

**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
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby submits these comments in support of the Petition filed by the United States Telecom Association (“USTelecom”) for a limited waiver of rules recently adopted in the above referenced proceeding.² Specifically, the Commission should waive sections 54.407(d) and 54.410((b)(2) and (c)(2) of its new rules in states where: (1) responsibility for making initial Lifeline eligibility determinations currently rests with a state Lifeline administrator or other state agency, or where subscribers are enrolled in the Lifeline

¹ NTCA represents nearly 600 rural telecommunications providers. All of NTCA’s members are full service local exchange carriers and many of its members provide wireless, video, broadband Internet, satellite, and/or long distance services to their communities; each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended

² United States Telecom Association, Petition for Waiver, WC Docket Nos 11-42 *et. al.*, CC Docket No. 96-45 (filed April 25, 2012).

program on an automatic or coordinated basis; and (2) the state is unable to modify its Lifeline enrollment procedures to meet the June 1, 2012 deadline for implementation of the revised eligibility determination procedures. The waiver would apply only in each affected state and only until that state has met the notice and certification form requirements in section 54.210 of the new rules.³

NTCA's members are Eligible Telecommunications Carriers ("ETCs") who are actively implementing the recently enacted reforms to the Lifeline Program. However, as USTelecom points out, ETCs have no control over when a state with responsibility for making initial Lifeline eligibility determinations or with automatic or coordinated Lifeline enrollment programs will meet its obligation to provide notice of a subscriber's eligibility and a copy of the subscriber's certification form required by the Commission's rules to the serving ETC. An ETC must obtain the notice and certification form before it may enroll new customers in the Lifeline program in accordance with the Commission's revised rules.⁴

The Commission has the discretion to waive its rules for good cause shown.⁵ It may also exercise its discretion to waive a rule when the facts made strict compliance inconsistent with the public interest.⁶ Additionally, the Commission may take into account considerations of hardship, equity, or more effective implantation of overall policy.⁷

³ NTCA also supports the individual petitions for waiver submitted by state commissions, *See Comment Sought on Petitions for Waiver Submitted by State Commissions, Public Notice*, WC Docket Nos 11-42, 03-109, 12-23 and CC Docket No. 96-45, DA 12-662 (rel May 4, 2012).

⁴ 47 C.F.R. §§ 54.407(d), 54.410(b)(2) and 54.410(c)(2).

⁵ 47 C.F.R. § 1.3.

⁶ *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir 1990).

⁷ *Wait Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir 1969).

A limited waiver would serve the public interest and strict compliance is impossible under the present circumstances. Operations by the individual state entities are conditions precedent to compliance with the new rules by individual ETCs. Without a Commission waiver, ETCs in the affected states will be compelled to turn away new subscribers to the Lifeline program. If ETCs enroll new subscribers and seek USF reimbursement before the state provides the certification, the ETCs risk violating the Commission's rules.⁸

It will take some time and effort for many states to implement the changes necessary to implement the changes to the Lifeline program. Some states face more do to than others to come into compliance with the Lifeline rules. There are significant repercussions for consumers and ETCs in states that make initial determinations regarding a subscriber's eligibility or automatic or coordinated enrollment but who cannot comply with the new federal rules before the Commission imposed deadline. In all likelihood, absent a waiver, ETCs will be required to forego serving Lifeline-eligible subscribers, and such subscriber will be denied benefits, until appropriate state procedures are in place. The public is better served if consumers who are entitled to benefits receive them for an interim period while states make necessary changes to their processes and procedures in accordance with the federal program reforms.

⁸USAC is provided the discretion to suspend payments to a carrier pending USAC's receipt and evaluation of the carrier's response to a notification that the ETC has failed to comply with the low-income rules. *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 12-23, 11-42, 03-109; CC Docket No. 96-45, FCC 12-11, ¶ 298 (rel. Feb. 6, 2012)

CONCLUSION

For the above-stated reasons, the Commission should grant USTelecom's Petition for Waiver.



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May 15, 2012