

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: June 30, 2022

Released: June 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 eleven previous Orders to provide necessary relief for low-income households.1 In the Eleventh Lifeline Waiver Order, the Bureau noted that, “[w]e will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate, but we anticipate that this will likely be the Bureau’s final extension of these waivers.”2 The Bureau finds good cause exists to continue to waive the Lifeline recertification and reverification requirements for those Lifeline subscribers residing on Tribal lands. This continued waiver will last until September 30, 2022. However, the Bureau will allow the other Lifeline COVID-19 waivers to expire as scheduled on June 30, 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).

2 Eleventh Lifeline Waiver Order at 1, para. 1.

## II. DISCUSSION

2. The Commission's rules may be waived for good cause shown.<sup>3</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>5</sup> 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.<sup>6</sup>

3. After reviewing the current information available on the COVID-19 pandemic<sup>7</sup> and considering the length of time the previous waivers have remained in place, we have determined that it is appropriate to end the existing Lifeline COVID-19 waivers but retain a limited exception for those Lifeline consumers residing on Tribal lands. The stay-at-home orders and significant economic disruption wrought by the early phases of the pandemic, which were the original basis of the Lifeline COVID-19 waivers, have subsided considerably. Meanwhile, the Lifeline waivers have remained in place for more than two years. Perhaps most significantly, Lifeline recertification efforts have been suspended throughout this time period. The Lifeline recertification process allows the Commission and the Universal Service Administrative Company (USAC) to ensure that subscribers receiving the Lifeline benefit continue to be eligible to participate in the program.<sup>8</sup> Restoring this and other program integrity tools allows us to protect limited universal service resources for those that truly need the support. On balance then, we now find that it is appropriate to allow the waivers to largely expire and to resume these efforts.

4. While we generally find that is appropriate to end our Lifeline COVID-19 waivers for the majority of Lifeline consumers, we find that good cause exists to extend through September 30, 2022 waivers of Lifeline recertification and reverification efforts for consumers residing on Tribal lands, based on the unique circumstances faced by Lifeline subscribers in those areas. Smith Bagley, Inc. (SBI) filed a petition seeking a further extension of the Lifeline waivers in effect, and detailed a rationale that primarily impacted Lifeline subscribers on Tribal lands.<sup>9</sup> For instance, SBI describes the challenges faced by consumers living on remote Tribal lands during the COVID-19 pandemic.<sup>10</sup> While we do not believe that a full extension of the waivers is appropriate, we recognize the unique circumstances facing Tribal subscribers.

5. The National Lifeline Association (NaLA) filed an *ex parte* with the Commission supporting SBI's request and requesting a further extension through September 30, 2022 for the Lifeline

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<sup>3</sup> 47 CFR § 1.3.

<sup>4</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> 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*).

<sup>7</sup> See, e.g., CDC, *COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited June 30, 2022).

<sup>8</sup> See 47 CFR § 54.410(f).

<sup>9</sup> See Smith Bagley, Inc., Request for Three-Month Extension of COVID-19 Lifeline Relief, WC Docket No. 11-42 (filed June 8, 2022) (SBI Request).

<sup>10</sup> See SBI Request at 3-6. As SBI discusses, while restrictions have been lifted in many parts of the United States, restrictions have remained in place on the Navajo Nation and have continued to make life and business difficult. *Id.* at 9.

recertification and reverification processes for all Lifeline subscribers.<sup>11</sup> NaLA believes that such a continuation is warranted because of the lack of database connections in some states and a purported need for greater planning to prepare for recertification and reverification efforts.<sup>12</sup> We note that USAC continues to bring additional database connections online,<sup>13</sup> but delaying the resumption of recertification and reverification efforts for this reason creates additional program integrity concerns and is not consistent with the way in which the program operated prior to the implementation of these waivers. Pausing these processes to enable additional database connectivity would represent a significant shift in Commission policy that we do not believe is appropriate. Additionally, we expect that USAC will be able to automatically verify the continued eligibility of the vast majority of Lifeline subscribers with the current databases to which USAC has access.<sup>14</sup> NaLA also urges the Commission to extend the current waivers to allow the Commission and USAC to plan for the resumption of recertification and reverification efforts. In fact, the Commission and USAC have already taken steps to prepare for the resumption of these efforts, and USAC began public outreach to service providers on recertification earlier this month.<sup>15</sup> As noted above, the Bureau does not believe that it is appropriate to further extend these waivers that have been in place for more than two years. The primary motivating factor for the waivers, the impact of the COVID-19 pandemic, has diminished and there are genuine program integrity concerns associated with a further extension.<sup>16</sup>

6. 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 September 30, 2022. 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 September 30, 2022.

7. 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 December 29, 2022. 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.<sup>17</sup> We clarify

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<sup>11</sup> Letter from John Heitmann, Counsel, National Lifeline Association, to Marlene Dortch, Secretary, FCC WC Docket Nos. 21-450, 20-445, 11-42, at 1 (filed June 28, 2022) (NaLA *Ex Parte*).

<sup>12</sup> NaLA *Ex Parte* at 2-3.

<sup>13</sup> See, e.g., USAC, *Lifeline – February 2022 Newsletter*, (March 1, 2022), <https://view.outreach.usac.org/?qs=47d642b0f4d3992822209bfaf683c3447c4e6cdb616841e3b356073968ff0f6cfa08ab554a80167d8f34aeb94c5a167b14903a5db0274f52653fced75b102ea261b5b90aa97e573e594d633f8dbb4a33> (detailing the recent launch of a state database connection with Connecticut).

<sup>14</sup> See NaLA *Ex Parte* at 3 (citing GAO, FCC Has Implemented The Lifeline National Verifier but Should Improve Consumer Awareness and Experience, GAO 21-2235 at 16 (Jan. 2021)).

<sup>15</sup> See USAC, *Recertification 101 Webinar*, <https://www.usac.org/wp-content/uploads/lifeline/documents/training/2022/Recertification-101.pdf> (last visited June 30, 2022).

<sup>16</sup> We note that NaLA's filing does not identify any new or continuing concerns related to the COVID-19 pandemic.

<sup>17</sup> Given the duration of these waivers of our Lifeline rules, we clarify that state administrators responsible for completing recertification efforts in California, Texas, and Oregon, should have flexibility to complete their recertification programs consistent with available resources. These states must make their best efforts to recertify all Lifeline subscribers in their states within 2022, consistent with the Commission's rules. However, we understand that these states may need additional time, in which case they may continue recertification efforts into 2023 for any

(continued....)

here that 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 September 30, 2022. In addition, no Tribal subscribers should be de-enrolled until after such direct outreach takes place.

8. *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 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 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.

### 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 §4.410(f) of the Commission's rules are waived to the limited extent provided herein.

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

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Lifeline subscriber in these three states. Such subscribers would only need to have their recertification completed once in 2023.