



GOVERNMENT OF THE VIRGIN ISLANDS
OF THE
UNITED STATES

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Public Services Commission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington DC 20554

March 26, 2013

Re: Application of the Virgin Islands Public Services Commission for Reauthorization of the Virgin Islands Telecommunications Relay Service, CG Docket No. 03-123

Dear Ms. Dortch:

Enclosed, please find the application of the Virgin Islands Public Services Commission for the reauthorization of the Virgin Islands Telecommunications Relay Service. The TRS program had been previously authorized on July 16, 2008 in Application No. TRS-61-07.

Please let me know if you have any questions.

A handwritten signature in black ink, appearing to read "M. Thomas Jackson".

M. Thomas Jackson
Chairman

CC: Mr. Gregory Hlibok,
Chief, Disability Rights Division, FCC

The Public Services Commission of the U.S. Virgin Islands (VI PSC) hereby respectfully requests, pursuant to Section 1.3 of the Federal Communications Commission's rules, a waiver of Section 54.409 (a)(2) with respect to the programs used to determine consumer eligibility for the Lifeline discount in the U.S. Virgin Islands (USVI). Unique circumstances in the USVI call into question whether the Supplemental Security Income and the National School Lunch Program should be used to determine consumer eligibility. Further, no Federal Poverty Guidelines (FPG) table has ever been established for the USVI. Accordingly, we respectfully seek guidance and a clarification of Section 54.409(a)(1) with respect to the appropriate FPG that would apply to potential Lifeline consumers.

I. Request for Waiver

According to Section 54.409(a)(2), consumers will qualify for Lifeline benefits if they, one or more of their dependents, or a member of the consumer's household, receive benefits under certain federal assistance programs. The list of approved programs includes the Supplemental Security Income Program (SSI) and the National School Lunch Program (FSLP).

The Social Security Act of 1972 (Public Law 92-603) ended matching Social Security grants to the 50 States and the District of Columbia. In place of these grants, Congress created the SSI program which provides cash payments to eligible consumers. Although later extended to the Northern Marianas Islands, SSI was not extended to the USVI, Guam or Puerto Rico. Instead, four grant programs for the blind, disabled and aged that had previously been authorized under the Social Security Act were continued in these Territories. These programs were Title I, Assistance for the Aged; Title X, Aid for the Blind; Title XIV, Aid to the Permanently and Totally Disabled; and Title XVI, Aid for the Aged, Blind or Disabled. All of these programs are means tested. Consumers must have incomes and resources below specific threshold amounts. Since SSI was not extended to the USVI, we request a waiver to allow qualification based on participation in one of the four Social

Security Act Titles that were retained for the USVI in lieu of SSI. We point out these four programs currently are used to qualify Lifeline participants and the Universal Service Administrative Company (USAC) has been providing reimbursements to the incumbent local ETC based on participation in these programs.

Although the NSLP is listed as a qualifying program in Section 54.409 (a)(2), it is not a means tested program in the USVI. Unlike the U.S. Mainland, all students in the public school system receive free school lunches, regardless of family income. All students in private and parochial schools also receive free school lunches if the school applies for the program. There is no income test for individual students and neither students nor their families are required to enroll in the program in order to receive school lunches. Federal law grants an exception to the qualification and certification requirements of the NSLP to Puerto Rico and the USVI. "Because the State agencies of Puerto Rico and the Virgin Islands provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family, they are not required to make individual eligibility determinations or publicly announce eligibility criteria." (7 C.F.R 245.4). Our concern is that, under a strict reading of the FCC's rules, almost any family with school-aged children could qualify for Lifeline benefits, even if the household had a very high income. We believe this would be counter to the intent of the Lifeline program to provide assistance only when needed. Consequently, we request a waiver of Section 54.409 (a)(2) to exclude the NSLP from the list of approved programs in the USVI.

II. Request for Clarification

According to Section 54.409(a)(1), consumers will qualify for Lifeline benefits if household income is at or below 135% of the FPG for a household of that size. FPG is published annually by the U.S. Department of Human Services. Separate FPG tables are provided for the U.S. Mainland,

And Alaska and Hawaii. No separate FPG has been established for any Territory. Consequently, we are asking for clarification as to which FPG table should apply in the USVI.

Because the cost of living in the USVI is closer to Hawaii or Alaska than in an average state, we are uncertain which FPG table would be appropriate to use here. On the other hand, we understand that this question has been asked numerous times in connection with other means-tested federal programs. Most notably, in 2009 Congress asked the Government Accountability Office (GAO) to explain why no FPG tables had been prepared for the Territories. After a thorough investigation, GAO reported that valid statistical data needed to calculate FPG for the Territories was not available but if the same formula was used for the States and Territories, it was possible the resulting FPG could be higher or lower than national thresholds.⁴⁷ Although the possibility of lower FPG appears counterintuitive, GAO did not make any recommendation and was unwilling to proceed further.

For some time, the Virgin Islands Department of Human Services has been applying the FPG for the U.S. Mainland to determine eligibility for the programs it administers and the U.S. Department of Agriculture website for the Supplemental Nutrition Assistance Program (SNAP) notes that the U.S. Mainland table applies to the USVI. Nevertheless, because the choice of tables for Lifeline qualification ultimately rests with the FCC, we are asking for a clarification on this issue.

III. Conclusion

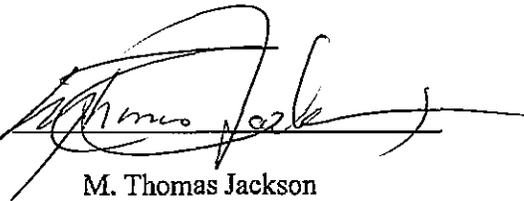
The VI PSC is taking action to ensure that the FCC's Lifeline rules are properly implemented. However, unique situations in the USVI call into question how some of the criteria should be applied to be consistent with the intent of those rules. Specifically, we believe the SSI

⁴⁷ See letter from David Gootnick, Director, International Affairs and Trade, United States Government Accountability Office to Hon. Jeff Bingaman and Lisa Murkowski of Senate Committee on Energy and Natural Resources and Hon. Madeleine Bordallo and Henry Brown of House Subcommittee on Insular Affairs, Oceans and Wildlife, dated November 10, 2009. GAO Report entitled "*Poverty Determination in U.S. Insular Areas*," GAO-10-240R.

program should be construed to include Title I, Assistance for the Aged; Title X, Aid for the Blind; Title XIV, Aid to the Permanently and Totally Disabled; and Title XVI, Aid for the Aged, Blind or Disabled. We also believe it is inappropriate to use participation on the NSLP as a criterion since most school children in the Territory automatically receive free school lunches regardless of household income. Good cause exists to grant this limited waiver of Section 54.409(a)(2).

We have also presented all of the information in our possession regarding the choice of FPG tables that would be appropriate for the USVI and respectfully request a clarification of Section 54.409(a)(1). We request timely rulings by the FCC in order that we can implement the requirements by the deadlines set by the FCC for implementation of the new rules and that disruption of eligible current Lifeline participants be held to a minimum.

Respectfully Submitted:



M. Thomas Jackson
Chairman
The Virgin Islands Public Services Commission
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