

**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	)	
	)	WC Docket No. 09-197
Telecommunications Carriers Eligible for	)	
Universal Service Support	)	
	)	WC Docket No. 10-90
Connect America Fund	)	

**EMERGENCY PETITION FOR WAIVER OF LIFELINE RECERTIFICATION RULES**

PRWireless PR, LLC (“PRWireless” or “Company”),<sup>1</sup> by counsel and pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, 47 C.F.R. § 1.3, hereby seeks an emergency waiver of the Lifeline recertification rules to prevent loss of critical wireless telephone service by thousands of low-income inhabitants of Puerto Rico who face severe challenges in the ongoing humanitarian crisis caused by Hurricanes Irma and Maria.

PRWireless requests that the Wireline Competition Bureau (“WCB” or “Bureau”): (1) waive the annual Lifeline recertification rules for 2017 with respect to customers who have anniversary dates in October through December and cannot be verified by an eligibility database, so they do not have to re-certify twice in one year; and (2) temporarily waive the recertification rules with respect to the remaining customers until the Bureau assesses the

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<sup>1</sup> Effective November 15, 2017, PRWireless, Inc. d/b/a Open Mobile (“Open Mobile”) and Sprint Corporation entered into a joint venture which resulted in the formation of a new limited liability company, PRWireless PR, LLC (“PRWireless”). PRWireless is a 100% subsidiary of PRWireless HoldCo, LLC, which in turn is jointly owned by both PRWireless PR, Inc. and Sprint.

hurricane recovery and determines an appropriate recertification timetable. Because strict application of the recertification rules with respect to these subscribers would frustrate the goals of the Lifeline program, PRWireless submits that the requested waivers are justified.

## **I. INTRODUCTION**

In the wake of the unprecedented devastation caused by Hurricanes Irma and Maria in late September and early October 2017, the Bureau provided relief on several fronts, including temporarily waiving the rules requiring annual Lifeline recertification.<sup>2</sup> Among the areas of relief provided in those orders was an extension of the annual Lifeline recertification requirement through March 31, 2018, for subscribers in Puerto Rico and the U.S. Virgin Islands. Earlier this month, the WCB granted a 30-day extension of that waiver for customers whose continued eligibility cannot be verified using an eligibility database and whose anniversary dates fall between April 1, 2018, and April 30, 2018.<sup>3</sup>

Under the terms of the waivers granted to date, carriers must begin recertification efforts starting March 1, 2018, for customers with anniversary dates from April 1 to April 30, 2018. For customers with anniversary dates during the existing waiver period (September 7, 2017 through March 31, 2018), recertification efforts must begin on April 1. For customers with

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<sup>2</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, DA 17-984 (WCB rel. Oct. 6, 2017); *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, DA 17-1066 (WCB rel. Oct. 6, 2017).

<sup>3</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Order, DA 18-102 (WCB rel. Feb. 2, 2018).

anniversary dates on or after May 1, 2018, recertification efforts must begin on March 1, 2018 or at least 60 days prior to the customer's anniversary date, whichever is later.<sup>4</sup>

## **II. DISCUSSION**

Because of the extreme difficulties that residents of Puerto Rico continue to face as the island recovers from the severe effects of last year's hurricanes, and because PRWireless is a small business that lacks the capacity to perform such an unexpectedly large number of recertifications within a short time, additional relief is needed to avoid loss essential wireless service. Therefore, PRWireless requests that the Bureau waive the Lifeline rules for 2017 for customers who have anniversary dates in October through December and cannot be verified by an eligibility database, and to provide other relief as it deems appropriate.<sup>5</sup> With respect to other Lifeline customers, PRWireless requests a temporary waiver of the recertification rules until the Bureau assesses the state of hurricane recovery and determines an appropriate timetable.

### **A. Customers Face Extraordinary Challenges Because of the Ongoing Hurricane Recovery.**

PRWireless has thousands of customers whose eligibility cannot be verified automatically (i.e., via the PAN database) and who will be required to recertify within 60 days after March 1 (those with anniversary dates from April 1 through 30). Several thousand more customers who cannot be verified via database will be required to recertify within 60 days after

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<sup>4</sup> See *id.* at Para. 6.

<sup>5</sup> PRWireless supports the Emergency Petition filed in the above-captioned proceedings by Telrite Corporation on February 27, 2018.

April 1 (those with anniversary dates from September 7, 2017 through March 31, 2018). And thousands more with anniversary dates on or after May 1 will face 60-day recertification deadlines the earliest of which will fall on March 1.

These customers face extraordinarily difficult circumstances in their daily lives. Five months after the hurricanes hit, an estimated 400,000 people on the island are still without electricity.<sup>6</sup> The power grid remains extremely fragile, and even the areas where power has been restored are subject to the constant threat of explosions and outages.<sup>7</sup> Many residents lack access to adequate food, water, and medicine, and it can be dangerous to travel due to the lack of street lights in many areas.<sup>8</sup> On information and belief, it remains difficult to travel from rural areas to the more populous areas where there are retail locations.

PRWireless submits that the ongoing situation in Puerto Rico would make it extremely burdensome for customers who cannot be verified via database to go through the required process to retain their Lifeline service. These customers will have 60 days to complete a recertification form and present it to PRWireless, along with documentary proof of continued eligibility (which is required under the rules of the Telecommunications Regulatory Board of Puerto Rico (“TRB”)). Typically, about 96% of the Company’s customers recertify at retail stores or kiosks. The remaining 4% recertify via mail. Recertifying over the phone is not

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<sup>6</sup> Kyla Mandel, “Puerto Rico Recovery Efforts Plagued by Power Company’s Financial Troubles,” ThinkProgress (Feb. 20, 2018), available at <https://thinkprogress.org/puerto-rico-recovery-power-84c087e1a2d0/>.

<sup>7</sup> Leyla Santiago and Susannah Cullinane, “Explosion Cuts Power in Puerto Rico,” CNN (Feb. 12, 2018), available at <https://www.cnn.com/2018/02/11/us/puerto-rico-power/index.html>.

<sup>8</sup> Ann M. Simmons and Milton Carrero Galarza, “Four Months After Hurricane Maria, Puerto Rico Struggles With Lack of Electricity, Food and Water,” Los Angeles Times (Jan. 30, 2018), available at <http://www.latimes.com/nation/la-na-puerto-rico-aid-20180130-story.html>.

possible because of the TRB rule requiring copies of eligibility documents. Power outages will present an obstacle for customers seeking to make copies of program participation or income documents. For many customers in rural areas, poor roads and lack of lighting can make travel to retail stores a dangerous undertaking. There is no assurance that these conditions will improve in the short term.

In addition, PRWireless, as a small business, will be severely burdened by the requirement to recertify customers in large groups, when it had staffed and designed its recertification process to handle recertifications over the course of the year as customer anniversary dates approach. On March 1, PRWireless will have to send notices to more than 1,600 customers with anniversary dates from April 1 to April 30. In March, notices will also have to be sent to another 1,500-1,600 customers with May anniversary dates. On April 1, notices must go out to more than 9,600 customers with anniversary dates within the waiver period of September 7, 2017 through March 31, 2018.

This glut of recertification notices will create an enormous amount of outreach and follow-up for the Company's small compliance staff. Because of the TRB rule requiring copies of eligibility documents, this process cannot be conducted via IVR, which would reduce the number of employee work hours involved. Currently, the recertification process is handled by five employees, two of whom perform the tracking activity to ensure that non-recertifying customers are de-enrolled and that information is retained for reporting and audits. These employees all have other responsibilities, including: audits of customer contracts and handset agreements; providing telephone support to sales staff; providing documents in response to requests from auditors and the credit and collections department; and various Lifeline-related

tasks. Absent a waiver, the Company believes it will need to hire additional people and possibly add kiosks to handle the large number of recertifications, adding significant cost burdens in an already difficult recovery situation.

Lastly, for customers with anniversary dates falling in October, November and December, the recertification process will be confusing this year as they will be required to complete their Calendar Year 2017 recertification within 60 days of March 1, 2018, and then recertify again before their 2018 anniversary date. Many of those customers may ignore the first request (believing they have until their 2018 anniversary later in the year), or the second request (believing they have already done all that is required of them in 2018). This could result in many eligible customers being de-enrolled for failure to respond due to this potential confusion.

**B. A Further Extension of the Recertification Waiver is Justified Under the Commission's Rules.**

The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.<sup>9</sup> Although agency may discharge its responsibilities by promulgating rules which serve the public interest as generally applied, it nonetheless has an obligation to seek out the public interest in particular, individualized cases. In fact, the Commission's right to waive its rules is not unlike an obligation in that it is a *sine qua non* to its ability to promulgate otherwise rigid rules. It is the necessary "safety valve" that makes the system work.<sup>10</sup> In addition, a waiver can be granted where good cause is

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<sup>9</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972).

<sup>10</sup> See *WAIT Radio*, 418 F.2d at 1157, 1159.

demonstrated,<sup>11</sup> especially where hardship, equity, or more effective implementation of an overall policy on an individual basis warrant relief.<sup>12</sup>

Here, strict application of the rules would frustrate the purpose of the Commission's recertification process. The Commission has stated that its recertification rules "strike an appropriate balance" between identifying and de-enrolling ineligible customers on the one hand, and avoiding excessive burdens on consumers and ETCs on the other.<sup>13</sup> The "rolling recertification" process was developed, in part, to spread out the administrative burden over time:

We find that, particularly as the National Verifier is launched in multiple states, annually recertifying subscribers on a rolling basis, based on the subscriber's service initiation date, will prevent the entity responsible for recertification from processing recertification and potential de-enrollment procedures for all subscribers at the same time. This will make the recertification process more manageable and result in a recertification process that reflects the amount of time the subscriber has actually been enrolled in the Lifeline program. We also expect that this change will enable providers and the National Verifier to respond to any customers who need assistance in the recertification process without being overwhelmed by customer service requests.<sup>14</sup>

Requiring thousands of customers with anniversary dates spanning several months to be recertified within the same 60-day period would create the very type of burden the Commission sought to avoid. Moreover, it would excessively burden consumers in Puerto Rico

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<sup>11</sup> 47 C.F.R. § 1.3. The Commission may waive a rule where the circumstances of the case render strict compliance to the rule is inconsistent with the public interest. *Northeast, supra*, 897 F.2d at 1165.

<sup>12</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969).

<sup>13</sup> *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6718, para. 138 (2012) ("2012 Lifeline Reform Order").

<sup>14</sup> *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4115, Para. 417 (2016) ("2016 Lifeline Order").

to respond to outreach, complete recertification forms, and provide copies of eligibility documents within a short time period while facing power failures and other ongoing challenges.

**C. Requested Relief.**

PRWireless requests a waiver of Sections 54.405(e)(4) and 54.410(f) of the Commission's rules for customers whose eligibility cannot be verified via database, i.e., who are not PAN participants. With respect to customers whose anniversary dates fell within the waiver period of September 7 through December 31, 2017, PRWireless requests that their 2017 recertification requirement be waived altogether and that these customers not be required to recertify next until their anniversary dates in 2018. With respect to customers with anniversary dates from April 1 to April 30, 2018, and for those with anniversary dates after April 30, PRWireless requests a temporary waiver of the recertification rules until the Bureau assesses the recovery situation in Puerto Rico and the U.S. Virgin Islands and determines an appropriate timetable for their recertification.

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### III. CONCLUSION

For all of the reasons set forth above, PRWireless requests a waiver of the Commission's Lifeline recertification rules to prevent large numbers of eligible customers facing extremely difficult circumstances from being de-enrolled.

Respectfully submitted,

PRWireless PR, LLC



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