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

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

Adopted: March 31, 2015 **Released: March 31, 2015**

ORDER

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, the Wireline Competition Bureau (Bureau) clarifies rules regarding subscriber usage of Lifeline-supported service established in the *Lifeline Reform Order*.[1] We clarify that, pursuant to the *Lifeline Reform Order*, an eligible telecommunications carrier (ETC) must both assess and collect a monthly fee from a subscriber in order to avoid the Lifeline usage requirements, including the requirement to de-enroll inactive subscribers who fail to use the service within any consecutive 60-day period.[2]

2. *Background*. In the *Lifeline Reform Order*, the Commission amended the rules to prevent pre-paid ETCs from receiving Lifeline support for inactive subscribers who have not used the service for a consecutive 60-day period.[3] The goal of this requirement was to reduce both waste and inefficiency in the Lifeline program by eliminating support for subscribers who are not using the service, as well as eliminating incentives ETCs may have "to continue reporting line counts for subscribers that have discontinued their service."[4] Specifically, the Commission made this change to "prevent ETCs who do not assess and collect from end users a monthly charge (pre-paid ETCs) from obtaining Lifeline support for an inactive subscriber who has failed to use his or her service in the first instance,"[5] and goes on to specify that the "restrictions do not apply to prepaid providers that collect some monthly amount from the customer."[6] The codified rules, however, refer to ETCs that do not assess "or" collect a monthly charge.[7]

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[1] *See Lifeline and Link Up Reform and Modernization et al*., WC Docket. Nos. 11-42 *et al.,* CC Dkt. No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or Order).

[2] *See* 47 C.F.R. § 54.405(e)(3) (explaining the requirement and the process for providing notice to subscribers).

[3] *See Lifeline Reform Order,* 27 FCC Rcd at 6767-6771, paras. 255-63; 47 C.F.R. § 54.407(c).

[4] *See Lifeline Reform Order,* 27 FCC Rcd at 6769, para. 258.

[5] *See id.* at 6768-69, para. 257.

[6] *See id.* at 6769, para. 257 n.697.

[7] *See* 47 C.F.R. § 54.405(e)(3) ("*De-enrollment for non-usage*. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in §54.407(c)(2), for 60 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers, an

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II. DISCUSSION

3. The Bureau clarifies that in order to obtain Lifeline support, Lifeline ETCs who assess a monthly fee for service from their Lifeline subscribers must also collect the monthly fee from the subscriber, or follow the requisite procedures to de-enroll any inactive subscribers who have not used the service during any consecutive 60-day period.[8] While the Order makes clear that ETCs who do not both assess and collect a monthly fee for service are prohibited from receiving Lifeline support for inactive subscribers, the related Commission rules require pre-paid ETCs to "assess or collect" a monthly fee in order to exempt itself from the non-usage de-enrollment requirements.[9]

4. The usage requirements as described in the *Lifeline Reform Order* are clear. As discussed in the Order, the consumer usage requirement applies only to "pre-paid" services – or services for which subscribers do not receive monthly bills and do not have a regular billing relationship with the ETC – because the lack of regular contact with the subscriber does not provide a reasonable opportunity for the ETC to ascertain a subscriber's continued intent to receive Lifeline benefits.[10] Merely assessing a monthly fee on a subscriber does not provide sufficient contact with the subscriber to ascertain the subscriber's intent to use the service.[11] Similarly, failing to actually collect the assessed fee does not provide the subscriber a sufficient incentive to place a value on the service. In such a situation, the consumer has little to lose by obtaining service that she may not use.[12] Providing support for subscriber lines that are not used wastes limited funds.[13] In contrast, actually collecting some monthly amount from subscribers is sufficient to ascertain subscriber intent[14] and ensures that subscribers will continue to subscribe to the service only to the extent that they value and use the service.

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eligible telecommunications carrier must provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage under this paragraph. If the subscriber uses the Lifeline service with 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber's Lifeline service. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to §54.416."); 47 C.F.R. § 54.407(c) ("An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from subscribers . . . .").

[8] 47 C.F.R. § 54.405(e)(3).

[9] *Id.*; 47 C.F.R. § 54.407(c).

[10] *See Lifeline Reform Order*, 27 FCC Rcd at 6769, para. 257 n.697. *See also id.* at 6771, para. 263. We note that this Order is intended only to clarify the language of the rules to match the intent set forth in the *Lifeline Reform Order*. It is not meant to encourage ETCs to begin imposing charges upon subscribers for services in order to avoid compliance with the existing usage requirements.

[11] *Cf.*, *id.* at 6769, para. 257 (noting that the usage requirement will "ensure that Lifeline support benefits only eligible low income subscribers actually using the supported service."); *id.* at 6770, para. 261 (noting that the purpose of the usage requirements is to ensure that the consumer can demonstrate that he or she "wants to continue receiving the Lifeline supported service.").

[12] *Cf. id.* at 6771, para. 263 (noting one commenter's assertion that even a "minimum payment on post-paid accounts is a clear indication of the subscriber's intent to maintain the Lifeline service.").

[13] *See id.* at 6767, para. 255.

[14] *See id.* at 6771, para. 263.

5. In the *Lifeline Reform Order*, the Bureau was delegated the authority to revise rules as necessary to ensure the reforms adopted through the Order are properly reflected in the rules.[15] Pursuant to this authority, we clarify that pre-paid ETCs must both assess and collect a charge for service on a monthly basis, or proceed to follow the procedures to de-enroll inactive subscribers who have not used the service during any consecutive 60-day period. We amend the rule language to reflect this clarification.

III. PROCEDURAL MATTERS

A. Congressional Review Act

6. The Commission will send a copy of this in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[16]

B. Final Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA),[17] requires agencies to prepare a regulatory flexibility analysis for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[18] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[19] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[20] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies additional criteria established by the Small Business Administration (SBA).[21]

8. We hereby certify that the rule revisions adopted in this Order will not have a significant economic impact on a substantial number of small entities. This Order clarifies rules adopted in the *Lifeline Reform Order* by correcting conflicts between the language of *Order* and the codified rules. These revisions do not create any burdens, benefits, or requirements that were not addressed in the Final Regulatory Flexibility Analysis attached to the *Lifeline Reform Order*.[22] The Commission will send a copy of this Order, including a copy of this final certification, to the Chief Counsel for Advocacy of the

[15] *Id.* at 6857, para. 507 (delegating to the Bureau the authority to make rule revisions as necessary to ensure that the reforms adopted in that order are properly reflected in the rules).

[16] *See* 5 U.S.C. § 801(a)(1)(A).

[17] The RFA, *see* 5 U.S.C. § 601 *et seq*., has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[18] 5 U.S.C. § 605(b).

[19] 5 U.S.C. § 601(6).

[20] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[21] Small Business Act, 15 U.S.C. § 632.

[22] *See Lifeline Reform Order*, 27 FCC Rcd at 6910-30, App. J.

Small Business Administration.[23] In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.[24]

C. Paperwork Reduction Act Analysis

9. This Order modifies information collection requirements adopted in the *Lifeline Reform Order* and is therefore subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-108,[25] the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5(c), 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, sections 0.91, 0.291, 1.1, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.1, 1.427, and the delegation of authority in paragraph 507 of FCC 12-11, this Order is ADOPTED.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE 30 days following Federal Register Publication, except to the extent expressly addressed below.

12. IT IS FURTHER ORDERED that the relevant rules are amended as set forth in Appendix A. Those rules contain modified information collection requirements that are subject to the PRA and shall become effective upon announcement in the Federal Register of OMB approval of the subject information collection requirements.

13. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[26]

14. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

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[23] 15 U.S.C. § 632.

[24] *Id.*

[25] *See* 44 U.S.C. § 3506(c)(4).

[26] *See* 5 U.S.C. § 801(a)(1)(A).

Julie A. Veach
Chief
Wireline Competition Bureau

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. Amend § 54.405 by revising paragraph (e)(3) to read as follows:

§54.405 Carrier obligation to offer Lifeline.

(3) *De-enrollment for non-usage*. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in §54.407(c)(2), for 60 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage under this paragraph. If the subscriber uses the Lifeline service with 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber's Lifeline service. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to §54.416.

2. Amend § 54.407 by revising paragraph (c) to read as follows:

§54.407 Reimbursement for offering Lifeline.

(c) An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers:

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