

**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
)	
Affordable Connectivity Program)	WC Docket No. 21-450
)	

ORDER

Adopted: September 30, 2022

Released: September 30, 2022

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 twelve previous Orders to provide necessary relief for low-income households.¹ The Bureau finds good cause exists to continue to waive the Lifeline recertification and reverification requirements for those Lifeline subscribers residing on Tribal lands through January 31, 2023. This waiver also addresses the potential impact that it may have on subscribers of both the Lifeline and Affordable Connectivity Programs (ACP) that were required to undergo recertification for calendar year 2022.

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 (WCB Nov. 16, 2020) (*Sixth Lifeline Waiver Order*) (extending prior waivers through February 28, 2021); *Lifeline and Link Up Reform and Modernization*, Order, 36 FCC Rcd 4448 (WCB Feb. 24, 2021) (*Seventh Lifeline Waiver Order*) (extending prior waivers through June 30, 2021 with the exception of the waiver of the Lifeline non-usage requirement); *Lifeline and Link Up Reform and Modernization Order*, Order, DA 21-760, 2021 WL 2668477 (WCB June 28, 2021) (*Eighth Lifeline Waiver Order*) (extending prior waivers through September 30, 2021); *Lifeline and Link Up Reform and Modernization Order*, Order, DA 21-1191, 2021 WL 4354767 (WCB Sept. 22, 2021) (*Ninth Lifeline Waiver Order*) (extending prior waivers through December 31, 2021); *Lifeline and Link Up Reform and Modernization Order*, Order, DA 21-1650, 2021 WL 6197252 (WCB Dec. 30, 2021) (*Tenth Lifeline Waiver Order*) (extending prior waivers through March 31, 2022); *Lifeline and Link Up Reform and Modernization Order*, Order, DA 22-323, 2022 WL 990325 (WCB March 25, 2022) (*Eleventh Lifeline Waiver Order*); *Lifeline and Link Up Reform and Modernization Order*, WC Docket No. 11-42, DA 22-691, 2022 WL 2399681 (WCB June 30, 2022) (partially extending Lifeline program recertification and reverification requirements for subscribers residing on Tribal lands through September 30, 2022) (*Twelfth Lifeline Waiver Order*).

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 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

3. After reviewing information related to the COVID-19 pandemic,⁶ the request filed by Smith Bagley, Inc. (SBI) for a further extension of the limited waiver for subscribers residing on Tribal lands,⁷ and information related to the COVID-19 pandemic on Tribal lands⁸ we have determined that it is appropriate to extend this limited waiver. In particular, we find that good cause exists to extend through January 31, 2023 the waiver of the Lifeline recertification and reverification requirements for consumers residing on Tribal lands, based on the unique circumstances faced by Lifeline subscribers in those areas. As SBI outlined in its request for a further extension of the Lifeline waivers in effect, Tribal governments continue to issue advisories recommending restrictions for communities residing on Tribal lands and the pandemic continues to impact daily life.⁹ Other factors such as the remoteness of Tribal areas also contribute to the unique challenges faced by Tribal subscribers when it comes to completing recertification and reverification.¹⁰ While SBI requested an extension of the waiver until the end of 2022, we believe that an extension through January 2023 is more appropriate, as it provides certainty to consumers and providers of the duration of the waiver period as we approach the end of the year.

4. The limited extension of the waiver of the reverification process for subscribers on Tribal lands will prevent the de-enrollment of any such subscribers who would otherwise have been required to certify their continued eligibility to the National Lifeline Eligibility Verifier (National Verifier) during the waiver period. We clarify here that USAC can begin to collect on-hand documentation from service providers for reverification of subscribers on Tribal lands immediately, but USAC should not begin direct consumer outreach until after January 31, 2023. We direct USAC not to de-enroll any Lifeline subscriber residing on Tribal lands for failure to successfully respond to a reverification documentation request associated with documentation deadlines falling on or before January 31, 2023.

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.

⁵ See *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 11-42, 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 See, e.g., CDC, *COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Sept. 22, 2022). Overall COVID-19 cases are trending substantially downward since the Bureau released the *Twelfth Lifeline Waiver Order* but are still significant, with a 7-day moving average of 55,332 cases as of September 20, 2022.

⁷ See *Smith Bagley, Inc., Request for Three-Month Extension of Recertification and Reverification Waivers on Tribal Lands and Request for Clarification*, WC Docket No. 11-42 (filed Sept. 15, 2022) (SBI Request).

⁸ See, e.g., Navajo Nation-Office of the President and Vice President, *News Release*, Indian Country Today (Sept. 7, 2022), <https://indiancountrytoday/the-press-pool/over-four-day-period-13-new-cases-and-four-deaths-related-to-COVID-19-reported-45-communities-identified-with-uncontrolled-spread>.

⁹ SBI Request at 3-5.

¹⁰ *Id.* at 7-9.

5. The waiver of the annual recertification requirement is also extended for subscribers who reside on Tribal lands. Because the National Verifier sends recertification notices to subscribers 90 days prior to their anniversary dates, this waiver extension will impact Lifeline subscribers residing on Tribal lands with anniversary dates that fall on or between April 14, 2020 and May 1, 2023. Any such impacted Lifeline subscribers residing on Tribal lands may have their recertification process delayed under this Order, but they must have their eligibility recertified after the waiver has expired. With the continuation of this waiver into 2023, we clarify that Tribal Lifeline subscribers only need to have their eligibility recertified once in 2023. USAC and the state administrators may begin automated recertification efforts for Tribal subscribers if USAC and the administrators believe this to be the best course of action, but any direct outreach to Tribal Lifeline subscribers should not begin until after January 31, 2023. In addition, no Tribal subscribers should be de-enrolled from the Lifeline program until after such direct outreach takes place.

6. In addition to requesting an extension of the existing waiver, SBi seeks clarification about how this waiver may impact subscribers that also participate in the Affordable Connectivity Program.¹¹ We understand that USAC has already initiated recertification efforts for all Tribal subscribers in the Affordable Connectivity Program. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for Lifeline subscribers on Tribal lands that also participate in the Affordable Connectivity Program. Such subscribers would have been required to respond to ACP recertification outreach during the waiver period.¹² Absent a waiver, in some instances these subscribers would have been required to separately recertify for Lifeline and the Affordable Connectivity Program because of the timing of Lifeline recertifications under the original Tribal Lifeline subscriber waiver period.¹³ We think it is appropriate to only extend this action to ACP subscribers enrolled in both programs as the impact to recertification is most significant because of their participation in the Lifeline program.

7. Under the ACP rules, qualifying households that are enrolled in both the Affordable Connectivity Program and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification requirement.¹⁴ Households that are enrolled in both programs and do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the Affordable Connectivity Program after completion of the Lifeline recertification process.¹⁵ As noted above, under

¹¹ See *id.* at 10-11.

¹² During the waiver period, USAC may continue to check the continued eligibility of ACP households for consumers residing on Tribal lands using the database connections through the National Verifier. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the Affordable Connectivity Program without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

¹³ The Affordable Connectivity Program does not have the same eligibility criteria as Lifeline. See *Affordable Connectivity Program Order*, WC Docket Nos. 21-450, 20-445, FCC 22-2, at 43, para. 86, & n.248 (2022) (*Affordable Connectivity Program Order*) (describing the differences in eligibility criteria between Lifeline and the Affordable Connectivity Program). Accordingly, while successfully recertifying for Lifeline satisfies a subscriber's recertification requirement for the Affordable Connectivity Program, successfully recertifying for the Affordable Connectivity Program does not necessarily mean that the subscriber remains eligible for Lifeline.

¹⁴ 47 CFR § 54.1806(f)(1).

¹⁵ As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the Affordable Connectivity Program. See *Affordable Connectivity Program*, at 43, para. 86, & n.248. Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the Affordable Connectivity Program. See *id.*

the recertification process for calendar year 2022, certain Tribal subscribers who participate in both Lifeline and the Affordable Connectivity Program would have been required to complete the Affordable Connectivity Program recertification process first, and then complete the Lifeline recertification process. With this waiver, Tribal households that are enrolled in both Lifeline and the Affordable Connectivity Program will be afforded time to demonstrate their continued eligibility for the Affordable Connectivity Program for the calendar year 2022 recertification process if they do not pass Lifeline recertification, even if this extends into 2023.¹⁶ Where such households do not pass Lifeline recertification after the end of the waiver period, we expect USAC and participating providers to resume the recertification process for subscribers who reside on Tribal lands as soon as practicable after the completion of the Lifeline recertification efforts. USAC and service providers should not de-enroll any impacted subscribers who do not respond to already distributed recertification outreach during the waiver period. To the extent that an impacted subscriber successfully completes their recertification process in 2023, they would not be required to undergo ACP recertification again in 2023. The Bureau understands that no impacted subscribers have already completed ACP recertification, so there should not be instances where such subscribers would have been de-enrolled from ACP but are still participating in the Lifeline program due to recertification.¹⁷

8. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs and in the Affordable Connectivity Program. Although we grant the limited waivers described herein, service providers remain otherwise subject to audits and investigations to determine compliance with ACP and 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 and appropriated 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 exercise our authority to consider imposing any 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 and ACP systems, as appropriate. We remain committed to ensuring the integrity of the Lifeline program the Affordable Connectivity Program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

III. ORDERING CLAUSES

9. 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 §§ 54.410(f), 54.1806(f)(1),(5), and 54.1809(d) of the Commission's rules are WAIVED to the limited extent provided herein.

¹⁶ See *Affordable Connectivity Program Order*, at 44, para. 86 (“Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program.”); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

¹⁷ See SBi Request at 11 (raising this concern for the Bureau's consideration).

10. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau