

**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

**COMMENTS OF GENERAL COMMUNICATION, INC. ON  
CRICKET’S PETITION FOR WAIVER**

In a waiver petition filed on October 16, 2012, Leap Wireless International, Inc. and Cricket Communications, Inc. (together, “Cricket”) argued that the Federal Communications Commission (“FCC” or “Commission”) should not require it to recertify in 2012 any Lifeline customers who fulfilled the Commission’s new and robust application and certification requirements prior to June 1, 2012.<sup>1</sup> General Communication, Inc. (“GCI”) agrees wholeheartedly with Cricket that there is no practical value to recertifying customers who have already adhered to the new requirements this year, but—unlike Cricket—GCI submits that a waiver of the Commission’s rules is not necessary. Instead, GCI urges the Commission to clarify that the only logical and reasonable reading of its rules applies—namely, if a new customer applies for Lifeline service in a given year and provides all the requisite information

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<sup>1</sup> See Petition for Waiver of Section 54.410(f) of the Commission’s Rules, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (filed Oct. 16, 2012) (“Cricket Petition”); *see also Wireline Bureau Seeks Comment on Cricket’s Petition for Waiver of the Commission’s Recertification Requirements for Lifeline*, Public Notice, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45 (rel. Oct. 22, 2012) (seeking comment on the Cricket Petition).

and certifications when applying (or if an existing customer provided all of the required information and certifications in a recertification completed earlier in the year), there is no need for the Eligible Telecommunications Carrier (“ETC”) to recertify that customer under section 54.410(f) of the Commission’s rules within that same calendar year. In the event that the Commission determines that reaching this result requires a waiver rather than just clarification, then GCI urges the Commission to issue a blanket waiver that removes the recertification requirement for all ETCs with respect to any Lifeline subscriber in this situation (in 2012 and in the future). And, if the Commission declines to issue a waiver, GCI requests that the Commission extend the recertification deadline by 60 days with respect to all customers who had provided all of the required certifications and information earlier in the year.

Like Cricket, and like many other ETCs, GCI took steps to begin implementing the *Lifeline Reform Order*’s application and certification requirements soon after it was released.<sup>2</sup> GCI began enrolling new customers under the more robust requirements in early April 2012, and—in order to ensure that it could recertify all of its customers by the end of the year—it also began recertifying existing customers under the new rules. Indeed, on March 28, 2012, GCI submitted its new Lifeline application and recertification forms to several Commission offices and to the Universal Service Administrative Company, explaining that the forms had been revised substantially in order to ensure compliance with the *Lifeline Reform Order*’s more exacting certification and information-collection requirements.<sup>3</sup> Among other things, the new forms include all of the required certifications, a requirement that applicants and recertifying

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<sup>2</sup> See *Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Rcd. 6656 (2012) (“*Lifeline Reform Order*”).

<sup>3</sup> See Letter from John Nakahata et al. to David Hunt et al. (submitted March 28, 2012).

customers provide documentation of eligibility, and a requirement that applicants and recertifying customers certify the accuracy of the information provided under penalty of perjury.

In the sections that follow, GCI explains first that the Commission’s annual recertification requirement does not, on its face, suggest that ETCs must recertify customers in the same year in which they apply for service (or recertify eligibility in the case of existing subscribers) and provide all of the certifications and information identified in the *Lifeline Reform Order*. Second, GCI explains that applying the rule in a manner that *does* require ETCs to recertify these customers would impose additional—and completely unnecessary—burden and expense on ETCs while sowing confusion with subscribers that would cause many of them to lose service. Finally, GCI argues that the Commission should clarify that the rule does not on its face require recertification with respect to these subscribers. In the event the Commission finds that the rule does require recertification in this context, however, then it should issue a blanket waiver with respect to all subscribers in this situation. And, if it declines to issue a blanket waiver, the FCC should extend the recertification deadline with respect to these customers to afford ETCs—many of which had reasonably assumed there was no need for duplicative certifications—time to complete the process.

**I. The Commission’s Rules Cannot Reasonably Be Interpreted to Require Recertification in this Situation**

The Commission’s new annual recertification rule states that ETCs “must annually recertify all subscribers” except in states where a state administrator or agency is responsible for recertification.<sup>4</sup> The regulation is silent on whether this requirement applies literally to “all subscribers” or whether it should instead be understood to apply only to subscribers who have not otherwise provided exactly the same information previously during the same calendar year.

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<sup>4</sup> 47 C.F.R. § 54.410(f)(1).

Because only one of these interpretations is objectively reasonable—namely, that there is no requirement to conduct duplicative certifications in the same year—the Commission should clarify that this is the interpretation that applies.

A real-world example helps illustrate why this is the only reasonable application of the rule. Imagine that a customer enrolls for Lifeline service for the first time on May 15, 2014, and at the time of enrollment the ETC collects all of the information and certifications required under the Commission’s new rules. Considering that the subscriber provided all of the necessary information as part of his or her application process, there is no sound basis for reading the rule to require the subscriber to also recertify in the same year. The practical problems with an unduly rigid interpretation of the rule are even clearer if the hypothetical new subscriber enrolls on December 15, 2014. In that case, it cannot possibly make sense for the rule to require the ETC to recertify the subscriber before the end of the year. Instead, the only logical reading is that the requirement does not apply with respect to subscribers who have already provided the requisite certifications and information during the year in question.

The *Lifeline Reform Order* provides further detail with respect to the process applicable in 2012. In particular, the Order directs providers to recertify their subscriber base as of June 1, 2012—the date on which the new certification and information requirements took effect—in order to ensure that, by the end of the year, each ETC has paperwork for each subscriber “contain[ing] each of the required certifications described [in the Order].”<sup>5</sup> While this passage can be read rigidly to require recertification of all subscribers, regardless of whether or when they had provided precisely the same information, it is only logical to interpret it in the manner described above with respect to the general recertification rule: the requirement applies only

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<sup>5</sup> *Lifeline Reform Order*, 27 FCC Rcd. at 6715 ¶ 130.

with respect to subscribers who have not already provided the requisite information during the year in question. Moreover, the *Order* states that “the re-certification may be done on a rolling basis *throughout the year*, at the ETC’s election”—which indicates clearly that ETCs could start recertifying existing customers under the new rules *before* June 1 without having to repeat the process again after June 1.<sup>6</sup>

Indeed, the Commission’s use of June 1, 2012, as the snapshot date for purposes of the recertification rule supports this logical interpretation. That is the date on which ETCs were required to begin collecting the more robust certifications and information from all new subscribers. The Commission could have set July 1 as the snapshot day, but that would have been nonsensical—all new customers who enrolled *after* June 1 but *before* July 1 would have been required to re-submit during the recertification process all of the same information they provided when they enrolled. By setting the date on June 1, however, and by explaining that the purpose was to ensure that ETCs had collected all of the requisite information from all subscribers by the end of the year (and by stating that ETCs could conduct recertifications of existing customers “throughout the year”), the Commission confirmed implicitly that there is no need to gather the same information for the same subscriber twice in a single year. Considering that the general rule in section 54.410(f)(1) cannot be understood to require recertifications in the same year a customer enrolls or has previously recertified (as explained above), and considering that the Commission implicitly recognized in the *Lifeline Reform Order* that there is no basis for requiring two certifications in a single year even in 2012, the rule should be understood to

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<sup>6</sup> *Id.* (emphasis added).

require recertification only in cases where customers have not provided the required information and certifications during the calendar year in question.<sup>7</sup>

## **II. Interpreting the Rule to Require Recertification of these Subscribers Would Impose Unnecessary Burden and Expense on ETCs and Sow Confusion Resulting in Loss of Service for Many Subscribers**

Reading the rule to require many subscribers to provide robust certification information twice in a year would subject ETCs to completely pointless burden and expense. Considering that ETCs are already devoting enormous resources to the recertification effort and ensuring compliance with the other rigorous new rules that the Commission has imposed, there is simply no justification for interpreting the rules in a manner that adds to the burden without providing any corresponding public benefit.

It would simply be nonsensical to interpret the rules in a manner that imposes duplicative burdens—but that is what a rigid reading would do in this circumstance. As Cricket explained in its petition, requiring recertification for customers who already provided precisely the same information earlier in 2012 “is wholly unnecessary and thus would create burdens without any material corresponding benefit.”<sup>8</sup> For customers who enrolled or recertified prior to June 1 subject to the new robust requirements, there is simply nothing to be gained (but much expense to be incurred) by “recertifying” that same person after June 1.

The far more defensible and logical reading of the rule recognizes that there is no need to recertify anyone who has already provided the required information during the year in question.

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<sup>7</sup> GCI implemented the new certification and information-collection requirements for new customers and for recertifying customers months before the actual effective date in order to thwart waste, fraud and abuse, and also because the enormous task of complying with all of the new Lifeline rules effectively required it to implement many of them long in advance of the effective date. Adopting a rigid interpretation of the rule requiring recertification even with respect to subscribers who already provided the same information earlier this year would discourage ETCs from working proactively in this manner in the future.

<sup>8</sup> *Cricket Petition* at 5.

This more reasonable approach comports with the only logical understanding of section 54.410(f)(1); it reflects the Commission’s implicit recognition that there is nothing to be gained by requiring duplicative certifications; and it avoids adding to the staggering burden that ETCs already bear in complying with the new rules. Indeed, this reasonable reading will allow ETCs to devote their resources to recertifying customers who actually need it—that is, those who have not yet provided the required information—rather than doubling back and recollecting that information from customers who already provided it earlier in the year.

This reasonable and less burdensome interpretation of the recertification rule would also avoid confusing subscribers in a manner that would otherwise cause many to lose service. If the FCC were to adopt an overly rigid view of the rule, ETCs would be required to return to subscribers who had already provided all of the necessary information and certifications and ask them to provide the same information again just weeks or months later. Many subscribers would quite reasonably conclude that there was an administrative mistake, or a problem with paperwork crossing in the mail, and they might assume that they do not actually need to recertify the exact same information that they had affirmatively certified just weeks or months earlier. Many would therefore refrain from responding for perfectly rational and defensible reasons, but the FCC’s rules—if applied in this nonsensically rigid way—would require ETCs to de-enroll them from the program for failure to respond. As Cricket explained, many of these subscribers would simply ignore or discard the recertification letter under the reasonable (but mistaken) belief that they had already complied.<sup>9</sup> These subscribers—the ones whose eligibility should be least in doubt because they very recently established their qualifications under the robust rules—would

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<sup>9</sup> *See id.*

find themselves kicked out of the program “because of duplicative and confusing administrative requirements rather than because they have actually lost their eligibility for benefits.”<sup>10</sup>

In short, far from preventing waste, fraud and abuse—the touchstones of the Commission’s Lifeline reforms—applying the recertification rule in this rigid manner would create confusion and service losses for subscribers, generate waste for ETCs, and fail to produce any public benefit.

### **III. The Commission Should Clarify that the Rule Does Not Require Duplicative Recertifications or, in the Alternative, It Should Issue a Blanket Waiver to that Effect.**

A waiver is not required in this case. Instead, the Commission should clarify that the rule as written does not require recertification with respect to a subscriber who has provided all of the certifications and other required information earlier in the year in question. If, however, the Commission concludes that the rule can only be read in this harmfully rigid way, then GCI urges it to issue a blanket waiver of the recertification requirement with respect to any subscriber who has provided all of the certifications and other required information earlier in the year in question.<sup>11</sup> Finally, if the Commission declines to issue a blanket waiver, then GCI requests that it extend the recertification deadline by 60 days with respect to these customers to afford ETCs—many of which had reasonably assumed there was no need for duplicative certifications—time to complete the duplicative process.

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<sup>10</sup> *Id.*

<sup>11</sup> Cricket has phrased its petition as a request for a “one time” waiver, limited only to the 2012 recertification process. *See* Cricket Petition at 1. If the Commission believes that the rule can only be read rigidly, however, then the waiver should actually be perpetual. Otherwise, under a rigidly literal reading of the rule, in future years ETCs will be required to recertify “all subscribers”—without any express exception for subscribers who made exactly the same requisite certifications when enrolling earlier in the year in question.

