

**Before the
Federal Communications Commission
Washington, DC 20554**

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| 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 |
| |) | |

**PETITION FOR WAIVER OF
THE UNITED STATES TELECOM ASSOCIATION**

I. BACKGROUND

On May 31, 2012, the Wireline Competition Bureau released a Waiver Order¹ (“*Waiver Order*”) addressing four separate petitions, including that of the United States Telecom Association (“USTelecom”),² seeking permanent or temporary waiver of various rules adopted in the *Lifeline Reform Order*.³ USTelecom’s Petition for Waiver (“*USTelecom Petition*”)⁴ sought a

¹ See Waiver Order, *Lifeline and Link Up Reform and Modernization*, DA 12-863 (rel. May 31, 2012).

² USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

³ Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Rulemaking, WC Dkt. Nos. 11-42 et al., CC Dkt. No. 96-45, FCC 12-11 (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

⁴ See The United States Telecom Association’s Petition for Waiver, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, filed April 25, 2012.

temporary waiver on behalf of Eligible Telecommunications Carriers (ETCs) in select states⁵ of the obligation to obtain from the state a signed certification from a subscriber prior to seeking Lifeline fund reimbursement for that subscriber.⁶ The *Waiver Order* granted a waiver from section 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of section 54.407(d) with respect to ETCs in those states in which the state Lifeline administrator or other state agency manages subscriber eligibility and is unable to modify, in the short term, its processes for ETCs to come into compliance with these rules.⁷

⁵ The states and territories for which waiver was sought included Arizona, California, Colorado, District of Columbia, Florida, Idaho, Kansas, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Tennessee, Texas, Utah, Vermont, United States Virgin Islands, and Washington. On May 14, 2012, subsequent to the filing of the *USTelecom Petition*, but prior to the issuance of the *Waiver Order*, based on new information about the status of changes to the customer eligibility determination process in Kansas and Tennessee, and oral assurances from representatives of New Jersey that the New Jersey Bureau of Public Utilities would complete action to eliminate automatic enrollment prior to June 1, 2012, USTelecom withdrew its request for waiver with respect to Kansas, Tennessee and New Jersey. On May 16, 2012, based on new information about the status of changes to the customer eligibility determination process, USTelecom withdrew New York from its request for waiver. On May 18, 2012, based on information indicating that the Arizona Department of Economic Security (DES) handles determinations of Lifeline eligibility under contract with one ETC, thus providing the ETC with constructive receipt of such certifications through DES as the ETC's contractor, USTelecom withdrew Arizona from its request for waiver. On May 24, 2012, based on an order of the Ohio Public Utilities Commission issued May 23, 2012, and a workshop conducted with staff of the Texas Public Utility Commission Tuesday May 22, 2012, USTelecom believed that those states would be in compliance with the Commission's rules by the June 1, 2012 deadline and therefore withdrew Ohio and Texas from its request for waiver. The *Waiver Order* granted the necessary waivers to ETCs in California, Colorado, District of Columbia, Florida, Idaho, Montana, Nevada, Oregon, the U.S. Virgin Islands, Utah, Vermont and Washington. On June 4, 2012, the Bureau released an Erratum to the *Waiver Order* adding Nebraska to states covered by the *Waiver Order*. On July 31, 2012, USTelecom filed the update required by the *Waiver Order*. The update noted the need for continuation of the waivers in the states covered in the *Waiver Order*, as modified by the Bureau's June 4, 2012 Erratum. On August 30, 2012, USTelecom notified the Bureau that ETCs in the state of Washington no longer required the waivers based on informal discussion between ETCs and those of the state indicating that ETCs have taken responsibility for obtaining Lifeline certification forms from customers.

⁶ See *USTelecom Petition* at 2 (seeking a waiver in particular states from sections 54.407(d), 54.410(b)(2) and 54.401(c)(2) of the Commission's rules).

⁷ See *Waiver Order* at para 3.

The Bureau granted the waivers until the sooner of December 1, 2012 or until the states' processes were modified to allow for compliance.⁸ USTelecom was required to provide an update to the Bureau by August 1, 2012 on the states' progress to come into compliance (as noted above, the update was filed on July 31). As states came into compliance through the provision of sufficient certification, USTelecom informed the Wireline Competition Bureau that the waivers were no longer necessary for ETCs serving in those states.

II. THE WAIVERS ARE STILL NECESSARY IN CERTAIN STATES

At this time, some state Lifeline administrators or other state agencies are not prepared to begin providing ETCs in their states with copies of subscriber certifications forms, as required by section 54.410(e), beginning December 1, 2012. USTelecom respectfully requests that, for these states, the Commission extend the waivers of sections 54.410(b)(2)(ii) and 54.410(c)(2)(ii), 54.410(e), and portions of section 54.407(d), granted in the *Waiver Order* for six months until June 1, 2013 (or for a shorter period of time if a state comes into compliance within six months). Extending this relief until June 1, 2013, will give state entities additional time to comply with the Commission's requirement that they provide signed certifications to ETCs from subscribers, and will give the Commission additional time to consider requests by the Oregon Public Utility Commission ("OPUC") and USTelecom to modify those very rules so that it would be acceptable for a state entity to retain the certification forms itself (versus being required to transmit them to the ETCs to retain).⁹ The states that require the waiver extension are:

⁸ *Id.* at para. 4.

⁹ See Letter of Jon Cray, OPUC RSPF Program Manager and Brant Wolf, OTA Executive Vice President, filed November 16, 2012, supporting part of the Petition for Reconsideration and Clarification submitted by USTelecom in CC Docket No. 96-45, WC Docket No. 11-42, WC Docket No. 03-109 and WC Docket No. 12-23 ("OPUC Request"); Petition for Reconsideration and Clarification of the United States Telecom Association, filed in the above referenced dockets on April 2, 2012 ("*USTelecom Reconsideration Petition*").

Colorado, Florida, Idaho, Oregon, Utah and Vermont.¹⁰ Additionally, for different reasons, USTelecom requests a six-month waiver of the same rules for ETCs in California (and the California Lifeline administrator) or, in the alternative, a waiver of sections 54.410(b)(1)(ii) and 54.410(c)(1)(ii). In support of this waiver petition, we provide the following state-specific information:

- Colorado -- To the best of our knowledge, Colorado has not yet provided any subscriber certification forms. It has not provided any statement confirming that it will be sending subscriber certification forms. It has not provided any information about how it will be sending subscriber certification forms in the future, such as the timing, manner of delivery or format. In our discussions with representatives of the Colorado commission, we have every reason to expect that they will continue to be unable to provide customer certification forms to ETCs. Their lack of compliance necessitates extension of the waiver for ETCs in Colorado.
- Florida -- To the best of our knowledge, Florida's two state entities that manage initial eligibility determinations have not yet provided any subscriber certification forms to ETCs. They have not provided any information about how they will be sending subscriber certification forms in the future, such as the timing, manner of delivery or format. Based on our discussions with representatives of the Florida commission, at this time we do not believe that Florida's state entities have any plans to provide customer certification forms to ETCs. Their inability to satisfy the requirements of section

¹⁰ It is our understanding that Nebraska will begin sending customer certification forms next week, so the waiver is no longer required for Nebraska ETCs. Similarly, the waiver is no longer required for ETCs serving the District of Columbia.

54f.410(e) by December 1 necessitates extension of the various waivers for ETCs in Florida.

- Idaho -- To the best of our knowledge, Idaho has not yet provided any subscriber certification forms. It has not provided any statement confirming that it will be sending subscriber certification forms. It has not provided any information about how it will be sending subscriber certification forms in the future, such as the timing, manner of delivery or format. In our discussions with representatives of the Idaho commission, we have every reason to expect that they will continue to be unable to provide customer certification forms to both wireline and wireless ETCs. Their lack of compliance necessitates extension of the waiver for ETCs in Idaho.
- Oregon – Staff of the OPUC and the Oregon Telecommunications Association (OTA) submitted a joint written *ex parte* letter to the Commission on November 16, 2012,¹¹ which acknowledged that Oregon was not transmitting certification forms to wireline and wireless ETCs.¹² If the Commission does not grant reconsideration of the requirement as requested by USTelecom, or endorse Oregon’s current process as in compliance with the rules governing certification, wireline and wireless ETCs in Oregon will be unable to comply with the Commission’s rules and thus require extension of the waivers.
- Utah – On November 21, 2012, Gary L. Widerburg, Secretary to the Public Service Commission of Utah, sent a letter to Kimberly Scardino at the FCC requesting an additional 6 to 12 months to develop a system which will include wireless ETCs in the

¹¹ See OPUC Request.

¹² *Id.*, at pages 2 and 3, “If the existing rules are not modified, the OPUC will have an obligation to photocopy and mail an average of 2,500 to 4,000 (and growing) certification forms each month to the consumer’s respective ETC. Alternatively, a secure electronic means of transmitting certification forms to each ETC will have to be developed.”

state's certification process. The letter acknowledges that "Presently, wireless carriers are not covered by the PSC's eligibility certification process." It also notes that "By extending the current waiver, the same safeguards will be in place for both wireline and wireless carriers." Given Utah's current non-compliance with the Commission's certification rule, ETCs serving Utah are unable to comply with the rules noted above and should be granted an extension of the waiver.

- Vermont -- On November 19, 2012 the Vermont Department of Public Service ("DPS") filed a petition dated November 1 with the Commission in this matter which includes a request for waiver of section 54.410.¹³ In this petition, the DPS states that that due to confidentiality restrictions, certification forms are not shared with ETCs.¹⁴ In light of this, ETCs in Vermont will be unable to comply with the Commission's rules and thus ETCs serving Vermont require extension of the waivers.
- California – In California, a state administrator is responsible for Lifeline eligibility determinations. It is our understanding that the state administrator is prepared to begin providing ETCs with electronic copies of Lifeline certification forms, complete with copies of the consumers' supporting documentation, in early December. However, neither the state administrator nor any ETC has the ability to remove the supporting documentation (e.g., an image of a consumer's Medicaid card) in a mechanized manner. Instead, to extract and destroy a copy of a customer's supporting documentation would require the state administrator or the ETC to manually delete that page from the

¹³ See Petition and Certification of the Vermont Department of Public Service to Opt-Out of the National Lifeline Database and Petition for Waiver of Sec. 54.410, submitted in CC Docket No. 96-45, WC Docket No. 11-42, WC Docket No. 03-109 and WC Docket No. 12-23, dated Nov. 1, 2012 and filed Nov. 19, 2012.

¹⁴ *Id* at page 5.

electronic file. Specifically, the post-December 1 process proposed by the administrator and the California Public Utilities Commission is as follows: (1) a customer submits a completed application/certification form and supporting documentation to the state administrator; (2) the administrator scans the consumer's entire submission and creates a single pdf file for that consumer; (3) the administrator will send each ETC complete pdf files of the ETC's eligible subscribers; (4) while the administrator is not explicitly prohibited from retaining copies of consumers' supporting documentation, ETCs are (see sections 54.410(b)(1)(ii) and 54.410(c)(1)(ii)); (5) thus, to comply with the Commission's rules, ETCs either would have to review electronically each page of its customers' pdf files to delete any images of supporting documentation or would have to print all of the files to separate the certification forms from the supporting documentation pages; after destroying copies of its customers' supporting documentation, the ETC would have to re-scan the certification forms to store them consistent with the Commission's recordkeeping rules (see 47 C.F.R. § 54.417(a)). There is no mechanized process for the steps described in 5, above. Such a labor intensive process is not realistic given the volumes in California. As the Commission knows, California has, by far, the largest number of Lifeline subscribers of any state in the country, with California enrolling thousands of consumers each week. Additionally, the files that the state administrator sends to ETCs contain new enrollees commingled with renewals so that the state administrator sends tens of thousands of customer files to ETCs each week. Instead of subjecting the state administrator or every California ETC to this burdensome and cost prohibitive process, USTelecom asks the Commission to extend for six months the relief

granted in the Waiver Order to the California state administrator and ETCs providing Lifeline service in that state.

An additional six-month waiver will enable the Commission to consider OPUC's and USTelecom's requests that the Commission modify its rules to eliminate the requirement that state entities must provide copies of certification forms to ETCs, particularly when the state agrees to comply with the Commission's document retention requirements and provide copies of such forms to USAC auditors.¹⁵ If the Commission is not inclined to modify its rules in the manner requested by the OPUC, an additional six months could enable the California state administrator to explore options for including a barcode or some other sort of identifying marker on certification forms so that after it scans the certification forms, the administrator would have the mechanized ability to extract just the certification forms (and not copies of supporting documentation) to create files for the ETCs.

In the alternative, USTelecom requests that, for ETCs in California, the Commission waive its rule directing ETCs not to retain copies of the documentation of a subscriber's income-based or program-based eligibility for Lifeline. See 47 C.F.R. § 54.410(b)(1)(ii), (c)(1)(ii). With the administrator transmitting tens of thousands of customer files to ETCs each week, it is infeasible for ETCs to sift through tens of thousands of electronic images each week to delete images of supporting documentation. Printing out tens of thousands of pages each week to shred those pages containing consumers' supporting documentation is no answer either: As noted above, most ETCs

¹⁵ See OPUC Request at 2 (OPUC is prepared to comply with the required retention period for certification forms and agrees to provide the forms to the Commission or USAC if needed for audit purposes).

can be expected to comply with the Commission's document retention requirements by storing certification forms electronically, which means that ETCs, in turn, will re-scan the thousands of pages they just printed, minus the supporting documentation pages. Not only would this option be as time consuming as the first, it would be extraordinarily wasteful. Instead, the Commission should waive sections 54.410(b)(1)(ii) and 54.410(c)(1)(ii) to permit ETCs in California to retain intact the files that they receive from the state administrator. This means that these ETCs would retain, in accordance with the Commission's recordkeeping rules (see 47 C.F.R. § 54.417(a)), the copies of subscribers' supporting documentation that are embedded in the certification files that the California state administrator transmits to them.

III. CONCLUSION

The Bureau found good cause to grant the waiver which expires December 1.¹⁶ The same situation exists now in the states listed above as when the Waiver Order was promulgated; thus, the same good cause to grant the extension of waiver in those states exists. For the foregoing reasons, the Commission should grant the Petition for Waiver.

Respectfully submitted,

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¹⁶ See *Waiver Order* at para. 5.