



N A R U C
National Association of Regulatory Utility Commissioners

November 23, 2016

The Honorable Thomas Wheeler, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Ajit Pai, Commissioner
The Honorable Michael O’Rielly, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Written Ex Parte: *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.

NARUC Resolution urging the FCC to expeditiously grant waivers or requested extensions of the December 2, 2016 Lifeline deadline.

Mr. Chairman and Commissioners:

At least 11 NARUC member commissions have filed requests for extensions of the looming *Lifeline Modernization Order’s*¹ December 2, 2016 deadline. All basically support – to one degree or another – the October 3, 2016 petition filed by the United States Telecom Association seeking a reasonable extension of that deadline to permit State commissions and lifeline providers the time needed to adjust rules and procedures to meet the new FCC requirements.²

A close examination of the State petitions filed in this proceeding makes clear that each of those petitions should be granted.

Seven days ago, in California, NARUC passed a resolution urging the FCC to do just that.

¹ *In the Matter(s) 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, *Numbering Resource Optimization*, CC Docket 99-200, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, 31 FCC Rcd. 3962 (rel. April 27, 2016); Published May 24, 2016 at 81 Federal Register 33025, at: <https://www.gpo.gov/fdsys/pkg/FR-2016-05-24/pdf/2016-11284.pdf> (“*Lifeline Modernization Order*”).

² *See, USTelecom Petition for Reconsideration and Clarification*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted June 23, 2016) (USTelecom Reconsideration Petition).

Discussion

In 1996, Congress made clear in 47 U.S.C. §§ 214(e), 253, 254, 1301-3, and other provisions of the Telecommunications Act, that it expects States to continue to play a continual and crucial role partnering with the FCC with respect to universal service and the promotion of advanced services like broadband. State Lifeline programs are a crucial part of that equation. Some State Lifeline programs provide support subsidies to low income consumers for phone service ranging from \$2.50 to well over \$10.00 per month.³ Indeed, in the April 2016 *Lifeline Modernization Order*, the Commission recognizes, at ¶¶ 286-289, that States continue to have a role with both the federal and State lifeline programs, specifically urging at ¶ 286 & ¶ 135 “USAC and the Bureau to work closely with the [S]tates...to develop the most efficient pathways to determining subscriber eligibility.”

State Commissions and Lifeline providers are *already* working diligently to implement the FCC’s comprehensive Lifeline reforms. However, NARUC’s members and other stakeholders have legitimate concerns regarding inconsistencies between new federal and existing State eligibility criteria.

As a result of changes to the federal eligibility criteria, any State that spelled out eligibility criteria for Lifeline in its statutes or regulations must amend those provisions or recognize the misalignment through special “State-only” qualification procedures. Some State rules or laws allow subscribers to be eligible for both the federal and State Lifeline discounts under an expanded set of assistance programs or under income thresholds higher than 135% of federal poverty guidelines. Even those States with criteria established in their rules that currently align with the federal program will be out of alignment upon the December 2nd effective date of the new rules, because they include LIHEAP, TANF, and NSLP, and do not include Veterans and Survivors Pension Benefits.

States that are involved in determining consumers’ eligibility for Lifeline are facing understandable challenges in making necessary changes. In some instances, the FCC revisions may require adjustments to the regulations by a State commission. In other States, changes may require updates to the governing statutes themselves by that State’s legislature. Moreover, in some States, significant technological upgrades—upgrades that cannot be completed by December 2016—are necessary for State eligibility databases to conform them with the new FCC rules.

One thing is crystal clear: while some commissions can easily meet the current December 2, 2016 deadline to revise State program rules to be consistent with the FCC reforms, several will not. Moreover, confusion about the applicable eligibility rules has the potential to result in denial or, at a minimum, delay of Lifeline benefits to qualifying low-income subscribers, defeating the goal of the Lifeline program.

That’s why at NARUC’s meeting earlier this month, the association passed the attached resolution urging the FCC to expeditiously grant “requested waivers of the effective date of the federal eligibility criteria to allow the parties to resolve the eligibility differences between State and federal Lifeline programs, obtain answers to the numerous questions that still remain, and ensure a smooth, efficient, and effective transition.”

This problem was first raised in FCC filings in the June 23, 2016 *United States Telecom Association Petition for Reconsideration and Clarification*⁴ and the October 3, 2016 *United States Telecom Association*

³ For example, Vermont provides the greater of \$7 or 50 % of the basic service charge, California provides a \$13.50 subsidy, Connecticut offers \$10.42, the District of Columbia between \$6.50 & \$8.50, Kansas, \$7.77, Missouri, \$6.50. Several other States offer \$3.50/month, including Arkansas, Minnesota, Nebraska, and Oregon. Idaho’s subsidy is \$2.50 while New York’s subsidy varies.

⁴ See, *USTelecom Petition for Reconsideration and Clarification*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted June 23, 2016) (USTelecom Reconsideration Petition).

*Petition For Waiver.*⁵ In the October petition, USTelecom seeks a waiver, for 27 States and territories, of, *inter alia*, the amended Lifeline eligibility rules in 47 C.F.R. §1§§54.400(j) & 54.409(a).

Many affected stakeholders, including several State commissions filed supporting USTelecom's request and/or filed their own separate waiver requests with the FCC. More are likely to be filed.

Missouri Public Service Commission Request for FCC to Grant USTelecom Petition.

For example, on October 19, 2016, the Missouri Public Service Commission filed comments explicitly supporting the USTelecom petition, and pointing out, at 3-4, that "Missouri will not meet the December 2, 2016 deadline for revising its rules to be consistent with recent FCC reforms."⁶ The comments explain that State simply cannot jump through all the State-mandated procedural requirements by that date. Those requirements include a hearing, a "lengthy" notice and comment rulemaking, and a mandate to submit draft rules to the Missouri Department of Economic Development for fiscal impact review, before final rules can be issued. Id.

Missouri is not the only NARUC member in this position.

Michigan Public Service Commission Request for to Grant the USTelecom Petition.

On October 21, the Michigan Public Service Commission also filed comments explaining in minute detail the implementation problems it faces that make meeting the December 2nd deadline impossible.⁷ For example, at 3, Michigan notes its database, operated by another State entity, requires substantial revisions to match the new federal eligibility criteria – which includes "the backend processes of how information is entered, coded, and the recoding of information." At 4-5 of their comments, the State points out the minimum expense (\$16,000) and minimum time frame to reprogram the database (6-8 months), as well as the need for the legislature to amend the Michigan Telecommunications Act before they can proceed to a rulemaking. Finally, the comments point out, at 6, the rulemaking procedures alone make the prospect of a timely release of any Michigan commission order by December 2 unlikely.

Nor are these two NARUC member States alone with these requests.

Utah State Division of Public Utilities Request for waiver to December 31, 2017.

On October 21, 2016, The Utah State Division of Public Utilities filed comments supporting the USTelecom Petition.⁸ Their comments points out the need for State legislative changes to implement the new Lifeline rules and specifies the need for a waiver "until December 31, 2017, assuming Utah is one of 5 States deployed in the National Verifier, otherwise, a waiver of up to 18 months requested."

⁵ See, USTelecom Petition for Waiver, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted June 23, 2016) (USTelecom Waiver Petition), at <https://ecfsapi.fcc.gov/file/1003603102032/Lifeline-Waiver-Petition-2016-10-03-FINAL.pdf>.

⁶ See, Comments of the Missouri Public Service Commission, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 19, 2016) at <https://ecfsapi.fcc.gov/file/101901016124/MoPSC%20Comments%20-%20US%20Telecom%20waiver.pdf>.

⁷ See, Comments of the Michigan Public Service Commission, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 21, 2016) at <https://ecfsapi.fcc.gov/file/10212393922653/Comments%2010-21-16.pdf>.

⁸ See, Utah State Division of Public Utilities Comments in Support of USTA Petition for Waiver, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 21, 2016) at <https://ecfsapi.fcc.gov/file/1021292125947/Utah%20State%20Division%20of%20Public%20Utilities%20October%2021.docx>.

Puerto Rico Telecomm’s Regulatory Board Request to Grant USTelecom Petition as to Puerto Rico.

On October 21, 2016, The Puerto Rico Telecommunications Regulatory Board filed comments urging the FCC to “grant the USTelecom Petition.”⁹ Their concerns, at 2, were focused specifically on revising the current verification process.

California Public Utilities Commission Request for A Waiver to October 31, 2017.

On October 28, 2016, the California Commission filed a separate request to extend the December deadline.¹⁰ According to this waiver petition, at 1-2, the California Lifeline Administrator and providers need “11 to 18 months to make these changes to their systems.” California has the largest Lifeline subscriber base in the nation with over 2 million subscribers that receive federal and state subsidies. The petition points out: “[b]ecause so many California Lifeline subscribers will be affected by the changes to the federal rules, the CPUC, the Administrator, and service providers must carefully plan, implement, and test the changes before rolling them out.” The CPUC also notes that the agency “must adopt State-specific benefit portability rules by January 15, 2017 in response to recently enacted State legislation” and is, in that ongoing proceeding to implement those rules, also “examining the impact of the Lifeline Modernization Order.”

Vermont Department of Public Service Request for A Waiver to “no earlier than” October 31, 2017.

On November 3, 2016, the Vermont Commission filed a request to extend the December deadline.¹¹ Specifically, at 2, the Vermont petition points out:

Unfortunately, due to the timing of the issuance of the Modernization Order it was impossible to address changes to Vermont's Lifeline program in 2016. The legislature next convenes in January of 2017 and generally ends its session by May. It is possible for the Department to advance recommendations for changes to the statute for this next session. A waiver will allow Vermont the opportunity to inform its legislative assembly of concerns with the current statute given the FCC's Lifeline Modernization Order and develop and implement an orderly process by which applications may be accepted, de-duped and verified.

Public Service Commission of Wisconsin Petition for Waiver for up to 24 Months.

On November 3, 2016, the Wisconsin Commission filed its own separate request to extend the December deadline.¹² The petition, at 7, specifically:

⁹ See, *Comments of the Puerto Rico Telecommunications Regulatory Board*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 21, 2016) at <https://ecfsapi.fcc.gov/file/102007480860/TRBPR%20Comments%20WC%20Docket%20No.%2011-42.pdf>.

¹⁰ See, *Petition of the California Public Utilities Commission for a Temporary Waiver*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 28, 2016) at <https://ecfsapi.fcc.gov/file/1028040749223/CPUC%20Petition%20for%20Temp%20Waiver%20-%20FCC%20WC%20Dkt%2011-42%20et%20al.pdf>.

¹¹ See, *Vermont Department of Public Service Waiver Request*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 3, 2016) at <https://ecfsapi.fcc.gov/file/1103302843726/2016.11.03%20-%20VT%20DPS%20Ltr.%20re%20Limited%20Lifeline%20Waiver.pdf>.

¹² See, *Public Service Commission of Wisconsin’s Petition For Waiver*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 3, 2016) at https://ecfsapi.fcc.gov/file/110354677504/PSCW%20Lifeline%20Modernization%20Order%20FCC%2016-38%20Waiver%20Petition%202016%20v15_0.pdf.

Requests a waiver of the effective date of the new federal Lifeline eligibility criteria until at least the earlier of 24 months from its grant or 60 days after the PSCW notifies the FCC and all ETCs in Wisconsin that it has realigned its eligibility criteria with the federal criteria and provided for state-only Lifeline qualification and benefits for non-federal criteria. This will allow Wisconsin the opportunity to make informed decisions and take action necessary to change state databases, state regulations, and to issue state orders to conform with the Lifeline Order, all of which will require more time than the FCC provided under the implementation deadline of December 1, 2016.

This request comes on the heels of a very expensive (approximately \$800,000) upgrade of the State's database "to provide eligibility results consistent with current federal and state criteria" that took 18 months and followed a four year commission rulemaking. *Id.* at 3-4.

New York Department of Public Service Request for Waiver to December 1, 2017.

On November 4, 2016, the New York Department of Public Service filed an *ex parte*¹³ expounding on its earlier filed October 21 comments¹⁴ on why the FCC should grant the USTelecom Petition for Waiver and extend the December deadline for New York to at least December 1, 2017.

Public Utility Commission of Oregon Request for Waiver to June 1, 2017.

On November 11, 2016, the Oregon Commission filed a specific waiver request to allow time for the commission "to implement the complementary technical, administrative, and operational changes."¹⁵ The petition, at 2, specifically points out that "implementation of the new benefit port freeze regulation requires significant modifications to the OPUC's Lifeline database and operations."

Maryland Public Service Commission Request to Grant USTelecom Petition as to Maryland.

On November 22, 2016, the Maryland Public Service Commission filed an *ex parte* noting that "[a]s explained in a letter from Verizon dated November 18, 2016...urging that the Commission grant the USTelecom Petition with respect to Maryland," Maryland cannot meet the deadline because legislative changes are required which the state commission intends to pursue "during the 2017 Maryland General Assembly's Legislative Session."¹⁶

¹³ See, *Ex Parte/Waiver Request filed by Graham Jesmer, Assistant Counsel, New York Department of Public Service*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 4, 2016) at <https://ecfsapi.fcc.gov/file/1104073200012/WC%20Docket%20No%202011-42%20et%20al.%20-%20Lifeline%20Modernization%20-%20New%20York%20DPS%20Ex%20Parte%20Letter%20-%202011-4-16%20Final.pdf>.

¹⁴ See, *Comments of the New York Public Service Commission on the Waiver Request of the United States Telecom Association*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted October 21, 2016) at <https://ecfsapi.fcc.gov/file/1021717825794/WC%20Docket%20No.%2011-42%20et%20al.%20-%20Lifeline%20Modernization%20-%20Comments%20of%20The%20NYPSC%20Supporting%20USTA%20Waiver%20Request.pdf>.

¹⁵ See, *Petition of Public Utility Commission of Oregon For Temporary Waiver*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 8, 2016) at <https://ecfsapi.fcc.gov/file/11090963614436/Petition%20of%20PUC%20for%20Temporary%20Waiver%2011-8-16.pdf>.

¹⁶ See, *Ex Parte/Waiver Request filed by David J. Collins, Executive Secretary, Maryland Public Service Commission*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 22, 2016) at <https://ecfsapi.fcc.gov/file/112254569665/Maryland%20Waiver%20Request%20re%20Revised%20Lifeline%20Eligibility%20Rules.pdf>.

Washington Utilities and Transportation Commission Request for Waiver to July 1, 2017.

On November 23, 2016, the Washington Utilities and Transportation Commission filed an *ex parte* specifically requesting “a delay of the December effective date for Lifeline verification so that the database currently required by the UTC for Eligible Telecommunication Carrier (#ETC) Lifeline-only wireless resellers will provide accurate eligibility determinations and not provide “false positives.”¹⁷ Washington specifies, at 2, that the State agency that has to make the changes to the State database cannot complete those changes until “the end of second quarter in 2017.”

Conclusion

The docket in this proceeding is stacked with States and other stakeholders supporting the extension or waiver of the current December 2, 2016 implementation date. Even at this late date, additional waiver requests seem a possibility.¹⁸

Absent FCC action, eligible telecommunication carriers and State administrators in affected States will face significant confusion and increased administrative overhead, which could undermine efficiencies intended by the FCC. It is obvious that granting the requested waivers serves the public interest, given the significant misalignment between the federal eligibility requirements and those in affected States. Such misalignment significantly complicates the application and intake process, eligibility determinations, recertifications, customer counts, rate plans, and every other aspect of managing the Lifeline program.

As is obvious from the record in these dockets, it is certain that many affected States will be unable to change their rules prior to the current effective date of the new federal rules.

Some State commissions and legislatures simply cannot act in time.

The challenges facing some NARUC members is exacerbated by an additional layer of technological complexity associated with the implementation of State administered eligibility processes – particularly in States where Lifeline providers rely on State eligibility determinations/databases, and the State does not provide ETCs with detail on how a customer qualifies. Particularly in States with matching programs, where either the legislature or policy makers may opt to retain different eligibility requirements for what heretofore have been “complementary” programs, also must significant expand consumer education initiatives.

The FCC should grant the requested waivers of the effective date of the federal eligibility criteria to allow parties to resolve the eligibility differences between State and federal Lifeline programs, obtain answers to the numerous questions that still remain, and ensure a smooth, efficient, and effective transition.

¹⁷ See, *Ex Parte/Waiver Request filed by Steven V. King, Executive Director and Secretary of the Washington Utilities and Transportation*, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90 (submitted November 23, 2016) at <https://ecfsapi.fcc.gov/file/112368545598/16112201.pdf>.

¹⁸ See, *Response of the Public Service Commission of the District of Columbia to the United States Telecom Association Petition for Waiver of Lifeline Eligibility Rules*, WC Docket 11-42, WC Docket 09-197, WC Docket 10-90 (submitted October 21, 2016) at 3, at: <https://ecfsapi.fcc.gov/file/1021459326565/DC%20PSC%20Response%20to%20US%20Telecom%20Petition%20WC%20Docket%2011-42%20et%20al.pdf>. (“Should unanticipated events prevent the DC PSC from amending its rules by December 2, 2016, the DC PSC will inform the Commission of this fact.”)

If you have questions about this letter, please do not hesitate to contact NARUC's General Counsel – Brad Ramsay at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.

Respectfully Submitted,

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Appendix A – Resolution on Requested Waivers to Implement the FCC’s Lifeline Reform Order

WHEREAS, On April 27, 2016, the Federal Communications Commission (FCC) released a Third Report and Order, Further Report and Order, and Order on Reconsideration, *In the Matter of Lifeline & Link Up Reform & Modernization*, 31 F.C.C. Rcd. 3962 (2016) (*Lifeline Order*); *and*

WHEREAS, In the *Lifeline Order*, among other things, the FCC standardized and streamlined eligibility criteria for the Federal Lifeline Program; *and*

WHEREAS, On June 23, 2016, the United States Telecom Association (USTelecom) filed a Petition for Reconsideration and Clarification of the *Lifeline Order*; *and*

WHEREAS, On October 3, 2016, USTelecom filed a petition asking the FCC for a limited waiver to permit providers to continue enrolling consumers in the federal Lifeline program based on State-specific program and income eligibility criteria for 27 States; *and*

WHEREAS, An October 6, 2016, FCC Public Notice requested comment from State, Tribal, and Territorial authorities on the US Telecom waiver petition; *and*

WHEREAS, Several State commissions and industry associations agreed with the USTelecom request’s concerns about the effective date of the new federal eligibility criteria and the unavoidable impact on State programs that were based on the prior FCC policy; *and*

WHEREAS, The Lifeline Order will require some State commissions to revise their regulations and some State legislatures to update State lifeline laws; *and*

WHEREAS, In some States, significant technological upgrades—upgrades that cannot be completed by December 2016—are necessary for State eligibility databases to conform them with the new FCC rules; *and*

WHEREAS, Many affected stakeholders, including several State commissions (Missouri, Michigan, Utah, Puerto Rico, Vermont, Wisconsin, Oregon, California, and New York), filed supporting USTelecom’s request and/or filed their own separate waiver requests with the FCC; *and*

WHEREAS, Additional waiver requests seem likely; *and*

WHEREAS, Absent such waivers, eligible telecommunication carriers (ETCs) and State administrators in affected States will face significant confusion and increased administrative overhead, which could undermine efficiencies intended by the *Lifeline Order*; *and*

WHEREAS, Such confusion about the applicable eligibility rules has the potential to result in denial or, at a minimum, delay of Lifeline benefits to qualifying low-income subscribers, defeating the goal of the Lifeline program; *and*

WHEREAS, The deadline for implementation of the eligibility criteria, as well as the Lifeline Broadband Internet Access Service (BIAS) offering, imposes severe time constraints on both State administrators and ETCs; *and*

WHEREAS, Granting the requested waivers would serve the public interest, given the significant misalignment between the federal eligibility requirements and those in affected States; *and*

WHEREAS, Such misalignment significantly complicates the application and intake process, eligibility determinations, re-certifications, customer counts, rate plans, and every other aspect of managing the Lifeline program; *and*

WHEREAS, It is unlikely that most or all affected States will be able to change their rules prior to the current effective date of the new federal rules as some State commissions and legislatures will have to complete specific procedures to make the necessary changes; *and*

WHEREAS, The challenge facing some States is exacerbated by an additional layer of technological complexity associated with the implementation of State administered eligibility processes – particularly in States where Lifeline providers rely on State eligibility determinations, and the State does not provide ETCs with customer eligibility specifics, *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened at its 128th Annual Meeting in La Quinta, California, urges the FCC to grant the requested waivers of the effective date of the federal eligibility criteria to allow the parties to resolve the eligibility differences between State and federal Lifeline programs, obtain answers to the numerous questions that still remain, and ensure a smooth, efficient, and effective transition.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors on November 15, 2016

Adopted by the NARUC Committee of the Whole on November 16, 2016