

**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 UNITED STATES TELECOM ASSOCIATION**

I. BACKGROUND

On December 21, 2012, the Wireline Competition Bureau released a Waiver Order¹ (“*Waiver Order*”) addressing petitions from several state commissions as well as a petition 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 temporary waiver on behalf of Eligible Telecommunications

¹ See Waiver Order, *Lifeline and Link Up Reform and Modernization*, DA 12-12-2062 (rel. Dec. 21, 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 Petition for Extension of Waiver of the United States Telecom Association, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, filed April 25, 2012.

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 limited waiver from sections 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) similar to that previously granted by the Bureau to allow more time for those states to implement a process to share consumer eligibility certifications with ETCs. The states for which ETCs were granted the limited waiver are those in which the state Lifeline administrator or other state agency manages subscriber eligibility and is unable to modify, in the short term, its processes in order for ETCs to comply with these rules.⁷ The Bureau granted the waivers until the sooner of June 1, 2013 or until the states’ processes were modified to allow for compliance.⁸

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 June 1, 2013. USTelecom respectfully requests that, for these states, the Commission extend the waivers of sections 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.410(e) granted in the *Waiver Order* for six months until December 1, 2013, (or for a shorter period of time if a state comes into compliance within six months). Extending this relief until December 1, 2013, will give state entities additional time to comply with the Commission’s requirement that they provide signed certifications to ETCs from

⁵ The states and territories for which USTelecom sought waivers included California, Colorado, District of Columbia, Florida, Idaho, Nebraska, Oregon, Utah, and Vermont. The *Waiver Order* granted the necessary waivers to the states of in California, Colorado, Florida, Idaho, Oregon, the U.S. Virgin Islands, Utah and Vermont, and to the ETCs operating therein.

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 ¶ 7.

⁸ *Id* at ¶ 6.

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: Florida, Idaho, Oregon, Utah and Vermont. 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). Colorado also requires a waiver extension but, as described in more detail below, only until July 1, 2013. In support of this waiver petition, we provide the following state-specific information:

- Colorado – On April 1, 2013, Colorado passed a law eliminating the Colorado state Low-Income Telephone Assistance Program (“LITAP”) and ending the state’s administration of the federal Lifeline program by July 1, 2013. To implement the new law, the Colorado Public Utilities Commission issued an order that (1) directs ETCs to revise updated tariffs by June 27, with an effective date by July 1, to remove the state LITAP program, and (2) transition to ETC-administration of a federal only Lifeline program by July 1, 2013.

Until the transition from state administration of Lifeline is completed, Colorado will continue to process applications, utilizing state eligibility criteria that do not meet the new federal requirements. Colorado is not currently providing copies of the certification forms and, given that it is discontinuing its administration of Lifeline, it is not developing

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”).

a process to provide those forms during the transition period. Thus, Colorado needs the waiver extension to provide application forms to carrier until July 1, 2013.¹⁰

- 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 information about how they will be sending subscriber certification forms in the future, such as the timing, manner of delivery or format. Based on discussions with representatives of the Florida commission, at this time we do not believe that Florida's state entities will provide customer certification forms to ETCs beginning June 1, 2013 in accordance with section 54.410(c), which 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

¹⁰ As the Colorado PUC explained in a pending petition filed March 8, 2013, the Commission also should extend the waiver of the uniform minimum eligibility requirements through July 1, 2013, to match the transition from state to ETC administration of the Lifeline program.

¹¹ *See* OPUC Request.

which acknowledged that Oregon was not transmitting certification forms to wireline and wireless ETCs.¹² They suggest that OPUC is prepared to retain the documents and provide upon request and if needed for audit purposes, and is also prepared to comply with the FCC's retention requirements for these documents. 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 extension of the waiver until December 1, 2013. They anticipated needing an additional 6 to 12 months to develop a system which will include wireless ETCs in the state's certification process. The letter acknowledges that "Presently, wireless carriers are not covered by the PSC's eligibility certification process." They anticipate their eligibility verification system "will operate with one central database containing all customer eligibility information." The letter 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. At the same time, the state has advised that it is developing a system that will soon provide all wireline and wireless customers'

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."

eligibility information and access to certification forms. The Commission should grant an extension of the waiver for Utah and Utah ETCs.

- Vermont -- On November 19, 2012 the Vermont Department of Public Service (“DPS”) filed a petition with the Commission in this matter which included a request for waiver of section 54.410.¹³ In this petition, the DPS stated that that due to confidentiality restrictions, certification forms are not shared with ETCs.¹⁴ On February 15, 2013, the Commission granted the request in this petition allowing Vermont to opt out of the National Accountability Database. However, the request for waiver of section 54.410 was not addressed. In light of this, ETCs in Vermont continue to 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. 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 electronic file.

Specifically, the post-waiver process proposed by the administrator and the California

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.

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 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

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).

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 June 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 ¶ 6.