

**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
	)	

**IDAHO PUBLIC UTILITIES COMMISSION  
PETITION FOR PERMANENT WAIVER OF FEDERAL COMMUNICATIONS  
COMMISSION RULES 47 C.F.R. § 54.407(d), 47 C.F.R. § 54.410(b)(2)(ii),  
47 C.F.R. § 54.410(c)(2)(ii), and 47 C.F.R. § 54.410(e)**

**INTRODUCTION**

The Idaho Public Utilities Commission (“IPUC”) respectfully requests that the Federal Communications Commission (“Commission”) grant a permanent waiver of the rules requiring the State of Idaho or its designated state Lifeline administrator to provide a copy of the Lifeline subscriber’s certification form to the Eligible Telecommunications Carrier (“ETC”) pursuant to 47 C.F.R. § 54.407(d), 47 CFR § 54.410(b)(2)(ii), 47 C.F.R. § 54.410(c)(2)(ii), and 47 C.F.R. § 54.410(e). A deviation of the Commission’s rules is in the public interest and good cause exists to grant the IPUC a permanent waiver of these rules.

## BACKGROUND

On February 6, 2012, the Commission released a Report and Order and Further Notice of Proposed Rulemaking (“*Lifeline Reform Order*”) to reform the federal Lifeline program and to create 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 receive Lifeline benefits and to prevent duplicate benefits from being distributed to a Lifeline recipient. On April 2, 2012, the United States Telecom Association (“USTA”) filed a petition requesting the Commission reconsider some of its findings and rules related to 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii) and 54.410(c)(2)(ii).<sup>1</sup>

In its May 31, 2012 *Waiver Order*, DA 12-863, the Commission temporarily waived the application of 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii) and 54.410(c)(2)(ii) until December 1, 2012. On its own motion, the Commission also expanded the waiver to include § 54.410(e) for ETCs in the states where the state Lifeline administrator or other state agency manages subscriber eligibility and certification and was unable to timely modify its processes for ETCs to come into compliance with these rules. This temporary waiver included Idaho.<sup>2</sup>

In November of 2012, the IPUC filed an ex parte letter with the Commission requesting an extension of the *Waiver Order* DA 12-863 due to Idaho’s state inability to meet the requirements of the sections identified in the *Waiver Order*.

On December 21, 2012, the Commission released a *Further Waiver Order*<sup>3</sup> addressing petitions from several state commissions that included Idaho as well as the USTA Petition

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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).

<sup>2</sup> See *Waiver Order, Lifeline Reform Order*, DA 12-863 (rel. May 31, 2012), at ¶ 2.

<sup>3</sup> See *Waiver Order, Lifeline Reform Order*, DA 12-12-2062 (rel. Dec. 12, 2012).

seeking permanent or temporary waiver of various rules adopted in the *Lifeline Reform Order*.<sup>4</sup> The Commission granted a limited waiver from 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) similar to that previously granted by the Commission on May 31, 2012. The Commission granted the waivers until the sooner of June 1, 2013, or until the states' processes were in compliance with the *Lifeline Reform Order*.<sup>5</sup>

On May 30, 2013, IPUC Staff filed comments in support of the May 6, 2013 USTA Petition stating that an extension of the waiver until December 1, 2013, will “give the FCC additional time to consider the request by USTA to modify the rules in question or grant permanent waivers” to the states addressed in the petition.<sup>6</sup> On August 30, 2013, the Commission granted a limited waiver of portions of Section 54.407(d), and Sections 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) to six states, including Idaho, until February 1, 2014. The Commission required each state to file a status update by November 1, 2013, with the Wireline Competition Bureau explaining the steps taken to bring its processes into compliance with these rules.<sup>7</sup> The Commission also instructed states to request a permanent waiver from the rules if they believed they were unable to comply.<sup>8</sup> Accordingly, IPUC Staff submitted a status report on October 31, 2013, notifying the Commission that no further changes to the process could be implemented and that the IPUC would likely file a petition for a permanent waiver.<sup>9</sup>

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<sup>4</sup> *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).

<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> IPUC May 30, 2012 Comments at 2.

<sup>7</sup> *Limited Waiver Order*, DA 13-1853, at ¶ 9.

<sup>8</sup> *Id.* at ¶ 10.

<sup>9</sup> See November 28, 2012 IPUC Letter.

During these waiver periods, the IPUC Staff had numerous telephone conversations with Commission staff to describe the Idaho Lifeline enrollment process, to discuss how the Idaho process meets the objectives of the *Lifeline Reform Order*, and to explain the hardship created by the requirement to provide hard-copy Lifeline certification forms to ETCs.

### **BASIS FOR PERMANENT WAIVER**

As explained in the ex parte letter, the filed comments in support of the USTA Petition, and in the Status Update, the IPUC believes that a permanent waiver of the rules set forth in 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.410(e) is appropriate due to the special circumstances that justify deviation from these rules, and that such deviation will serve the public interest.

#### ***Special Circumstances***

Special circumstances in Idaho warrant a deviation from the rules. Idaho'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 State of Idaho works in partnership with the Commission to ensure that the integrity of the Lifeline program is protected. Idaho augments the federal Lifeline program with the Idaho Telephone Service Assistance Program ("ITSAP"). Accordingly, Idaho has a vested interest in preventing waste, fraud and abuse of program support.

The Idaho Department of Health and Welfare ("DHW") is responsible for administering the ITSAP and the federal Lifeline benefits to eligible subscribers in Idaho's non-Tribal areas.<sup>10</sup> The administrative tasks associated with enrollment, verification and subscriber certification for both programs are performed concurrently at the regional Community Action Partnerships ("CAP") or the regional DHW offices. The CAPs are non-profit organizations that receive no

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<sup>10</sup> See *Idaho Code* § 56-901.

state funding. DHW contracts with the Community Action Partnership of Idaho (“CAPAI”) to administer the ITSAP/Lifeline program. Administration includes collecting the subscriber information from the CAPs, maintaining the ITSAP/Lifeline subscriber database, and submitting the new subscriber information to the ETCs.

The subscriber’s information and certification forms are in various formats within the regional CAP and DHW offices. Information is stored on computers, in paper forms, and electronic databases. The essential subscriber information is sent to CAPAI, who then consolidates and e-mails the new subscriber information to the appropriate ETCs for implementation. CAPAI enrolls and recertifies approximately 16,000 ITSAP/Lifeline subscribers annually. The State of Idaho does not have the ability or the resources to automate this function.

To comply with the State’s privacy rules, CAPAI would be required to generate paper copies of the non-confidential portions of each subscriber’s application by scanning to a PDF format, redacting the confidential information, and then transmitting the certification pages to the ETC. CAPAI would then be required to manually create and maintain two separate portions of the Lifeline application and certification form. CAPAI estimates that it would require another full-time employee to manually comply with 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii) and 54.407(d).

The Idaho process has sufficient safeguards in place to protect against waste, fraud and abuse of the state and federal programs and the IPUC Staff and DHW staff believe these safeguards are sufficient to meet the objectives of the *Lifeline Reform Order*. For example, CAPAI must: (1) verify the eligibility of each subscriber’s income through the approved means as described in the Order;<sup>11</sup> and (2) the subscriber must have existing wireline or wireless service

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<sup>11</sup> See *Lifeline Reform Order*, ¶ 113.

through an ETC with an assigned telephone number before the subscriber is allowed to enroll in the ITSAP/Lifeline programs. .

Idaho lacks funds to establish an automated process to facilitate the transfer of the executed certification forms to the ETCs or to hire additional staff that would be necessary to manually process the forms. *See Ex Parte Letter, Exhibit C.* The manual process also presents privacy concerns for Idaho. DHW has an obligation to protect sensitive subscriber information and believes that each additional step introduced to the manual process exposes an opportunity for a breach of security.

As required in the *Lifeline Reform Order*, Idaho will retain copies of the subscriber certifications forms and provide them upon request to the Commission or to the Universal Service Administrative Company for audit purposes. In addition, Idaho provides ETCs with all of the necessary information required for ETCs to transmit the information to the National Lifeline Accountability Database.<sup>12</sup>

### ***Public Interest***

The IPUC Staff believes a permanent waiver of the Commission rules would serve the public interest. Requiring the state Lifeline administrator to provide copies of the certification forms to the ETCs does nothing to enhance the validity of the subscriber's eligibility to receive Lifeline benefits, and instead it will increase the cost of the program. It will also delay delivery of the benefit to the subscribers. The result will be a protracted enrollment process and a financial disadvantage to the subscribers.

If the Commission does not grant the permanent waiver, DHW states that it may be compelled to limit its enrollment activity to the ITSAP program and transition the federal Lifeline program activities directly to the ETCs. Alternatively, DHW may decide to discontinue

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<sup>12</sup> *Limited Waiver Order*, DA 13-1853, ¶ 9.

the ITSAP program. Both scenarios harm the subscribers and do not serve the public interest. Granting a permanent waiver of these rules would best serve Idaho's subscribers.

### **GOOD CAUSE EXISTS TO GRANT A PERMANENT WAIVER**

The Commission may waive its rules for good cause shown pursuant to 47 C.F.R. § 1.3. The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of the chapter. Good cause includes the existence of particular facts that make strict compliance with the rule inconsistent with the public interest.<sup>13</sup> The Commission may also take into account considerations of hardship, equity, or more effective implementation of public policy on an individual basis.<sup>14</sup>

Idaho has made substantive changes to comply with all other requirements of the *Lifeline Reform Order*. These changes include: (1) ITSAP/Lifeline database reconciliation with all ETCs; (2) annual ITSAP/Lifeline subscriber database reconciliation with ETCs; (3) restructuring of the eligibility and certification process to include the subscriber's signed acknowledgments; (4) DHW's rulemaking process to conform with the Commission's definition of household, poverty levels, etc.; and (5) restructuring of the weekly ETC email lists of new subscribers to include information necessary for the ETC to populate the National Lifeline Accountability Database. Idaho reviewed ways to fully comply with the Commission Rules, but all options that did not include additional funding were deemed to be too time-consuming and impractical. Full compliance requires new funding to increase resources or to automate the reporting process. Should the temporary waiver expire on February 1, 2014, with no further action taken by the Commission, ITSAP/Lifeline benefits will likely be delayed by the ETCs who serve the

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<sup>13</sup> *Waiver Order*, DA 12-863 (rel. May 31, 2012 ), n.13.

<sup>14</sup> *Id.*

subscribers. According to a 2013 report compiled by CAPAI and submitted to DHW, over 50% of the Lifeline subscribers in Idaho are 50 or older. Therefore, delayed benefits will have the greatest impact on the older population who rely on the ITSAP/Lifeline program.

**Summary**

The IPUC Staff believes that the Commission requirements of 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.410(e) are unnecessary, cost-prohibitive, and burdensome. Idaho's special circumstances with the state's enrollment/certification process, lack of funding, and concern for privacy issues provide good cause to grant a permanent waiver. In addition, the IPUC Staff and DHW staff believe that no additional benefits to the Lifeline program, to the ETCs, or for the subscribers can be achieved by changing the current ITSAP/Lifeline process to conform to technical requirements of the Commission rules.

**CONCLUSION**

For the forgoing reasons, the IPUC respectfully requests the Commission grant a permanent waiver of 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.410(c)(2)(ii), and 54.410(e). A grant of the Permanent Waiver Petition is in the public interest.

Respectfully submitted this 14<sup>th</sup> day of January 2014.

FOR THE IDAHO PUBLIC UTILITIES COMMISSION

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