**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D. C. 20554**

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| In re | ) | |
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| Petition for Waiver of the | ) | |
| Federal Communications Commission's Rules | ) | WC Docket 03-109 |
| For Filing Sample Lifeline Verification Data | ) | |
| and for Declaratory Ruling Regarding the | ) | |
| Commission's Lifeline Verification Rules | ) | |

To: Wireline Competition Bureau

## PETITION FOR WAIVER AND REQUEST FOR DECLARATORY RULING

Alaska DigiTel, LLC ("ADT" or "Petitioner"), by its attorneys and pursuant to Section 1.925 of the FCC's rules, 47 C.F.R. § 1.925, respectfully requests a waiver of the Section 54.410(c)(2) of the Commission's rules, 47 C.F.R. §54.410(c)(2). Petitioner requires an additional 90 days to submit the required sample Lifeline verification data for Petitioner's Lifeline customers in the state of Alaska.

In addition, Petitioner requests a declaratory ruling that where a state commission which has mandated Lifeline support does not impose certification and verification requirements on CMRS carriers, it is legally sufficient for a CMRS carrier to follow the FCC's rules for certifications and verifications contained in Section 54.410 of the Commission's rules.

For the reasons shown herein, a waiver and an extension of the compliance deadline through September 22, 2005 is respectfully requested. For reasons beyond Petitioner's control, compliance with the June 22 deadline is impossible and therefore strict application of the rule would be inequitable and contrary to the public interest.

## I. Background

1. ADT provides Personal Communications Service ("PCS") to its subscribers in the state of Alaska. In August 2003, the Regulatory Commission of Alaska ("RCA") designated

ADT as an ETC in the state of Alaska.[1] Since that time, ADT has operated as an ETC and has advertised the availability of its Lifeline and Linkup services.

2. Since the Commission's Lifeline Order was published last year,[2] ADT has been working diligently to ensure that it is in compliance with the RCA's Lifeline certification and verification rules. Within the past three weeks, a staff person with the RCA informed ADT that the Alaska certification and verification procedures that were being put into place did not extend to wireless ETCs within the state of Alaska since the RCA has assumed jurisdiction for purposes of designating ETCs, but only for purposes of the federal USF program, and therefore, the FCC's federal default procedures should be followed with respect to wireless Lifeline customers. ADT has asked the RCA to confirm this advice in writing. Should the RCA issue a written confirmation, ADT will provide a copy as a supplement to this Petition.

3. Upon being informed of the RCA's position, ADT sought advice from the FCC staff and this Petition followed. The late notice from the RCA that its Lifeline customers would not be included in the RCA's Lifeline certification and verification procedures leaves ADT insufficient time to prepare and submit to the Universal Service Administration's Low Income Division a statistically valid sample of its Lifeline customers on or before the June 22, 2005 deadline for default states.

## II. Request for Waiver.

4. Petitioner requests a waiver and extension of the current deadline to implement the Commission's requirements for verifying the eligibility of its Lifeline customers. Petitioner is aware of nothing in either the RCA's rules or its orders that puts carriers on notice that wireless Lifeline customers are to be excluded from the state's certification and verification rules. As a result, until the past several weeks, Petitioner assumed that the RCA's rules for certification and verification would apply to all ETCs within the state.

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1 *In the Matter of the request by ALASKA DIGITEL, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, Docket No. U-02-39, Order No. 10, *Order Granting Eligible Communications Carrier Status and Requiring Filings* (August 28, 2003).

2 *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 03-109, FCC 04-87 (April 29, 2004)

5. RCA staff has recently made clear in informal advice that ADT's Lifeline consumers are excluded from the ADT's certification and verification procedures but has not yet confirmed that advice in writing. ADT believes the RCA will do so in the near future, but is not certain that written advice will issue. In order to provide verification that is legally sufficient, ADT wishes to submit the required data for its Lifeline customers to USAC under the FCC's rules in effect for federal default states. However, it is not possible for ADT to obtain written documentation verifying Lifeline eligibility from a statistically valid sample of its customers by June 22, 2005.

6. "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."[3] Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.[4]

7. Strict application of the rule would be inequitable and impose undue burdens on ADT because the company cannot obtain written responses and submit verification data to USAC by June 22. Moreover, the underlying purpose of the rule, to obtain data from carriers, would be undermined by its strict application, as ADT is ready, willing and able to conduct the FCC's verification program and submit the required data at the earliest possible date.

8. Petitioner has no alternative solution other than to request a waiver and extension. If the RCA does not include Alaska's state wireless Lifeline customers under its certification and verification procedures, Petitioner's only avenue for compliance with the verification requirement is to abide by the federal default rules.

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[3] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[4] *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

9. Extending Petitioner's compliance with the June 22, 2005 deadline by 90 days will not harm consumers. ADT's customers will benefit because they will continue to receive uninterrupted and much needed Lifeline discounts on their telephone service. As a result, a waiver of the compliance deadline in this instance will benefit the public interest.

## III. Request for Declaratory Ruling.

10. Pursuant to 47 C.F.R. § 1.2, Petitioner requests a declaratory ruling to remove uncertainty regarding the interplay between federal and state Lifeline compliance requirements. The Commission should declare that when a state commission that has designated an ETC under 47 U.S.C. §214(e)(2), but will not accept verification data for customers located within the state, an affected carrier should follow the FCC's federal default guidelines contained in Section 54.410 of the Commission's rules. None of the FCC's rules or orders describe a situation where a state that has designated a carrier as an ETC under 47 U.S.C. §214(e)(2), but will not accept verification data for customers located within the state.

11. The Commission should also declare that when a state commission that has designated an ETC under 47 U.S.C. §214(e)(2) does not enforce its certification rules within any portion of the state, an affected carrier should follow the FCC's federal default guidelines contained in Section 54.410 of the Commission's rules.

12. Without clarity on these points, a carrier may reasonably infer that wireless Lifeline customers in Alaska are not subject to federal or state certification and verification rules.

## Conclusion.

Petitioner wants to ensure that it meets all of its regulatory obligations as an ETC. In the absence of an opportunity to participate in the RCA's certification or verification procedures, the only alternative means for a carrier to achieve compliance is to follow the federal rules for certifications and to submit its verification data to USAC.

For all of the reasons set forth above, Petitioner requests a waiver and 90 day extension of the June 22, 2005 compliance deadline to submit verification information that is required of carriers operating in federal default states pursuant to Section 54.410 of the Commission's rules.

Petitioner also requests the Commission to declare that where states that have designated ETCs under Section 214(e)(2) do not impose certification and verification requirements on ETCs, the appropriate course is to follow the certification and verification rules for default states contained in Section 54.410 of the Commission's rules.

Finally, the public interest benefits of ensuring continued Lifeline support to low-income customers strongly favors a grant of the instant waiver request.

Respectfully submitted,

**ALASKA DIGITEL, LLC**

By:_____

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June 17, 2005

## CERTIFICATE OF SERVICE

I, Donna Brown, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 17th day of June, 2005, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND DECLARATORY RULING to the following:

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