

House Human Services Committee Testimony Notes

Testimony by: Kathleen Smith
Economic Services Division/DCF
24 January 2014

1. What is the need for this bill?

The reason this bill is needed is to fulfill the requirements of the FCC waiver (see additional document), to provide more expedient service to qualifying participants and to ultimately ensure the safety of participant's confidential information. To elaborate, in October 2012, the FCC issued the Public Notice for the Opt Out database (see additional document). The State chose to ask for a waiver since use of this database would create confidentiality issues for participants. One stipulation with the waiver is that we had to provide the telephone companies (ETC) participant change information (i.e. phone number changes, address changes, etc.) within five business days. This presented unique challenges since it took time for the application to go from the Tax Department to ESD, especially during the busy tax season. So in order to comply with the waiver we need to find a way to process the applications more efficiently. This is a benefit to the client as well since it allows them to receive their discount in a timely manner.

2. What doesn't work about the current system?

There is a lag time between receipt of the application at the Tax Department and receipt of the application at ESD. Furthermore, less than 10% of the applications need verification by the Tax Department, 90% of the applicants are already known to ESD as verified in the ACCESS management information system.

3. How will the change impact the Vermonters who access Lifeline?

Telephone discounts will be issued quicker since the Tax department will no longer be the middle-man. Applications will come directly to the ESD, and the processing of the discounts will be done directly by ESD staff without passing through the Tax Department.

I've provided for your review a copy of the Lifeline application. Eligibility requirements are clearly stated, and are primarily based on age, or age and income.

ESD started getting applications directly from Tax Dept. last year since there were such long delays (weeks) in receiving applications. They have not reviewed these prior to us since last year. There are a small number that need verifying by the Tax Dept. since most applicants are already known to ESD, and the process no longer made sense. Previously, even though the Tax Dept. was getting the applications, they were just mailing them directly to us and we were then consulting them if we had questions or issues and needed verification we did not have.

4. How many Vermonters are currently receiving the Lifeline benefit?

- People receiving Lifeline: 19,751
- Aged 65 and over: 11,559
- Aged under 65: 8,192



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU CLARIFIES MINIMUM REQUIREMENTS FOR STATES SEEKING TO OPT OUT OF NATIONAL LIFELINE ACCOUNTABILITY DATABASE

WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45

In this public notice, the Wireline Competition Bureau (Bureau) provides guidance to states regarding the process of opting out of the National Lifeline Accountability Database (Database) established in the *Lifeline Reform Order* (Order).¹

In the *Lifeline Reform Order*, the Commission established the Database to detect and eliminate duplicative Lifeline support provided to individuals and households and imposed specific requirements on ETCs, such as the requirement to query the Database prior to signing up a subscriber to determine if that subscriber or a member of that subscriber's household is already receiving Lifeline support from another ETC.² The Commission, however, recognized that states may have their own systems for eliminating individual or household support on which ETCs could rely and established a process through which states could file a request seeking to "opt out" of the Database.³ To opt out of the Database, the state's system must be comprehensive and at least as robust as the processes adopted by the Commission in the *Lifeline Reform Order*.⁴ In states that meet this standard and exercise their opt-out rights, ETCs will not have to separately comply with national requirements regarding the Database.⁵

Pursuant to the Order, if a state or state regulatory authority intends to opt out of the Database, it is required to make a one-time request by November 1, 2012 that the state has a comprehensive system in place to check for duplicative Lifeline support.⁶ We now provide a limited waiver, until December 1,

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order* or Order). The Commission directed the Bureau to release a public notice providing additional guidance to the states regarding the opt-out process. See *id.* at 6572, para. 221, n.582. On August 13, 2012, the Universal Service Administrative Company (USAC) released a request for proposals to construct the Database. See USAC, RFP-NLAD.pdf, available at http://www.usac.org/_res/documents/about/pdf/rfp/RFP-NLAD.pdf.

² See *Lifeline Reform Order*, 27 FCC Rcd at 6734-55, paras. 179-225; 47 C.F.R. § 54.404.

³ See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para. 221; 47 C.F.R. § 54.404(a).

⁴ See *Lifeline Reform Order*, 27 FCC Rcd at 6737-46, 6747-52, paras. 188-208, 212-220.

⁵ See *id.*, 27 FCC Rcd at 6752, para. 221.

⁶ See *id.* 47 C.F.R. § 54.404 was subject to Office of Management and Budget (OMB) approval of information collection requirements, and became effective May 1, 2012 upon Federal Register publication of OMB approval. See *Wireline Competition Bureau Provides Notice Regarding The Effective Date of Certain Rules Adopted In The Lifeline Reform Order*, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45, Public Notice, 27 FCC Rcd 4875 (WCB 2012); 77 FR 25609 (2012) (announcing that OMB has approved the information collection requirements of certain rules, including 47 C.F.R. § 54.404). States are required to file opt-out certifications within six months of the

(continued...)

2012, of the date by which states must file their opt-out request, to enable states to take into account the guidance provided in this public notice regarding the showing that a state must make in order to opt out of the database.⁷ Any state which has already filed a request with the Commission may amend the request, or withdraw its request and re-file without prejudice, in order to provide the specific information described below.⁸

To opt out of the Database, a state must list the obligations on ETCs to comply with the state system (e.g., the ETC must transmit its subscriber information to the database).⁹ An opt-out request will only be granted when a state demonstrates it has systems that cover all ETCs operating in the state and all subscribers of those ETCs.¹⁰

The opt-out request should itemize with particularity the functionality of the state's system that corresponds to the federal processes set forth in the Order, as described below.¹¹ Specifically, the state should demonstrate that the system on which it bases the opt-out request:

- can facilitate a process to scrub individual and household duplicates from ETCs' subscriber rolls.¹² The state system must be sufficiently capable of handling whatever functions, if any, are necessary to implement the scrubbing process. The state should file any data in its possession regarding the individual and/or household duplicate rate in its state to demonstrate that the process in the state has, in fact, successfully scrubbed individual and household duplicates from ETCs' subscriber rolls.
- will prevent ETCs from signing up individuals or households which are already receiving a Lifeline benefit. This includes a means for ETCs and/or other authorized users (e.g., state Administrators) to query the system prior to enrolling the subscriber to determine if

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effective date of the rule. See 47 C.F.R. § 54.404(a). Therefore, opt-out certifications currently are due no later than November 1, 2012.

⁷ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166. The Commission has granted limited waivers of implementation deadlines for regulatory requirements on numerous occasions. See, e.g., *Local Number Portability Porting Interval and Validation Requirements*, WC Dkt. No. 07-244, CC Dkt. No. 95-116, Order, 23 FCC Rcd 2425 (2008) (waiving deadline for complying with local number portability validation process).

⁸ See Texas Public Utility Commission, Petition and Certification to Opt Out of the National Database Pursuant to 47 C.F.R. § 54.404(a) by the Public Utility Commission of Texas, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45 (filed Sept. 13, 2012); Nebraska Public Service Commission, Petition and Certification of the Nebraska Public Service Commission to Opt Out of the National Lifeline Accountability Database, WC Dkt. Nos. 11-42 *et al.*, CC Dkt. No. 96-45 (filed Oct. 1, 2012).

⁹ This list should include regulatory and statutory citations as applicable.

¹⁰ 47 C.F.R. § 54.404(a).

¹¹ See *Lifeline Reform Order*, 27 FCC Rcd at 6752, para 221.

¹² See *id.*, 27 FCC Rcd at 6748-49, paras. 214-216.

the subscriber or anyone in the subscriber's household is already receiving duplicative support.¹³

- ★ • has a means of standardizing and verifying addresses submitted to the system. The system and any related processes must also be able to accommodate non-traditional addresses, such as addresses on Tribal lands not recognized by the U.S. Postal Service.¹⁴
- ★ • has a means of verifying a subscriber's identity at the time a system query is made.¹⁵ In response to the query, the system must indicate whether the subscriber's identity can be verified, and, if not, provide error codes to indicate why the identity could not be verified.
- ★ • includes a dispute resolution process to ensure that subscribers are not wrongfully denied benefits,¹⁶ including those cases where a subscriber fails the automated identity check or where the subscriber's address is incapable of being recognized by the U.S. Postal System.
- ★ • is able to receive and process information including the name, address and phone number of each Lifeline subscriber.¹⁷
- ★ • captures the address and date of service initiation to which Tribal Link Up support applied if Link Up support is offered in the state.¹⁸
- ★ • has a process to manage "exceptions" to the definition of "duplicative support" rules and to deal with situations, such as non-standardized addresses, that may not be able to be resolved through mechanized means.¹⁹
- ★ • retains all data related to consumers who have received Lifeline and Link Up for ten years after the consumer receives Link Up or de-enrolls from Lifeline.²⁰
- ★ • has the capability of receiving updates from ETCs both in real-time and in periodic batches.²¹
- ★ • includes safeguards to ensure that the data in the system is only used to check for duplicative support and related functions and for no other purpose, including marketing or subscriber retention.²² In addition, the state should demonstrate that the system includes sufficient safeguards to protect proprietary and personal information in the system from theft or loss.²³
- ★ • will permit the FCC and USAC to access records necessary for oversight and for audits.²⁴

¹³ See *id.*, 27 FCC Rcd at 6743-44, para. 203.

¹⁴ See *id.*, 27 FCC Rcd at 6738-39, 6743, paras. 193, 201.

¹⁵ See *id.*, 27 FCC Rcd at 6743, para. 201.

¹⁶ See *id.*, 27 FCC Rcd at 6749, para. 217.

¹⁷ See *id.*, 27 FCC Rcd at 6741, para. 198.

¹⁸ See *id.*, 27 FCC Rcd at 6739-40, para. 195.

¹⁹ See *id.*, 27 FCC Rcd at 6747-48, paras. 212-213.

²⁰ See *id.*, 27 FCC Rcd at 6740, para. 195.

²¹ See *id.*, 27 FCC Rcd at 6741, para. 198.

²² See *id.*, 27 FCC Rcd at 6751-52, para. 220.

²³ See *id.*, 27 FCC Rcd at 6745, para. 207.

²⁴ See *id.*, 27 FCC Rcd at 6754-55, para. 225.

Consistent with the Commission's directive in the *Lifeline Reform Order*, if the Bureau does not act to deny the request within 90 days, subject to the conditions explained above, it will be granted.²⁵

Action by the Chief, Wireline Competition Bureau.

For further information, please contact Jonathan Lechter, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7387 or TTY (202) 418-0484.

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²⁵ *See id.*, 27 FCC Rcd at 6752, para. 221. With respect to those states which have already filed their opt-out requests prior to the release of this public notice and which subsequently amend or re-file their request prior to December 1, 2012, the request will be approved if the Bureau does not act to deny the request within 90 days of the amendment or re-filing date.

INTRODUCTION

The Vermont Department of Public Service (DPS) respectfully requests that the Federal Communications Commission (FCC) grant a permanent waiver to the rules requiring a copy of the Lifeline subscriber's certification and re-certification form be provided to the Eligible Telecommunications Carrier ("ETC") pursuant to 47 C.F.R. §§ 54.407(d), 54.410(b)(2)(ii), 54.401(c)(2)(ii), and 54.410(e). Waiver of the rules is vital to the continuation of the Vermont add-on Lifeline program and is in the best interests of Vermont consumers eligible for participation in this valuable program.

Currently, the Vermont Lifeline program, including the application process and the eligibility guidelines, are governed by 30 Vermont Statutes Annotated § 218. Vermont law in 30 V.S.A. § 218© also establishes a state financial add-on to the federal Lifeline program, which can increase the credit by more than 37% of the federal contribution and can make a significant difference to program enrollees.

Under the process set out in Vermont law, the two state agencies authorized to administer the programs and not the individual ETC's, make eligibility determinations. These state agencies are the Vermont Department of Children and Families (DCF) and the Vermont Department of Taxes (Tax). Certification notifications are disseminated by DCF and Tax to the ETC's, who in turn provide the Lifeline credits to the customers that the state has certified to be eligible. Without a waiver, in order to meet the terms of the Commission's reform order, Vermont would be required to make comprehensive changes to the existing Lifeline process, and this could jeopardize the additional support provided through the Vermont Lifeline program. Of importance to this request for a permanent waiver is the fact that DCF and Tax operate under state statutes that mandate formal privacy protection of individual information collected by each agency.

Below we provide an overview of the Vermont Lifeline certification process. DPS asserts that the continued use of the existing process meets the salient goals of ensuring that:

- ETC's seek reimbursement only for subscribers who have executed a certification form attesting to their compliance with the Lifeline program requirements and
- Subscribers are determined eligible through a verification process based on:
 - a) Participation in a qualifying benefit program that includes a threshold income requirement; or
 - b) Satisfaction of income requirements; and

c) Residence in a household that is not currently receiving a Lifeline benefit.

The DPS believes the process described below meets the requirement of special circumstances that provide a proper basis for the granting of the permanent waiver.

Overview of the Vermont Lifeline Process and Basis for Request for Permanent Waiver Application and Eligibility

Currently, in Vermont, Lifeline benefits are available to any resident of Vermont who applies annually and:

- a) Who meets the means test of eligibility, which includes any individual participating in a qualifying public benefits program;
- b) Who is 65 years of age or older and has a modified adjusted gross income of less than 175 percent of the official poverty line as established by the federal Department of Health and Human Services for a family of two published; or
- c) Who is less than 65 years of age and has a modified adjusted gross income of less than 150 percent of the official poverty line as established by the federal Department of Health and Human Services for a family of two.

All Vermont Lifeline applications are submitted through one of two avenues: to DCF, for subscribers enrolled in a qualifying program, or to Tax, for all other subscribers. DCF and Tax certify applicant eligibility through verification of participation in one of the identified qualifying programs or based on annually reported income for the previous year.

When certification occurs through DCF, DCF staff reviews the application and verifies eligibility utilizing the current DCF database that tracks participation in any of the programs that allow for automatic participation in Lifeline. The DCF system contains the records of all Lifeline subscribers and eliminates the possibility for duplication of benefits. No less than twice a week, DCF provides a list of subscriber additions, deletions, or changes to the ETCs that enable the ETCs to identify the subscriber and make necessary changes to the individual accounts. The ETC is then required to provide a reply report to DCF which identifies all additions, deletions and changes to subscriber accounts. This process is repeated by both DCF and the ETCs on a quarterly and annual basis, allowing the verification process to be an ongoing practice.

When certification occurs through Tax, the process is identical to the one described above, with two additional step. Tax verifies the income of the applicant and then submits that information to DCF. All applications are retained by DCF.

During the course of the Vermont certification process, the information collected through the application process by both DCF and Tax is considered confidential information and current state law prohibits DCF and Tax from sharing this information with the ETCs.¹ In addition to the subscriber's confidential information, confidential information on others in the household, including the subscriber's spouse or civil union partner is also collected. All information collected by the two state agencies must be handled under strict confidentiality of guidelines to ensure security of information and to prevent any unnecessary or unauthorized transmittal of personal information, such as name, date of birth and social security number, which could be used to perpetuate fraud, among other crimes.

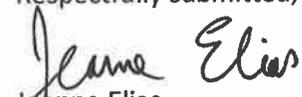
The public interest of Vermonters would best be served by a waiver of the Commission's rule. The waiver will allow the uninterrupted continuation of the current process in Vermont, which has been demonstrated over a number of years to be successful in providing this valuable telephone service to eligible subscribers, while eliminating fraud and duplication of service, and also allowing Vermont subscribers to continue to benefit from the state add-on program.

CONCLUSION

The Vermont Department of Public Service asserts that the Vermont process meets all of the objectives of the federal program. Based on the foregoing reasons we respectfully request that this waiver petition be granted. Vermont has implemented the Lifeline program in the state since 1985, ensuring a process that provides this valuable federal benefit to eligible subscribers, provides support in excess of the federal telephone service credit in the form of the Vermont add on, all while safeguarding against fraud and abuse of the program, the same principles the Commission seeks to achieve through the reform and modernization of Lifeline.

¹ 33 V.S.A. §111 for DCF and 32 V.S.A. §5901 for the Department of Taxes.

Respectfully submitted,


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