

**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
)	
Petitions for Waiver of Montana, Oregon and Colorado Commissions)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”) hereby respectfully submits its comments on the Petitions for Waiver filed by the Colorado Public Utilities Commission (“CO PUC”), Montana Public Service Commission (“MT PSC”), and Oregon Public Utility Commission (“PUC OR”) with the Federal Communication Commission (“FCC or Commission”) related to uniform eligibility criteria for Lifeline service.¹ The FCC should either grant the waiver requests or find that its previous Order has preempted state laws that conflict with the FCC’s newly adopted rules. In either case, Lifeline Eligible Telecommunications Carriers (ETCs) must be given clear direction on the eligibility criteria they should apply in any given state.

The Commission’s adoption of uniform Lifeline eligibility requirements on June 1, 2012, has created a conflict with the laws of Colorado, Montana and Oregon. In response to these

¹ 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, May 4, 2012.

conflicts, these States have sought a waiver of the FCC's rules. Sprint urges the Commission to consider several factors in determining whether to grant the requested waivers. These factors include:

- Would an unaddressed conflict between state and federal law place ETCs in an untenable legal position?
- How many eligibility criteria would be waived and would this result in a significant reduction in Lifeline eligibility in the state?
- Would rejection of the requested waiver result in an unfunded financial impact upon the state?
- Would an existing state Lifeline data base approval system be negatively impacted by rejection of the requested waiver?
- Do the benefits of rejecting the requested waivers outweigh the harms caused by granting a limited waiver of the uniform eligibility until mid-2013?

Based on these factors, Sprint recommends that the FCC grant the waiver requests of Oregon and Colorado. These states face potentially significant financial exposure if they must comply with the federal rules. In addition, the criteria they would apply are similar to those adopted by the FCC. While a waiver of the rules for Montana would also resolve the conflict of laws issue, Montana would apply a significantly more limited set of criteria that would eliminate a large number of eligible users. It is also not apparent that Montana faces the same financial exposure the other states must address. Under these circumstances, it may be more appropriate to simply note that the FCC's Order has preempted Montana state law rather than undermine the fundamental goals of the federal program.

Regardless of whether the FCC grants these waivers, however, the Commission should address the conflict of law that has been created. If the FCC does not grant the requested waivers, it should make clear that its previous Order has preempted conflicting state laws concerning Lifeline eligibility. A Lifeline ETC must not be left in the untenable legal position of

choosing between compliance with a state issued ETC authorization and the FCC's rules. Other than waiver of conflicting FCC regulations, a recognition of preemption is the only means of resolving this conflict of law, at least until such time as a state legislature changes existing state law.

I. Scope of the Requested Waiver

The FCC established participation in a limited number of programs as the basis for eligibility for Lifeline service. Specifically, participation in Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance (Section 8), Low-Income Home Energy Assistance Program, National School Lunch Program's free lunch program, Temporary Assistance for Needy Families, and/or a household income at or below 135% of the Federal Poverty Guidelines would qualify a family for Lifeline service.² The Oregon and Colorado eligibility criteria are similar and would include many of these programs, but they would not include 135% of the Federal Poverty Guideline for eligibility.³ Accordingly, the Oregon and Colorado requested waivers will have a limited impact on the number of eligible subscribers and is substantially consistent with the goals of the federal program.

The MT PSC notes that the Montana Code Section 69-3-1002(1) provides for Lifeline eligibility in Montana only if "the subscriber is certified by the department of public health and human services as a recipient of Medicaid benefits."⁴ This very restrictive approach to qualification is likely to have a significant impact on the number of eligible consumers in the

² 47 C.F.R. §54.409.

³ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., FCC 12-11, released Feb 6, 2012 ("*Lifeline Reform Order*") at fn. 160.

⁴ See *Petition for Waiver of the Montana Public Service Commission*, filed March 20, 2012.

State. Because the Montana limited eligibility standard would not seem to be consistent with the goals of the federal program, the FCC may want to find that its prior Order has preempted the state law and require ETC compliance with the federal standards rather than granting a waiver.

II. Financial Impact on the State

In addition to the relative impact of state rules on the number of eligible participants, the Commission should consider the financial impact to the states of implementing new criteria when considering the waiver request. The PUC OR reports that the Oregon state supported lifeline program “provides support of \$3.50 per month for each qualifying low-income Oregon customer to reduce the monthly cost for basic phone service.”⁵ To the extent that the 135% of the federal poverty guideline provides the ability for more Oregon residents to qualify for state supported Lifeline service, the additional customers so qualified will place a burden on the existing revenue stream designed to cover state supported Lifeline service. This increased burden, which was not considered by the Oregon Legislature, is unfunded and unbudgeted.

A similar situation exists in Colorado where the Lifeline program that is applied to ILECs has a Colorado contribution in addition to that from the federal program.⁶ As wireless carriers enter the Lifeline market in Colorado, the Lifeline subscription rate is expected to increase. It stands to reason that advertising by wireless ETCs in Colorado will generate more interest from ILEC customers and that demand for Lifeline service from ILECs will also grow. The Colorado legislature has built the Colorado funding and budget for state supported Lifeline around the eligibility programs enumerated in the Colorado statute. A broadening of the eligibility criteria

⁵ See *Petition for Waiver Jointly Submitted by the Public Utility Commission of Oregon and the Oregon Telecommunications Association*, filed April 19, 2012 (“*Oregon Waiver Petition*”) at 2.

⁶ Virgin Mobile is a Lifeline ETC in Colorado but did not seek and was not granted Colorado funding for its Lifeline customers, electing, instead to be “federal only” in its funding.

to include 135% of the federal poverty guideline and other programs will increase demands on the Colorado funds going to Lifeline service. This increase has not been considered by the Colorado Legislature and is unfunded.

Montana, on the other hand, does not provide state funding for Lifeline services that would be impacted by an increase in the number of eligible users. Accordingly, Sprint believes that the cost to Oregon and Colorado further justifies the grant of their proposed waivers, while the minor impact to Montana again mitigates the need for a waiver and would rather suggest only that the FCC clarify that the federal guidelines preempt state law in this area.

III. Impact on State Data Bases

Both Oregon and Colorado have a Lifeline eligibility system that compares applicants' information against a state data base administered by the respective departments of human services. These data bases contain information on all Colorado and Oregon residents, respectively, that receive benefits under the approved state qualifying programs.

The FCC has approved the concept of using state data bases, has championed the improvements in accuracy of Lifeline application approval through the use of these databases, and has taken steps to create a national database beginning with a subset of the programs contained in FCC Rule §54.409. Consideration will be given to expanding the use of and program coverage of Lifeline databases.⁷

The Colorado and Oregon databases used for Lifeline application approval, however, do not contain information on the other programs enumerated in FCC Rule §54.409. As a result, the application approval system used in Colorado and Oregon is currently incompatible with the FCC's requirements because the additional programs found in FCC Rule §54.409 are not used by

⁷ See *Lifeline Reform Order* at ¶¶179-217 and ¶¶399-415 (soliciting further comment on state versus national data bases).

Colorado and Oregon. Colorado also has a direct application system that allows potential Lifeline customers to apply for Lifeline service directly through the Department of Human Services. The Colorado Department of Human Services is bound by state law to approve only those applicants that qualify for Lifeline service as enumerated in the Colorado statute. Those that would qualify under the broader FCC guidelines will be turned away. This process is long standing in Colorado and no change to the process is contemplated. Because potential Lifeline customers have been directed to the Department of Human Services to apply for Lifeline service, even a separate federal Lifeline approval process administered by the ETCs will not be truly effective because many potential Lifeline customers will have already been turned away by the Department of Human Services.

Should the Commission determine that the waivers requested by CO PUC and PUC OR should not be granted, the effectiveness of the current data base Lifeline application system used in Colorado and Oregon will be significantly compromised because the approval system the state contemplated using the data base will become only partially accurate.

IV. Benefits of Waiver Versus Harms

The harm in granting the waivers requested by Montana, Colorado and Oregon is a reduction in the number or potential Lifeline customers in those states that would be eligible for Lifeline service. In Montana, the shrinkage in the state eligible base compared to the federal eligible base is the most significant because Montana recognizes participation in Medicaid as the only eligibility criteria. There is a much larger overlap in eligibility criteria in Colorado and Oregon, minimizing the negative impact.

The benefits of granting a waiver until the summer of 2013 for Colorado and Oregon are that the FCC will not be creating an unfunded mandate in those states, the existing state customer

Lifeline eligibility database may continue to be used, and an untenable conflict of state and federal law compliance may be avoided. Sprint believes that the overall balance of interests would weigh in favor of a grant of the Oregon and Colorado waiver requests. The Montana request would appear more problematic. However, in either case, if the Commission does not grant the requested waivers, it should clarify that conflicting state laws have been preempted, removing any compliance conflict that would otherwise be created.

CONCLUSION

Sprint requests that the Commission act upon the waiver requests as noted above. To the extent that the Commission does not grant the requested waivers, the Commission should clarify that inconsistent state law has been preempted.

Respectfully submitted,

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