

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

October 13, 2017

BY ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Telrite Corporation Emergency Petition;
WC Docket Nos. 09-197, 11-42, 10-90**

Dear Ms. Dortch:

On October 6, 2017, the undersigned counsel filed the attached Emergency Petition on behalf of Telrite Corporation (Telrite) through the Federal Communications Commission's (FCC's or Commission's) Electronic Comment Filing System (ECFS), and ECFS produced the attached confirmation page of the submission. However, ECFS encountered significant technical issues and disruptions on that date, and the document has not yet been posted on the ECFS website. Counsel, despite numerous attempts, has been unable to confirm when the Emergency Petition will be posted in ECFS. Out of an abundance of caution, counsel hereby resubmits the Emergency Petition to the above-referenced dockets, and respectfully requests that the Commission accept the document as filed on October 6, 2017.

Please contact the undersigned should you have any questions.

Respectfully submitted,



John J. Heitmann
Joshua T. Guyan
Jennifer R. Wainwright

Counsel to Telrite Corporation

**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

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 (Petition) for temporary enhanced support for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands. 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. In the wake of such a disaster, meaningful access to communications services will be essential for low-income consumers in these territories to recover and “to reconnect with loved ones and make living, housing, and work arrangements.”²

Two other petitions seeking temporary enhanced Lifeline support for subscribers in Puerto Rico and the U.S. Virgin Islands are currently pending before the Commission. On October 4, 2017, PRWireless, Inc. d/b/a Open Mobile requested “a temporary rule to increase the monthly discount level by \$25 for eligible customers” in Puerto Rico until March 1, 2018 as part of a larger request

¹ See 47 C.F.R. § 1.3 (permitting the Commission to waive or amend rules for good cause shown).

² 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, ¶ 12 (2005) (2005 Hurricane Katrina Order).

related to the Commission's High Cost and Lifeline rules following Hurricane Maria.³ On October 5, 2017, several affiliated communications companies operating under the Viya brand in the U.S. Virgin Islands similarly included as part of a larger petition for relief a request for enhanced Lifeline support totaling \$34.25 for Lifeline subscribers in the U.S. Virgin Islands, as well as a one-time \$30 handset credit, for at least six months.⁴ As explained herein, the need for Lifeline funds for recovery efforts is real, but the Open Mobile and Viya petitions are fundamentally flawed.

First, both Open Mobile and Viya seek the additional Lifeline funding only for subscribers of facilities-based Lifeline providers, which is anti-competitive and would exclude hundreds of thousands of eligible Lifeline subscribers of wireless resellers in Puerto Rico and the U.S. Virgin Islands from the recovery package. In addition, the Open Mobile proposal for enhanced Lifeline support mischaracterizes enhanced Lifeline support, such as for Tribal lands, as being designed to address the construction and deployment of infrastructure rather than to make communications services more affordable and promises no enhanced offers for its low-income customers.

Telrite respectfully requests that, rather than granting the enhanced Lifeline support requests set forth in the Open Mobile and Viya petitions, the Commission immediately make available to all eligible Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands a recovery package of up to \$25 per month of enhanced federal Universal Service Fund (USF) support for a six-month period.⁵

³ See Emergency Petition for Waiver and Other Relief, CC Docket No. 96-45 et al., 11 (filed Oct. 4, 2017) (Open Mobile Petition).

⁴ See Emergency Petition, WC Docket No. 11-42 et al., 10 (filed Oct. 5, 2017) ("Viya Petition").

⁵ Telrite generally supports Viya's request for a one-time \$30 handset credit. Indeed, Telrite expects that, in the coming weeks and months, it and other ETCs will be required to replace a significant number of handsets that were lost or damaged as a result of Hurricanes Irma and Maria. However, should the Commission grant Viya's request for a handset credit, the credit should apply equally to Lifeline subscribers in Puerto Rico, and should be made available to subscribers of both facilities-based and reseller ETCs since a low-income consumer's need for a replacement handset is not dependent upon whether his or her ETC is facilities-based or a reseller. Additionally, in order to ensure that the handset credit funds are disbursed responsibly, Lifeline subscribers seeking such

This temporary relief will allow eligible telecommunications carriers (ETCs) to provide enhanced voice and data offerings to Lifeline-eligible subscribers, thereby providing the “action” that Chairman Pai has called for⁶ to do “whatever we can to help”⁷ the people of Puerto Rico and the U.S. Virgin Islands.

I. CITIZENS OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS ARE FACING UNPRECEDENTED DEVASTATION FOLLOWING HURRICANES IRMA AND MARIA

Over the course of less than two weeks, Puerto Rico and the U.S. Virgin Islands were hit by two major hurricanes, 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 Hurricane Maria, as well as ongoing struggles for citizens to access basic necessities such as food, water, and electricity, and the extensive damage to communications networks throughout the island.⁸ While featured less prominently in the media, the devastation in the U.S. Virgin Islands is perhaps even worse,⁹ as described in the Viya Petition.¹⁰ 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,¹¹ and the estimated cost of the recovery effort

credit should be required to submit to ETC a written attestation that their handset was either lost or damaged as a result of the recent storms.

⁶ See *Connect America Fund*, WC Docket No. 10-90, Order, FCC 17-129, Statement of Chairman Ajit Pai (rel. Oct. 4, 2017) (CAF Relief Order).

⁷ See FCC Press Release, “Chairman Pai Statement on Hurricane Maria” (Sept. 21, 2017).

⁸ See Open Mobile Petition at 1-3.

⁹ 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>; 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>.

¹⁰ See Viya Petition at 3-8.

¹¹ See FCC, “Communications Status Report for Areas Impacted by Hurricane Maria” (Oct. 6, 2017).

has already topped half a billion dollars.¹² Thus, the relief and support requested in this Petition are just as important for the U.S. Virgin Islands as they are for Puerto Rico.

II. TEMPORARY ENHANCED LIFELINE SUPPORT WILL ALLOW ALL ETCS TO MAKE ENHANCED SERVICE PLANS AVAILABLE TO ALL LOW-INCOME CONSUMERS IN PUERTO RICO AND THE U.S. VIRGIN ISLANDS TO AID IN JUMP-STARTING THE RECOVERY FOLLOWING HURRICANES IRMA AND MARIA

Just as the Commission recognized in the aftermath of Hurricane Katrina, specialized relief for low-income consumers “is necessary to assist the disaster recovery efforts” following Hurricanes Irma and Maria.¹³ As Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands gain access to power and wireless communications services are restored, they will need enhanced voice and data offerings “to reconnect with loved ones and make living, housing, and work arrangements in the wake of the hurricane.”¹⁴ As it did in 2005 after Hurricane Katrina, the Commission is in a position to help the victims of Hurricanes Irma and Maria “recover from the catastrophic damage and help the affected communities rebuild.”¹⁵

The Commission is in a position to help jump start the disaster recovery efforts by supporting enhanced Lifeline service offerings in Puerto Rico and the U.S. Virgin Islands. However, Telrite opposes the anti-competitive proposals from Open Mobile and Viya for enhanced Lifeline support, as they would leave hundreds of thousands of eligible low-income subscribers to Lifeline service from resellers with no recovery assistance.

¹² 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 2005 Hurricane Katrina Order ¶ 10.

¹⁴ *Id.* ¶ 12.

¹⁵ *Id.* ¶ 1.

Instead, Telrite respectfully requests that the Commission make available to all eligible Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands up to an additional \$25 per month of enhanced Lifeline support for six months. This targeted relief will help low-income consumers – who are likely to be disproportionately affected by the disaster¹⁶ – to jump start efforts to reconnect to family, government services, and jobs – which will in turn aid in the broader recovery efforts on these islands. Similar to enhanced Tribal Lifeline support, the additional \$25 is intended to “ensure affordable access to telecommunications services,”¹⁷ and therefore should be conditioned upon ETCs offering to these subscribers enhanced monthly voice and data service options similar to options provided on Tribal lands during the six-month enhanced support period. Further, the temporary enhanced support should be available to eligible Lifeline subscribers of both facilities-based ETCs and resellers.¹⁸

Open Mobile and Viya also have requested that an additional \$25 in Lifeline support be made available on a temporary basis, suggesting such enhanced support “is equivalent to” the enhanced

¹⁶ 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) (noting that events such as Hurricane Katrina and Hurricane Harvey underscore that “poor people are disproportionately impacted by natural disasters”).

¹⁷ See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 00-208, ¶ 28 (2000) (2000 Tribal Lifeline Order).

¹⁸ Open Mobile and Viya’s proposals would have the effect of subverting competition in the Lifeline program, under the guise of providing relief to hurricane victims in Puerto Rico and the U.S. Virgin Islands. However, limiting competitive communications options from an already underserved population is patently inconsistent with the Communications Act’s universal service mandate and the Commission’s rules and policy objectives for achieving universal service. See, e.g., 47 C.F.R. § 54.701(a) (stating that the universal service programs are to be administered in a “competitively neutral manner”); 2000 Tribal Lifeline Order ¶ 120 (noting that “competitively neutral access to [universal service] support is critical to ensuring that all Americans ... have access to affordable telecommunications services.”).

Lifeline support for eligible subscribers residing on Tribal lands.¹⁹ However, Open Mobile's and Viya's requests are based on fundamental misunderstandings of the enhanced Tribal Lifeline program and are facially anti-competitive. Therefore, those requests should be rejected, and the Commission should instead grant Telrite's consumer-focused and competitively neutral proposal for temporary enhanced Lifeline support.

As an initial matter, both Open Mobile and Viya would limit the availability of the enhanced support to subscribers of facilities-based ETCs.²⁰ To support this restriction, Open Mobile in particular appears to rely on the misguided assumption that when the Commission instituted enhanced Lifeline support for Tribal lands, the primary objective was to promote infrastructure deployment. To the contrary, the Commission's 2000 Tribal Lifeline Order makes clear that the primary purpose of the enhanced Tribal benefit is not infrastructure deployment but rather increasing subscribership and improving affordability.²¹ Indeed, wireless resellers play a vital role providing wireless Lifeline service to low-income Americans residing on Tribal lands where networks are available but the facilities-based providers most often do not offer or actively market Lifeline service. Wireless resellers such as Telrite also are essential to filling the service gap for the more than half million Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands. Importantly, the Commission has already taken proper steps to provide relief to facilities-based ETCs that need to rebuild or repair their network infrastructure through the High Cost Program.²² Indeed, the Viya Petition praises the Commission for its assistance with the "reconstruction effort" through the CAF Relief Order.²³

¹⁹ Open Mobile Petition at 12; *see also* Viya Petition at 10.

²⁰ *See* Open Mobile Petition at 11; Viya Petition at 10.

²¹ *See* 2000 Tribal Lifeline Order ¶ 44.

²² *See generally* CAF Relief Order.

²³ *See* Viya Petition at 2.

Furthermore, the Open Mobile Petition includes a separate request for increased High Cost support, which is more properly intended to address its network construction and repair needs.²⁴ Thus, to the extent the temporary enhanced Lifeline support Open Mobile and Viya contemplate is analogous to the Tribal Lifeline program, limiting the availability of any enhanced Lifeline support in Puerto Rico and the U.S. Virgin Islands to only subscribers of facilities-based providers would serve only to benefit facilities-based ETCs by creating an unfair competitive advantage, and would needlessly exclude hundreds of thousands of eligible Lifeline subscribers of wireless resellers who are equally in need of such relief as the subscribers of facilities-based ETCs.

In Open Mobile's quest to restrict competition from resellers, it also loses sight of the purpose of the Lifeline program, which is to make communications services affordable for low-income consumers. Open Mobile suggests that enhanced Tribal Lifeline support "was introduced [to] address the significant challenges not only of serving extremely poor communities, but also constructing and deploying infrastructure in extremely hard-to-serve areas."²⁵ This claim is simply wrong. The Commission has long made clear that "[t]he animating principle of the Lifeline program has always been affordability."²⁶ Thus, in the Tribal context, ETCs must demonstrate that any enhanced Tribal support for which they seek reimbursement will be used to support an increased service offering (*e.g.*, more minutes, texts, broadband data, etc...). Open Mobile, however, fails to state that the enhanced support it is requesting will be used to promote affordability by way of making an enhanced service offering more affordable for low-income consumers. Instead, Open Mobile vaguely suggests that it will use the requested support "to provide a level of service that will

²⁴ See Open Mobile Petition at 5-7.

²⁵ *Id.* at 12.

²⁶ See, *e.g.*, *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 54 (2016).

help its customers in the wake of the extreme devastation brought by the hurricane”²⁷ Open Mobile also appears to indicate that the enhanced support will be used to construct infrastructure rather than to provide low-income consumers with discounts off enhanced service offerings. The Lifeline program rules do not permit such use of its funds.²⁸

Telrite therefore respectfully requests that the Commission grant this Petition and make available for six months up to an additional \$25 per month of enhanced Lifeline support to eligible Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands, conditioned upon the ETC providing to these subscribers enhanced voice and data offerings similar to those offers provided on Tribal lands. Because the temporary enhanced Lifeline support is intended to promote affordability, it should be available to subscribers of both facilities-based and reseller ETCs.

III. GOOD CAUSE EXISTS TO PROVIDE TEMPORARY ENHANCED LIFELINE SUPPORT

The Commission may waive or amend any of its rules for good cause shown.²⁹ Discretion may be exercised where the “particular facts make strict compliance inconsistent with the public interest.”³⁰ Hardship, equity or more effective implementation of overall policy may also be

²⁷ Open Mobile Petition at 13.

²⁸ See 47 C.F.R. § 54.403(a) (providing federal Lifeline support of \$9.25 per month if the carrier certifies that it will pass through the full amount of support to the qualifying low-income consumer), 54.403(a)(3) (providing additional support of up to \$25 per month for ETCs providing Lifeline service to eligible residents of Tribal lands if they pass through the full Tribal lands support amount to the qualifying eligible resident), and 54.403(b) (stating that ETCs must apply the federal Lifeline support amount to reduce the cost of any generally available residential service plan or package and charge the Lifeline subscribers the resulting amount).

²⁹ See 47 C.F.R. § 1.3.

³⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

considered.³¹ In short, waiver or amendment of the rules 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. Indeed, the Commission’s objective in adopting the 2005 Hurricane Katrina Order was 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.”³² 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.”³³ Indeed, “what’s needed to help the people of Puerto Rico and the U.S. Virgin Islands right now is action.”³⁴ Telrite respectfully submits ample good cause exists to grant this Petition. As the people of Puerto Rico and the U.S. Virgin Islands recover from Hurricanes Irma and Maria, meaningful access to communications services will be essential for low-income consumers in these territories. The enhanced Lifeline service offerings that would be made possible by the relief requested in this Petition would, consistent with the 2005 Hurricane Katrina Order, “facilitate evacuees and those remaining in the affected areas to reconnect with loved ones, and make living, housing, and work arrangements in the wake of the hurricane[s].”³⁵

³¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³² See 2005 Hurricane Katrina Order ¶ 2 (2005).

³³ See FCC Press Release, “Chairman Pai Statement on Hurricane Maria” (Sept. 21, 2017).

³⁴ CAF Relief Order, Statement of Chairman Ajit Pai.

³⁵ 2005 Hurricane Katrina Order ¶ 12.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant this Petition and immediately make available a recovery package to Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands up to \$25 per month of enhanced federal USF support for a six-month period. The temporary enhanced support should be conditioned upon ETCs providing enhanced voice and data offerings to Lifeline-eligible subscribers during the six-month enhanced support period similar to the service offering available on Tribal lands, and should be available to subscribers of both facilities-based ETCs and resellers.

Respectfully submitted,

By: _____

John J. Heitmann

Joshua Guyan

Jennifer Wainwright

KELLEY DRYE & WARREN LLP

3050 K Street NW, Suite 400

Washington, D.C. 20007

(202) 342-8400 (voice)

(202) 342-8451 (facsimile)

jheitmann@kelleydrye.com

Counsel for Telrite Corporation

October 6, 2017

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Phone: 1-888-225-5322
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Contact Us (<https://www.fcc.gov/contact-us>)

