

**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
To: Wireline Competition Bureau		

PETITION FOR LIMITED WAIVER

Smith Bagley, Inc. (“SBI”), by counsel and pursuant to 47 C.F.R. § 1.3, requests a limited waiver of the Commission’s recertification rules as adopted in its Report and Order and Further Notice of Proposed Rulemaking (“Lifeline Order”), FCC 12-11 (Feb. 6, 2012). A limited waiver of the rules is necessary because it is not feasible for SBI to implement the new recertification rules in all circumstances.

I. INTRODUCTION AND SUMMARY

Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, provides that the Commission will grant a waiver for “good cause shown.”¹ In making its determination, the Commission may consider “hardship, equity, or more effective implementation of

¹ 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

overall policy” on an individual basis.² Here, good cause exists for the grant of a waiver, as it will not undermine the goal of the Commission’s underlying rules, but will prevent SBI from having to take extraordinary measures needed to comply with the letter of the law in its unique circumstances, which would not fulfill the Lifeline program’s goals and specific objectives.

SBI is a small carrier, providing commercial mobile radio services in rural areas of the American Southwest. SBI has been designated as an ETC and provides Lifeline in areas of Arizona, New Mexico, and Utah, including five tribal lands. Currently, SBI has approximately 72,000 low-income customers who use Lifeline to access the public switched telephone network from five tribal lands; the Navajo, Hopi, Ramah Navajo, Zuni, and White Mountain Apache, as well as nearby non-tribal areas that are equally remote.

At the outset, it is important to understand SBI’s service area, as well as SBI’s track record as a Lifeline recipient. The areas where SBI serves are among the most geographically and demographically challenging to serve in the entire nation. Many citizens live in remote areas, spread across an area that is roughly the size of Pennsylvania, and use a telephone as a true lifeline, that is, to access the public switched network only for important and emergency calls. Some live in households located a significant distance from any formally-maintained road. The population density in these areas is less than 10 people per square mile, and in many remote areas it is 1 person per square mile.

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

The 2010 Census contains statistics broken out for the Navajo Nation, which are also representative of the other tribes SBI serves. To cite just a few:³

- The poverty rate is 41.5%, compared to 9.5% for the general population.
- The unemployment rate is 23.6%.
- 24.8% of households receive less than \$10,000 in annual income and benefits.
- 51.1% of households receive less than \$25,000 in annual income and benefits.
- 34.3% of households have no health insurance coverage, compared to 15.5% nationwide.
- Median household income is \$24,095 compared to \$50,046 nationwide.
- Per capita income is \$10,151 compared to \$26,059 nationwide.
- Only 72.1% of households have telephone service.

In short, SBI serves an extraordinary population that is unlike almost any other place in the nation. The challenges to simply get phone service out to these areas have been extraordinary, and it would not have happened without the FCC's high-cost and low-income programs. As shown below, strict application of the Commission's Lifeline recertification rules could result in the erosion or even reversal of these gains.

Accordingly, the Commission needs to assist SBI in reaching a solution that takes these special circumstances into account.

In the eleven years since SBI first became eligible to offer Lifeline benefits, the company has built a demonstrated record of compliance with the Commission's Lifeline

³ Sources: Selected Economic Characteristics, 2010 American Community Survey 1-year Estimates; Poverty Status in the Past 12 Months, 2010 American Community Survey 1-year Estimates; Selected Population Profile in the United States, 2010 American Community Survey 1-year Estimates.

rules. The company has employed in-house specialists and used undersigned counsel to monitor performance and oversee operations that comply with the rules. Over the years, SBI has been audited by both the high-cost and low-income divisions at USAC on multiple occasions. In every case, SBI has been shown to be in overall compliance with the rules, and adjustments made to support levels have never been more than *de minimis*.

Moreover, SBI has proactively contacted USAC in at least two instances where support was overpaid to the company that needed to be trued-up in subsequent payment periods. In short, SBI has a substantial performance record that warrants consideration in this matter.

Finally, as evidenced by its conduct within the Lifeline program over a decade, SBI has demonstrated that it fully supports the Commission's goal of curbing waste, fraud and abuse in the Lifeline program. The relief requested below is strictly limited to reducing the resources expended into areas of activity that will yield very little reduction in program waste, fraud or abuse.

As set forth more fully below, it will be impossible for SBI to complete the recertifications according to the letter of the regulations adopted by the Commission without an extraordinary and unnecessary effort. SBI has concluded that the only way to comply with the recertification rule is to send a team of people out to visit every household that does not respond to telephonic inquiries. This extraordinary measure is made necessary by the rule requiring non-responders to be removed from the Lifeline program. Given the Commission's stated intent that carriers need not obtain documentation from customers who recertify, ostensibly to reduce the burden on carriers,

limited relief is required to avoid a significant number of the most vulnerable people in remote areas losing Lifeline service.

Therefore, SBI requests a limited waiver of the recertification rules.

II. THE RECERTIFICATION RULES.

The Commission's new recertification rules adopted in its Lifeline Order, 47 C.F.R. § 54.410, require carriers to "recertify the eligibility of their Lifeline subscriber base as of June 1, 2012 by the end of 2012 and report the results to USAC by January 31, 2013."⁴ Where a database is not available, a carrier "must re-certify the continued eligibility of all of its subscribers by contacting them...specifically, all such ETCs must obtain from each Lifeline subscriber by the end of 2012 a re-certification form that contains each of the required certifications...."⁵

The nine required certifications are as follows:

(i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;

(ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit;

(iii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);

(iv) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;

(v) If the subscriber provided a temporary residential address to the eligible

⁴ Lifeline Order at para. 130.

⁵ Id. See also, 47 C.F.R. §54.410(d).

telecommunications carrier, he or she will be required to verify his or her temporary residential address every 90 days;

(vi) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(vii) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge;

(viii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(ix) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

Carriers must certify to the FCC/USAC that each of the above certifications has been obtained, either in writing or through a recording.⁶

III. SBI CANNOT COMPLETE THE RECERTIFICATION PROCESS BY YEAR END WITHOUT EXTRAORDINARY BURDENS, BOTH ON THE COMPANY AND ON RESIDENTS OF TRIBAL LANDS.

A. Strict Compliance With the Recertification Rule Would Impose an Enormous Cost Burden on the Company.

Having now undertaken the process of attempting to operationalize the new FCC recertification rules, SBI has determined that in order to reach out to all of its 72,000 Lifeline customers by December 31, 2012, it will need the following additional resources *over and above current levels*:

- 80 in-house customer service representatives and store agents to manage customer recertifications via telephone and in stores, plus 56 additional field representatives

⁶ See 47 C.F.R. §§ 54.407(d), 54.416(a)(3); 54.419.

to go door-to-door. Estimated salaries for these workers over a 21-week period needed to complete the task total \$1.5 million.

- Estimated costs of travel, fuel, lodging, food and incidental expenses for field team total \$648,000.
- Estimated costs for work stations, software licenses, and broadband connectivity needed to perform tasks total \$106,000.
- Estimated costs of mailers, and other media needed to notify customers of recertification total \$254,000.
- Estimated costs of leasing new office space to house new employees dedicated to recertification total 24,000.

To put this into perspective, SBI currently employs less than 200 people. Hiring 136 new workers for this task is a huge increase in its employee count. Real estate space to house the new workers will nearly double SBI's office footprint. In all, SBI estimates the cost of recertifying its entire Lifeline customer base to be \$2.532 million dollars, and it believes each subsequent annual recertification of its customer base to cost a similar amount. This does not take into account the overwhelming "soft-cost" in the form of existing employees being removed from their regular duties to ensure that this project is carried out properly.

B. The Task of Recertifying All of the Company's Customers Would Be Greatly Complicated by Demographic, Linguistic, and Cultural Factors.

In SBI's experience communicating with its customer base, many tribal citizens do not respond to a call or text message because for them, a telephone is, literally, a lifeline. It is not a device used regularly. This is especially true in households where there is no electricity. In such situations, phones are occasionally charged through an

automobile charger and the phone turned off until it is needed. Many such citizens are of advanced age, are disabled, or lack adequate means of transportation. Often, they live in areas so remote that they cannot come to an SBI store to recertify. Others have language difficulty or cultural differences that make obtaining these nine certifications, under penalty of perjury, an extraordinarily difficult task over the phone.

The enormity of this task is compounded by the large area, sparse population, and the extreme difficulty reaching many tribal households who live in remote areas, in areas that have no residential addressing system, in housing units located far from roads in difficult to access areas. The Navajo Nation currently has no 911 address system, which virtually all rural areas nationwide have access to. In order to reach a residence located a significant distance from the highway, oftentimes directions include reliance on landmarks— an extraordinary task for customer service representatives to complete, and to keep track of for future use.

In addition, SBI faces a unique challenge because it does not send monthly invoices to its Lifeline customers. Because many tribal customers reside in such remote locations, often without direct mail delivery, and because the monthly access charge is \$1.00, SBI has never mailed invoices to such customers. Customers pay the cumulative monthly access fee when they sign up and SBI refunds any unused amounts if the customer terminates early. Accordingly, for thousands of SBI customers, mailing recertification information would be a fruitless exercise.

Asking SBI employees to appear at a home, unannounced, to ask for certifications under penalty of perjury, can be an extraordinary cultural intrusion. It is likely that SBI employees will be perceived as being an inspector appearing on behalf of the federal

government. It is well known that tribal populations are undercounted by the U.S. Census due to “deep-rooted skepticism of the federal government.”⁷ Many of the elderly Lifeline subscribers do not speak English and rely on the younger family members for translation. There is a strong likelihood that an unannounced visit to a home on a reservation by a non-native-speaking SBI representative will not result in recertification because of the language barrier. In addition, sending teams of people out to remote areas presents otherwise unnecessary occupational safety risks, similar to that encountered by government employees such U.S. Census workers who canvass throughout the nation.

C. Due to the Commission’s De-enrollment Rule, the Inevitably Low Response Rate In These Areas Would Result in the Loss of Service to Large Portions of Vulnerable Populations.

Under the current rules, SBI is required to cut off Lifeline benefits for consumers who do not respond to carrier outreach.⁸ For SBI, this is not a viable option. SBI must take extraordinary measures to reach all of its customers because the most vulnerable populations are least likely to respond to advertising, to text messaging, to answer their phones when called, and to access voice mail messages. These vulnerable people, who depend on the telephone as a literal Lifeline, are going to be disproportionately impacted when SBI cuts off Lifeline benefits.

SBI does not believe the FCC ever intended for carriers to go to such extraordinary steps. Indeed, the FCC eliminated the requirement of obtaining backup

⁷ See, e.g., Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census, News Release, May 22, 2012 (estimating a 4.9% undercount of “American Indians and Alaska Natives living on reservations”) at http://www.census.gov/newsroom/releases/archives/2010_census/cb12-95.html ; and Census Bureau Tackles Undercount of Native Americans, Seattle Times, May 26, 2010, at http://seattletimes.nwsourc.com/html/localnews/2011962971_nativecensus27m.html.

⁸ 47 C.F.R. § 54.405(e)(4).

documentation and allowed the use of IVR technology as a means of complying, to lessen the burden on carriers.⁹

Nor is it an option for SBI to perform the recertification once, and then have USAC take over recertification process in 2013.¹⁰ Contrary to the FCC's statement that it expects "that ETCs will increasingly gain access to automated means of verifying subscriber eligibility,"¹¹ SBI does not believe there will be an accurate and complete electronic database of tribal Lifeline consumers on tribal lands in Arizona, New Mexico and Utah where SBI serves any time soon.¹² And SBI does not believe USAC will have the budget to send dozens of field agents to Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo to survey every single household, every single year. SBI simply cannot risk having its reputation with the tribal authorities jeopardized by having hundreds or even thousands of vulnerable rural citizens cut off from Lifeline benefits in a process that is beyond its control. Given the option, SBI would spend all of the funds and soft costs set forth above, before abandoning this population that it has worked so hard to gain the trust of over the past decade.

Accordingly, relief is warranted, because the cost of complying is extraordinary, while the benefits to the program will be truly marginal. SBI believes it can recertify a significant portion of its customer base telephonically, and by recertifying those who visit its stores. Strict compliance with the rule will not substantially advance the Commission's goals of curbing waste, fraud and abuse in the program. There are less

⁹ Lifeline Order at paras. 132, 169.

¹⁰ Lifeline Order at para. 133.

¹¹ *Id.*

¹² *See* SBI Reply Comments (filed with Joint Board July 30, 2010) at p. 14.

onerous ways to ensure compliance with the Commission's rules, while not offending rural tribal residents with home visits or burdening a small business in the fashion set forth above.

IV. RELIEF REQUESTED.

SBI recognizes that all ETCs must implement policies and procedures to ensure that only eligible subscribers receive Lifeline services.¹³ Accordingly, SBI requests limited relief from the requirements set forth in Appendix C of the Lifeline Order, which require each Lifeline subscriber active as of June 1, 2012 to provide a signed recertification form to the ETC by December 31, 2012.

SBI requests the Commission to permit it to recertify its Lifeline customers as follows: SBI shall recertify (a) all of its customers telephonically, making at least two attempts to reach them, (b) all customers visiting a company store for products or services, taking steps to ensure that each such customer is recertified at least once per year; or (c) whenever a customer renews a service contract. This methodology ensures that most SBI customers will go through the recertification process each year. The rest, those located in the most remote areas and who may not contact the company for many months, must recertify when their contracts are renewed.

This relief makes sense because it eliminates a step made necessary by the Commission's de-enrollment rule – which requires that a customer must be removed from Lifeline if they do not respond to recertification attempts – namely, the need to conduct field visits to thousands of homes, many in very remote locations. Moreover,

¹³ 47 C.F.R. §54.410(a).

SBI requests that this relief remain in place indefinitely. Without this relief, SBI will need to make a separate request for a waiver each year.

V. CONCLUSION

For all of the reasons set forth above, SBI requests limited relief from the FCC's recertification rule. SBI is committed to ensuring program compliance in any reasonably feasible manner. Accordingly, SBI is willing to discuss with Commission staff any reasonable alternative that fulfills program goals while not creating an overwhelming burden on a small business, as shown above.

Respectfully submitted,

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