribers' eligibility need only be recertified once in calendar year 2021. Any subscribers with anniversary dates falling on or between January 1, 2021 and September 28, 2021 may have their recertification process delayed under this Order but must have their eligibility recertified after the waiver has expired.

6. For the same reasons set forth in our *Fifth Lifeline Waiver Order*, we similarly extend through June 30, 2021 our direction to USAC to pause its periodic, targeted reviews to identify and de-enroll ineligible subscribers.¹¹ USAC should not involuntarily de-enroll any subscriber nor seek additional documentation from an eligible telecommunications carrier or subscriber as part of those reviews until that date.

7. We similarly extend through June 30, 2021 our recent waiver of the Lifeline program's requirement that consumers seeking to demonstrate income-based qualification for the Lifeline program must provide at least three consecutive months of documentation to confirm their income.¹² The circumstances necessitating this prior waiver have not changed, and we therefore find that this extension is warranted to ensure that consumers are able to successfully complete the Lifeline enrollment process.

8. Finally, we also extend through June 30, 2021 our waiver for consumers residing in rural areas on Tribal lands of the requirement that such consumers submit the necessary documentation to correct an automated check error(s) prior to enrolling in the Lifeline program and receiving Lifeline service.¹³ The circumstances necessitating this waiver have not changed¹⁴, and we find that this extension is warranted to ensure that eligible telecommunications carriers may begin immediately providing Lifeline-supported service to any consumer residing in a rural area on Tribal lands who applies for Lifeline but is unable to provide the necessary documentation to resolve a failed automated check at the time of application. The consumer will have 45 days from the time of application to provide such documentation, but if the consumer does not submit the necessary documentation, USAC will de-enroll the consumer from the Lifeline program.

¹⁰ See 47 CFR § 54.410(f); *2019 Lifeline Order*, 34 FCC Rcd at 10934-36, 10956, paras. 111-114, 176; FCC, Bridging the Digital Divide for Low-Income Consumers, 85 Fed. Reg. 41930 (July 13, 2020) (announcing approval under the Paperwork Reduction Act and effective date of October 13, 2020).

¹¹ See *Fifth Lifeline Waiver Order*, 35 FCC Rcd 8791, para. 7.

¹² *Third Lifeline Waiver Order*, 35 FCC Rcd at 4484, paras. 8-10.

¹³ *Fourth Lifeline Waiver Order*, 35 FCC Rcd at 5512-14, paras. 7-11.

¹⁴ As SBI outlines in its request for a six-month extension of the COVID-19 Lifeline Waivers, consumers living in rural areas on Tribal lands, such as those served by SBI, continue to be significantly impacted by the ongoing pandemic. SBI Request at 4-9.

9. We next decline to extend the previous waiver of the Commission's non-usage rule for the Lifeline program by four months.¹⁵ At the expiration of the current waiver period on February 28, 2021, the requirement that Lifeline subscribers who are not paying an end-user fee for their Lifeline service must use their service at least every 30 days, with an additional 15-day cure period, will have been waived for almost a year. As the length of the non-usage waiver has increased, so has the likelihood that universal service funding is being disbursed for connections that have not been used. Both the Oregon Public Utility Commission and California Public Utilities Commission have raised this concern. In a letter filed with the Commission in November 2020, the Oregon Public Utility Commission expressed concern about the expenditure of public funds on a service that is not being used in Oregon, and potentially not being used nationwide, and reported that, based on a comprehensive survey of Lifeline providers in that state, few Lifeline subscribers would be required to re-enroll in the program if the waiver was lifted because most subscribers who fail to use their service for 45 days do not return to using that phone again.¹⁶ Indeed, one party notes that more than 40% of the company's Lifeline subscribers who did not use their phone in April 2020 had not cured their non-usage as of January 2021.¹⁷ The California Public Utilities Commission is also currently evaluating whether to continue the suspension of the non-usage rule for its state Lifeline benefit program and is concerned about the costs associated with this suspension on the State's program.¹⁸ Some parties urge the Commission to allow the usage requirement to take effect again, but to issue a waiver extending the total non-usage period from 30 days to 180 days.¹⁹ However, we find that such an extension after an almost year-long waiver of the rule will only result in further disbursements being used to support a service that no one is using.

10. Therefore, at the expiration of the waiver period, ETCs must send notice to subscribers who have not used their service in the previous 30 days and notify those subscribers that they have 15 days to cure their non-usage. Recognizing that ETCs may be responsible for sending a larger number of non-usage notices and that many ETCs start the outreach required by this rule long before the expiration of the usage period, we extend the waiver and require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days. Lifeline subscribers who are de-enrolled from the program may always choose to apply and re-enroll in the program if they would like to begin receiving the Lifeline discount again.

11. *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 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. In the case of the rural areas in Tribal lands waiver extended in this Order, we note that Lifeline subscribers

¹⁵ See 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

¹⁶ See Letter from Megan Decker, Chair, Public Utility Commission of Oregon, to Marlene H. Dortch, FCC, WC Docket No. 11-42 (filed Nov. 4, 2020).

¹⁷ See Letter from Shawn Chang, Counsel to TracFone Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 4, 2021).

¹⁸ According to the California Public Utilities Commission's request for comments, "Based on data for October 2020, the Commission's staff estimates that the current incremental cost of suspending the non-usage rule is over \$7.3 million per month for the California LifeLine Program." See *Before the Public Utilities Commission of the State of California, Order Instituting Rulemaking to Update the California Universal Telephone Service (California LifeLine) Program, Rulemaking 20-02-008, E-Mail Ruling Requesting Comments Regarding Non-Usage* (Jan. 27, 2021), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M363/K790/363790604.PDF>.

¹⁹ See Letter from Shawn Chang, Counsel to TracFone Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Feb. 4, 2021).

residing in rural areas on Tribal lands currently comprise approximately 2% of total Lifeline subscribership, and we thus expect that USAC will be able to sufficiently monitor the claims made pursuant to this waiver for potential waste, fraud, and abuse. 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. In the case of suspected fraudulent activity, USAC retains its ability to recover funds, de-enroll fraudulent accounts, and prevent persons engaging in such activity from accessing the USAC Lifeline systems, as appropriate. 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. Finally, we direct USAC to include demonstration of eligibility under this waiver in its risk-based sampling for USAC's periodic, targeted reviews after this waiver expires and USAC resumes such reviews.

III. ORDERING CLAUSES

12. 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)(4), 54.410(a), 54.410(b)(1)(i)(B), and 54.410(f) of the Commission's rules are waived to the limited 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