

In the Matter of)
)
 Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
)
)

ORDER

Adopted: December 26, 2018

Released: December 26, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In November 2018, a wildfire known as the Camp Fire inflicted tremendous damage and led to the evacuation of tens of thousands of people in Butte County, California. As a result, the California Public Utilities Commission (CPUC) has petitioned for a temporary waiver of the Lifeline recertification and non-usage rules to prevent eligible low-income subscribers from being de-enrolled from the Lifeline program during the wildfire recovery period. In this Order, the Wireline Competition Bureau (Bureau) grants the CPUC's petition requesting temporary waivers of the Lifeline program's non-usage and recertification rules for subscribers in Butte County, California affected by the Camp Fire.¹ Based on the record before us, we find that good cause exists to temporarily waive these rules and deadlines, as provided herein, to assist Lifeline program participants in Butte County affected by the recent California wildfire.²

II. BACKGROUND

2. Beginning on November 8, 2018, the Camp Fire caused 88 deaths, damaged or destroyed over 19,000 structures, and burned 153,336 acres.³ The fires also caused power outages and damage to communications services, and tens of thousands of residents have been displaced from their homes.⁴ The Acting Governor of California declared a state of emergency in Butte County on November 8.⁵ Due to the damage caused by these fires, the CPUC filed a Petition on December 19, 2018 requesting a six-month suspension from November 1, 2018 to May 1, 2019 of the Commission's non-usage and recertification rules for all Lifeline subscribers residing in Butte County,⁶ including those who enroll in the program during the waiver period.⁷ The CPUC contends that a temporary waiver is necessary as

¹ See Petition of the California Public Utilities Commission for Temporary Waiver, WC Docket No. 11-42, at 1 (filed Dec. 19, 2018) (Petition).

² See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f).

³ Petition at 1-2; *see also* CAL FIRE, California Statewide Fire Summary (Nov. 25, 2018), http://cdfdata.fire.ca.gov/admin8327985/cdf/images/incidentfile2277_4326.pdf.

⁴ Petition at 3-4.

⁵ *Id.* at 1.

⁶ *Id.* at 1, 5.

⁷ *Id.* at 4.

communications services are rebuilt, and many residents of Butte County begin the process of rebuilding their lives and communities.⁸

3. The CPUC also requests a temporary waiver of the Commission's Lifeline recertification requirements for Lifeline subscribers residing in Butte County.⁹ California Lifeline Program recertification forms are typically delivered by mail to the subscriber's original service address.¹⁰ The CPUC argues that if a subscriber had to relocate because his or her house was damaged or destroyed in the fires, the subscriber would have no way to receive the recertification forms.¹¹ Accordingly, the CPUC requests that the Commission's renewal and recertification rules be temporarily waived for subscribers living in Butte County and whose service anniversary dates fall between November 1, 2018 and May 1, 2019.¹² The CPUC requests that those subscribers receiving a waiver be permitted to begin their recertification process again on May 1, 2019,¹³ which, in conjunction with the CPUC's 105-day Lifeline renewal process, would give affected subscribers a new service anniversary date of August 14, 2019.¹⁴

III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹⁷ We grant the petition for waiver of the Commission's non-usage and recertification rules for all Lifeline subscribers in Butte County.

5. The petition requests a six-month waiver of the Commission's Lifeline program's non-usage and recertification rules for Butte County.¹⁸ Based on the record before us, we find that good cause exists to waive, from November 1, 2018 through May 1, 2019, sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for all ETCs' Lifeline subscribers in Butte County. There are approximately 12,686 Lifeline subscribers in Butte County.¹⁹ Given the extraordinary damage caused by these wildfires, strict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers during the recovery efforts to rebuild in the aftermath of the fire.

6. To promote the maintenance and rebuilding of communities affected by the Camp Fire and to facilitate continued access to communications services for disaster victims, we first find good cause to temporarily waive the usage requirements in sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules for ETCs' Lifeline subscribers in Butte County. Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service

⁸ Petition at 3-4.

⁹ See 47 CFR §§ 54.405(e)(4) and 54.410(f).

¹⁰ Petition at 5-6.

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 CFR § 1.3.

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ Petition at 1.

¹⁹ *Id.* at 4.

for 30 consecutive days.²⁰ A temporary waiver of these rules will help Lifeline-supported consumers retain access to emergency communications services during this disaster, and will allow ETCs to continue providing Lifeline service to disaster victims in Butte County without requiring those subscribers to de-enroll and re-enroll in the program as they continue to rebuild from the devastation of these wildfires. After the expiration of the waiver periods on May 1, 2019, 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 before being subject to de-enrollment from the program. To the extent that subscribers were de-enrolled or not claimed for support during the relevant waiver period, ETCs may claim federal Lifeline support for qualifying service provided during the waiver period and continue providing Lifeline-supported service to impacted subscribers.

7. We also find good cause to temporarily waive the recertification requirements in sections 54.405(e)(4) and 54.410(f) of the Commission's rules for ETCs' Lifeline subscribers in Butte County whose service anniversary dates fall on or between November 1, 2018 and May 1, 2019.²¹ Waiver of these rules will allow Lifeline subscribers in Butte County additional time to complete the recertification process after recovering from the damage created by the wildfires. Damage to residential buildings and infrastructure resulting from the wildfires will make it difficult, if not impossible, for Lifeline subscribers to receive and respond to mailed recertification forms.²² At the expiration of the waiver period, we expect that the state's Lifeline program administrator will begin recertification efforts promptly, consistent with the CPUC commitment in the Petition.²³ Any subscriber whose anniversary date falls within the waiver period but has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period.

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 the Universal Service Administrative Company (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 subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. 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.

IV. 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 §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f), of the Commission's rules are waived to the limited extent provided herein.

10. IT IS FURTHER ORDERED, that 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 the request for waiver

²⁰ See Petition at 1.

²¹ 47 CFR §§ 54.405(e)(4), 54.410(f).

²² See Petition at 2-3.

²³ *Id.* at 6.

filed by the California Public Utility Commission IS GRANTED.

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