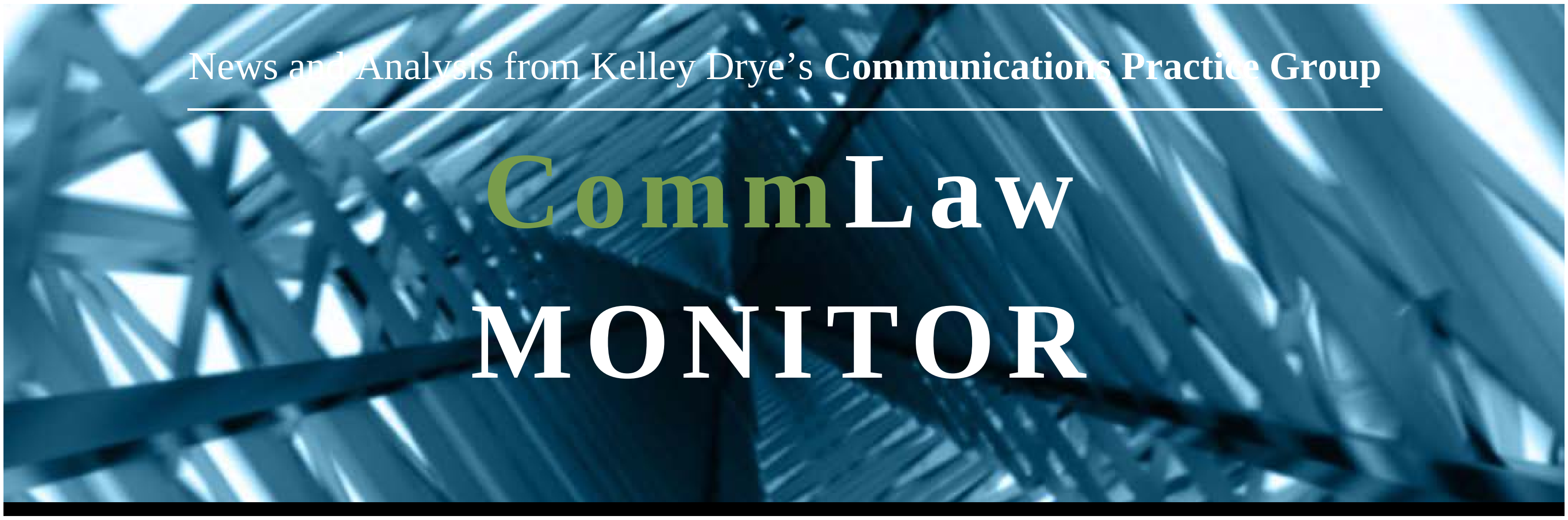

FCC Sets Stage for $4.5 Billion Auction by Resolving Mobility Fund Phase II Challenges

By Steve Augustino and J. Bradford Currier on February 27, 2018
Posted in Federal & State Regulatory, Universal Service Fund, Wireless

The Federal Communications Commission ("FCC") took a major step forward on closing the "digital divide" in mobile broadband at its February meeting by unanimously adopting an Order resolving the remaining challenges to the Mobility Fund Phase II ("MF-II") auction. The order eases the letter of credit requirements and clarifies the collocation obligations for funding recipients, but generally preserves the MF-II auction budget, disbursement, and performance rules announced last year. After clearing away these challenges, the FCC will focus on identifying the areas eligible for funding and conducting the auction later this year.

The Mobility Fund provides financial support to wireless service providers to maintain and extend mobile broadband and voice services in unserved and

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underserved areas. The FCC plans to give out over $4.5 billion in support through the MF-II auction to expand 4G LTE coverage in places lacking such service. The Order addresses four key issues:

1) Relaxing Letter of Credit Requirement: The FCC requires a MF-II auction winner to obtain a letter of credit covering the support received, which allows the FCC to recover funding in the event the service provider fails to meet its performance milestones. Recognizing the significant costs of obtaining a letter of credit, the FCC will allow a service provider to significantly reduce the letter of credit's value (and simultaneously reduce the letter of credit's cost) once the service provider meets its 80 percent service milestone. The FCC also stated that a service provider can cancel the letter of credit once it meets its final performance milestone. With these changes, the letter of credit obligations for the MF-II auction match the letter of credit obligations imposed in the Connect America Fund Phase II ("CAF-II") auction, which covers fixed broadband deployment.

2) Clarifying Collocation Obligation: The FCC initially indicated that funding recipients would be required to provide reasonable collocation by other service providers on "all" towers that the recipients owned or managed. A number of service providers asked the FCC to reconsider this requirement, pointing out that a similar collocation requirement applicable to earlier auction winners only covered "newly constructed" towers. The FCC resolved this discrepancy by clarifying that the collocation requirement only applies to newly constructed towers in the areas where the service provider receives MF-II support.

3) Maintaining Budget and Disbursement Schedule: The FCC refused to increase the budget for the MF-II auction in response to wireless industry claims that it did not provide enough money to achieve full 4G LTE coverage in all eligible areas. The FCC affirmed its budget calculation methodology and stated that it would re-evaluate if more funding is necessary in the future. The FCC denied requests to base the budget on wireless carriers' projected costs, expressing concern that such a system would encourage inflated claims and waste. The FCC also affirmed its monthly disbursement schedule after carriers asked it to allow larger support payments early in the network construction process. While the FCC recognized that carriers would likely incur most costs early in the network construction process, it found that trying to match each carriers' costs during the deployment process would strain the MF-II budget. The FCC also noted that CAF-II will operate on a monthly disbursement schedule.

4) Preserving Performance Requirements: The FCC rejected calls to lower the minimum level of service required from MF-II auction winners from the current 10/1Mbps median data speed and 100 ms latency benchmarks. The FCC

found such benchmarks necessary to ensure that rural offerings keep pace with their urban counterparts and do not become a "second-class" service.

The FCC also declined to extend bidding preferences to small businesses in the MF-II auction, which Commissioner Clyburn supported, or adopt new limitations on winning carriers entering into equipment exclusivity arrangements. In addition, the FCC retained the role played by the Universal Service Administrative Company in verifying the data wireless providers submit to demonstrate compliance with their MF-II auction buildout requirements.

With the last MF-II auction reconsideration petitions resolved, the FCC can move on to finalizing the set of areas eligible for funding. The FCC recently issued an initial map of areas presumptively eligible for funding. The FCC's eligibility determinations will be subject to a challenge process, which is scheduled to begin on March 29, 2018. However, it remains unclear when the challenge process will conclude and the FCC will announce the final list of areas eligible for support through the MF-II auction. Whenever it occurs, the MF-II auction will have transformative impacts on rural wireless broadband deployment, so stakeholders should assess whether funding opportunities exist in their service areas and consider participating in the auction process.

TAGS: AUCTION, BUDGET, COLLOCATION, CONNECT AMERICA FUND, FCC, MOBILITY FUND, ORDER, WIRELESS BROADBAND, WIRELESS EQUIPMENT, WIRELESS INFRASTRUCTURE

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Updated 499-A Form and Instructions Signal Start of 2018 USF Season

By Steve Augustino on February 20, 2018
Posted in Business & Strategic Planning, Federal & State Regulatory, Universal Service Fund

Last week, the FCC released its form and instructions for the 2018 499-A, due April 1st. The 499-A form is filed by almost all intrastate, interstate and international providers of telecommunications in the U.S. and reports historic annual revenue. Notably, the FCC's Wireline Competition Bureau did not solicit comments on the form and instructions this year, but that may be due to the lack of substantive changes from the 2017 versions. In previous years, and most recently in 2015, the Bureau sought comment on proposed revisions to the 499-A documents.

Filers, please remember to review your records carefully before filing. Now is the time to make sure that reseller certifications are in order and to update traffic studies and jurisdictional estimates. The form should also be reviewed against the prior year's form for consistency. Significant changes, such as large increases or decreases in revenue, on a particular line or the absence of revenue reporting on a line where revenue was reported the prior year, are red flags that almost always generate additional USAC scrutiny.

Finally, remember that downward revisions to the 2017 Form must be filed by March 31st.

To learn more about the form, audits and investigations and developments affecting the USF, register for our 9th Annual webinar.

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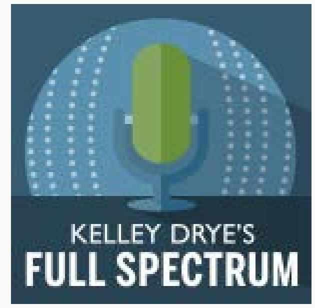

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Ready, Set, Bid: FCC Announces July Start Date for Auction to Provide Support for Voice and Fixed Broadband in Unserved High-Cost Areas

By Steve Augustino and Avonne Bell on February 5, 2018
Posted in Business & Strategic Planning, Internet, Universal Service Fund

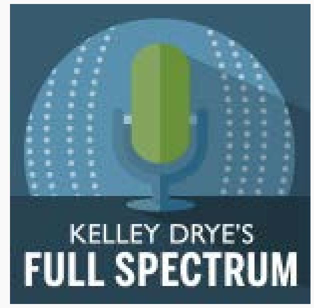
At the January Open Meeting, the Federal Communications Commission ("FCC") adopted a Public Notice ("PN") that sets July 24, 2018 as the start of the Connect America Fund Phase II auction ("Phase II Auction") in which service providers can compete for up to $1.98 billion annually in financial support over 10 years. This will be the first time a reverse, multi-round auction is used to provide support for high-cost rural areas. The FCC also adopted an Order on Reconsideration ("Recon Order") that resolves outstanding reconsideration petitions related to the Phase II Auction.

Many of the auction specifics were initially adopted and discussed in more detail in earlier FCC proceedings as this action is the next phase in a long-running effort to restructure aspects of the universal service fund high cost program. In the Recon Order, the FCC addresses petitions that challenged aspects of its August 2017 Public Notice establishing Phase II Auction procedures (see our prior post on the auction procedures). The key decisions from the Recon Order include

- choosing not to reconsider the bid weight values;
- maintaining the requirement that recipients of support must offer voice service at rates comparable to those in urban areas, including if it is a stand-alone VoIP offering;
- allowing recipients of support to notify the FCC if there is a disparity between the number of locations the cost model estimates they need to serve and the amount actually available in eligible census blocks within a state and receive a pro rata reduction if they successfully demonstrate that they can't meet the requirement; and
- modifying the letter of credit requirement to provide relief in the required amount.

In the PN, the FCC outlines the final details for the Phase II Auction including relevant deadlines; applying to participate in the Phase II Auction; how to bid in the auction; and post-auction requirements for support recipients. Short form applications to be considered for eligibility to participate in the Phase II Auction can be submitted electronically from March 19 – March 30, 2018. The schedule for bidding rounds will be announced via a public notice approximately one week before the auction start. The FCC also plans to hold tutorials and a mock auction to assist interested parties with applying and understanding how the auction will operate.

Entities interested in participating in the Phase II Auction are encouraged to review not only the PN but prior FCC orders and public notices on the matter, available at the FCC's Phase II Auction website.



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Does the Rural Healthcare Program Need a Check-Up? Program Under Microscope Following $18.7 Million Proposed Fine for Fraud

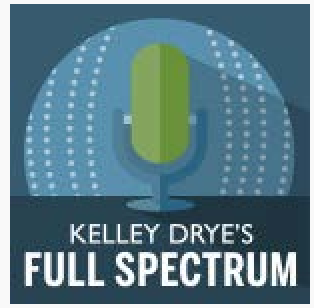
By Steve Augustino and J. Bradford Currier on February 5, 2018
Posted in Enforcement, Investigations & Audits, Federal & State Regulatory, Universal Service Fund

The Rural Health Care Program ("RHCP") is sure to face increased scrutiny in the wake of a $18.7 million proposed fine issued by the Federal Communications Commission ("FCC") at its January meeting against a telecommunications reseller for allegedly defrauding the program. The FCC claims that DataConnex, one of the top five recipients of RHCP funding, violated the program's competitive bidding rules and submitted falsified documents to increase the support it received. The FCC recently ramped up enforcement involving the RHCP and proposed significant reforms last month aimed at improving oversight and deterring fraud. The FCC's actions potentially foreshadow additional restrictions on the use of RHCP consultants and the amount of available funding.

The RHCP offers funding to rural health care providers to make telecommunications services more affordable. Under the program, contracts for telecommunications services are awarded through an open competitive bidding process designed to select the most cost-effective bid. The RHCP's Telecom Program allows service providers to receive payments based on the difference between the normally higher rates for telecommunications services in rural areas and the generally lower rates charged in urban areas. The FCC alleges that DataConnex engaged in a multi-year scheme with a healthcare consultant, through which DataConnex referred rural healthcare providers to the consultant with the understanding that the consultant would direct the healthcare institutions to select DataConnex as their telecommunications service provider. In exchange, DataConnex purportedly paid hundreds of thousands of dollars to a company owned by the consultant. DataConnex also allegedly misrepresented the costs of urban telecommunications services to boost the support it received from the RHCP.

Following recent trends in enforcement actions involving federal funds, the FCC upwardly adjusted the proposed fine to include a penalty equal to three times the amount DataConnex received from the program and threatened to revoke the company's authorizations to provide service. In addition, recognizing the disruption the enforcement action posed to healthcare providers contracting with DataConnex, the Commission indicated it would consider waiving the competitive bidding rules to allow affected institutions to select a new RHCP service provider.

FCC Chairman Pai noted that the proposed fine represents the second enforcement action in the past year involving charges of RHCP fraud. Last summer, the FCC issued an amendment to its first-ever RHCP enforcement action, increasing the proposed penalty against telecommunications service provider Network Services Solutions and its chief executive for allegedly using inside information to gain an unfair advantage in the competitive bidding process. The FCC cited the Network Services Solutions case in support of RHCP reforms it proposed last month. Specifically, the FCC proposed establishing a benchmark to identify outlier requests for RCHP support and subject such requests to increased scrutiny. The FCC also proposed bolstering the RCHP competitive bidding rules and imposing more detailed requirements for determining urban and rural service rates. Critically, the FCC



sought comment on whether it should implement disclosure requirements regarding the use of RHCP consultants and restrictions on the receipt of gifts in connection with funding requests.

Through its recent enforcement actions, the FCC appears to be making the case for significant reforms to the RHCP that will impact telecommunications service providers, healthcare institutions, and the healthcare consultant industry. As a result, stakeholders should carefully monitor the FCC's actions and consider participating in the rulemaking process. The attorneys of Kelley Drye & Warren have significant experience with RHCP regulations and compliance, and can assist telecommunications and healthcare providers with navigating new rules and responding to FCC actions.

TAGS: COMPETITIVE BIDDING, CONSULTANT, FRAUD, KICKBACK, NOTICE OF APPARENT LIABILITY, REVOCATION, RULEMAKING, RURAL HEALTH CARE PROGRAM, TELECOMMUNICATIONS PROGRAM, USF

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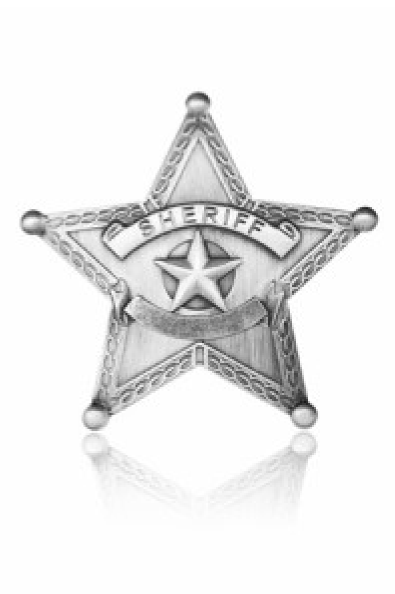
E-Rate Fraud in Crosshairs Following Charter School Indictment

By Steve Augustino, Marisa A. Lorenzo and J. Bradford Currier on January 28, 2018
Posted in Enforcement, Investigations & Audits, Litigation, Universal Service Fund



E-Rate fraud is back in the spotlight following the indictment of a Dallas charter school CEO and the owner of a contracting company for an alleged kickback scheme resulting in over $300,000 in illegal subsidies. Federal prosecutors stated that the pair violated the E-Rate program's competitive bidding requirements and submitted fraudulent invoices to the Federal Communications Commission ("FCC"). The indictment comes on the heels of major FCC settlements and enforcement actions against educational institutions and service providers for alleged E-Rate violations. FCC Chairman Pai has repeatedly criticized the administration of the E-Rate program and the indictment may spur further calls for action to combat

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fraud in the program.

The E-Rate program is the country's largest educational technology program and assists schools and libraries with obtaining affordable telecommunications and internet services. Under the program, educational institutions receive a discount from the FCC (through the Universal Service Administrative Company) on equipment and services provided by vendors. The discounts range from 20 to 90 percent, with higher discounts targeted to institutions located in high-poverty and rural areas. In order to receive the discount, institutions must use a competitive bidding process that treats price as the primary factor for selecting a vendor. Importantly, institutions may not receive any gifts or other payments in exchange for picking a vendor. Institutions also must pay a portion of the costs for the services and equipment to further incentivize the selection of the lowest-cost bid.

Federal prosecutors alleged that the CEO of a group of charter schools received thousands of dollars from a contracting executive in exchange for selecting the contractor as the schools' E-Rate service provider. According to the indictment, the pair falsely certified to the FCC that the vendor selection followed the competitive bidding rules and submitted invoices for equipment and services that were never provided to the schools. Prosecutors also alleged that the schools never paid their required portion of the costs for the discounted equipment and services. In addition to potential prison time, prosecutors sought the recovery of any money or property traceable to the alleged E-Rate fraud.

The FCC also may take enforcement action against the schools and the contractor. The FCC recently increased its oversight of the E-Rate program following an uptick in complaints concerning conflicts of interest in bids as well as submissions of falsified claims. Late last year, the FCC required the E-Rate service provider to the New York City Department of Education to return over $17 million in subsidies after a school system consultant submitted fraudulent invoices for work performed by subcontractors he owned. The FCC already required the school system to pay $3 million and adopt a number of compliance measures to resolve the investigation, including the establishment of an E-Rate training program for school leadership and the appointment of an independent compliance monitor. The settlement represented the first time the FCC took enforcement action against an educational institution (instead of a vendor) for E-Rate violations. Moreover, the FCC previously proposed a fine of more than $100,000 and sought to recover E-Rate subsidies from an AT&T subsidiary for allegedly overcharging schools a rate 400 to 500 percent higher than the rate available to other customers.

Large penalties for E-Rate violations are common. First, the FCC often applies a "treble damages" factor to E-Rate overcharges, which can significantly increase fines. Second, the FCC normally imposes a separate fine for each false certification or invoice submitted, which can serve as a forfeiture multiplier. Third, the FCC generally seeks full restitution of improperly disbursed E-Rate support, including for support disbursed beyond the normal one-year statute of limitations for FCC enforcement actions, arguing that such action does not represent a separate fine but rather a recovery of federal funds.

The indictment and recent FCC E-Rate enforcement actions highlight the importance of putting in place strong compliance safeguards governing the request for and use of federal universal service support. Service providers and support recipients therefore should review their E-Rate compliance policies and procedures carefully.

TAGS: CHAIRMAN PAI, E-RATE, FCC, FCC ENFORCEMENT, FRAUD, INDICTMENT, SCHOOLS AND LIBRARIES PROGRAM, UNIVERSAL SERVICE

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USF Update: Where Are We Now?

By Steve Augustino on February 9, 2018
Posted in Business & Strategic Planning, Enforcement, Investigations & Audits, Federal & State Regulatory, Universal Service Fund

In 2017, the Government Accountability Office (GAO) released a report focusing on the Lifeline program. Tucked away in that report was a significant discussion of Universal Service Fund (USF) contributor audits that has received little attention. In a recent episode of Kelley Drye's Full Spectrum podcast, Partner Steve Augustino and Special Counsel Denise Smith discussed four trends in USF contributor audits that they expect to result from the GAO report.

Kelley Drye's Communications group continues to monitor this and other USF issues. Join us on March 8th for our 9th Annual USF Update webinar as the group discusses audits, enforcement actions and more.

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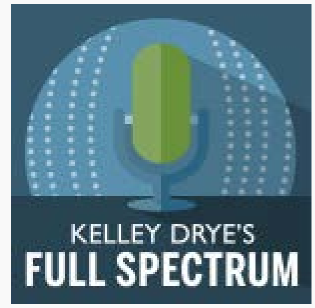

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LIFELINE UPDATE

FCC Extends Lifeline Non-Usage and Recertification Waivers in Puerto Rico and USVI

On March 1, 2018, the FCC's Wireline Competition Bureau issued the attached order which extends waivers of the Lifeline program's usage and recertification requirements in Puerto Rico and the U.S. Virgin Islands until **May 31, 2018**.

In the order, the Bureau acknowledged that extension of the waivers was in the public interest in light of ongoing recovery efforts in Puerto Rico and the U.S. Virgin Islands following Hurricanes Irma and Maria. Unlike previous waiver orders, however, ETCs will be required to begin the recertification process before the end of the waiver period. Accordingly, ETCs should review the language of this order carefully to ensure proper implementation.

Please contact John, Josh or your usual Kelley Drye attorney should you have any questions regarding the waiver order.

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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
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
Connect America Fund	)	WC Docket No. 10-90

ORDER

Adopted: March 1, 2018 **Released: March 1, 2018**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part the petition of Telrite Corporation (Telrite)[1] to extend the Bureau's temporary waiver of the Lifeline Program's recertification and non-usage rules[2] in Puerto Rico and the United States Virgin Islands (USVI) through May 31, 2018.

2. Recovery efforts continue in Puerto Rico and the USVI in the wake of Hurricanes Irma and Maria ("Hurricanes"), which struck the United States and its territories in September 2017.[3] Together, the Hurricanes caused widespread and catastrophic damage, destroyed and damaged countless homes, schools, libraries, and health care facilities, displaced residents, and disrupted communications and access to power. Because of these compelling and unique circumstances, we find good cause to temporarily waive for 30 days sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for all eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in Puerto Rico or the USVI.

II. DISCUSSION

3. Generally, the Commission's rules may be waived for good cause shown.[4] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[5] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.[6]

[1] *See* Telrite Corporation Emergency Petition for Extension of Waiver, WC Docket No. 11-42 et al. (filed Feb. 26, 2018) (Telrite Petition).

[2] 47 CFR §§ 54.405(e)(3); 54.405(e)(4); 54.407(c)(2); 54.410(f).

[3] *See generally* Federal Emergency Management Agency (FEMA), https://www.fema.gov/ (last visited Feb. 27, 2018); CNN, 2017 Atlantic Hurricane Season Facts, http://www.cnn.com/2017/05/15/us/2017-atlantic-hurricane-season-fast-facts/index.html (last visited Feb. 27, 2018).

[4] 47 CFR § 1.3.

[5] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

4. Lifeline providers are required to recertify their customers' continued Lifeline eligibility every 12 months.[7] Providers may elect to have USAC conduct the recertification process.[8] Lifeline providers are also required to provide their subscribers who do not pay an end-user charge and have failed to use their Lifeline service for 30 consecutive days with 15 days' notice that failure to use the Lifeline service within the notice period will result in termination of that Lifeline subscriber's benefit.[9] In response to the widespread damage caused by the Hurricanes, the Commission released orders on September 7, 2017, October 7, 2017, October 31, 2017 and February 2, 2018, temporarily suspending and waiving a number of Lifeline rules, including the recertification and non-usage rules, in Puerto Rico and the USVI.[10]

5. Telrite states that, in absence of this waiver being granted, Lifeline subscribers in Puerto Rico and USVI may be de-enrolled due to no fault of their own and during a critical recovery time when communications services are needed the most.[11] The damage caused by the Hurricanes has made it difficult for Lifeline subscribers in Puerto Rico and the USVI to receive, or respond to, messages from their Lifeline provider or USAC to complete the recertification process or to receive notice of non-usage. Accordingly, in response to Telrite's petition, we temporarily waive the recertification and non-usage rules in USVI and in Puerto Rico for until May 31, 2018. This will extend the recertification deadline for relevant subscribers whose Lifeline provider has elected USAC to conduct recertification. It will also allow subscribers in Puerto Rico and USVI to continue to have access to their Lifeline services when power is restored and they can access such services once again.

6. Under the relief we grant today, in combination with our previous waivers, ETCs must begin the 60-day notice period for recertification by April 1, 2018 for any subscribers whose anniversary dates fall from September 7, 2017 through May 31, 2018. Any subscriber whose anniversary date falls within the waiver period but has already recertified their eligibility or is recertified through an eligibility database is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules. Any subscriber whose anniversary date falls after May 31, 2018, must be recertified pursuant to the timeline established in the Commission's rules.

7. Based on the record before us, we find that good cause exists to temporarily waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules through May 31, 2018 for ETCs serving Lifeline subscribers residing in Puerto Rico and the USVI.[12] Given the current circumstances caused by the Hurricanes, strict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers during the recovery efforts to rebuild in the aftermath of the Hurricanes. Waiver of these rules is in the public interest because it will allow ETCs serving Lifeline subscribers in Puerto Rico and the USVI additional time to complete the recertification process for those subscribers whose service anniversary dates fall within this waiver period. Disruptions to electrical

(Continued from previous page)
[6] *Northeast Cellular*, 897 F.2d at 1166.

[7] 47 CFR § 54.410(f).

[8] *See* USAC-Elected Recertification, http://www.usac.org/li/tools/usac-elected-recertification.aspx (last visited Feb. 27, 2018).

[9] *See* 47 CFR § 54.405(e)(3).

[10] *Lifeline and Link Up Reform and Modernization*, Order, 32 FCC Rcd 6846 (WCB 2017); *School and Libraries Universal Support Mechanism et al.*, Order, 32 FCC Rcd 7456, 7460-61, paras. 10-13 (WCB 2017); *Lifeline and Link Up Reform and Modernization*, Order, 32 FCC Rcd 9240 (WCB 2017); *Lifeline and Link Up Reform and Modernization*, Order, DA 18-102 (released Feb. 2, 2018).

[11] See Telrite Petition at 6-7.

[12] *See* 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

service and infrastructure resulting from the Hurricanes will make it difficult for Lifeline subscribers to receive and respond to service provider recertification requests and non-usage notifications.[13]

8. We decline to grant an indefinite waiver of the rules, absent further action from the Commission.[14] We find that the waiver period established above is an appropriate time period that accommodates the extraordinary circumstances of the Hurricanes while continuing to protect program integrity. ETCs in the affected areas that are unable to comply with the Lifeline non-usage and recertification requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Wireline Competition Bureau.

9. *Preventing Waste, Fraud, and Abuse*. We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Although we grant the limited waivers described herein, service providers remain otherwise subject to audits and investigations to determine compliance with USF Program rules and requirements. We will require USAC to recover funds that we discover were not used properly through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF Programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the Programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

III. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules are waived to the limited extent provided herein.

11. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Telrite Corporation, Inc. IS GRANTED IN PART AND DENIED IN PART to the extent provided herein.

12. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

[13] *See* Telrite Petition at 7.

[14] *See id.* at 2.

LIFELINE UPDATE

<u>FCC to Require Use of Standardized Forms Starting July 1st</u>

The FCC's Wireline Competition Bureau released the attached Public Notice yesterday which provides guidance regarding the new standardized forms that consumers and eligible telecommunications carriers (ETCs) must use to verify and recertify subscriber eligibility for the Lifeline program beginning on **<u>July 1, 2018</u>**.

The standardized forms are: (1) the application; (2) the IEH worksheet; and (3) the recertification form. The new forms must be used for enrollments on or after July 1, 2018 and for recertifications where the 60-day notice period starts on or after July 1, 2018.

The Public Notice provides a link to the page on USAC's website where the forms can be viewed. There are different versions for National Verifier states and non-National Verifier states. Currently, English and Spanish versions available for the non-National Verifier states (presumably there will be Spanish versions available for the National Verifier states as well).

The forms have been approved by the Office of Management and Budget.

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Please contact John, Josh or your usual Kelley Drye attorney should you have any questions regarding these changes.

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PUBLIC NOTICE

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DA 18-161

Released: February 20, 2018

WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE ON UNIVERSAL FORMS FOR THE LIFELINE PROGRAM

WC Docket No. 11-42

In this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance regarding the new universal forms for the Lifeline program that consumers and eligible telecommunications carriers (ETCs) must use to verify and recertify subscriber eligibility for the federal Lifeline benefit beginning on July 1, 2018. In the *2016 Lifeline Order*, the Commission delegated to the Bureau the objective of creating uniform, standardized Lifeline forms for all subscribers receiving Lifeline benefits, if the Bureau "believes that doing so will aid program administration."[1] Implementing universal forms will foster greater consistency in the Lifeline eligibility determination and recertification processes, thereby aiding in program administration and reducing improper payments due to errors in application and recertification forms.

The Bureau has worked closely with the Universal Service Administrative Company (USAC) to develop user-friendly, plain language forms that will be used to apply for and recertify eligibility for Lifeline program benefits. These forms are intended for use in all states and territories, regardless of whether the National Verifier has been rolled out in that state or territory. The three universal forms will be made available on USAC's website.[2] The forms will be available in both English and Spanish language versions on USAC's website.

If state law, state regulations, or a state agency requires ETCs to use a pre-existing universal enrollment or recertification form for Lifeline subscribers in that state, ETCs may continue to use those forms instead of the corresponding forms identified in this Public Notice. If a state or ETC requires additional information from Lifeline applicants beyond the information collected in the FCC's universal Lifeline forms, an ETC may include additional questions in their online forms or include an attachment with paper copies of the FCC's universal Lifeline forms.

Beginning on July 1, 2018, ETCs using paper enrollment forms must use the FCC's universal Lifeline forms. ETCs enrolling Lifeline applicants with an electronic form must use exactly the same language used in the FCC's universal Lifeline forms. A Spanish language version of the form will be available on USAC's website, and ETCs should use that version for Spanish-speaking consumers. For other languages, direct translations of the FCC's universal Lifeline forms into other languages are acceptable. ETCs that claim Lifeline reimbursement for a subscriber whose enrollment or 60-day

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[1] *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006, para. 126 (2016) (*2016 Lifeline Order*).

[2] *See* USAC, Lifeline Forms (last visited February 13, 2018), http://www.usac.org/li/tools/forms/default.aspx.

recertification notice period[3] began on or after July 1, 2018 using noncompliant forms will be subject to repayments to the Fund and potential enforcement actions. For ETCs that elect USAC to conduct recertification on their behalf, we expect that USAC will incorporate the universal recertification form as it updates its processes in launching the National Verifier, and USAC may continue to use its existing compliant recertification forms until that point. ETCs may continue to claim those subscribers whose eligibility is recertified through USAC.

FCC Form 5629 – The Lifeline Program Application Form

FCC Form 5629 will be used in all states and territories to obtain the information necessary to evaluate whether a consumer is eligible to receive Lifeline service and to obtain the consumer's certifications, as required by 47 CFR § 54.410.

FCC Form 5630 – The Lifeline Program Annual Recertification Form

FCC Form 5630 will be used in all states and territories to recertify the eligibility subscribers who are receiving Lifeline service. Lifeline recipients must recertify their eligibility on an annual basis to comply with 47 CFR § 54.410(f).

FCC Form 5631 – The Lifeline Program Household Worksheet

FCC Form 5631 will be used in all states and territories to obtain information necessary to confirm whether a consumer is eligible for Lifeline service in instances where the consumer shares an address with another Lifeline recipient, as required by 47 CFR § 54.410(g).

For further information, please contact Allison Jones, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-1571, or at allison.jones@fcc.gov.

– FCC –

[3] *See* 47 CFR § 54.405(e)(4).

LIFELINE UPDATE

FCC Issues Two Lifeline Waiver Orders

On December 18, 2017, the FCC's Wireline Competition Bureau (WCB) issued two orders granting or extending waivers of certain Lifeline program rules. The specific waivers issued are as follows:

National Verifier Recertification Waiver: Due to the delay in the implementation of the National Verifier from this month into early 2018, WCB waived the recertification rules in Colorado, Montana, Mississippi, New Mexico, Utah, and Wyoming from January 1, 2018 through the date of the soft launch of the National Verifier for subscribers whose anniversary dates would otherwise fall during that time frame. Service providers had been relying on previous guidance to not recertify subscribers whose anniversary dates fall in January 2018 or later because the reverification process will also act as recertification. The order explains "this temporary waiver will allow impacted subscribers to be independently and objectively recertified and reverified by the National Verifier. This waiver will also prevent eligible consumers from being de-enrolled due to a lack of time to respond to recertification efforts, as is required by the Commission's rules." The order states that "waiver of these rules is in the public interest because it will allow for a smooth transition to reverification by the National Verifier and will minimize consumer confusion and de-enrollment of eligible low-income consumers." Upon launch of the National Verifier in these states, the order directs USAC to "promptly begin the reverification process for impacted Lifeline consumers."

Michigan Waiver Extension: WCB also issued a second order, which grants in part the Michigan Public Service Commission's request for an extension of its waiver to implement Lifeline federal eligibility changes. The current waiver is set to expire on December 31, 2017, but has been extended until **June 30, 2018**, to allow additional time to pass legislation and update the Michigan eligibility database.

Similar to waiver extensions already granted in California and New York, this order provides that "if Michigan does not update its database such that ETCs may rely on that database to determine whether a consumer is eligible for Lifeline under the revised federal eligibility rules by June 30, 2018, ETCs will be responsible for ensuring that subscribers enrolled or recertified after that date are eligible under the Commission's revised eligibility criteria." Sprint filed a petition for reconsideration of this provision in the California waiver order.

The Bureau also "direct[s] USAC to conduct outreach to ETCs operating in Michigan so that they may be prepared to conduct eligibility determinations without relying on Michigan's eligibility database if that database is not updated by the expiration of this waiver period."

*   *   *

Please contact John, Josh or your usual Kelley Drye attorney should you have any questions regarding these orders.

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LIFELINE UPDATE

FCC Approves Significant Changes to the Lifeline Program

At the FCC's open meeting on November 16th, the Commissioners approved by a 3-2 party-line vote a multi-part Lifeline item that will have a significant impact on the program and eligible telecommunications carriers (ETCs) that currently provide Lifeline service. The item was released on December 1, 2017 with a few important changes. Below is an overview and timeline for the key provisions in the item:

Section	Key Rule Changes	Timeline for Rule Changes
Fourth Report and Order (paras. 2-31)	• Tribal Lifeline support will only be available in rural Tribal areas (less than 25,000 people) • ETCs will no longer be permitted to rely on a subscriber's self-certification of residence on Tribal lands. • **The Commission will limit enhanced Tribal Lifeline support to facilities-based ETCs.**	These changes will be **effective 90 days after the Wireline Competition Bureau announces that the Commission has received approval from the Office of Management and Budget (OMB) for the new information collection requirements subject to the Paperwork Reduction Act, or on August 1, 2018, whichever date occurs later**. We anticipate that OMB review could take between 1 and 6 months.
Order on Reconsideration (paras. 32-46)	• **The Commission will eliminate the benefit port freeze for both voice and broadband Lifeline services. No grandfathering of existing port freezes.**	This rule change will be effective **60 days after publication of the order in the Federal Register**.
Memorandum Opinion and Order (paras. 47-52)	• The Commission finds that broadband Internet access delivered via Wi-Fi is not eligible for reimbursement as	This clarification is effective **30 days after publication in the Federal Register** (¶ 142)

<table>
<tr><td></td><td>mobile broadband under the Lifeline program rules, and finds that mobile broadband service eligible for Lifeline reimbursement must be provided on a network using at least 3G mobile technologies.
The order clarifies that a provider does not directly serve a customer with fixed broadband service under the Lifeline rules if that customer cannot access the services at their residential address (thus, “premium Wi-Fi” service also do not qualify for Lifeline support as a fixed service).</td><td></td></tr>
<tr><td>Notice of Proposed Rulemaking (paras. 53-118)</td><td>The Commission proposes to eliminate stand-alone LBP designations and walk back from the state preemption provisions set forth in the 2016 order.
The FCC proposes to limit all Lifeline support to facilities-based ETCs, but also seeks comment “alternatively” on TracFone’s proposal to minimize WFA through “conduct-based requirements.”
The FCC seeks comment on TracFone’s “units” proposal for meeting the minimum service standard requirements.
The FCC seeks comment on prohibiting agent commissions related to Lifeline enrollments.
The FCC proposes and seeks comment on a number of changes to enrollment and audit processes aimed at addressing waste, fraud and abuse in the Lifeline program.
The NPRM seeks comment on prohibiting Lifeline providers from distributing handsets in person to Lifeline consumers.
The NPRM seeks comment on adoption of a self-enforcing budget for the Lifeline program with an annual cap.</td><td>These are proposed rule changes, and will be subject to a public comment period before the FCC can take further action to implement them. Typically there is a 6-12 month period between an NPRM and final order, however, we understand the Commission is looking to move fast on this. Comments are due on January 24, 2018 and replies are due on February 23, 2018.</td></tr>
</table>

	• **The FCC seeks comment on potentially adopting a "maximum discount level" for Lifeline service that would effectively eliminate the "free" business model.**	
Notice of Inquiry (paras. 119-132)	• The NOI seeks comment on "whether and how the Commission should adopt rule changes to target Lifeline support to bring digital opportunity to areas that offer less incentive for deployment of high-speed broadband service, such as rural areas and rural Tribal areas." • The NOI asks about implementing a lifetime benefit restriction for Lifeline recipients.	As with the proposals in the NPRM, the issues in the NOI will be subject to public comment, and will require the FCC to take additional action before moving to a final order on these issues. **Comments are due on January 24, 2018 and replies are due on February 23, 2018.**

Please contact John, Josh or your usual Kelley Drye attorney should you have any questions regarding the adopted or proposed rule changes in the Lifeline item.

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FCC Grants Temporary Universal Service Fund Relief for Hurricane Victims

By John Heitmann, Steven Augustino, Denise Smith, Jennifer Wainwright
Kelley Drye Client Advisory

OCTOBER 13, 2017

On October 6, 2017, the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (Bureau) issued an order temporarily waiving several rules and requirements related to the federal Universal Service Fund (USF) for persons and businesses in areas affected by Hurricanes Harvey, Irma and Maria. This Order is part of a broader effort by the FCC to modify or waive its rules in response to the disruptions caused by the August and September hurricanes in the Southeast. The Order generally extends deadlines for service providers participating in three of the USF's four major programs, eased the USF contribution burdens in the affected areas and provides relief for schools, libraries and other applicants for program benefits. The waivers discussed below are self-effectuating, but parties needing further relief than what is granted should consult with counsel regarding options for seeking additional relief. Parties are advised to review each of the waivers carefully and seek advice of competent counsel to determine the impact on the company's obligations.

Geographic Scope . The order generally applies to so-called "Affected Disaster Areas," defined as "areas of **Texas, Florida, Georgia, Puerto Rico, and the United States Virgin Islands** (USVI) that have been designated as Major Disaster Areas eligible for Individual Assistance for the purposes of federal disaster relief by the Federal Emergency Management Agency (FEMA)." Footnote 8 in the order further explains that all counties in Puerto Rico and the USVI have received such designation from FEMA, and directs parties to the FEMA website to view the counties in Texas, Florida and Georgia that have been designated as Affected Disaster Areas. Generally, relief is available to entities that serve or have headquarters in the Affected Disaster Areas and, in some cases, to entities outside the affected areas if their consultant is located within one of the Affected Disaster Areas. As explained in more detail below, the length of the specific waivers granted varies. Note also that Texas is excluded from the Lifeline provisions of the order.

USF Recipient Waivers. The order grants temporary waivers of certain rules for three USF programs – E-Rate, Rural Health Care, and Lifeline. The Commission had previously granted relief under the High Cost program by an order issued on October 4, 2017 which allowed eligible telecommunications carriers (ETCs) in Puerto Rico and the USVI to receive up to $76.9 million in advance payments from the Connect America Fund to facilitate repairs of their networks in these territories. Through this latest order, the Bureau granted the following relief:

- *E-Rate:* The order generally grants three types of relief:
  - Extension of Filing Deadlines: The deadline to file FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act Certification (CIPA) Form), Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form), and Form 474 (Service Provider Invoice Form), is extended until **March 5, 2018**. Requests for review or waiver of decisions by the Universal Service Administrative Company (USAC), directed to USAC or the Commission, also may be filed until **March 5, 2018**.
  - Extension of Construction Deadlines: The order extends until **September 30, 2018** the FY 2016 implementation deadline for non-recurring services, other than special construction, and extends until **June 30, 2019** the FY 2017 deadline to complete special construction and light new fiber. (Applicants that wish to invoke the waiver of the special construction deadline must submit a valid FCC Form 500 before **June 30, 2018** certifying that construction for the special construction project was unavoidably delayed due to damage caused by the hurricanes.)
  - Waiver of Record Retention Requirements: For records that were destroyed as a result of the hurricanes, the order waives the FCC's rule that "requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request." However, "Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Hurricanes. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission."

- *Rural Health Care:* Similar to the E-Rate program, the order waives certain filing and record retention requirements. Specifically:
  - Extension of Filing Deadlines: The deadline to file Form 463 (Healthcare Connect Fund (HCF) Program Invoice and Request for Disbursement Form) and the FY 2016 Annual Report Questionnaire by consortia under the HCF Program is extended until **March 5, 2018**. Requests for review or waiver of decisions by the Universal Service Administrative Company (USAC), directed to USAC or the Commission, also may be filed until **March 5, 2018**.
  - Waiver of Record Retention Requirements: For records that were destroyed as a result of the hurricanes, the order waives the FCC's rules that "require health care providers and service providers to retain all documents covered by those rules for at least five years after the last day of the delivery of supported services in a given funding year." Similar to the E-Rate record retention waiver, "[a]pplicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Hurricanes."

- *Lifeline:* The order extends in terms of time, geographic scope, and rules a waiver that was previously granted on September 7, 2017. The new waiver of the Lifeline rules was granted in part in response to petitions filed by Telrite Corporation and PRWireless, Inc. d/b/a Open Mobile. (As noted above, the Bureau excluded Texas from the Lifeline waiver because "the Public Utility Commission of Texas (Texas PUC) administers eligibility and recertification processes in that state and has indicated that such processes continue to function at this time.") The key Lifeline provisions of the order are as follows:
  - Non-Usage: Until **February 28, 2018**, Lifeline providers will not be required to de-enroll

subscribers in the affected areas that do not comport with the FCC's usage requirement. "At the expiration of the waiver period, Lifeline subscribers who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission's rules."

  - Recertification: The requirement for subscribers to annually recertify their eligibility for Lifeline is temporarily waived for subscribers whose anniversary dates fall on or **between September 7, 2017 and February 28, 2018**. "At the expiration of the waiver period, ETCs are expected to begin recertification efforts promptly and subscribers who were subject to the waiver period will have 60 days to respond to their ETC's recertification efforts." Additionally, "[a]ny subscriber whose anniversary date falls within the waiver period but has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules."
  - Port Freeze: The order grants a temporary waiver until **February 28, 2018** of the port freeze rule, and "will permit subscribers to apply their Lifeline benefit to a different Lifeline provider even if they would otherwise be prohibited from doing so due to section 54.411 of the Commission's rules. At the expiration of this waiver period, subscribers will be subject to the port freeze requirements of section 54.411, as measured from the date of that subscriber's latest Lifeline enrollment or transfer." The Bureau granted this waiver on its own motion, finding that "Lifeline subscribers may find that they are unable to obtain service from their current Lifeline provider in their area, even if another Lifeline provider's service is operational."

USF Contributor Waivers. The order extends the filing deadlines for certain USF contributor forms, waives late filing fees, and instructs USAC to refrain from imposing certain monetary and non-monetary penalties against providers. In particular, the order grants the following relief:

- *Form 499-Q Revisions:* For contributors serving the Affected Disaster Areas, the order extends the 45-day deadline for revisions to the August 2017 and November 2017 Form 499-Q until **January 2, 2018**. The Bureau found that such extension "will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of the Hurricanes on contributor revenues rather than having to wait until next year's Form 499-A true-up process" and "will allow affected providers to utilize all available dollars for service restoration efforts in the Affected Disaster Areas."
- *Late Fees for November 1 Form 499-Q:* The Bureau directs USAC, until after **January 2, 2018**, to "refrain from assessing late fees on late [November 1] Form 499-Q filings made by" either "providers with headquarters in the Affected Disaster Areas" or third party consultants or other external entities that prepare Form 499-Q filings on behalf of USF contributors and "are based in Affected Disaster Areas and whose operations have sustained damage due to the Hurricanes."
- *Collection Activities:* The Bureau grants relief from the following "collection activities" by USAC:
  - Interest and Penalties: The order waives "all interest and penalties incurred by providers with headquarters in Affected Disaster Areas between the effective date of this Order and January 2, 2018."
  - Red Light: Providers with headquarters in Affected Disaster Areas "will not be placed on Red Light due to debts that became delinquent after July 1, 2017, between the effective date of this Order and January 2, 2018."
  - Transfer to Treasury: "[A]ny debts incurred by providers with headquarters in the Affected Disaster Areas will not be transferred to Treasury for collection activities between the effective

date of this Order and January 2, 2018."

Audit/Compliance Reminder. The order reminds waiver recipients that the Bureau "retain[s] the discretion to evaluate the uses of monies disbursed through the USF Programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. Additionally, in the event [the Bureau] discover[s] any improper activity resulting from [its] action today, [the Bureau] will subject the offending party to all available penalties at [its] disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both."

* * *

Please contact the authors or your regular Kelley Drye attorney should you have any questions regarding the waiver order or the regulatory effects of the 2017 hurricanes.