

**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
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109

PETITION FOR WAIVER OF SECTION 54.410(f) OF THE COMMISSION'S RULES

Respectfully submitted,

PR WIRELESS, INC. d/b/a OPEN MOBILE

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Summary

PR Wireless Inc. d/b/a Open Mobile (“PR Wireless”), seeks a waiver of 47 C.F.R. Section 54.410(f) with respect to its customers who enrolled or were recertified between January 1, 2012, and May 31, 2012. A limited waiver of the 2012 re-certification requirement is warranted because the purposes of Section 54.410(f) have already been served by the procedures already undertaken this year with respect to those customers, and a requirement to recertify these customers once again would cause confusion and result in the de-enrollment of thousands of Lifeline-eligible customers.

The Puerto Rico Telecommunications Regulatory Board has implemented a set of rules and procedures aimed at eliminating the occurrence of duplicate Lifeline discounts at the same household and by the same individual subscriber. As part of this process, all of PR Wireless’ Lifeline subscribers were subjected to a rigorous, indeed overly aggressive, duplicate elimination process resulting in thousands of mandatory de-enrollments. Moreover, this winnowing process is ongoing and occurs *prior to* the provision of federal Lifeline discounts—thus removing virtually any possibility that the remaining subscribers receive more than one Lifeline service per household.

In addition to undergoing an aggressive process that virtually eliminates the possibility of duplicate support payments, these subscribers have provided actual documentation demonstrating their eligibility, and they made nearly all of the certifications required under the FCC’s rules. They have also provided the personal information required under the FCC’s new Lifeline rules, including residential address, date of birth, and social security number. Because it is unnecessary and burdensome to obtain the few additional certification statements to comply strictly with the FCC’s rules, PR Wireless believes a limited waiver is warranted.

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PR Wireless Inc. d/b/a Open Mobile (“PR Wireless”), by its counsel, and pursuant to sections 1.2 and 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ hereby petitions for a waiver of 47 C.F.R. Section 54.410(f) with respect to the customers who enrolled or recertified between January 1, 2012, and May 31, 2012.

PR Wireless seeks a limited waiver of the 2012 recertification requirement because the purposes of Section 54.410(f) have already been served by the procedures already undertaken this year with respect to those customers. All of the PR Wireless customers who enrolled in Lifeline in 2012 through May 31, as well as those who were recertified during this period on their service anniversary, have undergone rigorous vetting for duplicates, have made most of the certification statements currently required by the FCC, and have demonstrated their eligibility by providing program or income documentation. To require all of these customers once again to complete detailed certifications would only cause confusion and would inevitably result in the

¹ 47 C.F.R. §§ 1.2, 1.3.

de-enrollment of thousands of qualified customers for failure to respond to recertification attempts. A limited waiver is needed to avoid this punitive result.

I. BACKGROUND

PR Wireless has been an eligible telecommunications carrier (“ETC”) for purposes of support from the High Cost and Low Income Programs of the federal Universal Service Fund (“USF”) as well as the Puerto Rico Universal Service Fund since 2007. The company is a leading provider of discounted Lifeline service in Puerto Rico, and has been conscientiously implementing recent reforms adopted by both the FCC and the Telecommunications Regulatory Board of Puerto Rico (“TRB”).

In July 2011, the TRB implemented a set of rules and procedures aimed at eliminating the occurrence of duplicate Lifeline discounts at the same household and by the same individual subscriber. These procedures have been the subject of an ongoing dispute before the FCC.² The TRB’s process involved a comprehensive review of Lifeline subscriber data obtained from PR Wireless and other Lifeline providers in Puerto Rico. As a result of the review, the TRB’s process initially forced the de-enrollment of affected subscribers from all Lifeline service, rather than allowing subscribers to retain one non-duplicate Lifeline subscription as required by the FCC’s rules and orders.³ After several filings before the FCC brought attention to the legal deficiencies with the TRB’s approach, the TRB issued a directive allowing some (but not all) de-enrolled customers to re-enroll with a single Lifeline provider.⁴

² *Comment Sought on TracFone Wireless, Inc. Emergency Petition for Declaratory Ruling and Interim Relief*, Public Notice, DA 12-295 (rel. Feb. 27, 2012).

³ *See Lifeline and Link Up Reform and Modernization et al*, Report and Order, 26 FCC Rcd 9022 (2011).

⁴ In re: Universal Service Fund, Lifeline/Link Up, (Resolution and Order), Case No. JRT-2001-SU-0003 (issued March 7, 2012), attached as Exhibit C to the TRB’s Comments dated March 22, 2012.

In addition to the initial scrubbing and resulting mass de-enrollment, the TRB has implemented a centralized database to screen all existing and potential Lifeline subscribers for duplicate addresses and duplicate social security numbers. This screening is undertaken before any support is paid, foreclosing the possibility that multiple Lifeline discounts will be provided to the same subscriber or the same household. Moreover, the TRB's database uses very specific data parameters and has suffered from technical problems, which have been documented in detail before the FCC.⁵ PR Wireless and other Lifeline providers have sought reconsideration of the TRB's order adopting the database mechanism in an effort to address these problems, but in the meantime the database continues to be applied. As a result, many qualified subscribers are not permitted to enroll in Lifeline since the system would not validate their physical address due to deficiencies in its physical address database.

Finally, the TRB's rules require that all Lifeline subscribers annually demonstrate their continued eligibility under applicable Lifeline criteria. Customers must actually present documentation that they meet the income- or program-based eligibility criteria adopted by the TRB; they may not simply self-certify to that effect. PR Wireless performs these recertifications on a rolling basis, sending forms to approximately 5,000-6,000 subscribers each month on the anniversary of their enrollment in Lifeline. The forms in use during the first five months of 2012⁶ required subscribers to certify, under penalty of perjury, that (1) they will comply with all program requirements; (2) they are receiving Lifeline for only one telephone service in their household; (3) the information they have provided is true and correct; (4) that they meet the

⁵ See Letter from Mitchell F. Brecher, Greenberg & Traurig, to Marlene H. Dortch, FCC Secretary, WC Docket No. 11-42, dated July 30, 2012. PR Wireless and other Lifeline providers have sought reconsideration of the TRB administrative order adopting the database.

⁶ PR Wireless has since implemented forms that comply with the FCC rule changes that became effective June 1, 2012.

eligibility criteria for Lifeline; (5) they will notify the company within five days if they no longer meet the income- or program-based eligibility criteria; and (6) they will be responsible for demonstrating their continued eligibility at the company's request.

II. ARGUMENT

Recertification of customers under Section 54.410(f) of the FCC's rules⁷ only months after they have completed their initial or annual recertifications would be unnecessary and would cause significant additional loss of legitimately eligible Lifeline subscribers due to expected rates of non-response. Tens of thousands of PR Wireless' Lifeline subscribers completed certifications during the first five months of 2012 that substantially comply with the FCC's new Lifeline rules, including the one-per-household certification. The TRB's Lifeline duplicate process has eliminated virtually any chance of multiple Lifeline discounts being provided in the same household.

In considering whether it is in the public interest to grant PR Wireless' petition, the Commission should recognize PR Wireless' compliance efforts predating implementation of the *Lifeline Reform Order* and the TRB duplicate screening process – which occurs prior to enrollment. Under these unique circumstances, there is good cause to waive Section 54.410(f) with respect to PR Wireless' Lifeline subscribers who enrolled or completed recertifications between January 1 and May 31, 2012.

⁷ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 132 (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”) (requiring ETCs to recertify all Lifeline subscribers enrolled as of June 1, 2012 by December 31, 2012, and to report the results to USAC on or before January 31, 2013).

A. The Purposes of the FCC’s Recertification Rules Have Already Been Served With Respect to Customers Enrolled or Recertified During 2012.

In the *Lifeline Reform Order*, the Commission promulgated rules to modernize and reform the low-income programs supported by the federal Universal Service Fund (“USF”) and to better detect and prevent waste, fraud and abuse of scarce USF resources. Among these reforms is a requirement that ETCs obtain from each of their enrolled Lifeline customers an annual self-certification that the customer remains eligible to receive Lifeline supported services. As part of the recertification process, each customer must also be presented with the following disclosures:

- (i) Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program;
- (ii) Only one Lifeline service is available per household;
- (iii) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;
- (iv) A household is not permitted to receive Lifeline benefits from multiple providers;
- (v) Violation of the one-per-household limitation constitutes a violation of the Commission’s rules and will result in the subscriber’s de-enrollment from the program; and
- (vi) Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person.

In addition, each customer must certify, under penalty of perjury, that:

- (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 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).

The certification forms PR Wireless used for its new enrollments and annual recertifications between January 1 and May 31, 2012, substantially complied with the above requirements. With regard to the six required disclosures, PR Wireless' forms contained two of them. The remaining disclosures will be made when the customers renew service or during the 2013 recertification process.

The forms also contained nearly all of the certification statements that are applicable to PR Wireless' Lifeline customers.⁸ The forms only lacked the two following certifications:

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

⁸ Two of the statements are inapplicable: The certification regarding Tribal lands (there are no Tribal lands in Puerto Rico) and the certification regarding verification of temporary addresses (because this rule has not received the required approval by the Office of Management and Budget).

- The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law.

Under the circumstances, the absence of these statements does not frustrate the purpose of the FCC's recertification rules. The Lifeline forms in use during January through May 2012 required customers to sign acknowledgments that they must comply with program rules, and to certify under penalty of perjury that they have provided true and correct information.

In addition, all of the Lifeline subscribers whom PR Wireless either enrolled or recertified during the first five months of 2012 satisfied the requirement in Section 54.410(f) that customers certify to their continued eligibility under applicable program- or income-based criteria. Indeed, the certifications obtained in compliance with TRB rules, which require customers to provide actual documentation demonstrating continued eligibility, provide an even greater degree of assurance of continued eligibility than the FCC's self-certification requirement.

Lastly, all of these subscribers have already provided the personal information that is required to be collected under the FCC's recertification rules.⁹ Specifically, these subscribers have already provided their social security number,¹⁰ date of birth, physical address (as distinct from billing address), the number of persons in the household (if qualifying by income), and the qualifying program (if qualifying under program-based criteria).¹¹

In sum, the subscribers at issue provided all the required information and made virtually all of the certification statements required under the FCC's 2012 recertification rules, and PR Wireless' disclosures, as supplemented, fully comply with the disclosure rules. Accordingly, no useful purpose would be served by strictly applying the FCC's rule, which would require all of

⁹ 47 C.F.R. § 54.410(d)(2).

¹⁰ Under TRB rules and orders, Lifeline subscribers must provide all nine digits of their social security number.

¹¹ The form did not ask customers to indicate whether their address is permanent or temporary. However, as indicated above, this is not applicable since the temporary address verification rule has not received the requisite OMB approval.

these customers to complete another round of certifications during the same year or face de-enrollment.

B. The TRB's Duplicate Resolution Procedures Have Virtually Eliminated the Possibility of Multiple Lifeline Services Being Provided to the Same Household.

In January, February and March, 2012, the TRB sent a series of letters to ETCs, including PR Wireless, with instructions to de-enroll customers who were found to be receiving duplicative Lifeline service in violation of the restrictions against more than one discount per individual and one discount per household. The letters were accompanied by CDs with lists of customers identified as duplicates as well as a template de-enrollment notification letter the ETCs were required to send to the identified customers. As a result of these TRB directives, PR Wireless de-enrolled more than 25,000 customers who the TRB had alleged to be receiving multiple Lifeline discounts. Because the TRB prohibited these customers from receiving any Lifeline discounts whatsoever, many of these customers would have remained with PR Wireless had the FCC's duplicate resolution process been applied.

The TRB's de-enrollment process, therefore, was overly aggressive and eliminated Lifeline discounts for many subscribers who were entitled to one, and only one, discount under FCC rules and orders. It can be safely presumed that virtually no duplicate Lifeline benefits remained after this initial scrubbing and mass de-enrollment process was concluded in the spring of 2012.

Moreover, the TRB's monthly database review process has further reduced the ranks of PR Wireless' subscriber base. Under the TRB's rules, PR Wireless must submit a CD providing information regarding all Lifeline customers in a specific format with each monthly request for reimbursement. This process identifies duplicate Lifeline discounts at the front end, before reimbursements are paid from the state or federal programs.

As a result of the TRB's duplicate elimination policies and procedures, PR Wireless' Lifeline subscriber base has already been thinned out to a core group of subscribers who have been subjected to rigorous data review and survived the TRB's draconian de-enrollment process. This winnowing process is more aggressive than is permitted under the FCC's rules. All of the subscribers affected by this Petition have certified that they understand the one-per-household rule and that they do not receive multiple Lifeline services in their household. Requiring them to certify to this effect again would provide no added assurances given the extremely thorough vetting they have already received.

C. Recertification of PR Wireless Lifeline Subscribers Who Enrolled or Completed Recertifications During The First Five Months of 2012 Would Have Punitive Results.

Recertification is a process that is marked by a high degree of attrition. In 2007, the last year in which carriers were instructed to report the number and percentage of customers who did not respond to verification attempts, the nationwide non-response rate was approximately 10%.¹² In PR Wireless' experience, the non-response rate is much higher, hovering for the last several months in the 30%-40% range. Subscribers that do not recertify are migrated to an undiscounted plan. Those who migrate to another PR Wireless plan often abandon service, finding they can no longer afford it. During the first five months of 2012, PR Wireless de-enrolled approximately 17,000 customers by virtue of their lack of response to annual recertification efforts.

PR Wireless' Lifeline subscriber base has, therefore, already been thinned out twice in five months: once, as a result of the TRB's aggressive duplicate de-enrollment process, and again, as a result of the annual recertification process. Because the recertification process is attritional by nature – there will always be people who simply do not respond to repeated

¹² Letter from Karen Majcher, USAC, to Sharon Gillett, FCC, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45, dated Jan. 10, 2012.

attempts to obtain recertification – their ranks would again be significantly reduced if PR Wireless is forced to collect another round of certifications of these subscribers in the same calendar year.

Given that the subscribers who enrolled or recertified during the first five months of 2012 already survived duplicate review and provided documentation of (continued) eligibility, there is no doubt that they are qualified to continue to receive federal Lifeline benefits. Accordingly, it would be unfair and punitive to force another certification process that would inevitably result in the termination of Lifeline discounts to many eligible consumers who are the intended beneficiaries of the program.¹³

III. GOOD CAUSE EXISTS FOR A WAIVER

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."¹⁴ In making its determination, the Commission may consider "hardship, equity, or more effective implementation of overall policy" on an individual basis.¹⁵ Here, good cause exists for the grant of a waiver, as it will not undermine the goal of the Commission's underlying rules. As discussed *supra*, the customers who enrolled or recertified during the first five months of 2012 made virtually all of the federally required certifications, demonstrated their continued eligibility with program or income documentation, and provided all of the personal information required by the FCC's rules. They all survived the TRB's aggressive duplicate screening process, which ferreted out customers receiving multiple discounts and forced the de-enrollment of many more customers than would have been de-

¹³ See *Lifeline Reform Order*, *supra*, Statement of Commissioner Mignon L. Clyburn Approving in Part, Concurring in Part ("In addition, I understood from both carriers and consumers, that an annual recertification process for 100 percent of Lifeline subscribers is likely to have the unintended effect of de-enrolling qualified consumers.")

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

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

enrolled under the FCC's rules. There is no question that these subscribers are eligible, and the TRB's ongoing duplicate review process virtually guarantees that they will not receive multiple Lifeline discounts in the future.

Moreover, PR Wireless has demonstrated unique circumstances under which strict application of Section 54.410(f) would disserve the Lifeline program's goals and specific objectives. If PR Wireless is forced to put these subscribers through another recertification process during the same calendar year, there will be significant confusion among customers. Company call centers will be flooded with inquiries from de-enrolled customers who will not understand why they were subjected to another certification process so soon after demonstrating their eligibility and making numerous certifications to the company. More troublingly, another round of recertifications of the same customers will shred the ranks of PR Wireless' Lifeline customers as one attritional process is piled upon another. Numerous qualified subscribers will inevitably have their Lifeline benefits terminated. This needless elimination of critical benefits for low-income citizens would be contrary to the Commission's statutory mandate to preserve and advance universal service.¹⁶ Moreover, because these customers already went through ample screening and certification processes, this repeat procedure will do nothing to serve the Commission's objectives of preventing waste, fraud and abuse of the Lifeline program.

¹⁶ 47 U.S.C. § 254(b).

IV. CONCLUSION

For all of the reasons set forth above, PR Wireless requests a grant of the limited waiver of Section 54.410(f) as applied to the Lifeline subscribers who enrolled or completed recertifications from January 1 to May 31, 2012.

Respectfully submitted,

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