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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Petitions for Declaratory Ruling and Requests for Waiver by	)	
	)	
US Cellular Corporation, *et al.*	)	

ORDER AND DECLARATORY RULING

Adopted: January 28, 2010 **Released: February 2, 2010**

By the Commission:

I. INTRODUCTION

1. In this order, we address four petitions for waiver of section 54.410 of the Commission's rules[1] and six requests for a declaratory ruling concerning the Commission's Lifeline certification and verification requirements.[2] We grant the requests for waiver seeking an extension of the June 22, 2005,

[1] *See* 47 C.F.R. § 54.410(c)(2). The following petitions were filed seeking both a waiver of section 54.410(c)(2) of the Commission's rules and a declaratory ruling: US Cellular Corporation, USOC of Washington RSA-4, Inc., Western Sub-RSA Ltd. Partnership, McDaniel Cellular Telephone Company, Oregon RSA No. 2 Limited Partnership, United States Cellular Operating Company of Richland, and Yakima Washington MSA Limited Partnership, Petition for Waiver of the Federal Communications Commission's Rules for Filing Sample Lifeline Verification Data and for Declaratory Ruling Regarding the Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (US Cellular Washington Petition); Alaska DigiTel, LLC, Petition for Waiver of the Federal Communications Commission's Rules for Filing Sample Lifeline Verification Data and for Declaratory Ruling Regarding the Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (ADT Petition); US Cellular Corporation, US Cellular Operating Company, LLC, Green Bay Celltelco, Kenosha Cellular Telephone, L.P., Madison Cellular Telephone Company, Racine Cellular Telephone Company, and Lacrosse Cellular Telephone Company, Petition for Waiver of the Federal Communications Commission's Rules for Filing Sample Lifeline Verification Data and for Declaratory Ruling Regarding the Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (US Cellular Wisconsin Petition); and Virginia Cellular, LLC d/b/a Cellular One, Petition for Waiver of the Federal Communications Commission's Rules for Filing Sample Lifeline Verification Data and for Declaratory Ruling Regarding the Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (VA Cellular Petition). Upon receiving additional guidance from the state of Wisconsin, counsel for the US Cellular Wisconsin Petition filed a request to withdraw that petition. *See* US Cellular Corporation, US Cellular Operating Company, LLC, Green Bay Celltelco, Kenosha Cellular Telephone, L.P., Madison Cellular Telephone Company, Racine Cellular Telephone Company, and Lacrosse Cellular Telephone Company, Request for Approval of Withdrawal of Petition for Waiver and Request for Declaratory Ruling, WC Docket No. 03-109 (filed July 27, 2005). We grant this request to withdraw herein, and therefore, do not address the US Cellular Wisconsin Petition.

[2] The following petitions seek only a declaratory ruling: Wisconsin RSA #4 Limited Partnership, Wausau Cellular Telephone Limited Partnership, Nighttel Wireless, LLC, Metro Southwest PCS, LLP, Wisconsin RSA #10, and Brown County MSA Cellular Limited Partnership, Request for Declaratory Ruling Regarding the Federal

deadline to submit sample Lifeline verification data in the US Cellular Washington Petition, the ADT Petition, and the VA Cellular Petition.[3] We also grant the Petitioners' requests for a declaratory ruling and conclude that when a state commission mandates Lifeline support, but does not impose certification and verification requirements on certain carriers within the state, the affected carriers must follow federal default criteria for certification and verification purposes.[4] Finally, we grant the requests filed by Wisconsin RSA #4 and US Cellular Wisconsin to withdraw their petitions.

II. BACKGROUND

A. Applicable Lifeline Rules

2. The Commission's Lifeline program is designed to promote the goals of section 254 of the Communications Act of 1934, as amended (the Act), that telephone service be affordable to low-income consumers by providing universal service funds to reduce the price consumers pay for basic telephone service.[5] Lifeline support is provided directly to eligible telecommunications carriers (ETCs), based on the number of qualifying low-income customers they serve.[6]

3. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support," including Lifeline support.[7] Section 214(e)(2) of the Act assigns state commissions the primary responsibility for performing ETC designations.[8] However, section 214(e)(6) of the Act provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that is not

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Communications Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (Wisconsin RSA #4 Petition); RCC Minnesota, Inc., Request for Declaratory Ruling Regarding the Federal Communications Commission's Lifeline Verification Rules, WC Docket No. 03-109 (filed June 17, 2005) (RCC Petition). Upon receiving additional guidance from the state of Wisconsin, counsel for the Wisconsin RSA #4 Petition filed a request to have the petition withdrawn. *See* Wisconsin RSA #4 Limited Partnership, Wausau Cellular Telephone Limited Partnership, Nighttel Wireless, LLC, Metro Southwest PCS, LLP, Wisconsin RSA #10, and Brown County MSA Cellular Limited Partnership, Request for Approval of Withdrawal of Petition for Waiver and Request for Declaratory Ruling, WC Docket No. 03-109 (filed July 27, 2005). We grant this request to withdraw herein, and therefore, do not address the Wisconsin RSA #4 Petition.

[3] 47 C.F.R. § 54.410(c)(2).

[4] We refer to the filers of the US Cellular Washington Petition, the ADT Petition, the VA Cellular Petition, and the RCC Petition collectively as Petitioners in this order.

[5] *See* 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable and affordable rates."). Generally, the Lifeline program provides eligible consumers with a discount on monthly charges for basic local landline or wireless telephone service. *See* 47 C.F.R. § 54.401.

[6] 47 C.F.R. § 54.407(a).

[7] 47 U.S.C. § 254(e). The Communications Act of 1934 was amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[8] 47 U.S.C. § 214(e)(2); *see also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000).

subject to the jurisdiction of a State commission, the Commission shall upon request" perform the relevant ETC designation.[9]

4. Under the Commission's rules, states may establish their own Lifeline programs that provide additional support to low-income consumers.[10] States may develop their own eligibility, certification, and verification requirements or use the federal requirements as their default standard.[11] States that do not have a Lifeline program and states that have their own programs but elect to use the federal requirements are called "federal default states."[12] Consumers and ETCs located in federal default states must comply with federal eligibility, certification, and verification requirements.[13] Consumers and ETCs located in states with their own Lifeline programs must comply with the eligibility, certification, and verification requirements established by the state commission.[14]

5. On April 29, 2004, the Commission released an order, in which it adopted, among other things, certification and verification procedures for consumers and ETCs located in federal default states.[15] Specifically, under sections 54.409 and 54.415 of the Commission's rules, eligible consumers in federal default states are required to certify, under penalty of perjury, that their income is at or below 135 percent of the federal poverty guidelines or that they participate in at least one of the following federal programs: Medicaid, Food Stamps, Supplemental Security Income, Federal Public Housing Assistance, Low Income Home Energy Assistance, the National School Lunch Program's Free Lunch program, or Temporary Assistance for Needy Families.[16] Under section 54.410 of the Commission's rules, ETCs in federal default states are required to implement procedures to verify the continued eligibility of a statistically valid random sample of their Lifeline consumers and provide results of that sample to the Universal Service Administrative Company (USAC).[17] As such, consumers qualifying for Lifeline benefits also may be required to verify with their ETC, on an annual basis, that they continue to be eligible to receive Lifeline support.[18] ETCs in states that have their own Lifeline programs must comply with state certification and verification procedures.[19]

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[9] 47 U.S.C. § 214(e)(6).

[10] 47 C.F.R. §§ 54.409(a), 54.415(a). In this order, the term "state" means the states, the District of Columbia, territories, and possessions of the United States of America.

[11] *See Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004) (*Lifeline Order*).

[12] The current federal default states are: Delaware, Hawaii, Iowa, Indiana, Louisiana, New Hampshire, American Samoa, and the Northern Mariana Islands. *See* USAC website, Low Income, Frequently Asked Questions, http://www.universalservice.org/li/tools/frequently-asked-questions/faq-lifeline-linkup-order.aspx#q1 (last viewed Feb. 2, 2010).

[13] *See* 47 C.F.R. §§ 54.409, 54.410.

[14] *See* 47 C.F.R. § 54.410. States operating their own Lifeline programs are free to devise more strict qualification procedures. *See* 47 C.F.R. §§ 54.409(a), 54.415(a).

[15] *Lifeline Order*, 19 FCC Rcd 8302.

[16] *See* 47 C.F.R. §§ 54.409(b), 54.415(b).

[17] 47 C.F.R. § 54.410(c)(2).

[18] 47 C.F.R. § 54.410(c).

[19] 47 C.F.R. § 54.410(c)(1).

B. Petitions for Waiver and Declaratory Ruling

6. The Petitioners, all commercial mobile radio service (CMRS) carriers and ETCs, provide wireless telecommunications service in Alaska, Virginia, and Washington.[20] Each of these states has its own Lifeline program.[21] The Petitioners explain that they planned to follow state procedures for purposes of certifying Lifeline eligibility and verifying continued eligibility.[22] Shortly before the Petitioners planned to submit their Lifeline certification and verification data to their respective state commissions in 2005, the Petitioners were advised by state commission staff that they were not subject to or included in the state's Lifeline certification and verification procedures.[23] In Washington, the state commission excluded some Lifeline customers from state verification and certification rules, and in Virginia and Alaska, the state commissions excluded all wireless ETCs from state verification and certification rules.[24] The Petitioners claim that, due to the late notice, they had insufficient time to prepare the annual statistically valid random sample that is applicable to ETCs in federal default states pursuant to section 54.410(c)(2) of the Commission's Lifeline rules.[25]

7. On June 17, 2005, the Petitioners filed requests for waiver of section 54.410(c)(2) of the Commission's rules and/or requests for a declaratory ruling concerning Lifeline certification and verification requirements.[26] The Wireline Competition Bureau (Bureau) released a public notice on June 28, 2005, seeking comment on the petitions.[27] Four parties filed comments.[28]

8. In their requests, the Petitioners ask the Commission to declare that, when a state has its own Lifeline program but either does not impose or enforce certification and verification requirements for

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[20] *See* US Cellular Washington Petition at 2; ADT Petition at 2; VA Cellular Petition at 2; RCC Petition at 2.

[21] *See* US Cellular Washington Petition at 2; ADT Petition at 2; VA Cellular Petition at 2; RCC Petition at 2.

[22] US Cellular Washington Petition at 3; ADT Petition at 2; VA Cellular Petition at 2; RCC Petition at 2.

[23] US Cellular Washington Petition at 2; ADT Petition at 2; VA Cellular Petition at 2; RCC Petition at 2.

[24] *See* US Cellular Washington Petition at 2 (state commission excluding certain Lifeline customers from state verification and certification rules); ADT Petition at 2 (state commission excluding all Alaska wireless Lifeline customers from state verification and certification rules); VA Cellular Petition at 2 (state commission excluding all Virginia wireless Lifeline customers from state certification and verification rules); RCC Petition at 2 (state commission excluding certain Lifeline customers from state verification and certification rules).

[25] *See, e.g.*, US Cellular Wisconsin Petition at 2; *see also* 47 C.F.R. § 54.410.

[26] *See supra* nn.1, 2; 47 C.F.R. § 54.410(c)(2).

[27] *See Wireline Competition Bureau Seeks Comment on Requests for Waiver and Declaratory Ruling Concerning Lifeline Rules*, WC Docket No. 03-109, Public Notice, 20 FCC Rcd 11699 (Wireline Comp. Bur. 2005).

[28] The following parties filed comments in response to the Bureau's public notice: CTIA – The Wireless Association (CTIA) (stating that Wisconsin does not extend its state Lifeline verification procedures to CMRS carriers); National Telecommunications Cooperative Association (NTCA) (stating that the Commission should deny the petitions for declaratory ruling because there is no verifiable evidence that the relevant state commissions have refused to accept verification and certification data from the petitioning parties); Public Service Commission of Wisconsin (Wisconsin PSC) (clarifying that wireless ETCs in Wisconsin must follow state verification procedures); and Sprint Corporation (Sprint) (stating that the Commission should conclude that when a state commission does not accept verification data for certain Lifeline customers within that state, an affected carrier should follow the federal default guidelines). NTCA also filed reply comments. We note that the state commissions in Alaska, Virginia, and Washington did not submit comments in this proceeding.

certain carriers or customers within the state, it is legally sufficient for an affected carrier to comply with the Commission's federal certification and verification requirements.[29] The Petitioners state that, without clarity on these points, a carrier may infer that wireless Lifeline customers in the state are not subject to federal or state certification and verification requirements.[30]

III. DISCUSSION

9. We grant the Petitioners' requests for declaratory ruling. We find that when a state has mandated Lifeline support but does not impose or enforce its certification and verification requirements on some carriers that operate within that state or on some Lifeline customers who reside within the state, the affected carriers and customers must follow federal default procedures set forth in sections 54.409 and 54.410 of the Commission's rules.[31] For example, because some states do not assert jurisdiction over CMRS carriers or other types of carriers, these carriers may not be subject to state Lifeline procedures. We encourage states that are not federal default states to notify carriers over which they do not assert jurisdiction that the carriers must follow the federal procedures.[32] In addition, we encourage these states to notify USAC that they do not plan to assert jurisdiction over certain carriers or customers.

10. We take this action to remove uncertainty regarding the interplay between federal and state Lifeline compliance requirements and to affirm the Commission's requirement that all ETCs annually verify Lifeline customer eligibility. Without clarification, some carriers may presume that they are not subject to either federal or state certification and verification requirements. In fact, the Commission's rules contemplate that all ETCs will verify the continued eligibility of their Lifeline customers to ensure that the low-income support mechanism is updated, accurate, and carefully targeted to provide support to only eligible consumers.[33] Verification also is an effective way to prevent fraud and abuse and ensure that only eligible consumers receive benefits.[34] Because the ETCs described herein do not appear to be required by their relevant states to follow state certification and verification procedures, the only alternative means to comply with the Commission's certification and verification requirements is to require them to follow the federal default rules for certifications and to submit their verification data to USAC. Moreover, this is consistent with the procedures outlined in the *ETC Designation Order* when states do not have jurisdiction to designate a carrier as an ETC.[35]

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[29] *See supra* nn.1, 2; *see also* 47 C.F.R. § 54.410.

[30] *See, e.g.,* RCC Petition at 3.

[31] *See* 47 C.F.R. §§ 54.409, 54.410. We note that section 54.415 of our rules provides that the eligibility criteria for Link Up customers is the same as the criteria set forth in section 54.409 of our rules. As such, the ruling we announce today would apply to the eligibility criteria for Link Up as well as Lifeline. 47 C.F.R. § 54.415.

[32] A carrier may not assume that it is not subject to state procedures. Rather, even though, as NTCA has noted, there does not appear to be official notice by the states in this proceeding that they do not assert jurisdiction over certain types of carriers, carriers retain the obligation to determine whether they must follow state or federal Lifeline certification and verification requirements. *See* NTCA Comments at 2-3.

[33] *Lifeline Order*, 19 FCC Rcd at 8322, para. 33.

[34] *Id.*

[35] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*) (establishing requirements for all ETCs designated by the Commission).

11. In addition, we find good cause to grant the requests for waiver of section 54.410(c) of the Commission's rules.[36] The parties, all operating in states with their own Lifeline programs and certification procedures, reasonably took steps to comply with those state certification procedures until they were advised by their respective states that they were not subject to them. Moreover, because those states are not federal default states under the Commission's rules, we find the parties' explanation that they had insufficient time to comply with the certification procedures for federal default states in a timely manner to be compelling, under the circumstances. Because the Petitioners were unable to comply with the June 22, 2005 deadline due to their reasonable confusion as to which certification procedures – federal or state - applied to them in these unique circumstances, we believe that strict application of the deadline in these instances would be contrary to the public interest. Although the deadline for submitting verification data for 2004-2005 for federal default states was June 22, 2005, we direct USAC to accept late-filed completed sample verification data filed by the Petitioners. Finally, we grant the requests filed by Wisconsin RSA #4 and US Cellular Wisconsin to withdraw their petitions because the Wisconsin Public Service Commission clarified that its state verification procedures apply to wireless ETCs.[37]

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201-205, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, and 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Requests for Waiver filed by US Cellular Corporation, USOC of Washington RSA-4, Inc., Western Sub-RSA Ltd. Partnership, McDaniel Cellular Telephone Company, Oregon RSA No. 2 Limited Partnership, United States Cellular Operating Company of Richland, Yakima Washington MSA Limited Partnership, Alaska DigiTel, LLC, and Virginia Cellular, LLC d/b/a Cellular One on June 17, 2005, ARE GRANTED, to the extent set forth herein.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4, 201-205, 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Requests for Declaratory Ruling filed by US Cellular Corporation, USOC of Washington RSA-4, Inc., Western Sub-RSA Ltd. Partnership, McDaniel Cellular Telephone Company, Oregon RSA No. 2 Limited Partnership, United States Cellular Operating Company of Richland, Yakima Washington MSA Limited Partnership, Alaska DigiTel, LLC, Virginia Cellular, LLC d/b/a Cellular One, and RCC Minnesota, Inc. on June 17, 2005, ARE GRANTED, to the extent set forth herein.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4, 201-205, 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, that the Requests for Approval of Withdrawal of Petition for Waiver and Request for Declaratory Ruling filed by US Cellular Corporation, US Cellular Operating Company, LLC, Green Bay Celltelco, Kenosha Cellular

[36] 47 C.F.R. § 54.410(c). Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *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). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. *Accord, NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver).

[37] *See supra* nn.1, 2.

Telephone, L.P., Madison Cellular Telephone Company, Racine Cellular Telephone Company, Lacrosse Cellular Telephone Company on July 27, 2005, and Wisconsin RSA #4 Limited Partnership, Wausau Cellular Telephone Limited Partnership, Nighttel Wireless, LLC, Metro Southwest PCS, LLP, Wisconsin RSA #10, and Brown County MSA Cellular Limited Partnership on July 27, 2005, ARE GRANTED.

15. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.4(b)(2), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary