Before the
Federal Communications Commission
Washington, DC 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
Advancing Broadband Availability Through Digital Literacy Training	WC Docket No. 12-23

PETITION FOR WAIVER OF

THE UTAH PUBLIC SERVICE COMMISSION

I. Introduction

Pursuant to 47 CFR § 1.3 the Utah Public Service Commission ("PSC") petitions for a 45 day waiver of both the December 31, 2012 and January 31, 2013 deadlines for re-certification of Lifeline subscribers[1]. Note: This petition addresses only the wireline carriers in the State of Utah. The wireless carriers in the state are still self certifying at this time. The Utah Division of Public Utilities ("DPU") has arranged to have the Utah Department of Workforce Services ("DWS") query the relevant databases for matching program-based eligibility for every wireline Lifeline subscriber in Utah. The DPU has mailed re-certification notices to those subscribers

[1] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and FUther Notice of Proposed Rulemaking, 27 FCC Rcd at 6714-22, paras. 129-48; 47 C.F.R 54.410(f).

who were not verified as eligible on a program basis.[2] The Utah Administrative Rule currently in effect requires 60 days between notice and de-enrollment.[3] As a result of this and significant delays including dissolution and reassignment by the state legislature of the agency previously tasked with managing the databases relevant to re-certification and unexpectedly high number of subscribers not automatically eligible for Utah Lifeline, re-certification cannot be completed by the deadlines. Therefore the PSC requests waiver of the December 31, 2012 and January 31, 2013 deadlines, and requests a 45 day extension of each respectively so that the due process requirements of the state rule for de-enrollment may be met.

II. Background

On December 2, 2010 as part of the follow-up on several on-going federal wireless ETC applications which had been heard, and granted, by the Utah PSC the PSC opened a docket to decide the following issues.[4]

- The process for verification of continuing eligibility (i.e. annual certification) of Lifeline customers;
- The determination of entities that may verify the continuing eligibility of Lifeline customers;
- The method of calculation and recovery of costs for verifying continuing eligibility of Lifeline customers, particularly for ETCs not paying to the state USF fund;
- The role of the "responsible agency", *see* Utah Admin. Code R.746-341-2.B., in verifying continuing eligibility of Lifeline customers;
- The determination and implementation of a process to prevent customers from receiving duplicate service from multiple providers (double-dipping);
- The process for avoiding unauthorized changes of a Lifeline carrier, and preventing slamming;

[2] The Utah Division of Public Utilities is the administrator of the Lifeline program in Utah.
[3] Utah Amin. Code R. 746-341-4(C)(2)(c) requires "at least 40 days to demonstrate continued eligibility." In the event that the subscriber fails to respond a notice so intent to discontinue is issued and rule 746-341-4(D)(1) requires an additional 20 day period within which to Lifeline may not be discontinued.
[4] Resol. of Certain Issues Related to the Designation of a Common Carrier as an Eligible Telecomm. Carrier, Docket No. 10-2528-01 (Utah PSC 2010).

- Whether the findings, conclusions, and orders made in this proceedings apply equally to all ETCs in the state, regardless of technology or business model used;
- Whether additional rulemaking proceedings/and or additional reporting requirements are necessary to implement the determinations made in these proceedings.

On March 14, 2011 the PSC issued an Order reflecting additional areas to be addressed in the Docket. The new areas were:

- The role of the "responsible agency," *see* Utah Admin. Code R746-341-2(B), -3(C), in the initial certification of Lifeline customers;
- Initial certification process and requirements; and the method of calculation and recovery of any costs of initially certifying Lifeline customers, particularly of certifications for Eligible Telecommunications Carriers not paying into the State Universal Service Fund.
- The establishment of oversight and guidelines for Lifeline outreach and advertising to ensure that customers are receiving necessary and accurate eligibility, terms of service and provider information, and to expand outreach activities to reach a larger percentage of the population eligible for Lifeline services;
- The establishment of Lifeline outreach and advertising requirements to incorporate eligibility verification and duplicate service prevention.

In October of 2011 the PSC started discussions with the DWS to determine if, and how, it could both continue to do the landline eligibility certification and add in wireless certification.

In November of 2011 a census of one carrier's Lifeline customers' records was obtained and in December of 2011 the population collected was tested against the DWS's program participation records to determine the match with program based eligibility. The intent of this exercise was to estimate the percentage of Lifeline subscribers which would need follow-up mailings for verification to determine on-going eligibility. The result of this record matching exercise showed less than 3% would require re-certification follow-up. The population which was checked was from a wireless ETC, this turned out to not be representative of the wireline Lifeline subscriber population.

On January 31, 2012 FCC Transformation Order was adopted.

On April 25, 2012 the United States Telecom Association applied for a waiver of certain requirements of the Lifeline Reform (Transformation) Order on behalf of states which currently provide some initial certification themselves. Utah is included in the listed of states for which a waiver was requested.

On May 31, 2012 the FCC granted USTA's waiver request. The waiver expired on December 1, 2012.

During the 2012 General Legislative Session (January to March) the Utah Legislature Passed House Bill 139 and incorporated the agency which the PSC contracted with to perform Lifeline eligibility certification (responsible agency) into the DWS. The resulting change in agency organization became effective in July 2012.

On July 31, 2012 the PSC requested interested parties to file questions and comments about, or on, the ability of the DWS's eRep system to handle the Lifeline eligibility certification process, for both initial certification and on-going eligibility certification.[5] The eRep system is the interface and database the State of Utah uses to administer nearly all of its aid type programs including all of those that are automatic qualifiers for Lifeline assistance. Adding Lifeline to this system makes sense from an efficiency stand-point, the issue is whether the system is capable of meeting all of the FCC's requirements.

On October 16, 2012 the PSC issued an Order with its final requirements document for the verification system, specifying all criteria which must be met by the eRep system to fulfill

[5] *Id.*

the state's responsibilities regarding determining Lifeline eligibility of participants.[6] As of this point-in-time the DWS is preparing a bid and work description for the programming and implementation in response to this Order.

The Utah Commission intends to continue to utilize a centralized eligibility and verification system as it has found that doing so reduces costs. Further, it improves the ability of the system to stop potential "double dippers" as the database will be completely integrated into the State's general verification system used for all of its aid programs. This will improve the ability of the program administrators to define households and ensure all relevant guidelines and rules are followed. Additionally, it has the advantage that local telephone companies will no longer have any need to receive, review, verify, and store income or program participation information from their customers.

On or about November 1, 2012 5,000 re-certification application forms and envelopes were ordered and the mailing was scheduled to be completed by November 30, 2012.

By November 7, 2012 all 19 Utah wireline carriers had submitted their lists of Lifeline subscribers to the Utah Division of Public Utilities. There were a total of 24,559 Lifeline customers at that time. Note: The wireless ETC carriers are still self-certifying and are not the subject of this petition – nor was data on their customers collected for this round of certification/verification.

On November 8, 2012 the lists of Lifeline customers were transmitted to the responsible agency (on within the DWS as directed by the Utah Legislature and Governor). The first system wide re-certification data query of the eRep system was initiated.

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[6] *Id.*

On November 21, 2012 the DPU received the identification of those subscribers not automatically re-certified based on enrollment in other aid programs administered through the system. The number of subscribers who could not be automatically recertified was 14,965 out of 24,559 customers submitted. Because there were significantly more mailings necessary than had been initially expected, the supply of materials to complete the mass mailing was insufficient. As a result the mailing of notifications to the affected customers of the need to recertify was not completed by November 30, 2012 as had been originally planned.

On December 7, 2012, the Department of Workforce Services mailed letters to the 14,965 subscribers who were not automatically re-certified based on low income assistance program eligibility notifying them of the need to recertify and providing them with the form required and instructions on regarding the options available.

III. Discussion

The Federal Communications Commission has authority to grant waiver and extension of the deadlines requested by the Utah PSC.[7] In its recent Order this Commission stated in relevant part that:

> Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is appropriate when (i) special

[7] 47 C.F.R. § 1.13

> circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[8]

The Utah PSC will be a couple weeks late in providing the re-certification information to the wireline ETCs in order to meet the deadlines. It would be just and equitable to allow a temporary waiver granting an additional 45 days within which to complete the Lifeline re-certification requirements. Throughout the past few months Utah has experienced substantial barriers to meeting these deadlines. The primary barrier was that the Utah Legislature in the 2012 general session re-organized the state agency which had previously been managing the databases that are necessary for re-certification. The bill went into effect on July 1, 2012.

In September of 2010, the PSC received notification from the responsible agency previously in charge of the processing eligibility for Lifeline that it would likely not be capable of processes the expected large volume of new applicants arising from the certification of wireless ETC carriers in the state of Utah. Also the existing procedures the responsible agency was currently using would not be capable of correctly handling the required information for the wireless ETC carriers' Lifeline customers. As a result of this various options were considered. The Utah Legislature enacted a bill to reorganize state agencies, the result of which was that the responsible agency was to be moved into the same department which administered the aid programs upon which Lifeline eligibility is conditioned. The ultimate result would benefit all of the parties involved with the Lifeline program.

Utah House Bill 139 split up what was the Utah Department of Community and Culture. Within this Department was the Division of Housing and Community Development (the responsible agency). The PSC had an ongoing relationship with this Division for maintaining the data necessary and performing the data matching with respect to both the initial and on-going

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[8] *Lifleline Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order (issued Nov. 30, 2012) (identified as DA 12-1927).

Lifeline certification. As a result of this reorganization the control and maintenance of all low income assistance programs were placed with the DWS. This agency, while having greater technological expertise and ability then the previous responsible agency had, required both new programming and new agreements with the PSC in order to be able to provide the required Lifeline verification and data warehousing services.

The PSC has been working diligently toward creating a new agreement which will allow DWS to perform the required application processing and data matching with the various programs necessary for both initial and re-certification. The PSC has opened multiple dockets in order to allow the interested parties to work together toward implementing a more robust system that is both lower cost, easier for subscribers, ETCs, and state regulators to use, and compliant with the Transformation order. Unfortunately crafting a framework and agreements between multiple involved state agencies which involves sharing data and significant software development is time consuming. As of the time of this petition there remain ongoing dockets relating to this matter.

Working toward attempting to meet the deadlines, the databases were queried and those wireline Lifeline subscribers that could be re-certified based on the low income assistance programs were identified (9,584 of 24,559 Lifeline customers). Since we had conducted the eligibility test in November of 2011 it was anticipated (incorrectly it turns out) that a majority of the wireline Lifeline subscribers would be eligible based on a program participation basis. The supplies which had been previously ordered to complete the anticipated 5,000 mailings were insufficient when the query of the programs returned 14,965 subscribers requiring notice by mail. Although more supplies were quickly ordered, an additional delay occurred. Rather than

being mailed on November 30, 2012 as was intended, the mailings were made on December 7, 2012.

As an additional concern, Utah administrative rules require a total of 60 days for the de-enrollment process to be completed. This rule is potentially inconsistent with the recent changes to 47 CFR § 54.405.[9] As a result of these facts the earliest date on which the list of subscribers which may be de-enrolled will be available to be sent to the wireline ETCs is approximately January 20, 2013.

Utah has not sat on its laurels. Rather, Utah and the interested parties have worked diligently toward compliance with the Transformation Order. Under these circumstances Utah has still managed to perform all of the critical steps necessary to provide the ETCs data necessary to complete the de-enrollment process. The databases have been queried. Those eligible for recertification based on the low income assistance programs have been identified. Those not identified have been mailed proper notice. Unfortunately because of the existing Utah Administrative Rule, and the later than anticipated date of mailing, the de-enrollment portion of the re-certification cannot be completed by December 31, 2012. As such the wireline ETCs cannot be prepared by January 31, 2013 to meet their reporting requirements.

This situation is unique and unusual. The special circumstances warrant a 45 day waiver. Failure to meet the deadlines is not the result of failure of effort to do so. The public policy goal of a system-wide review and re-certification of all Lifeline subscribers is being met, and will continue to be met on an on-going basis. Every wireline Lifeline subscriber in Utah is being re-

[9] 47 CFR § 54.405 as amended by the Lifeline Order is internally inconsistent as it applies to Utah. § 54.405 states that "[a] carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination, that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements." Based on this Utah would be required to follow the current rules allowing a total of 60 days for de-enrollment. § 54.405 then goes on to require a subscriber be provided 30 days to respond and further then requires termination if not responded to within the 30 day period. The clause requiring Utah to comply with its state rule 40 day notice plus 20 day appeal and the clause requiring Utah to comply with the FCC's 30 day de-enrollment requirement cannot both be fulfilled.

certified. All eligible Lifeline subscribers will remain enrolled, and all ineligible subscribers will be de-enrolled in a timely manner. The critical actions have been taken. Granting this waiver would not result in unfair, special, or favorable treatment. It would not reward non-compliance. Rather it would result in just and equitable treatment of the ETC carrierss and protection of the due process rights of the wireline Lifeline subscribers who are subject to the potential gap in Lifeline support.

IV. Conclusion

Therefore the PSC respectfully requests that the Commission grant a waiver of the December 31, 2012 and January 31, 2013 deadlines for re-certification and grant an additional 45 days for the compliance with each respectively.