

**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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23
	)	
	)	
	)	

**NEBRASKA PUBLIC SERVICE COMMISSION**

**PETITION FOR PERMANENT WAIVER**

**DECEMBER 17, 2013**

## INTRODUCTION

The Nebraska Public Service Commission (“NPSC”) respectfully requests the Federal Communications Commission (“Commission”) grant it a permanent waiver of the rules requiring the NPSC to provide a copy of the Lifeline subscriber’s certification form to the Eligible Telecommunications Carrier (“ETC”) pursuant to 47 C.F.R. §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d). Because special circumstances warrant a deviation from the FCC’s rules in this particular case, and because a deviation of these rules in Nebraska will serve the public interest, good cause exists to grant the NPSC a permanent waiver from these rules.

## 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 were not being distributed to subscribers on the program. On April 2, 2012 the United States Telecom Association (USTA) filed a petition requesting the Commission reconsider some of its findings and rules including the rules now codified in 47 C.F. R. §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d).<sup>1</sup>

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., United States Telecom Association (USTA) Petition for Reconsideration and Clarification (filed April 2, 2012).

On May 31, 2012, the Commission temporarily waived the application of §§ 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) until December 1, 2012.<sup>2</sup> On its own motion, the Commission expanded the waiver to include § 54.410(e). Nebraska was among the states listed in the *Waiver Order*.<sup>3</sup>

In December of 2012, the Wireline Competition Bureau released a further Order addressing petitions seeking permanent or temporary waiver of these rules.<sup>4</sup> The Commission's *Further 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 not listed in this *Further Waiver Order* as it had achieved compliance as of December of 2012.

On May 13, 2013 the NPSC filed a Petition for Waiver explaining that while it was in compliance with the FCC's new rules, ongoing compliance with §§54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) would result in a significant burden for the NPSC and a delay in bringing Lifeline benefits to eligible subscribers.

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<sup>2</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Waiver Order, 27 FCC Rcd 5941 (May 31, 2012)(*Waiver Order*).

<sup>3</sup> 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 the United States Telecom Association, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (filed April 25, 2012).

<sup>4</sup> See *Lifeline and Link Up Reform and Modernization*, DA 12-2062 (rel. Dec. 21, 2012)(*Further Waiver Order*).

### **BASIS FOR PERMANENT WAIVER**

The NPSC believes a permanent waiver for Nebraska from the requirements set forth in 47 C.F.R. §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) is appropriate as there are special conditions in Nebraska that warrant deviation from these rules and that such deviation will serve the public interest. The NPSC further believes these particular rules as applied in Nebraska are unnecessary and cost-prohibitive for consumers.

The underlying purpose of §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d), according to the Commission, is to ensure that ETCs only seek reimbursement for subscribers who have executed a certification form attesting to their compliance with the Lifeline program requirements.<sup>5</sup> However, the fact that the NPSC, as the state Lifeline administrator, oversees the application verification process, ensures that a compliant certification form is executed by each subscriber,<sup>6</sup> then provides written notification to each affected ETC per the requirement in §§ 54.410(b)(2)(ii) and 54.410(c)(2)(ii), should be considered more than sufficient to accomplish this purpose.

In Nebraska, after reviewing each subscriber's application, the NPSC staff verifies the subscriber's initial eligibility via access to the Nebraska Department of Health and Human Services (NDHHS) database or through verification of documentation provided by the subscriber (for programs not in the NDHHS system). The NPSC staff

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<sup>5</sup> *Waiver Order* ¶5.

<sup>6</sup> The NPSC provided a draft copy of the Nebraska Lifeline application form with the certification page(s) to the FCC staff for review and editing shortly after the FCC's Lifeline Reform Order was issued to ensure compliance with the FCC's new rules. The NPSC requires all ETCs to use the NPSC's application form. The NPSC does not process subscriber application forms where the information is deficient or incomplete.

utilizes a centralized database that contains the records of all Lifeline subscribers for all ETCs, eliminating duplicates. After eligibility is determined, the NPSC provides a letter to the consumer and weekly “add” report to each ETC listing the subscribers to be added to the Lifeline program. The list contains the ETC name, subscriber’s first and last name, last 4 digits of subscriber’s social security number, residential address, indicator if residential address is temporary, phone number, name of financially responsible party for phone bill, eligible program received, indicator of documentation used for proof of participation in eligible program, indicator that all certification statements were marked, mailing address (if different than residential address), approval date, and an NPSC assigned identification number (“NTAP number”). The NPSC also requires each ETC to provide the NPSC staff a report containing any additions, removals, or changes to Lifeline subscriber accounts on a monthly basis and a complete Lifeline subscriber list on a semiannual basis so that the NPSC staff can match the names, account numbers, telephone numbers and addresses with its internal records.

The NPSC submits its process is designed to ensure that ETCs only seek reimbursement for subscribers who have executed the certification form attesting to their compliance with the Lifeline program requirements. Requiring Nebraska to provide copies of certification forms to the ETCs does nothing further to prevent waste, fraud or abuse. Rather, it delays critical benefits to eligible Lifeline subscribers.

The NPSC believes the two conditions for waiver are met. Special circumstances warrant a deviation from §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d), and the deviation from the Commission’s rules will further the public interest in Nebraska. The Commission may waive its rules if good cause is shown and it may take

into account considerations including “more effective implementation of overall policy on an individual basis.” In the NPSC’s case, a grant of the requested permanent waiver would result in a more effective and efficient implementation of the Lifeline program with less cost and processing time.

***Special and Unique Circumstances Warrant the Grant of a Rule Waiver***

Special circumstances warrant a deviation from the general rule in Nebraska. The NPSC’s role as the state lifeline administrator, and the unique requirements presented by state law create these special circumstances. Like other state Lifeline administrators, the NPSC works in partnership with the Commission to ensure the integrity of the Lifeline program is protected. The NPSC supports the federal fund with state universal service support for each subscriber enrolled in the Lifeline Program. The NPSC has a vested interest in preventing waste, fraud and abuse of program support.

In addition, Nebraska state law requires the NPSC to collect confidential information from subscribers during the Lifeline application process, and this confidential information must be protected by the NPSC. To comply with Neb. Rev. Stat. §§ 4-108 through 4-114 (2007), the NPSC is required to collect a subscriber’s entire social security number or resident alien identification to verify eligibility for public benefits. This information is not only collected for the applicant but for each member of the applicant’s household. The confidential data supplied by each applicant must be protected. Misuse or inadvertent release of this subscriber data could cause financial harm to Nebraska consumers and would expose the NPSC to liability. For example, any loss, theft or breach of the confidential data must be reported to all affected persons. In

some circumstances the NPSC would be required to notify law enforcement and the news media.<sup>7</sup> Accordingly, the NPSC has to be very careful about transmitting subscriber information provided on the Lifeline application form to ETCs on a routine basis.

During the past year, the NPSC has streamlined the application process for consumers by creating an online application. Applicants are unable to submit an incomplete online application to the NPSC for processing. All certifications must be attested to individually prior to the ability of an applicant to submit the form to the NPSC. Despite the NPSC's attempts to streamline the application process, adherence to §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) requires its staff to generate paper copies of the non-confidential portions of the each subscriber's online application to scan in PDF format and transmit the certification pages to the ETCs.

The NPSC does not currently have the ability or the resources to automate this function. Therefore, in order to comply with both state law and the Commission's rules, the NPSC must manually create and maintain two separate portions of the Lifeline application and certification form (one with the full social security number(s) and state law certifications and another with only the last four digits of the subscriber's social security number and federal certifications). With each application or re-certification, the NPSC must remove confidential information from the image that is transmitted to the ETC. The NPSC estimates it takes on average roughly 20 hours of staff time per week to comply with §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d). This manual process is not only precarious in light of the potential exposure to the NPSC; it delays the processing of valid subscriber Lifeline benefits.

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<sup>7</sup> See Neb. Rev. Stat. § 87-803 (2006); see also § 87-802 relative to notice.

*A Deviation from the Commission's Rules Would Serve the Public Interest*

The NPSC submits that a deviation from the Commission's rule would serve the public interest. The additional staff time and cost associated with compliance with §§ 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) detracts from timely processing Lifeline benefits. With a permanent waiver the NPSC would be able to focus on processing applications without the fear of inadvertently transmitting confidential information to ETCs.

In order to implement the Commission's rules, the NPSC has already 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 without risking the inadvertent disclosure of confidential information is in the public interest. Accordingly, public interest would be served by Nebraska's deviation from these rules.

Finally, if its waiver request is granted, the NPSC will retain copies of the subscriber certifications and provide them upon request to the Commission or to USAC 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 standards require the NPSC to keep applications for a minimum of ten (10) years after becoming inactive. However, if the

Commission requires a more lengthy record retention schedule, the NPSC will maintain its records for the requisite period of time for Commission or USAC for its purposes.

**CONCLUSION**

For the foregoing reasons, the NPSC respectfully requests the Commission grant it a permanent waiver of sections 54.410(e), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d) of its rules.

Dated: December 17, 2013.

Respectfully submitted,

**Nebraska Public Service Commission**

By: 

Shana Knutson # 21833  
Legal Counsel  
Atrium Building, Suite 300  
1200 N Street  
Lincoln, NE 68508