

**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 AND CLARIFICATION OF
THE UNITED STATES TELECOM ASSOCIATION, THE INDEPENDENT
TELEPHONE AND TELECOMMUNICATIONS ALLIANCE, THE NATIONAL
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION, THE ORGANIZATION
FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES, THE WESTERN
TELECOMMUNICATIONS ALLIANCE, AND THE EASTERN RURAL TELECOM
ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The Commission has taken important steps to reform and modernize the Universal Service Fund’s Lifeline program, and the United States Telecom Association (“USTelecom”), the Independent Telephone and Telecommunications Alliance (“ITTA”), the National Telecommunications Cooperative Association (“NTCA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the Western Telecommunications Alliance (“WTA”), and the Eastern Rural Telecom Association (“ERTA”) (collectively, the “Petitioners”) support the Commission’s efforts and the reforms adopted in the

Order.¹ However, because of the importance of the Lifeline program to low-income consumers, the Petitioners believe that the timeframes for the implementation of certain aspects of the *Order* by postpaid eligible telecommunications carriers (“ETCs”) are unrealistic and could harm the very consumers the program is intended to benefit.

Specifically, beginning with April 2012 disbursements, the *Order* establishes an interim flat-rate reimbursement amount of \$9.25 per month in place of the current tiered reimbursement structure, eliminates the Link Up program in non-Tribal lands for all eligible ETCs, and changes the calculation of the Link Up discount for eligible residents of Tribal lands. These changes significantly simplify low-income support programs that the Petitioners all support. However, in order to effectuate such beneficial program changes, it will be necessary in many states for postpaid ETCs subject to state tariffing or customer notification requirements to submit revised tariffs or provide new customer notices. In addition, postpaid ETCs must modify their billing systems, update manual procedures, and complete employee training in order to implement the new requirements in the *Order*. These tasks cannot realistically be completed within the relatively short time period (less than 60 days) contemplated under the *Order*.

Accordingly, pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, the Petitioners respectfully request for postpaid ETCs that the Commission: (i) waive the effective date for the establishment of the new interim flat-rate reimbursement amount,² the April effective

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

² This aspect of the requested waiver and extension of time covers new 47 C.F.R. § 54.403(a) (the \$9.25 monthly “Lifeline support amount for all eligible telecommunications carriers”); and § 54.403(b)(2) (addressing instances where a Lifeline customer makes only a partial payment on a bill). Both require state-specific service term changes and/or billing systems modifications.

date for the elimination of Link Up discounts, and the changes to the Tribal Link Up discount; and (ii) extend these effective dates until October 1, 2012.³ This October 1, 2012 date coincides with the deadline by which ETCs must implement new consumer disclosures regarding the Lifeline program mandated by the *Order*. This October 1, 2012 deadline also would represent the last date by which postpaid ETCs must implement the waived Lifeline and Link Up program requirements; to the extent postpaid ETCs are able to complete implementation of these requirements before October 1, 2012, they should do so.

The Petitioners also request that the Commission clarify several aspects of its new certification requirements under Section 54.407(d) of its rules. *See Order*, Appendix A, § 54.407(d). Such clarification is necessary given the differences in timing between the implementation of the Commission's Lifeline reforms and whenever ETCs must provide the requisite certification. Absent such clarification, ETCs would be put in an untenable position of being unable to provide the required certification through no fault of their own, jeopardizing continued participation in the Lifeline program and the ability of their low-income customers to continue receiving Lifeline benefits.

II. GOOD CAUSE EXISTS TO WAIVE FOR POSTPAID ETCs THE EFFECTIVE DATES OF THE NEW FLAT-RATE LIFELINE SUPPORT AMOUNT AND THE CHANGES TO THE LINK UP PROGRAM.

The Commission may waive its rules for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule when the particular facts make strict

³ Because new Section 54.403 which implements the \$9.25 flat-rate discount for federal Lifeline support has been identified by the Commission as requiring Office of Management and Budget approval under the Paperwork Reduction Act before it can be effective, and that approval has not yet been obtained, the effective date of that rule has not yet been determined. Nevertheless, to the extent the Commission is seeking an effective date for this rule prior to October 1, 2012, the Petitioners seek an extension of that effective date with respect to implementing the new Lifeline support amount.

compliance inconsistent with the public interest.⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ In short, a waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.⁶

Such circumstances exist here. In the *Order*, the Commission established a new flat-rate Lifeline support amount of \$9.25 per line per month beginning with April 2012 disbursements. *See Order* ¶ 58 . It also eliminated Link Up support on non-Tribal lands and changed the calculation of the Link Up discount for eligible residents of Tribal lands effective April 1, 2012. *See Order* ¶ 245 n. 652 & Appendix A, new Rule 54.413. Although this new structure will be simpler to administer and easier for subscribers to understand, it represents a dramatic change that will require extensive work to implement. Given that the *Order* was released on February 6, 2012, postpaid ETCs have less than sixty days to complete the tasks necessary to implement these reforms, which is simply not a sufficient period of time.

⁴ The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission’s grant of a waiver “[g]iven the deference due the agency in matters of this sort”); *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission “is narrow and constrained”). As the D.C. Circuit has observed, the Commission’s waiver determinations are entitled to heightened deference because “the agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances.” *AT&T Wireless Services, Inc. v. AT&T*, 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *Northeast Cellular*, 897 F.2d at 1166; *see also Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission’s Rules*, WC Docket No. 05-174, *Order*, 2005 FCC LEXIS 4527 (Aug. 11, 2005).

First, in many states, postpaid ETCs subject to tariffing requirements must include a description of the Lifeline and Link Up programs in their state tariffs or provide notice to customers regarding these programs.⁷ For example, in California, incumbent local exchange carriers (“ILECs”) must file tariffs that describe the Lifeline and Link Up programs, including the rates to be paid by eligible subscribers, and provide this information to all new applications for telephone service.⁸ Other states have similar tariff and notice requirements.⁹

In such states, postpaid ETCs subject to tariffing requirements must submit new tariffs that incorporate the new flat-rate Lifeline amount and reflect the elimination of Link Up support on non-Tribal lands in addition to notifying customers of the revised Lifeline discount amount. This process will require the preparation and submission of new tariffs and customer notices, which must be filed with and approved by state public service commissions (or otherwise permitted to take effect). This process will take longer than the period of time allotted under the *Order*. For example, in Nevada, updating a tariff to reflect the new Lifeline discount rate, the elimination of the Link Up program on non-Tribal lands, and changes to the Tribal Link Up

⁷ Customer notification requirements apply not only to residential customers but to wholesale customers that resell ILECs’ Lifeline service. CLEC notification requirements are set forth in interconnection agreements and, in the case of some of Petitioners’ members, can require the ILEC to provide the CLEC with up to 45 days’ advance notice of rate changes.

⁸ See Ca. Pub. Utils. Comm’n General Order 153, REVISED per Resolution T-1732, Procedures for Administration of the Moore Universal Telephone Service Act (California Lifeline Program) Section 3 (effective December 1, 2011), Section 3, *available at* http://docs.cpuc.ca.gov/WORD_PDF/GENERAL_ORDER/154648.pdf.

⁹ See, e.g., Texas Pub. Util. Comm’n Rule § 26.412(g)(2)(B) & § 26.413(f)(1); Verizon Southwest TXC, Schedule No. A-1, Network Access Line Service, & Schedule No. A-5, Service Charges, Sheets No. 1 & 15B (Texas Pub. Util. Comm’n Jan. 1, 2012); AT&T Communications of the Midwest, Inc., Local Residential Service, Rate List, Sheet 6.6 (Minn. Pub. Ser. Comm’n. Aug. 1, 2011); AT&T Communications of New York, Inc., P.S.C. No. 24 Telephone Residential Local Exchange Services, Section 5, Consumer Service Descriptions (N.Y. P.S.C. July 21, 2010).

discount will require approval of the Nevada state commission, which could take considerable time.¹⁰ In Minnesota, ILECs will be required to provide the Minnesota commission with 30 to 60 days notice prior to amending their tariffs to reflect the impact of the *Order* on Lifeline and Link Up customers.¹¹ In Texas, ILECs will be required to file a notice with the Texas Commission ten to thirty-five days in advance of the changes to their tariffs resulting from the *Order*.¹² In Mississippi, even after a carrier's proposed tariff changes are approved, the carrier must wait 30 days before its revised tariff can take effect.¹³ And in California, revisions to an ILEC tariff are subject to a 20-day protest period.¹⁴

Second, in order to implement changes to the current Lifeline rate structure and the Link Up program, ETCs must modify their billing systems, internal procedures, and employee training materials. It is unrealistic to expect that this could reasonably be done in less than 60 days as contemplated under the *Order*. Indeed, the Petitioners' members estimate that it would take more than 120 days to make the system, procedural, and program modifications necessary to

¹⁰ See Nev. Admin. Code § 703.400(4) (requiring all tariff changes to be approved by the state commission); *Southwest Gas Corp. v. Pub. Serv. Comm'n of Nevada*, 546 P.2d 216, 218 (Nev. 1976) (providing that utilities may propose that tariffs become effective upon 30 days notice unless suspended by the state commission); Nev. Rev. Stat. § 704.110 (providing that the state commission may take up to 210 days to approve an application to change a tariff).

¹¹ See Minn. Stat. §§ 237.01 & 237.075 (2009) (30-day period applies to rate-of-return carriers with fewer than 30,000 lines, while 60-day period applies to other carriers).

¹² See Tex. Utils. Code § 53.304, as amended by Tex. HB 2680 (2011) (providing that ILECs with less than 30,000 lines must provide ten days notice of rate changes); Texas Utils. Code § 53.103 (generally requiring a notice of intent to change rates to be filed thirty-five days in advance of a rate change).

¹³ See Miss. Code Ann. § 77-3-37.

¹⁴ See Ca. Pub. Utils Code § 489; Ca. Pub. Utils. Comm'n General Order 96-B, Telecommunications Industry Rules, Section 7 available at <http://docs.cpuc.ca.gov/published/REPORT/91328.htm> (generally allowing minor tariff changes to be filed by advice letter, but allowing a 20-day protest period for service changes that have not been approved by the California state commission).

implement the *Order*. Given the complexity associated with modifying carrier billing systems resulting from changes to federal regulatory policies, the Commission previously has granted carriers additional time to effectuate such modifications and should do likewise here for postpaid ETCs.¹⁵

The Link Up program presents its own unique challenges. Specifically, while the *Order* eliminated the Link Up program on non-Tribal lands, postpaid ETCs must develop the capability to identify eligible subscribers living on Tribal lands where the ETC also is receiving high-cost support in order to ensure that they receive Link Up benefits. *Order*, Appendix A, § 54.413(a)(i). This capability does not currently exist, and will take time to develop and implement. In addition, although the *Order* itself is silent on the issue, new Section 54.413, which establishes the Link Up program for Tribal lands, changes the manner by which carriers must calculate the Link Up discount.¹⁶ If that was the Commission’s intent, additional work to

¹⁵ See, e.g., *Truth-in-Billing Format*, Order Granting, in Part, Temporary Waivers, 15 FCC Rcd 35, ¶ 4 (CC Bureau 1999) (granting temporary waivers to allow carriers additional time to implement truth-in-billing rules, recognizing that billing system changes may take “longer than anticipated” due to technical constraints); see also *Ameritech Operating Companies Pacific Bell and Nevada Bell, Petitions for Extension of Waivers and Transport Rate Structure and Pricing Requirements*, 9 FCC Rcd 3171 ¶ 3 (CC Bureau 1994) (finding that the difficulty and time involved in reprogramming billing systems constituted good cause for a temporary waiver of the transport billing requirements); see also *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24979 ¶ 52 (2002) (giving carriers more than four months to implement interim modifications to the Commission’s revenue-based universal service assessment rules because of the billing system modifications required to implement the new rules); *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, Order, 9 FCC Rcd 2475 (1993) (reconsidering and extending the effective date of the Commission’s “separate billing” requirements in section 64.1510(a)(2)(ii) and (b)).

¹⁶ Compare 47 C.F.R. § 54.411(a) (authorizing a reduction equal to one half of the carrier’s customary charge or \$30, whichever is less, in addition to a reduction of up to \$70 to cover 100 percent of the charges between \$60 and \$130 “for commencing telecommunications service at the principal place of residence of the eligible resident of Tribal lands”) with *Order*, Appendix A, § 54.413 (providing “100 percent reduction, up to \$100, of the customary charge for

change the ETC's billing systems, tariffs, and customer support procedures will be required, which cannot reasonably be completed by the April 1, 2012 deadline. If that was not the Commission's intent, this issue requires clarification.

Under these circumstances, good cause exists to waive for postpaid ETCs the effective date for the establishment of the new Lifeline rate structure and implementation of the changes to the Link Up program. The Commission should extend these deadlines until October 1, 2012, which corresponds to the date by which ETCs must revise their marketing materials to include new consumer disclosures mandated by the Commission. *See Order* ¶ 276 (“We require all ETCs to implement these disclosures six months from the effective date of this Order”). This October 1, 2012 deadline would represent the latest date by which the Commission's waived Lifeline and Link Up requirements must be effectuated. To the extent a postpaid ETC is able to comply with applicable state tariffing or customer notice requirements and otherwise is able to complete the electronic and manual system changes necessary to implement these requirements before October 1, 2012, it should do so.¹⁷

(footnote cont'd.)

commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence ...”).

¹⁷ Petitioners' member companies take seriously and make every effort to comply with the Commission's deadlines. However, in those cases when a deadline cannot realistically be met – as is the case here for postpaid ETCs – affected carriers have no choice but to seek a waiver and extension. Petitioners and their member companies continue to assess their ability to meet other deadlines in the *Order*, most notably the June 1, 2012 deadline by which ETCs must comply with the Commission's new certification rules, must implement new processes to document consumer eligibility for Lifeline, and must update their Lifeline consumer certification processes. *See Order* ¶¶ 32, 33, & 111. To meet this June 1, 2012 deadline, ETCs must coordinate with public service commissions in each affected state, must complete extensive electronic and manual system changes, and must conduct comprehensive employee training. It may not be possible to complete these tasks by the June 1, 2012 deadline – although Petitioners' member companies will make every effort to do so – in which case Petitioners may have no choice but to seek appropriate relief from the Commission.

III. THE COMMISSION SHOULD CLARIFY ITS NEW LIFELINE CERTIFICATION REQUIREMENTS UNDER SECTION 54.407.

The *Order* adopts Section 54.407(d) of the Commission's rules, which requires that an ETC certify "that it is in compliance with all of the rules in this subpart, and, to the extent required under this subpart, has obtained valid certification and re-certification forms from each of the subscribers for whom it is seeking reimbursement." *Order*, Appendix A, § 54.407(d). This certification is required in order for an ETC "to receive universal service support reimbursement" under the Lifeline program. *Id.* There are three aspects of Section 54.407(d) that require clarification.

First, the Commission should clarify the scope of Section 54.407(d) in those states that have automatic enrollment procedures for the Lifeline program, which generally require ETCs to apply Lifeline discounts automatically to subscribers who meet certain state-determined criteria, such as participation in a state disability assistance program, without the need for the subscriber to complete an application or affirmatively consent to enrollment in the Lifeline program.¹⁸ In the *Order*, the Commission noted the "unintended consequences" of state automatic enrollment programs and required that states "modify those programs, as necessary, to comply with our rules, so that consumers are not automatically enrolled without consumers' express consent." *Id.* ¶ 173.

However, the *Order* does not specify a date certain by which states must modify their automatic enrollment programs. As a result, even with the Commission's new limitations on automatic enrollment programs, unless and until a state modifies such programs, ETCs will not have any ability to verify eligibility prior to the subscriber being enrolled in Lifeline. This is also

¹⁸ *Order* ¶ 94, n.253 (noting that, according to GAO, "9 states have in place automatic enrollment of eligible consumers"); *id.* ¶ 170.

the case in states that have coordinated enrollment programs such that ETCs are not involved in the Lifeline eligibility determination but are only told by the state who to enroll in the program. Accordingly, the Commission should clarify that Section 54.407(d) does not require an ETC to certify that it has confirmed a subscriber's eligibility for participation in Lifeline prior to enrolling that subscriber in the program in those states with automatic or coordinated enrollment programs.

Second, the Commission should clarify that ETCs are permitted to qualify their certification under Section 54.407(d) by indicating “compliance with all of the rules in this subpart *that are in effect at the time of the reimbursement request.*” This qualification is necessary given that the Commission is in the process of reforming the Lifeline program and even the new rules established in the *Order* may not all be effective at the time a Section 54.407 certification must be filed. *See generally Order*, Section XIII.

Third, the Commission should clarify the mechanics of how the certification requirement will be implemented. Specifically, it is unclear whether ETCs will be required to file a separate certification or whether the Commission will modify FCC Form 497 to incorporate the new requirements in Section 54.407(d). Equally unclear is the effective date of the Section 54.407(d) certification requirement. Accordingly, the Commission should clarify how and when ETCs will be required to provide the requisite certification under Section 54.407(d).

IV. CONCLUSION

For the foregoing reasons, the Commission should grant this Petition for Waiver and Clarification

Respectfully submitted,

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