

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
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)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
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Lifeline and Link Up)	WC Docket No. 03-109
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Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
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**PETITION FOR WAIVER OF THE NEBRASKA PUBLIC SERVICE
COMMISSION**

On February 6, 2012, the Commission issued an Order and Further Notice of Proposed Rulemaking to reform and modernize the federal Lifeline program and to eliminate fraud and abuse of the Lifeline program benefits.¹ The NPSC appreciates the steps taken by the Commission overall to modernize its rules and to eliminate opportunities for abuse of the Lifeline program. That notwithstanding, the NPSC respectfully requests that the Commission grant it a waiver of 47 C.F.R. §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii), 54.410(e) and portions of 54.407(d) relative to the

¹ See *Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, FCC 12-11 (rel. Feb. 6, 2012)(*Lifeline Reform Order*).

requirement for the NPSC, acting as the state lifeline administrator, to transmit copies of the certification forms to the eligible telecommunications carriers (ETCs). Administratively partitioning a subsection of the Lifeline application and sending copies of the certification pages to the ETCs has increased costs and significantly increased the administrative burden on the NPSC's limited resources.

BACKGROUND

On February 6, 2012 the Commission took significant steps to reform the federal Lifeline program and created mechanisms to protect the program from waste, fraud and abuse. Many of the new rules enacted by the Commission were designed to ensure that only eligible subscribers received Lifeline benefits and to ensure duplicative benefits weren't being distributed to subscribers on the program. Recognizing that it may take states and carriers additional time to implement the Commission's changes, the Wireline Competition Bureau released a *Waiver Order* addressing petitions, seeking permanent or temporary waiver of various rules adopted in the *Lifeline Reform Order*.² The Commission's *Waiver Order* granted a limited waiver for compliance with §§ 54.410(b)(2)(ii) and 54.410(c)(2)(ii) and portions of § 54.407(d) to ETCs in certain states where the state Lifeline administrator or other state agency manages subscriber eligibility and was unable to timely modify its processes for ETCs to come into compliance with these rules. Nebraska was among the states listed in the *Waiver Order*.³

² See *Lifeline and Link Up Reform and Modernization*, DA 12-2062 (rel. Dec. 21, 2012)(*Waiver Order*).

³ The United States Telecom Association sought waivers for ETCs in California, Colorado, District of Columbia, Florida, Idaho, Nebraska, Oregon, Utah, and Vermont. See *Petition and Extension of Waiver of*

During the past year, the NPSC has made systematic changes to comply with the Commission's new rules by adding the federal eligibility programs adopted by the Commission which were not previously used by the NPSC, by updating its application form to include all the required certifications, and by implementing processes for the annual recertification of eligible subscribers.⁴

Prior to the enactment of the Commission's new rules, the NPSC, as administrator of the state Lifeline program, provided written notice to each ETC and subscriber upon the determination that the subscriber had met the program-based eligibility criteria set forth by the NPSC's rules. In addition, since December, while focused heavily on automating certain processes the NPSC has had a manual process in place to provide carriers with a copy of the subscriber's certification form consistent with the Commission's new rules.

As the state Lifeline administrator, the NPSC verifies each subscriber's eligibility for the Lifeline program, checks for duplicates, and, provides regular reports to each ETC related to eligibility determinations, corrections and de-enrollments. The NPSC also requires ETCs to provide Lifeline subscriber lists on a monthly basis so that the NPSC can match the names, account numbers, telephone numbers and addresses with its internal records.

The Commission's new rules require the NPSC to also provide each ETC with a copy of the Lifeline application/certification form for each subscriber that the NPSC

the United States Telecom Association, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (filed April 25, 2012).

⁴ Previously, the NPSC's rules required re-certification on a two year rolling basis.

enrolls in the Lifeline program.⁵ This extra step is an obligation that is time consuming, costly and doubles certification since the required information is available at the NPSC and retained for 10 years. Further, it has considerably hampered the NPSC's ability to timely enroll eligible subscribers.⁶ Accordingly, the NPSC seeks a waiver from §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii), 54.410(e) and portions of § 54.407(d) to the extent that these rules require the NPSC to provide the certification pages to the ETCs.

WAIVER REQUEST

The Commission may waive its rules for good cause.⁷ Good cause may include the existence of particular facts that make strict compliance with the rule inconsistent with public interest.⁸ The Commission may also take into account considerations of hardship, equity or more effective implementation of public policy on an individual basis.⁹ Good cause exists in this particular instance to grant the NPSC a waiver of §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii), 54.410(e) and portions of § 54.407(d). Nebraska has a unique state law requirement which requires it to collect confidential information from subscribers during the application process, and the confidential information collected must be protected by the NPSC. Compliance with §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii),

⁵ The NPSC generally refers to this program as the Nebraska Telephone Assistance Program (NTAP) and supplements the federal Lifeline Program with state universal service funds. Accordingly, the NPSC has a vested interest in determining initial eligibility and continued verification of enrollment of subscribers in the program.

⁶ It appears based upon the Petition for Waiver filed by the United States Telecom Association on May 6, 2013, requesting waivers for Colorado, Florida, Idaho, Oregon Utah, Vermont, and California, that Nebraska is not the only state which has had difficulties with this requirement.

⁷ 47 C.F.R. § 1.3 (2013).

⁸ *Northeast Cellular Telephone Com. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir.1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1927).

54.410(e) and portions of § 54.407(d) to the extent that these rules require the NPSC to transmit certification forms to the ETCs has created a hardship for the NPSC. Further, the Commission's public policy triggering this rule will be met by the NPSC's current process used in the administration of Lifeline eligibility.

Unique Hardship Posed by This Requirement

Due to a state law requirement, the NPSC is required to collect a subscriber's entire social security number or resident alien identification to verify eligibility for public benefits.⁹ This and other data provided on the application form collected to document eligibility is considered confidential personal subscriber data. Misuse or inadvertent release of this subscriber data could cause financial harm to Nebraska consumers and liability exposure to the NPSC. Accordingly, the NPSC has a duty to protect this subscriber information from being transmitted to the ETCs.

In order to comply with the Commission's rules, the NPSC must create and maintain two separate portions of the Lifeline application and certification form (one with the full social security number and state law certifications and another with only the last four digits of the subscriber's social security number and federal certifications). Accordingly, with each application or re-certification, the NPSC must remove this information from the image that is transmitted to the ETC. The NPSC does not currently have the ability or the resources to automate this function. Because of its limited resources, the NPSC has found it very difficult to dedicate staff to sift through the applications, partition the required certification and application information, create

⁹ See *Neb. Rev. Stat.* §§ 4-108 through 4-114 (2007).

images of these documents and provide them to the relevant ETC. This manual process has created a delay in the approval process for consumers and has increased the NPSC's workload considerably. Moreover, this requirement has forced the NPSC to create and maintain two filing systems for each application due to document retention policies relevant to filing, storing and maintaining these subscriber files with personal information.

Current NPSC Processes are Otherwise Sufficient to Protect Against Lifeline Abuse

The NPSC, as the state Lifeline administrator already has sufficient processes in place to protect against abuse of the Lifeline program. For example, the NPSC

1. Reviews the eligibility of each subscriber through a coordinated enrollment process with the Nebraska Department of Health and Human Services (NDHHS);
2. For programs not administered by NDHHS, the NPSC requires documentation from each subscriber demonstrating eligibility;
3. Searches for duplicates in the household to ensure that only one Lifeline discount is provided to each household;
4. Once eligibility is determined, provides written notice to the ETC and to the relevant subscriber in writing when it has determined the subscriber is eligible for the Lifeline benefit;
5. Notifies the ETC of subscribers that should be "removed" from the program;

6. Conducts follow-up processes to ensure that ETCs are correctly reporting subscribers: including monthly and bi-annual carrier report requirements, annual recertification of subscribers, and payment audit requirements;
7. Retains copies of all documents for active Lifeline participants and keeps records relative to inactive Lifeline participants for a period of ten (10) years; and
8. If needed, the NPSC has enforcement tools to ensure that ETCs are seeking reimbursement for only the eligible subscribers enrolled at the direction of the NPSC.¹⁰

In sum, the NPSC believes that its current interaction with ETCs is sufficient to prevent abuse of the program.

If its waiver request is granted, the NPSC is prepared to retain copies of the subscriber certifications and provide them upon request for audit purposes. If there are concerns from the Commission, USAC, or the ETCs related to the programs, eligibility, or certification procedures, the NPSC will provide the necessary records including the certification forms signed by subscribers enrolled in the program. The NPSC's document retention requirements equal the requirements being considered by the Commission in its rulemaking. If a waiver is granted, on a going forward basis, the NPSC commits to ensuring that it maintains the appropriate records for the requisite period of time for Commission or USAC audits.

The NPSC's understanding from speaking with some of the ETCs is that they also experience a burden by the requirement to sort and retain the certification forms received

¹⁰ The NPSC has the ability to assess administrative penalties of \$10,000 per violation per day up to \$2 million for each violation per year. *See Neb. Rev. Stat. § 75-156(2008)*.

from the NPSC because it is duplicative of the eligibility notifications already provided from the NPSC. The NPSC does not anticipate opposition to its Petition from ETCs in Nebraska.

A Grant of the NPSC's Waiver Request Would Serve the Public Interest

In addition, a grant of the NPSC's waiver request would be in the public interest. The NPSC already provides subscriber lists and exercises great care to ensure that only eligible subscribers are receiving federal Lifeline benefits. The Commission's requirement that the state Lifeline administrator transmit to each ETC the subscriber certification forms increases costs, staffing levels, and results in unnecessary lag time to enroll the eligible subscribers. In order to implement the Commission's rules, the NPSC has added temporary staff, purchased software, and experienced an increase in other administrative costs. Conversely, with a waiver in place, the NPSC could decrease its processing and approval time, which, in turn, will benefit qualifying subscribers. The benefit of timely approval of Lifeline support to needy consumers outweighs the public policy reasons behind this rule, particularly in a state which oversees the enrollment process. Accordingly, public interest would be served by waiver of these rules.

CONCLUSION

The NPSC has made every effort to update its processes to be in compliance with the Commission's rules. However, the new rules, to the extent that these rules require the NPSC to provide copies of each subscriber certification to the relevant ETC, have increased the burden on the NPSC and have increased program administration costs. For

the foregoing reasons, the NPSC respectfully asks the Commission for a waiver of the requirement to provide copies of the certification forms to the ETCs. The NPSC appreciates the opportunity to submit this Petition for Waiver.

Dated: May 13, 2013.

Respectfully submitted,

Nebraska Public Service Commission

A handwritten signature in cursive script that reads "Shana Knutson".

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