

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

ORDER

Adopted: December 30, 2021

Released: December 30, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In response to the impact of the ongoing COVID-19 pandemic in the United States, the Wireline Competition Bureau has waived certain Lifeline program rules in nine previous Orders to provide necessary relief for low-income households. The effects of the COVID-19 pandemic continue to be felt by many Americans, and recently a new variant of the coronavirus has emerged that has contributed to uncertainty about the ongoing pandemic. The importance of access to affordable communications services for low-income consumers has been underscored by the pandemic and its long-lasting impact. Accordingly, we find good cause to extend, on our own motion, our prior waivers of the Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, reverification, recertification, general de-enrollment, and income documentation through March 31, 2022. We will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate.

1 According to Centers for Disease Control and Prevention (CDC) data, the number of new COVID-19 cases reported daily nationwide on December 13, 2021 was 201,786 with a 7-day moving average of 117,890 cases. CDC COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last visited Dec. 15, 2021). See also Spencer Kimball, CNBC, Omicron is Spreading Faster than any Other Covid Variant, WHO Warns (Dec. 14, 2021), https://www.cnbc.com/2021/12/14/who-says-omicron-is-spreading-at-a-rate-not-seen-with-any-other-covid-variant.html; Lena H. Sun, Joel Achenbach, Laurie McGinley, and Tyler Pager, Washington Post, Omicron is Spreading Rapidly in U.S. and Could Bring Punishing Wave as Soon as January, CDC Warns (Dec. 14, 2021), https://www.washingtonpost.com/health/2021/12/14/omicron-us-spread/.

2 See Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 2729 (WCB Mar. 17, 2020) (First Lifeline Waiver Order) (temporarily waiving Lifeline recertification and reverification requirements); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 2950 (WCB Mar. 30, 2020) (Second Lifeline Waiver Order) (temporarily waiving Lifeline usage and general de-enrollment requirements and directing the Universal Service Administrative Company (USAC) to suspend periodic reviews); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 4482 (WCB Apr. 29, 2020) (Third Lifeline Waiver Order) (temporarily waiving three-month documentation requirement for subscribers to demonstrate income eligibility); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 5510 (WCB June 1, 2020) (Fourth Lifeline Waiver Order) (temporarily waiving documentation requirements for subscribers residing in rural areas on Tribal lands); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 8791 (WCB Aug. 17, 2020) (Fifth Lifeline Waiver Order) (extending prior waivers through November 30, 2020); Lifeline and Link Up Reform and Modernization, Order, 35 FCC Rcd 12954 (WCB Nov. 16, 2020) (Sixth Lifeline Waiver Order) (extending prior waivers through February 28, 2021); Lifeline and Link Up Reform and Modernization, Order, 36 FCC Rcd 4448 (WCB Feb. 24, 2021) (Seventh Lifeline Waiver Order) (extending prior waivers through June 30, 2021 with the exception of the waiver of the Lifeline non-usage requirement); Lifeline and Link Up Reform and Modernization Order, Order, DA 21-760, 2021 WL 2668477 (WCB June 28, 2021) (Eighth Lifeline Waiver Order) (extending prior waivers through

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II. DISCUSSION

2. The Commission's rules may be waived for good cause shown.³ The Commission may exercise its discretion to waive a rule where the particular facts make strict 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.⁵

3. The Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service to help ensure that all Americans have access to affordable communications service.⁶ We find that good cause exists to extend through March 31, 2022 our recent waivers of certain Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands, reverification, recertification, general de-enrollment, and income documentation.⁷ The circumstances necessitating those prior waivers continue to impact consumers.⁸ We therefore find that this extension is warranted to ensure that no Lifeline subscribers are involuntarily de-enrolled from the Lifeline program during this unprecedented national pandemic. Low-income consumers, in particular, have been disproportionately impacted by the ongoing pandemic.⁹ In addition, ongoing efforts to minimize the spread of coronavirus continue to cause disruptions to daily life and economic recovery in some areas, including on rural Tribal lands.¹⁰ Extending the waivers through March 31, 2022 will allow additional time for the benefits of the ongoing COVID-19 vaccination efforts to continue and will allow additional time for individuals who have lost jobs and faced other challenges as a result of the pandemic to recover.

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September 30, 2021); *Lifeline and Link Up Reform and Modernization Order*, Order, DA 21-1191, 2021 WL 4354767 (WCB Sept. 22, 2021) (*Ninth Lifeline Waiver Order*) (extending prior waivers through December 31, 2021).

³ 47 CFR § 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁶ See *Bridging the Digital Divide for Low-Income Consumers*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019) (*2019 Lifeline Order*).

⁷ *Ninth Lifeline Waiver Order*, 2021 WL 4354767 at *1-3, paras. 3-8. Smith Bagley's most recent filing requests that the Commission extend these Lifeline waivers for a further six months. We believe, however, that three months best allows the Commission to continue to monitor the situation across the country while offering relief to Lifeline subscribers. See Smith Bagley, Inc. Request for Six-Month Extension of COVID-19 Lifeline Relief, WC Docket No. 11-42 (filed Dec. 8, 2021) (SBI Request) at 7-10.

⁸ See CDC COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Dec. 15, 2021).

⁹ Based on data from the first six months of the pandemic, low-wage jobs were lost at a rate of about eight times more than the rate of high-wage jobs. See Heather Long, Andrew Van Dam, Alyssa Fowers, Leslie Shapiro, *The COVID-19 Recession is the Most Unequal in Modern U.S. History* (Sept. 30, 2020), <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>; see also Pew Research, *Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest* (2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

¹⁰ See SBI Request at 5-7. According to SBI, "The persistently high number of COVID-19 infections has caused Tribal governments to maintain COVID-19 advisories that limit capacity requirements and implement social distancing measures that have loosened in other parts of the country." SBI Request at 5. SBI also states that, "Because pandemic conditions have not improved, many locations where a consumer can obtain eligibility documents are open for limited hours and visits can only be made by appointment, further restricting access for a population with limited ability to travel." SBI Request at 6.

4. Extension of the waiver of the reverification rules will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Lifeline Eligibility Verifier (National Verifier) during the waiver period. USAC conducts a one-time reverification of eligibility for each existing Lifeline subscriber around the time that the National Verifier is hard launched in a state or territory. We direct USAC to not de-enroll any Lifeline subscriber for failure to successfully respond to a reverification documentation request for those subscribers with documentation deadlines falling on or before March 31, 2022. We also direct USAC to not open any new reverification documentation requests on or before March 31, 2022 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

5. On October 13, 2020, an amendment to the Lifeline recertification rule took effect, requiring that Lifeline subscribers' annual recertifications be completed by the end of each calendar year instead of by each subscriber's anniversary date.¹¹ Because the National Verifier sends recertification notices to subscribers 90 days prior to their anniversary dates, this waiver extension will impact Lifeline subscribers with anniversary dates that fall on or between April 14, 2020 and June 29, 2022. Any such impacted Lifeline subscribers may have their recertification process delayed under this Order, but they must have their eligibility recertified after the waiver has expired. To provide USAC and the state administrators with enough time to reasonably stagger the beginning of recertifications again after the expiration of the waiver granted in this Order, and consistent with the requirement that Lifeline subscribers undergo one recertification per calendar year, we also clarify that subscribers' eligibility will only need to be recertified once in calendar year 2022.

6. For the same reasons set forth in our *Ninth Lifeline Waiver Order*, we similarly extend through March 31, 2022 our direction to USAC to pause its periodic, targeted reviews to identify and de-enroll ineligible subscribers.¹² USAC should not involuntarily de-enroll any subscriber nor seek additional documentation from an eligible telecommunications carrier or subscriber as part of those reviews until that date. We note that this direction does not apply to more systematic reviews of Lifeline subscribers that USAC may conduct as part of its routine program integrity efforts or at the direction of the Bureau or the Commission's Managing Director. In such cases, where USAC identifies subscribers that may no longer be eligible to participate in the program, USAC may de-enroll subscribers consistent with the Commission's rules.¹³

7. We similarly extend through March 31, 2022 our recent waiver of the Lifeline program's requirement that consumers seeking to demonstrate income-based qualification for the Lifeline program must provide at least three consecutive months of documentation to confirm their income.¹⁴ The circumstances necessitating this prior waiver have not changed, and we therefore find that this extension is warranted to ensure that consumers are able to successfully complete the Lifeline enrollment process.

8. Finally, we also extend through March 31, 2022 our waiver for consumers residing in rural areas on Tribal lands of the requirement that such consumers submit the necessary documentation to correct an automated check error(s) prior to enrolling in the Lifeline program and receiving Lifeline service.¹⁵ The circumstances necessitating this waiver have not substantially improved,¹⁶ and we find that

¹¹ See 47 CFR § 54.410(f); *2019 Lifeline Order*, 34 FCC Rcd at 10934-36, 10956, paras. 111-114, 176; FCC, Bridging the Digital Divide for Low-Income Consumers, 85 Fed. Reg. 41930 (July 13, 2020) (announcing approval under the Paperwork Reduction Act and effective date of October 13, 2020).

¹² See *Ninth Lifeline Waiver Order*, 2021 WL 4354767, *2, para. 6. See also *Second Lifeline Waiver Order*, 35 FCC Rcd 2950, 2953, para. 12.

¹³ See 47 CFR § 54.405(e).

¹⁴ *Third Lifeline Waiver Order*, 35 FCC Rcd at 4483-4, paras. 6-7.

¹⁵ *Fourth Lifeline Waiver Order*, 35 FCC Rcd at 5512-14, paras. 7-11.

this extension is warranted to ensure that eligible telecommunications carriers may begin immediately providing Lifeline-supported service to any consumer residing in a rural area on Tribal lands who applies for Lifeline but is unable to provide the necessary documentation to resolve a failed automated check at the time of application. The consumer will have 45 days from the time of application to provide such documentation, but if the consumer does not submit the necessary documentation, USAC will de-enroll the consumer from the Lifeline program.

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 waiver described herein, service providers remain otherwise subject to audits and investigations to determine compliance with Lifeline 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. In the case of the rural areas in Tribal lands waiver extended in this Order, we note that Lifeline subscribers residing in rural areas on Tribal lands currently comprise approximately 2% of total Lifeline subscribership, and we thus expect that USAC will be able to sufficiently monitor the claims made pursuant to this waiver for potential waste, fraud, and abuse. 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. In the case of suspected fraudulent activity, USAC retains its ability to recover funds, de-enroll fraudulent accounts, and prevent persons engaging in such activity from accessing the USAC Lifeline systems, as appropriate. We remain committed to ensuring the integrity of the Lifeline program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies. Finally, we direct USAC to include demonstration of eligibility under this waiver in its risk-based sampling for USAC's periodic, targeted reviews after this waiver expires and USAC resumes such reviews.

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 U.S.C. §§ 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)(1), 54.405(e)(4), 54.410(a), 54.410(b)(1)(i)(B), and 54.410(f) of the Commission's rules are waived to the limited extent provided herein.

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¹⁶ As SBi outlines in its most recent request for an extension of the COVID-19 Lifeline Waivers, consumers living in rural areas on Tribal lands, such as those served by SBi, face substantial challenges due to living in remote areas and must often travel long distances to reach mail and shopping (including SBi's stores). SBi Request at 2-3. In addition, as SBi, has explained, Tribal areas, including the Navajo Nation in Arizona, have been particularly impacted by the COVID-19 pandemic and have seen an increase in COVID-19 cases in recent months that may worsen during the winter months. SBi Request at 5.

11. 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