

**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
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

GCI PETITION FOR CLARIFICATION OF ANNUAL RECERTIFICATION RULE

General Communication, Inc. (“GCI”) seeks clarification from the Federal Communications Commission (“FCC” or “Commission”) regarding the practical requirements of 47 C.F.R. § 54.410(f)—the recently adopted rule requiring Eligible Telecommunications Carriers (“ETCs”) to recertify each of their Lifeline subscribers annually.¹ While the text of the rule is ambiguous as to application, FCC staff has said it interprets the rule’s specification of an “annual” recertification to require recertification of each individual subscriber within twelve months of that subscriber’s most recent certification or recertification—not just once per calendar year. This approach imposes unnecessary and unjustified costs on ETCs without any

¹ 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*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, 27 FCC Rcd. 6656 (2012) (“Lifeline Order”).

corresponding public benefit, and GCI therefore urges the Commission to clarify that ETCs can comply by recertifying subscribers once per calendar year.²

GCI does not challenge the existence of a recertification rule, but instead asks the FCC to clarify that ETCs can comply without adhering to an approach that inflates the compliance cost unnecessarily and that undermines some of the new rule's benefits. As a practical matter, a once-every-twelve-months interpretation of the "annual" requirement means that ETCs must track recertification timing for each customer individually. It also means that ETCs must seek recertification substantially before twelve months go by or else they risk letting individual subscribers slip past their individual twelve-month deadlines, at which point the ETC is no longer entitled to support for that subscriber from USAC. The result of these two realities—the need to track each customer's certification timing individually, and the need to recertify each customer long before twelve months expire—is that ETCs have to hire substantially more staff to handle the process and develop individualized tracking systems to keep tabs on the timing for each individual customer.

Nothing in the text of the rule, however, indicates that it should be implemented in this costly manner. Rather, the rule states only that ETCs "must annually re-certify all subscribers,"³

² The annual recertification requirement is the 800-pound gorilla in the FCC's new Lifeline rules. The Commission has estimated that the revised Lifeline rules will create an annual "information collection" compliance burden of 24 million hours and \$624 million. *See* Federal Communications Commission, Supporting Statement (OMB Control Number 3060-0819) (Sept. 2012), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3060-011 ("FCC Supporting Statement"). (The \$624 million figure is the result of adding up the annualized costs listed on pages 9 through 15 of the Supporting Statement.) Of that total, the annual recertification requirement alone is responsible for more than 16 million hours and \$419 million. *See id.* Indeed, some ETCs have petitioned the FCC to waive the rule, in part or in its entirety, because of the enormous compliance costs it imposes compared with the relatively miniscule savings it generates for the Universal Service Fund. *See, e.g.,* Smith Bagley, Inc. Petition for Limited Waiver, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 (filed June 26, 2012). Clearly, the FCC should embrace any practical revisions that can bring down these extraordinary and unjustified implementation costs.

without indicating whether that means recertifying them once per calendar year (a sensible and administrable approach) or within twelve months of each individual subscriber's last certification or recertification (an unnecessarily costly and complicated approach). GCI submits that the once-per-calendar year approach is far more reasonable, cost-effective, and efficacious, and it urges to clarify that ETCs that adhere to this approach are in compliance. GCI estimates that its own compliance burden would fall by roughly 30 percent if the FCC were to clarify that this common sense approach is compliant. The savings would come from needing fewer employees devoted to the recertification effort and from more simplified processes for tracking which customers have recertified and when their next recertifications are due.

The Commission may believe that a once-per-calendar approach poses a risk because some subscribers may not recertify for as long as 23 months or more. (For example, under a once-per-calendar-year approach, an ETC could a recertify a customer once on January 15, 2013, and then again 23 months later on December 15, 2014.) This concern is overstated for a number of reasons. First, as required by the revised Lifeline rules, all ETCs are *already* undertaking a complete recertification of their entire customer base that must be completed by the end of 2012.⁴ This means that by the end of this year, every existing Lifeline subscriber will have been recertified under the new, more stringent rules, and all new subscribers will be certified under them as well. This robust new certification and recertification requirement means that there should not be material numbers of non-eligible subscribers lurking on any ETC's subscriber rolls.

Second, as a practical matter, even an unscrupulous ETC could not afford to develop systems designed to take advantage of the risk the FCC may believe exists. In order to recertify

³ 47 C.F.R. § 54.410(f)(1).

⁴ See Lifeline Order, 27 FCC Rcd. at 6715 ¶ 130.

their entire subscriber pools in a cost-effective way, ETCs need to spread out the work over the course of a year—meaning that it is impossible as a practical matter to try to recertify all subscribers in January of one year and then delay recertifying them again until December of the following year. Moreover, that strategy would not produce any lasting value for the ETC because it would have to recertify all of the subscribers again during the very next calendar year, meaning it could not continuously stretch out the timeline between recertifications.

Third, even if a particular subscriber were recertified after, say, eighteen months rather than twelve, nothing in the administrative record suggests that would be materially harmful for the Universal Service Fund. In the Lifeline Order, the FCC explained that the new rules require ETCs to recertify their entire subscriber base every year because the pre-existing sample-based recertification system “fail[ed] to assess the actual eligibility of a large number of subscribers nationwide.”⁵ But a once-per-calendar-year approach cures that flaw just as effectively as the far more burdensome approach that the FCC has started to implement. Simply put, there is nothing to suggest that a once-per-calendar-year approach would generate materially more waste—and certainly not enough to warrant an approach that increases ETCs’ compliance costs by as much as 30 percent.

Fourth, the “every twelve months” approach to the rule undermines part of its potential benefit. Under the rule, ETCs must submit annual reports to USAC providing the data generated from the previous calendar year’s recertification effort—including, for example, the number of subscribers the ETC attempted to recertify, the number who successfully recertified, the number

⁵ *Id.* at 6717 ¶ 135.

who are no longer eligible, and the number who did not respond.⁶ This data could provide valuable information to the Commission and to USAC about, among other things, trends in the Lifeline marketplace, areas of concern, and ETCs whose processes may merit greater scrutiny.

But an “every twelve months” approach will skew the data and degrade its utility because, by practical necessity, some subscribers will be recertified twice in the same calendar year and will therefore be included twice on the same form submitted annually to USAC. If, for example, an ETC recertifies a customer on January 3, 2013, the ETC will need to recertify that person again in late December 2013 to avoid possibly slipping past the individualized less-than-twelve-months deadline. The annual recertification report for calendar year 2013 would therefore include data twice for this single person, possibly even including different results. Moreover, the number of subscribers that the ETC attempts to recertify (as reported on the annual USAC form) will never match the number of subscribers the ETC actually serves—because, again, it will need to recertify some subscribers more than once per year.

This problem will erode the value and utility of the reports flowing from the recertification effort. Applying the once-per-calendar-year approach would rectify the problem immediately. In other words, switching to once-per-calendar-year would not only reduce the compliance burden and address the Commission’s concern about the pre-existing “sampling” approach, it would also improve the value and utility of the data generated under the rule.

Finally, the staff’s interpretation of “annual” conflicts with the Commission’s general interpretation of that word in other contexts and with the law’s general interpretation of that term. For example, the Commission in other contexts interprets “annual” reporting requirements

⁶ See *id.* at 6721-22 ¶¶ 147-148. The form that USAC has developed for ETCs to report this information is available here: http://www.usac.org/_res/documents/li/pdf/cert-ver/CertificationFormandInstructions.pdf.

