

**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

REPLY COMMENTS OF THE USA COALITION

The Universal Service for America Coalition (“USA Coalition”), by its attorneys, joins the broad consensus urging the Commission to issue a clarifying order regarding the annual recertification requirement Rule 54.410(f) or, alternatively, to grant of a waiver of that Rule so that eligible telecommunications carriers (“ETCs”) can satisfy the Commission’s Lifeline recertification requirement by acting to recertify subscribers once per calendar year.

While the USA Coalition agrees with General Communication, Inc. (“GCI”) that a waiver of the Rule 54.410(f) is not necessary under the most straightforward reading of Rule 54.410(f),¹ it nevertheless supports the Commission’s quick action to clarify the issue. To the extent that the Commission deems a waiver to be necessary, the USA Coalition believes good cause exists to grant a waiver.² Under either course of action the Commission should act expeditiously in order to relieve the regulatory burden associated with otherwise duplicative recertifications that may be required and the potential consumer harm that would foreseeably occur in the absence of Commission action. Taking the steps advocated by either GCI or Cricket would reduce these burdens without negatively impacting the Commission’s stated goals of protecting the Lifeline program against waste, fraud, and abuse.

¹ GCI Comments, WC Docket No. 11-42, *et al.* (filed Nov. 21, 2012); Petition for Clarification of Annual Recertification Rules, WC Docket No. 11-42, *et al.* (filed Oct. 1, 2012).

² *Accord* Leap Wireless International Inc. Petition for Waiver of Section 54.410(f) of the Commission’s Rules, WC Docket No. 11-42, *et al.* (filed Oct. 16, 2012) (“Cricket Petition”).

For these reasons, the USA Coalition joins the call for the Commission to grant the GCI Petition for Clarification of Annual Recertification Rules or, alternatively, the Cricket Petition for Waiver of Section 54.410(f).

I. THERE IS WIDESPREAD AGREEMENT THAT “ONCE PER CALENDAR YEAR” IS THE APPROPRIATE INTERPRETATION FOR RULE 54.410(F)

GCI, Tracfone Wireless, Inc. (“Tracfone”), and the United States Telecom Association (“US Telecom”) agree that the requirement for annual recertification of Lifeline customers set forth in Rule 54.410(f) is most plausibly read to require Lifeline customer recertification only once per calendar year, rather than recertification of each subscriber every twelve months.³ The USA Coalition concurs that a waiver does not appear to be necessary in this situation because the Rule’s language stating that ETCs must “annually recertify all subscribers” means “once per calendar year” rather than “one every twelve months” is clear from its context.⁴

As pointed out by GCI, the Commission’s use of the word “annual” to describe the recertification requirement should be interpreted to bar any interpretation that multiple “annual” recertifications are necessary. Reading “annual” to mean something more than “once per year” would be a tortured reading of the existing Rule. That is, the Rule itself is clear that only an “annual” recertification is necessary and, thus, applies regardless of whether and when a customer enrolls in Lifeline service. Tracfone, for its part, finds the Rule language to be both “explicit” and “plain” that the term “annual” can only mean “once per year.”⁵ US Telecom agrees that the clarification sought by GCI is “the most logical interpretation” of the language in question.⁶ The USA Coalition concurs in this assessment.

³ GCI Comments, *supra* note 2; Tracfone Comments, WC Docket No. 11-42, *et al.* (filed Nov. 21, 2012); US Telecom Comments, WC Docket No. 11-42, *et al.* (filed Nov. 23, 2012).

⁴ *See* GCI Comments at 4.

⁵ Tracfone Comments at 2.

⁶ *See* US Telecom Comments at 2.

However, while the USA Coalition agrees with those commenters who believe that the Rule's language appears straightforward, there can be no doubt that there confusion surrounds the issue. In the absence of clarification, this regulatory uncertainty may result in ETCs engaging in duplicative recertification procedures that may have unintended and harmful effects upon Lifeline customers. This ambiguity creates a significant compliance risk to ETCs because the less apt interpretation may be deemed to apply and with it the significant regulatory obligations that accompany that interpretation. For these reasons, the USA Coalition strongly agrees with the commenting parties that Commission clarification is necessary.

II. REQUIRING MULTIPLE RECERTIFICATIONS IN A SINGLE YEAR WOULD BE UNNECESSARILY DUPLICATIVE AND WOULD HARM CONSUMERS

As the Commission noted in its recent grant of Sprint Nextel Corporation, Affordable Phone Services. Inc., and Absolute Home Phones Petitions for Waivers of Rule 54.410(f), requiring "subscribers to re-certify their eligibility would likely cause confusion and frustration."⁷ Here, too, consumers would be confused at the requirement that they recertify when they may have only very recently certified as to their eligibility. In addition to being unnecessarily duplicative, the imposition of additional recertifications, with the recognized confusion and frustration that they engender, carry significant practical consequences for Lifeline customers. That is because any subscribers that fail to respond to the ETC's recertification request must be de-enrolled from the Lifeline program pursuant to the de-enrollment requirements set forth in the Commission's rules.⁸ This outcome risks unnecessarily cutting off needed service to many otherwise eligible subscribers solely due to a paperwork technicality, while doing little to address the fraud and abuse that the Commission is concerned about.

⁷ *Lifeline and Link Up Reform and Modernization*, et al., Order, DA 12-1927 at ¶ 2 (rel. Nov. 30, 2012).

⁸ 47 C.F.R. §§ 54.405(e), 54.410(f)(5).

A) No Practical Value Accompanies the “Every-12-Months” Interpretation

As stated by the Commission in the 2012 *Lifeline Reform Order*, the requirement for ETCs to annually re-certify Lifeline subscribers ensures that only eligible subscribers remain in the program.⁹ As noted by GCI, ETCs have adhered to the new, and more exacting information collection requirements this year in obtaining customer certifications, meaning that there is no practical value to recertification.¹⁰ As argued by US Telecom, “there is nothing in the record... that supports the efficacy of an ‘every 12 months’ recertification period as opposed to a once-per-calendar-year requirement in deterring duplication or abuse.”¹¹ Further, any concern that a less onerous recertification requirement would fail to identify and remove ineligible consumers from the Lifeline program is amply addressed by the fact that the consumer was required to recently certify as to their eligibility and must recertify in the next year.¹² As pointed out by Tracfone, this is especially so given the existence of additional safeguards against fraud and abuse present in the Lifeline program, such as the 60 day non-usage de-enrollment requirement¹³ Thus, the “every 12 months” interpretation yields no practical benefit to the Lifeline program.

B) The “Every-12-Months” Interpretation Is Burdensome to Small Carriers

The dubious regulatory benefit of the “every 12 months” interpretation should be grounds alone for the Commission to issue a clarifying order, but when added to the unnecessary costs imposed upon carriers in meeting this more stringent requirement in addition the harmful effects of such an interpretation on eligible customers, the justification for issuing either a waiver or clarification becomes abundantly clear. As noted by many parties, the multiple annual

⁹ See *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656, 6717-18, ¶ 134.

¹⁰ GCI Comments at 1-2.

¹¹ US Telecom Comments at 4.

¹² *Id.* at 4.

¹³ Tracfone Comments at 7.

recertification interpretation would impose significant costs upon carriers to comply.¹⁴ This is especially so for small carriers like the members of the USA Coalition with limited numbers of Lifeline customers who would be forced to dedicate scarce resources to meeting the recording-keeping requirements that such an interpretation would require.¹⁵ These very real costs far outweigh the negligible benefits of the “every-12-months” interpretation and should be recognized as additional grounds to adopt the more flexible interpretation of this rule.

C) The “Every-12-Months” Interpretation Would Harm Lifeline Customers

The customer harm that a more frequent recertification requirement would produce is a concern shared by nearly all commenters.¹⁶ As was persuasively argued by GCI, requiring subscribers who had only recently provided all the necessary information and certifications to the ETC to provide substantially the same information again would lead many to “quite reasonably conclude that there had been administrative mistake, or a problem with paperwork crossing in the mail, and they might assume that they do not actually need to recertify” the same information they had only recently provided and sworn to.¹⁷ A reasonably foreseeable outcome would be for customers like these to ignore the recertification request or refrain from responding.¹⁸

The harsh result that would follow from a customer’s reasonable confusion, but the result required under the Commission’s rules, is the mandatory disconnection of customer service for failure to recertify. This draconian outcome would apply to many who had only just recently established their eligibility for Lifeline participation and almost certainly continued to remain eligible, but were disqualified from receiving the opportunities and security that phone service

¹⁴ See GCI Comments at 7; US Telecom Comments at 3; Cricket Petition at 5.

¹⁵ Accord US Telecom Comments at 3.

¹⁶ Cricket Petition at 5; Tracfone Comments at 6; GCI Comments at 7.

¹⁷ GCI Comments at 7.

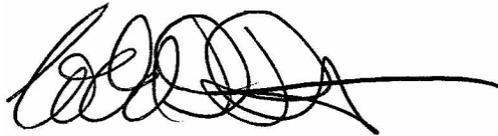
¹⁸ *Id.*; accord Cricket Petition at 5.

brings, including being able to connect to jobs, family and emergency services, merely due to a paperwork processing issue. The Commission could not have intended this severe outcome and should, therefore, not interpret its rules in a manner that would produce this result.

* * *

For these reasons, the Commission should recognize that the burdens and consumer harms associated with the interpreting the annual recertification requirement Rule 54.410(f) to mean “once-every-twelve months” instead of the more workable “once a calendar year” interpretation. Accordingly, the USA Coalition urges the Commission to grant the GCI Petition for Clarification of Annual Recertification Rules. In the alternative, good cause exists to grant the Leap Wireless International Inc. and Cricket Communications, Inc. Petition for Waiver of Section 54.410(f) under these specific circumstances as in the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Todd D. Daubert', with a long horizontal line extending to the right.

Todd D. Daubert
J. Isaac Himowitz
Aaron M. Gregory
SNR DENTON US LLP
1301 K Street, N.W.
East Tower Suite 600
Washington, DC 20005
(202) 408-6400
(202) 408-6399 (facsimile)
todd.daubert@snrdenton.com

Counsel for the USA Coalition

Date: December 10, 2012