

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Lifeline and Link Up Reform and) WC Docket No. 11-42
Modernization)
General Communication, Inc. Petition for Waiver)
of Section 54.410(f))
Virgin Islands Telephone Corp. d/b/a Innovative)
Telephone Petition for Clarification and Waiver)

ORDER

Adopted: December 27, 2012

Released: December 27, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a limited waiver from section 54.410(f) of the Commission’s rules and the 2012 re-certification requirement set forth in the Lifeline Reform Order to General Communication, Inc. (GCI). Based on the record before us, we find that GCI verified the eligibility of certain subscribers upon enrollment in the Lifeline program, alleviating the need for it to re-certify the eligibility of this discrete and limited group of subscribers in 2012.

2. We also grant Virgin Islands Telephone Corp. d/b/a Innovative Telephone (Innovative) request for a 30-day extension to complete the re-certification process for a limited number of subscribers in the Virgin Islands. Innovative must complete the re-certification process by January 31, 2013, and report its findings by March 1, 2013. The relief granted to Innovative in this Order is a limited extension of time for re-certification under section 54.410(f) and paragraph 130 of the Lifeline Reform Order.

1 47 C.F.R. § 54.410(f); Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6715-16, paras. 130-132 (2012) (Lifeline Reform Order).

2 General Communication, Inc. Petition for Waiver of Section 54.410(f), WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Nov. 21, 2012) (GCI Petition); Letter from John Nakahata, Counsel for GCI, to Marlene H. Dortch, FCC, dated Dec. 3, 2012 (GCI Ex Parte) (withdrawing a portion of the GCI Petition and narrowing the scope of its petition for waiver). Most of the Lifeline Reform Order rules became effective June 1, 2012.

3 Virgin Islands Telephone Corp., Inc. Petition for Clarification and Waiver, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Nov. 29, 2012) (Innovative Petition); see Letter of Bennett Ross, Counsel for Innovative, to Marlene H. Dortch, FCC, WC Docket No. 11-42 et al., CC Docket No. 96-45 (filed Dec. 10, 2012) (Innovative Ex Parte) (clarifying the scope of the Innovative Petition). This extension of time applies to the approximately 60 Innovative Lifeline subscribers yet to re-certify their eligibility. Innovative’s Petition seeks clarification, or in the alternative waiver, of certain reforms adopted in the Lifeline Reform Order. We will address the remainder of Innovative’s petition for clarification or waiver of rules not addressed herein at a future date.

4 See 47 C.F.R. § 54.416(b) (requiring that ETCs annually provide the results of their re-certification efforts to the Commission and the Administrator, as well as to the relevant Tribal authority, if applicable. ETCs designated as (continued...))

II. BACKGROUND

A. Annual Lifeline Re-Certification Reporting Requirements

3. *2012 Re-Certification Requirement.* In the *Lifeline Reform Order*, the Commission adopted a set of uniform re-certification procedures that all Eligible Telecommunications Carriers (ETCs) must perform annually to verify the ongoing eligibility of their Lifeline subscribers.⁶ Section 54.410(f) requires that ETCs annually re-certify the eligibility of their subscribers.⁷ To comply with the annual requirement for 2012, all ETCs and, where applicable, state Lifeline administrators or an agent of the state (collectively, “state agencies”) must re-certify the eligibility of their Lifeline subscriber base as of June 1, 2012, by the end of 2012 and report the results to Universal Service Administrative Company (USAC) by January 31, 2013 (2012 re-certification requirement).⁸ The 2012 re-certification requirement is intended to work in lock step with the new certification of eligibility requirements established in the *Lifeline Reform Order*.⁹ The Commission found that the upfront documentation requirement upon enrollment would be a sufficient initial check of subscriber eligibility, and the annual subscriber self-certification would assist in obtaining updated subscriber information for use in populating the National Lifeline Accountability Database.¹⁰ The requirement for ETCs to annually re-certify their Lifeline subscribers ensures that only eligible subscribers remain in the program.¹¹ Any subscribers that fail to respond to the ETC’s or state agency’s re-certification efforts must be de-enrolled from Lifeline pursuant to the de-enrollment procedures set out in the Commission’s rules.¹²

4. ETCs and state agencies have the option of re-certifying subscribers in one of two ways, as described in 47 C.F.R. § 54.410(f).¹³ First, to the extent that a database is available to verify program or income-based eligibility, ETCs or state agencies must query the database to confirm the subscriber’s continued eligibility.¹⁴ In the absence of a database, the ETC or state agency must re-certify the continued eligibility of a subscriber by obtaining a signed certification from the subscriber that meets the requirements of 47 C.F.R. § 54.410(d).¹⁵ The *Lifeline Reform Order* makes clear that “[r]egardless of the format used to re-certify the subscriber’s continued eligibility for Lifeline, ETCs [or a state agency] must convey all of the required information set forth in the amended section 54.410(d) and obtain from the

(Continued from previous page) _____

such by one or more states pursuant to § 54.201 must also report the results of their re-certification efforts to the designating state commission(s)).

⁵ See *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, 6897, paras. 130-32, App. C; 47 C.F.R. § 54.410(f).

⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6714-22, paras. 129-48; 47 C.F.R. § 54.410(f).

⁷ See 47 C.F.R. § 54.410(f).

⁸ *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132; 47 C.F.R. § 54.416(b).

⁹ See *Lifeline Reform Order*, 27 FCC Rcd at 6717-18, para. 134. The 2012 re-certification process requires that ETCs re-certify their base of Lifeline subscribers as of June 1, 2012. The new documentation requirements, under which subscribers show proof of eligibility upon enrollment, became effective June 1, 2012. Therefore, the two requirements are designed to ensure that all Lifeline subscribers’ eligibility will be verified in 2012.

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. §§ 54.405(e), 54.410(f)(5).

¹³ 47 C.F.R. § 54.410(f).

¹⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 131; 47 C.F.R. §§ 54.410(f)(2)(i)-(ii), 54.410(f)(3)(i)-(ii).

¹⁵ See 47 C.F.R. §§ 54.410(f)(2)(iii), 54.410(f)(3)(iii); *Lifeline Reform Order*, 27 FCC Rcd at 6715, 6897, para. 130, App. C.

subscriber an individual certification for each requirement set forth in the rule.”¹⁶ In order to obtain a signed certification from the subscriber, the ETC or state agency must send a notice to the subscriber separate from the subscriber’s bill seeking information sufficient to re-certify the subscriber, and notifying the subscriber that he or she will be de-enrolled within 30 days unless the subscriber re-certifies that the subscriber is eligible to receive Lifeline.¹⁷ ETCs or state agencies may contact and receive re-certification responses from subscribers in writing, by phone, by text message, by e-mail, by Interactive Voice Response (IVR), or otherwise through the Internet using an electronic signature.¹⁸ If an ETC or state agency is unable to re-certify a subscriber because the subscriber did not respond to the re-certification request, the ETC must de-enroll the subscriber.¹⁹ If an ETC or state agency receives a response from the subscriber that the subscriber is no longer eligible, the subscriber must be de-enrolled within five business days.²⁰

5. Each ETC must report the results of its re-certification process to the Commission and USAC by January 31, 2013, using FCC Form 555.²¹ The re-certification process is not considered “complete” until the ETC has de-enrolled all subscribers that either failed to respond to a re-certification request or state that they are no longer eligible, or where a database query by the ETC or state agency indicates the subscriber is no longer eligible and the ETC de-enrolls that subscriber.

B. Petitions for Waiver

6. *GCI Petition for Waiver.* GCI seeks a limited waiver of the 2012 Lifeline re-certification requirement with respect to 1,089 new Lifeline subscribers enrolled between April 2, 2012 and June 1, 2012.²² GCI asserts that its employees verified the eligibility of these subscribers by reviewing program or income eligibility documentation and enrolled these subscribers using a certification form encompassing substantially all of the section 54.410(d) certifications, and the form in use since May obtains the subscriber’s consent to share its information with USAC.²³

¹⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. Electronic signatures may be used to satisfy the re-certification requirement.

¹⁷ 47 C.F.R. § 54.405(e)(1).

¹⁸ See 47 C.F.R. § 54.419; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130. Any text messages sent for the purpose of re-certification must be sent to the phone number associated with the supported service, and responses must be sent from that phone number. *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. When utilizing phone or IVR, a subscriber must be prompted to certify to each individual requirement set forth in section 54.410(d). *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132. If the state agency or third party is responsible for performing the annual re-certification functions, the state or its agent must provide the ETC with a copy of the completed re-certification form. *Id.* at 6715, para. 131 n.341. The ETC or state agency must also notify the subscriber in writing that failure to respond to the re-certification request could result in de-enrollment. *Id.* at 6720, para. 142.

¹⁹ See 47 C.F.R. § 54.405(e)(4).

²⁰ See 47 C.F.R. § 54.405(e)(1). If the state agency is performing the re-certification, the ETC must de-enroll the subscriber within 5 business days of receiving notice from the state agency that the subscriber was unable to be re-certified.

²¹ See *id.*; *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 132; 47 C.F.R. § 54.416(b). The FCC Form 555 is posted on USAC’s website at http://www.usac.org/_res/documents/li/pdf/forms/FCC-form-555.pdf. See also *Wireline Competition Bureau Reminds Carriers That They Must Re-Certify Eligibility of All Subscribers By December 31, 2012*, WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, Public Notice, DA 12-1626 (Wireline Comp. Bur. rel. Oct. 31, 2012).

²² *GCI Ex Parte* at 1. GCI enrolled approximately 1,089 subscribers between April 2, 2012 and June 1, 2012.

²³ *GCI Ex Parte* at 2.

7. *Innovative Petition for Waiver*. Innovative requests that the Commission waive sections 54.410(f), 54.405(e)(4) and 54.416(b) for 30 days so that it may complete the re-certification process for 60 Lifeline subscribers in the Virgin Islands by January 31, 2013 and report the results to USAC by March 1, 2013.²⁴ Innovative states that prior to the Commission's recent reforms, Lifeline subscribers in the Virgin Islands have been required to re-certify their eligibility for benefits every six or twelve months, depending upon the method the subscriber used to establish eligibility.²⁵ Innovative states that because the Virgin Islands Department of Human Services (DHS) makes eligibility determinations for Lifeline subscribers by consulting a database to determine eligibility based on participation in a certain federal assistance program, Innovative has provided DHS a list of its Lifeline subscribers to be re-certified pursuant to the Commission's re-certification requirements.²⁶ Innovative states that DHS has provided it with the names of Lifeline subscribers who purportedly have been re-certified by DHS.²⁷ Innovative states that it is yet to receive information from DHS on the eligibility of approximately 60 Lifeline subscribers, and Innovative believes those subscribers have yet to be notified about the need to re-certify their continued eligibility for Lifeline.²⁸ Innovative asserts that if these subscribers have been contacted by DHS but failed to respond to re-certification requests, neither DHS nor Innovative is able to provide such subscribers with the requisite 30-day notice of de-enrollment in time to meet the December 31, 2012 deadline.²⁹

III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.³⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³² Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.³³

9. *GCI Limited Waiver of Section 54.410(f)*. The Bureau finds that good cause exists to grant a limited one-time waiver of the 2012 Lifeline re-certification requirement to GCI for the subscribers it enrolled between April 2, 2012 and June 1, 2012 who demonstrated their eligibility for the Lifeline program. GCI established the eligibility of these subscribers and used certification forms containing most of the certifications required in section 54.410(d) of the Commission's rules. We note, however, that GCI's certification form in use during the time period at issue fell short of full compliance with the 2012 re-certification requirement in two regards. First, the form collected residential addresses without the caveat that the subscriber must provide a physical address and that Post Office Box addresses are not

²⁴ *Innovative Ex Parte* at 3.

²⁵ *Id.*

²⁶ *Id.* Innovative states that it is unfamiliar with DHS's process for re-certifying subscribers whose eligibility cannot be confirmed through an available database.

²⁷ *Id.* at 2-3.

²⁸ *Id.* at 3.

²⁹ *Id.*; 47 C.F.R. § 54.405(e).

³⁰ 47 C.F.R. § 1.3.

³¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³³ See *Northeast Cellular*, 897 F.2d at 1166.

permitted.³⁴ Second, it appears that the form did not obtain consent from each subscriber to share its information with USAC.³⁵ Because physical residential addresses are required to populate the National Lifeline Accountability Database to protect against duplicate Lifeline benefits, we condition this waiver on GCI obtaining by January 31, 2013, the physical address, not a Post Office Box address, for any of its subscribers that may have initially provided a Post Office Box as their residential address on a certification form. We further condition this waiver on GCI obtaining by January 31, 2013 consent from each subscriber to share its information with USAC.³⁶ Consistent with the Commission's determination in the *Lifeline Reform Order*, GCI may collect this data using a written format, text messages, or Interactive Voice Response.³⁷ With these conditions, we find that a limited waiver for re-certifying GCI's subscribers enrolled between April 2, 2012 and June 1, 2012 will serve the public interest and is warranted under these circumstances.³⁸

10. ETCs are required to annually provide the results of their re-certification efforts performed pursuant to section 54.410(f) to the Commission and USAC.³⁹ Because we conditionally grant a waiver of section 54.410(f) to GCI for the subscribers described above, we waive on our own motion section 54.416(b) of the Commission's rules requiring GCI to report the results of the 2012 re-certification requirement for the subscribers subject to this waiver.⁴⁰ GCI must submit a cover letter to USAC by January 31, 2013, detailing the number of subscribers in each state that are subject to waiver of the 2012 re-certification requirement.

11. *Innovative Petition for Waiver*. The Bureau grants a limited waiver of sections 54.405(e)(4), 54.410(f), and 54.416(b) of the Commission's rules, and paragraph 130 of the *Lifeline Reform Order*, for Innovative's 60 Lifeline subscribers in the US Virgin Islands.⁴¹ ETCs must provide a 30-day pending termination notice to subscribers who fail to re-certify their Lifeline eligibility prior to de-enrolling a subscriber from Lifeline pursuant to the Commission's rules. Because Innovative has not received information regarding the eligibility of a very limited number of subscribers from DHS, we find that it would be appropriate to allow Innovative additional time to fulfill its obligation to provide the requisite notice to subscribers before de-enrolling them from the Lifeline program.⁴² We therefore grant Innovative's request for a 30-day extension of the re-certification requirement. Innovative must complete the re-certification requirement for the 60 Lifeline subscribers in the US Virgin Islands subject to this

³⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6895, App. C; *GCI Ex Parte*, Exhibit A.

³⁵ GCI's form in use from April 2, 2012, through May 7, 2012, appears not to have collected this information; however, GCI changed its form on May 7, 2012, to include obtaining subscriber consent. See *GCI Ex Parte* at 2.

³⁶ See *Lifeline Reform Order*, 27 FCC Rcd at 6897, App. C. These conditions are consistent with waiver conditions adopted by the Bureau in this context previously. See *Lifeline and Link Up Reform and Modernization*, DA 12-1927, para. 14 (WCB rel. Nov. 30, 2012).

³⁷ *Lifeline Reform Order*, 27 FCC Rcd at 6715-16, para. 132.

³⁸ See 47 C.F.R. § 54.410(d); *Lifeline Reform Order*, 27 FCC Rcd at 6895-97, App. C.

³⁹ See 47 C.F.R. § 54.416(b) (requiring that ETCs annually provide the results of their re-certification efforts to the Commission and the Administrator (USAC), as well as the relevant Tribal authority, if applicable. ETCs designated as such by one or more states pursuant to § 54.201 must also report the results of their re-certification efforts to the designating state commission(s)).

⁴⁰ See 47 C.F.R. § 54.416(b). GCI must provide the results of its re-certification efforts for all subscribers not subject to this waiver.

⁴¹ See 47 C.F.R. §§ 54.410(f), 54.405(e)(4), 54.416(b); *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130.

⁴² See 47 C.F.R. § 54.405(e).

waiver by January 31, 2013, and report its findings to the Commission, USAC, and the relevant state or Tribal governments by March 1, 2013.⁴³

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, sections 54.405(e), 54.410(f) and 54.416(b) of the Commission's rules, 47 C.F.R. §§ 54.405(e), 54.410(f), 54.416(b), and paragraph 130 of FCC 12-11 ARE WAIVED to the extent described above AND CONDITIONED with respect to General Communication, Inc.

13. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and the delegation of authority in paragraph 130 of FCC 12-11, the amended petitions filed by General Communication, Inc. and Virgin Islands Telephone Corp. d/b/a Innovative Telephone ARE GRANTED as described above.

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

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

⁴³ See 47 C.F.R. § 54.416(b). Innovative must provide the results of its re-certification efforts for all subscribers not subject to this waiver to USAC by January 31, 2013.