

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	WC Docket No. 11-42
Lifeline and Link Up Reform and)	
Modernization)	
)	
Telecommunications Carriers)	WC Docket No. 09-197
Eligible for Universal Service)	
Support)	
)	
Connect America Fund)	WC Docket No. 10-90

TELRITE CORPORATION EMERGENCY PETITION FOR EXTENSION OF WAIVER

Pursuant to section 1.3 of the Federal Communications Commission’s (Commission’s) rules,¹ Telrite Corporation (Telrite or the Company) respectfully submits this Emergency Petition for Extension of Waiver (Petition) for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands.² As the Commission is aware, Hurricanes Irma and Maria caused a veritable “one-two punch” of devastation throughout Puerto Rico and the U.S. Virgin Islands, the likes of which has never been recorded. Telrite respectfully submits that grant of this Petition is essential to protect low-income consumers in Puerto Rico and the U.S. Virgin Islands from having their vital Lifeline service disconnected at a time when it is needed most. Indeed, de-enrollment of eligible subscribers from the Lifeline program during this emergency based on their inability to comply with technical program rules in the short-term would subject already vulnerable consumers to unnecessary endangerment resulting from the termination of essential communications services.

¹ See 47 C.F.R. § 1.3.

² See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-860 (WCB rel. Sept. 7, 2017) (Waiver Order).

Telrite therefore respectfully requests that the Wireline Competition Bureau (Bureau)³ expeditiously grant this Petition and extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 90 days beyond the period granted in the Waiver Order.⁴

I. BACKGROUND

A. The Waiver Order

On September 6, 2017, Telrite submitted a request for temporary waiver of the Lifeline non-usage and recertification rules for subscribers in Puerto Rico and the U.S. Virgin Islands because Hurricane Irma was expected to cause power and network outages, and displacements in both areas.⁵ The Bureau granted Telrite’s request and issued the Waiver Order on September 7, 2017, finding that “[s]trict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers in the immediate aftermath of Hurricane Irma.”⁶ Specifically, the Bureau concluded that a 90-day waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and

³ See 47 C.F.R. § 0.91(b) (authorizing the Bureau to “[a]ct on requests for interpretation or waiver of rules”); *see also* 47 C.F.R. § 0.291(a) (stating that the Bureau has delegated authority to perform all the functions described in section 0.91 of the Commission’s rules, including specifically the authority to act on requests for waiver of the rules).

⁴ Telrite is aware that PRWireless, Inc. d/b/a Open Mobile also has requested an extension of the Waiver Order for 90 days in Puerto Rico as part of a larger request related to the Commission’s High Cost and Lifeline rules following Hurricane Maria. *See* Emergency Petition for Waiver and Other Relief, CC Docket No. 96-45 et al., 13-14 (Oct. 4, 2017) (Open Mobile Petition). The relief requested in this Petition is broader in that it includes the U.S. Virgin Islands. This Petition is also narrower because it does not address forms of relief proposed by Open Mobile that would require a Commission-level vote. Telrite takes no position in this pleading regarding Open Mobile’s requests for relief beyond extension of the Waiver Order.

⁵ Telrite Corporation Emergency Petition for Temporary Suspension and Waiver, WC Docket Nos. 11-42, 09-197, 10-90 (filed Sept. 6, 2017).

⁶ Waiver Order ¶ 1.

54.410(f) of the Commission’s rules was in the public interest “[i]n order to promote the maintenance and rebuilding of communities affected by Hurricane Irma and facilitate continued access to telecommunications services for disaster victims.”⁷ The Waiver Order further provides that at the end of the 90-day waiver period, “Lifeline subscribers who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission’s rules”⁸ and “subscribers whose service anniversary dates fell during the waiver period will have 60 days to respond to their [eligible telecommunications carrier’s (ETC’s)] recertification efforts.”⁹ Finally, the Waiver Order explains “ETCs in the affected areas that are unable to comply with the Lifeline non-usage and recertification requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Wireline Competition Bureau.”¹⁰

B. Devastation Following Hurricane Maria in Puerto Rico and the U.S. Virgin Islands

As noted above, the Waiver Order was issued in anticipation of widespread power and network outages and other damage from Hurricane Irma. Less than two weeks later, just as relief efforts in Puerto Rico and the U.S. Virgin Islands were getting underway, Hurricane Maria swept over these already severely damaged territories, leaving behind unprecedented destruction throughout the affected communities. The Open Mobile Petition describes in detail the gravity of the situation in Puerto Rico in the immediate aftermath of the storm, as well as ongoing struggles

⁷ *Id.*, ¶ 5.

⁸ *Id.*

⁹ *Id.*, ¶ 6.

¹⁰ *Id.*, ¶ 7.

for citizens to access basic necessities such as food, water, and electricity, and the extensive damage to communications networks throughout the island.¹¹

While featured less prominently in the media, the devastation in the U.S. Virgin Islands is equally palpable.¹² Indeed, St. Croix, St. John, and St. Thomas remain part of the “disaster area” identified in the Commission’s most recent status report for areas impacted by Hurricane Maria, with a majority of cell sites remaining out of service on St. Croix and St. Thomas and 100 percent of cell sites in St. John remaining out of service as of October 5, 2017.¹³ Thus, an extension of the Waiver Order is just as important for the U.S. Virgin Islands as it is for Puerto Rico.

II. REQUEST FOR EXTENSION OF WAIVER

Telrite supports the Commission’s efforts to curb waste, fraud and abuse in the Lifeline program and expends significant time and resources to comply with the Lifeline program rules, including the non-usage and recertification requirements. However, neither the Commission’s rules nor its orders related to the Lifeline program contemplate potential difficulties that consumers may have in keeping track of Lifeline service usage requirements (including during the “cure” period) or responding to recertification requests following a natural disaster such as Hurricane Maria. Given the magnitude of potential harm to low-income consumers that could result if the non-usage and recertification rules are routinely enforced against Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands during what is sure to be a lengthy and arduous recovery period, Telrite respectfully

¹¹ See Open Mobile Petition at 1-3.

¹² See Morgan Winsor, “U.S. Virgin Islands in ruins from Hurricane Maria,” ABC News (Sept. 29, 2017) available at <http://abcnews.go.com/International/us-virgin-islands-ruins-hurricane-maria/story?id=50178300>; Brian O’Connor, “Mapp gives Trump \$750-million first guess on cost of rebuilding,” Virgin Islands Daily News (Oct. 3, 2017) available at http://www.virginislandsdailynews.com/breaking/mapp-gives-trump--million-first-guess-on-cost-of/article_6e63f4a2-8893-5cb6-a34b-6178f4ce9586.html.

¹³ See FCC, “Communications Status Report for Areas Impacted by Hurricane Maria” (Oct. 5, 2017).

requests that the Bureau extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 90 days beyond the period granted in the Waiver Order.¹⁴

Without the requested waiver extension, significant numbers of Lifeline subscribers could be de-enrolled from Lifeline at a time when they need essential communications service the most, starting this December. With respect to Puerto Rico, the Open Mobile Petition correctly observes that “it will take several months for the power grid to be restored,” “road[s] and other infrastructure have been greatly damaged and disrupted,” “[m]ail delivery will not be reliable for an unknown period,” and many Lifeline subscribers “have suffered property damage and ... have lost their homes.”¹⁵ Communities in the U.S. Virgin Islands are facing similar destruction and disruptions.¹⁶

Under these conditions, “[i]t will be unrealistic to expect customers in these circumstances to comply with the paperwork requirements for retaining critical Lifeline service.”¹⁷ Indeed, absent reliable mail delivery or cell tower service, it will be all but impossible for ETCs to send notices regarding recertification to subscribers with any degree of certainty that the notices will actually

¹⁴ Consistent with the Waiver Order, the extension should allot Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands 30 days to meet Lifeline program usage requirements, plus a 15-day cure period, and 60 days to complete recertification after the waiver period.

¹⁵ Open Mobile Petition at 14.

¹⁶ See Jeremy Peters, “In the Virgin Islands, Hurricane Maria Drowned What Irma Didn’t Destroy,” New York Times (Sept. 27, 2017) *available at* <https://www.nytimes.com/2017/09/27/us/hurricane-maria-virgin-islands.html>.

¹⁷ Open Mobile Petition at 14. As Telrite noted in its initial waiver petition, absent relief from the Commission’s rules, many subscribers will be de-enrolled from the Lifeline program and forced to re-apply for service, a particularly burdensome task for an individual or family that may also be dealing with the loss of possessions, a home, or worst of all a life. In some cases, re-enrollment may be complicated further by the loss of documents that Lifeline applicants are required to present during the enrollment process to demonstrate eligibility for the program (*e.g.*, three consecutive months of pay stubs) and difficulties that Lifeline providers likely will experience setting up enrollment events in the aftermath of such a storm.

reach them. As it stands currently, the Waiver Order applies to subscribers whose recertification date would fall between September 7, 2017 and December 6, 2017. Thus, for subscribers whose recertification date is December 7, 2017 or later, ETCs will need to provide a recertification notice beginning on October 8, 2017. At this point, there is no indication that the mail system or cell towers in Puerto Rico and the U.S. Virgin Islands will be sufficiently functional within the next three days such that it would be reasonable to expect recertification notices to reach affected subscribers. Further, substantial numbers of Lifeline subscribers in Puerto Rico are recertified by querying the “Programa de Asistencia Nutricional” (PAN) database to verify the subscribers’ continued participation in the Supplemental Nutrition Assistance Program (SNAP). However, the PAN database has been unavailable following Hurricane Maria, and it is unclear when it will be restored so that ETCs can perform recertifications.

Telrite therefore respectfully submits that, in light of this ongoing and uncertain recovery period, an extension of at least 90 days beyond the period set forth in the initial Waiver Order is necessary. To be clear, however, an extension of the waiver is equally important for low-income consumers in the U.S. Virgin Islands, as the destruction and inability to obtain basic necessities and services on these islands appears to be of a similar magnitude as in Puerto Rico.

III. GOOD CAUSE EXISTS TO EXTEND THE WAIVER

The Commission may waive any of its rules for good cause shown,¹⁸ and on delegated authority, the Bureau may waive the Commission’s rules based on the same standard.¹⁹ Discretion to waive a rule may be exercised where the “particular facts make strict compliance inconsistent

¹⁸ See 47 C.F.R. § 1.3.

¹⁹ See 47 C.F.R. § 0.91(b); *see also* 47 C.F.R. § 0.291(a).

with the public interest.”²⁰ Hardship, equity or more effective implementation of overall policy may also be considered.²¹ In short, grant of a waiver request is justified when the public interest would be served by such action.

The Commission consistently has acknowledged the need for low-income consumers to have access to critical communications services during and after a catastrophic natural disaster.²² In issuing the Waiver Order, the Bureau acknowledged that good cause existed for temporarily granting relief from the Lifeline usage and recertification requirements in Puerto Rico and the U.S. Virgin Islands, finding that “[s]trict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers in the immediate aftermath of Hurricane Irma.”²³ Sadly, not only were predictions about the impact of Hurricane Irma correct, but the damage sustained in Puerto Rico and the U.S. Virgin Islands was then compounded by Hurricane Maria. Telrite therefore respectfully submits ample good cause also exists to extend the relief granted in the Waiver Order

²⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

²¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²² In 2005, the Commission established a temporary Lifeline program to provide relief to victims of Hurricane Katrina who were “without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment.” See *Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 02-60, CC Docket No. 02-6, WC Docket No. 03-109, Order, FCC 05-178 (2005). The Commission’s actions following Hurricane Katrina reflect the general truth that “poor people are disproportionately impacted by natural disasters.” See *Addressing the Risk of Waste, Fraud and Abuse in the FCC’s Lifeline Program: Hearing Before the S. Committee on Commerce, Science, and Transportation*, 115th Cong. (Sept. 6, 2017) (Statement of Jessica J. Gonzalez, Deputy Director & Senior Counsel, Free Press and Free Press Action Fund) (internal cites omitted). And in the aftermath of Hurricane Maria, Chairman Pai has made clear that despite the “catastrophic impact” of the storm, “the FCC stands ready to do whatever [it] can to help.” See FCC Press Release, “Chairman Pai Statement on Hurricane Maria” (Sept. 21, 2017).

²³ Waiver Order ¶ 1.

for an additional 90 days beyond the initial waiver period.²⁴ Granting this Petition would serve the public interest because it would avoid the significant harm and endangerment to consumers that would be caused by de-enrolling Lifeline subscribers in Puerto Rico or the U.S. Virgin Islands simply because they cannot strictly adhere to the Commission's usage or recertification requirements during and in the recovery period following an unprecedented natural disaster.

IV. CONCLUSION

For the foregoing reasons, the Bureau should grant this Petition and extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 90 days beyond the period granted in the Waiver Order.

Respectfully submitted,

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²⁴ The Waiver Order explained “[eligible telecommunications carriers (ETCs)] in the affected areas that are unable to comply with the Lifeline non-usage and recertification requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Wireline Competition Bureau.” Waiver Order ¶ 7.