

**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: November 27, 2017**

**Released: November 27, 2017**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part the New York State Public Service Commission's (New York) motion for an extension of waiver, which gave New York until December 1, 2017 to implement Lifeline federal eligibility program changes in sections 54.400(j) and 54.409(a) of the Commission's rules.<sup>1</sup> Based on the record before us, we find that good cause exists to extend the waiver through the earlier of April 30, 2018, or the date on which New York has aligned its eligibility criteria with the Commission's Lifeline eligibility rules and updated its eligibility database accordingly.

2. In the *2016 Lifeline Order*, the Commission adopted changes to the Lifeline program's eligibility rules.<sup>2</sup> These changes took effect on December 2, 2016 and included removing certain federal programs as qualifying programs for Lifeline eligibility;<sup>3</sup> adding the Veterans and Survivors Pension Benefit as a qualifying program;<sup>4</sup> and removing state-specific Lifeline eligibility criteria.<sup>5</sup> These changes were made to simplify enrollment in the Lifeline program, to focus enrollment on the most highly-used eligibility programs, and to foster long-term technical solutions with the National Verifier.<sup>6</sup>

3. New York maintains a database that allows ETCs to determine subscriber eligibility for the Lifeline Program.<sup>7</sup> In December 2016, the Bureau provided New York a temporary waiver until December 1, 2017 to implement the streamlined federal eligibility criteria.<sup>8</sup> In support of the original waiver request, New York stated that updating its database would require technical adjustments that may

<sup>1</sup> Motion of the New York State Public Service Commission for a Further Waiver, WC Docket No. 11-42 (filed Oct. 27, 2017) (New York Extension Request). *See also Lifeline and Link Up Reform and Modernization*, Order, 31 FCC Rcd 12718, 12718, para. 1 (WCB 2016) (*Waiver Order*). The *Waiver Order* did not waive the inclusion of the Veterans and Survivors Pension Benefit Program as a qualifying program. *Id.* at 12719, para. 2.

<sup>2</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, 4021-40, paras. 167-216 (2016) (*2016 Lifeline Order*).

<sup>3</sup> *Id.* at 4021, para. 167.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4038, para. 212.

<sup>6</sup> *Id.* at 4022, para. 168.

<sup>7</sup> *See* Letter from Graham Jesmer, Assistant Counsel, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 4, 2016).

<sup>8</sup> *Waiver Order*, 31 FCC Rcd at 12721, para. 24.

not be completed by December 1, 2016.<sup>9</sup> New York also stated that its residents receive the largest share of Low Income Home Energy Assistance Program (LIHEAP) assistance in the nation, and more time was needed to determine if New York would retain the LIHEAP as a state-specific eligibility criterion for its own state-based funding.<sup>10</sup>

4. On October 27, 2017, New York filed a petition requesting that the Bureau extend the previously granted waiver until June 29, 2018 “due to unforeseen challenges in OTDA’s [Office of Temporary and Disability Assistance] rollout of its modified system, which will not be ready on December 1, 2017” and the need for “additional time to consider making changes to New York State’s support system for Lifeline customers.”<sup>11</sup> On November 16, 2017, New York submitted an *ex parte* describing the work New York must complete to implement the federal eligibility criteria.<sup>12</sup>

5. Generally, the Commission’s rules may be waived for good cause shown.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup> Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>16</sup>

6. We find there is good cause to extend the Bureau’s previously granted waiver for New York through April 30, 2018, or until New York has aligned its eligibility criteria with the Commission’s Lifeline eligibility rules and updated its eligibility database accordingly, whichever is sooner. New York indicates that it needs additional time because of “unforeseen challenges” with modifying its database and the need for additional time to “make reasoned public policy decisions.”<sup>17</sup> Moreover, New York’s

<sup>9</sup> *Waiver Order*, 31 FCC Rcd at 12722, para. 13; Comments of New York State Public Service Commission, WC Docket No. 11-42 et al., at 2 (filed Oct. 21, 2016).

<sup>10</sup> *Waiver Order*, 31 FCC Rcd at 12723, para. 13; Comments of New York State Public Service Commission, WC Docket No. 11-42 et al., at 3 (filed Oct. 21, 2016).

<sup>11</sup> New York Extension Request at 3 (stating that extending the waiver would give New York “the opportunity to make reasoned decisions regarding any necessary changes to the state eligibility verification system and processes, NYPSC rules and regulations, and service provider tariffs which may be affected by the Commission’s Lifeline Modernization Order.”).

<sup>12</sup> Letter from Graham Jesmer, Assistant Counsel, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Nov. 16, 2017) (stating “[C]hanges to [New York OTDA’s] systems may take an additional two to three months to complete. Shutting down OTDA’s existing match will take approximately three weeks, and testing the new criteria may take an additional three weeks. These timeframes are dependent on the availability of New York State’s IT agency to match the timing of Lifeline change request with other competing priorities, and could potentially extend out further.”; “In addition, ETCS will need to be provided with notices that the data match being provided will not match their existing MOUs with OTDA.... These notices would take a minimum of 45 days to draft, approve, and issue.”; “With the change in eligibility criteria, new MOUs will need to be drafted and agreed on with each Lifeline service provider.... This could take four months or longer, depending on the phone provider and the level of review necessary.”). New York states that “OTDA has actively been working with its IT department to initiate the changes, initiated a review of its existing MOUs, and begun drafting notice language to the phone providers.” *Id.* at 2.

<sup>13</sup> 47 CFR § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>16</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>17</sup> New York Extension Request at 1.

database does not provide ETCs with the specific program that qualified the subscriber for Lifeline.<sup>18</sup> As a result, if an ETC relied on New York's database, it would risk enrolling an ineligible customer who is only eligible for the New York state subsidy but not for the federal subsidy. Accordingly, ETCs in New York would need to manually verify every potential subscriber's eligibility for the federal Lifeline discount. Rendering New York's eligibility database unusable could create significant burdens and inefficiency, and would undermine the state's investment in an eligibility verification database. We accordingly find that the potential harm that could result from failing to extend the Bureau's previously-granted waiver for New York outweighs the desire to bring about these eligibility changes sooner. Based on the record, extending the waiver for this period will have minimal financial impact on the Fund.<sup>19</sup>

7. At the same time, we decline to grant New York's request to extend the waiver through June 29, 2018.<sup>20</sup> We find that, based on the record before us, continuing the Bureau's waiver for New York through April 30, 2018 at the latest is an appropriate extension that provides New York sufficient additional time to make the changes necessary to implement the federal eligibility criteria while ensuring the eligibility changes are not unreasonably delayed.<sup>21</sup>

8. Additionally, we clarify that if New York does not update its database such that ETCs may rely on that database to determine whether a consumer is eligible for Lifeline under the revised federal eligibility rules by April 30, 2018,<sup>22</sup> ETCs will be responsible for ensuring that subscribers enrolled or recertified after that date are eligible under the Commission's revised eligibility criteria. As in other states, ETCs may elect to rely on the Universal Service Administrative Company (USAC) to conduct the eligibility recertification process. We also direct USAC to conduct outreach to ETCs operating in New York so that they may be prepared to conduct eligibility determinations without relying on New York's eligibility database if that database is not updated by the expiration of this waiver period.

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, 1.3, that the motion for extension of time filed by the New York State Public Service Commission is GRANTED IN PART AND DENIED IN PART.

10. IT IS FURTHER 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, 1.3, that sections 54.400(j) and 54.409(a) of the Commission's rules, 47 CFR §§ 54.400(j) and 54.409(a) ARE WAIVED to the limited extent provided herein.

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<sup>18</sup> See Letter from Graham Jesmer, Assistant Counsel, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1 (filed Nov. 4, 2016).

<sup>19</sup> Letter from Graham Jesmer, Assistant Counsel, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Nov. 14, 2017) ("[B]ased on numbers provided to DPS by USAC, it appears that during any extension, only a limited number of customers, likely fewer than 1,000 would receive Lifeline benefits by qualifying using the Low Income Home Energy Assistance Program (LIHEAP); National School Lunch Program (NSLP); or Temporary Assistance to Needy Families (TANF).").

<sup>20</sup> New York Extension Request at 3.

<sup>21</sup> See also *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, DA 17-1047 (WCB Oct. 25, 2017) (extending a rule waiver for the California Public Utility Commission to the same date).

<sup>22</sup> We note that New York's eligibility database can satisfy the revised eligibility rules by informing ETCs whether a prospective subscriber is eligible for the federal Lifeline benefit under the revised eligibility criteria even if the database does not inform the ETC of the specific program through which the subscriber's eligibility was verified.

11. 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

Kris Anne Monteith  
Chief  
Wireline Competition Bureau