

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: June 1, 2020**

**Released: June 1, 2020**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. The coronavirus COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.<sup>1</sup> Efforts to slow the spread of the disease have resulted in the dramatic disruption of many aspects of Americans’ lives, including social distancing measures to prevent person-to-person transmission that have required the closure of businesses across the country for indefinite periods of time. At the same time, people are turning to telemedicine, telework, and online learning to enable social distancing measures, which has increased the importance of access to affordable communications services for low-income consumers, especially those residing in rural areas on Tribal lands.

2. The Wireline Competition Bureau issues this Order to ease the Lifeline program application and enrollment process during the COVID-19 pandemic for those consumers who reside in rural areas on Tribal lands and qualify for Lifeline benefits. During the Lifeline application process, if a consumer’s application fails an automated check used to confirm the consumer’s qualification for the Lifeline program (e.g., to confirm their identity or their eligibility as a low-income consumer), they must submit supporting documentation to complete their application prior to receiving Lifeline-supported service.<sup>2</sup> In light of the unique challenges facing consumers in rural Tribal areas during the coronavirus pandemic, the Bureau, on its own motion, temporarily waives through August 31, 2020 the requirement that such consumers provide the necessary documentation to correct an automated check failure(s) prior to receiving their Lifeline-supported service.<sup>3</sup> Instead, a Lifeline provider may choose to immediately begin providing the consumer with Lifeline-supported service, and the consumer will have 45 days from the time of application to provide such documentation and prove their eligibility. We note that a Lifeline provider that chooses to provide service to a consumer in a rural Tribal area pursuant to this waiver may not claim that subscriber for reimbursement from the Universal Service Fund until the subscriber has submitted the necessary documentation and received a positive eligibility determination (in which case, the provider may claim Lifeline support for up to 45 days of service provided prior to the eligibility determination). We believe that this approach will help eligible consumers who reside in rural areas on Tribal lands safely and successfully complete the Lifeline enrollment process and quickly get connected

<sup>1</sup> See Centers for Disease Control and Prevention, Coronavirus (COVID-19) (last visited May 26, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

<sup>2</sup> See 47 CFR § 54.410(a) (prohibiting eligible telecommunications carriers from activating a consumer’s Lifeline service until the consumer has completed the eligibility verification and enrollment processes); 47 CFR § 54.409 (establishing criteria for consumer qualification for Lifeline).

<sup>3</sup> See 47 CFR § 54.410(a).

to vital broadband and phone services during the unprecedented COVID-19 crisis without creating incentives for Lifeline providers to enroll ineligible subscribers in the program.

3. In light of the ongoing coronavirus pandemic, we also extend our prior waivers of the Lifeline program's recertification, reverification, general de-enrollment, usage requirements, and income documentation requirements through August 31, 2020.<sup>4</sup> We will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate.

## II. BACKGROUND

4. 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.<sup>5</sup> A consumer can demonstrate their eligibility for the Lifeline program by either showing that they participate in one of the Lifeline qualifying programs, such as Medicaid or the Supplemental Nutrition Assistance Program, or by showing that their household income is at or below 135% of the federal poverty guidelines.<sup>6</sup> The Lifeline program is administered by the Universal Service Administrative Company (USAC), which operates the Lifeline National Eligibility Verifier (National Verifier) to make subscriber eligibility determinations and the National Lifeline Accountability Database (NLAD) to prevent duplicative Lifeline support and establish the subscriber lists for which providers can claim Lifeline support.<sup>7</sup> Under the Commission's rules, Lifeline providers can only claim reimbursement from the Lifeline program for service provided to actual qualifying low-income consumers after the consumer has completed the eligibility determination and enrollment processes.<sup>8</sup> During the eligibility determination and enrollment processes, the National Verifier and NLAD will conduct automated checks to confirm an applicant's qualification for the program, and in particular, an applicant's identity, address, eligibility as a qualifying low-income consumer, and status as an independent economic household.<sup>9</sup> If the applicant does not pass those automated checks, they must submit documentation to confirm their identity, address, eligibility, or status as an independent economic household.<sup>10</sup>

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<sup>4</sup> See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-285 (WCB Mar. 17, 2020) (*First Lifeline Waiver Order*) (temporarily waiving Lifeline recertification and reverification requirements); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-354 (WCB Mar. 30, 2020) (*Second Lifeline Waiver Order*) (temporarily waiving Lifeline usage and general de-enrollment requirements and directing USAC to suspend periodic reviews); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-462, (WCB Apr. 29, 2020) (*Third Lifeline Waiver Order*) (temporarily waiving three-month documentation requirement for subscribers to demonstrate income eligibility).

<sup>5</sup> 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*).

<sup>6</sup> See 47 CFR § 54.409(a)-(b).

<sup>7</sup> 47 CFR §§ 54.404, 54.407(a), 54.410, 54.702(a).

<sup>8</sup> 47 CFR §§ 54.407(a), 54.410(a).

<sup>9</sup> A consumer is eligible for Lifeline only if no one in the consumer's household is already subscribed to a Lifeline service. 47 CFR § 54.409(c). If a Lifeline applicant's address is already listed as the address of an existing Lifeline subscriber, the applicant must complete the One-Per-Household Worksheet to confirm that they are in an independent economic household from any existing Lifeline subscriber. See 47 CFR § 54.410(g); USAC, What is a Household?, <https://www.lifelinesupport.org/do-i-qualify/what-is-a-household/> (last visited May 26, 2020).

<sup>10</sup> See USAC, Prove My Identity, <https://www.lifelinesupport.org/how-to-get-lifeline/prove-my-identity/> (last visited May 26, 2020); USAC, How to Prove Participation, <https://www.lifelinesupport.org/do-i-qualify/how-to-prove-participation/> (last visited May 26, 2020); USAC, How to Prove Income, <https://www.lifelinesupport.org/do-i-qualify/how-to-prove-income/> (last visited May 26, 2020).

5. Under section 54.410(a) of the Commission's rules, a Lifeline provider is prohibited from providing Lifeline service to, or claiming Lifeline reimbursement for, a consumer until the consumer is confirmed to be a qualifying low-income consumer and has completed the entire eligibility determination and enrollment processes,<sup>11</sup> including resolving any automated check errors with appropriate documentation. During the social distancing measures implemented in response to the COVID-19 pandemic, Lifeline applicants in remote Tribal lands may find themselves increasingly in need of communications services for online learning, telehealth, and telework, but increasingly unable to submit documentation to dispute automated check errors promptly.

### III. DISCUSSION

6. The Commission's rules may be waived for good cause shown.<sup>12</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>13</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>14</sup>

7. We find that good cause exists to temporarily waive, for consumers residing in rural areas on Tribal lands, the requirement that applicants seeking to qualify for the Lifeline program successfully submit the necessary documentation to correct an automated check error(s) prior to enrolling in the Lifeline program and receiving Lifeline service.<sup>15</sup> To combat the spread of coronavirus, Tribal areas have implemented stay-at-home orders and guidelines on social distancing.<sup>16</sup> The Navajo Nation has even needed to close down essential businesses such as grocery stores and gas stations to help stop the spread of COVID-19.<sup>17</sup> Despite these efforts, some communities in rural areas on Tribal lands have been significantly impacted by the coronavirus.<sup>18</sup> And these efforts have forced many businesses to close, including the retail stores of carriers that assist consumers residing in these areas with uploading documentation during the Lifeline application and enrollment process.<sup>19</sup> Moreover, other methods of submitting documentation, such as using the National Verifier's online portal or sending documents by

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<sup>11</sup> 47 CFR § 54.410(a).

<sup>12</sup> 47 CFR § 1.3.

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>15</sup> 47 CFR § 54.410(a).

<sup>16</sup> See, e.g., Public Health Emergency Stay at Home (Shelter in Place) Order for All Residents of the Navajo Nation for Quarantine and Isolation Purposes to Limit the Spread of COVID-19 (Mar. 20, 2020), <https://www.navajonnsn.gov/News%20Releases/NNDOH/2020/March/NDOH%20Public%20Health%20Emergency%20Order%202020-004%20Dikos%20Ntsaaigii-19.pdf>; Oglala Sioux Tribe Orders 72-Hour Lockdown After COVID-19 Cases Emerge on Reservation (May 12, 2020), <https://www.thedailybeast.com/ogla-sioux-tribe-orders-72-hour-lockdown-after-covid-19-cases-emerge-on-reservation>.

<sup>17</sup> Public Health Emergency Order Locking Down the Navajo Nation for 57-Hours During the Weekend and Closing Essential Businesses Due to Community Spread of COVID-19 (May 19, 2020), <https://www.navajonnsn.gov/News%20Releases/NNDOH/2020/May/NDOH%20Public%20Health%20Emergency%20Order%202020-011%20Dikos%20Ntsaaigii-19.pdf>.

<sup>18</sup> See Rachel Martin, NPR, *Navajo Nation President Says COVID-19 Has Killed 103* (May 13, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/13/855419230/navajo-nation-president-says-covid-19-has-killed-103>.

<sup>19</sup> Letter from David LaFuria and Steven Chernoff, Counsel for Smith Bagley, Inc. (SBI) to Ajit Pai, Chairman, FCC, at 3 (Mar. 24, 2020), <https://ecfsapi.fcc.gov/file/103242293100795/2020%200324%20SBI%20ex%20parte%20letter%20re%20COVID-19%20relief%20FINAL.pdf> (noting that SBI has been forced to close all of its storefronts due to the coronavirus).

mail, may also be more difficult to use in remote areas with lower residential broadband adoption rates and postal delivery to community buildings instead of residences. In particular, many rural areas on Tribal lands do not have standard postal addressing systems in place, which can require consumers to travel long distances to send and retrieve their mail.<sup>20</sup> In addition, consumers in some of these areas lack electricity,<sup>21</sup> which can be another obstacle to submitting documentation. Smith Bagley, Inc., a Lifeline service provider for subscribers residing in rural areas on Tribal lands, has previously noted the difficulties in obtaining documents from consumers due to the need to travel large distances and the absence of road infrastructure in some areas.<sup>22</sup> In short, consumers residing in rural areas on Tribal lands, who already face difficulties in submitting documentation given the issues with postal delivery on Tribal lands, lack of electricity, absence of road infrastructure, and remoteness of their location now must also face the challenges brought by the spread of COVID-19. Increased social distancing efforts are necessary to avoid person-to-person interactions and stop the spread of the coronavirus, and those efforts are underway across the country. Yet consumers residing in rural areas on Tribal lands may face unique obstacles in establishing their eligibility for Lifeline through documentation without having such in-person contacts.<sup>23</sup>

8. Accordingly, we waive our rules until August 31, 2020 to ease the enrollment process for consumers residing in rural areas on Tribal lands seeking to qualify for the Lifeline program even if those consumers have pending automated check failures for which they need to submit documentation to confirm their identity, address, eligibility, or status as an independent economic household.<sup>24</sup> Specifically, a Lifeline provider may choose to immediately begin 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, and the consumer will have 45 days from the time of application to provide such documentation. If the consumer is unable to provide documentation to resolve the automated check error(s) by the end of the 45-day period and therefore has not proven their eligibility (i.e., received a positive eligibility determination) even with the additional time provided by this Order, the consumer will no longer be able to receive Lifeline service. Consumers residing in rural areas on Tribal lands must still meet the eligibility requirements for the Lifeline program, but our action today allows Lifeline providers to quickly provide those consumers with Lifeline access without the need for consumers to perform in-person interactions to provide documentation at the time of application. This waiver serves the public interest by enabling the Lifeline program to reach consumers in rural areas on Tribal lands that need it most while also allowing these consumers to safely obtain Lifeline benefits during the coronavirus pandemic.

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<sup>20</sup> Letter from David LaFuria and Steven Chernoff, Counsel for Smith Bagley, Inc. to Marlene Dortch, Secretary, FCC, at 2 (Mar. 26, 2019), <https://ecfsapi.fcc.gov/file/1032752454908/2019%200326%20SBI%20FCC%20National%20Verifier%20Letter%2011-42%20FINAL.pdf>.

<sup>21</sup> *Id.* at 1-2.

<sup>22</sup> Letter from David LaFuria and Steven Chernoff, Counsel for Smith Bagley, Inc. to Marlene Dortch, Secretary, FCC, at 1-2 (Mar. 9, 2018), [https://ecfsapi.fcc.gov/file/103091705523523/2018%200309%20SBI%20ex%20parte%20letter\\_FINAL.pdf](https://ecfsapi.fcc.gov/file/103091705523523/2018%200309%20SBI%20ex%20parte%20letter_FINAL.pdf).

<sup>23</sup> Letter from President Jonathan Nez to Chairman Ajit Pai, at 1 (Mar. 27, 2020), <https://ecfsapi.fcc.gov/file/10401600106488/2020%200331%20President%20Nez%20letter%20to%20FCC%20re%20Lifeline%20services.pdf> (requesting that the FCC suspend any in-person requirements for Lifeline enrollment, including presenting documentation of Lifeline eligibility).

<sup>24</sup> In California and Texas, where a state administrator determines the eligibility of Lifeline applicants residing on Tribal lands, we direct Lifeline providers to continue to follow the rules and guidance established by those state administrators, and encourage those state administrators to implement the flexibility discussed in this waiver for those demonstrating eligibility through income.

9. We therefore waive, through August 31, 2020, section 54.410(a) of the Commission's rules to permit Lifeline providers to begin providing Lifeline-supported service to applicants residing in rural areas on Tribal lands even if the applicant has not yet provided documentation to resolve an automated check failure(s).<sup>25</sup> However, we note that we do not waive section 54.407(a)'s requirement that Lifeline providers may only claim reimbursement for actual qualifying low-income customers.<sup>26</sup> Under this waiver, Lifeline providers may begin providing Lifeline service to a consumer residing in a rural area on Tribal lands immediately after the consumer submits a Lifeline application and for 45 days thereafter notwithstanding any unresolved eligibility check failures, but the provider may not claim that subscriber for reimbursement until the subscriber has completed their application (i.e., submitted the necessary documentation to correct an automated check failure(s)) and received a positive eligibility determination. For those subscribers whose eligibility is ultimately confirmed in the Lifeline application process, the provider may then claim Lifeline support for up to 45 days of service provided prior to the eligibility determination. In short, under this waiver, Lifeline providers bear the risk of providing service to a consumer who has yet to receive a positive eligibility determination during the 45-day period and for this reason, a Lifeline provider's decision to provide service pursuant to this waiver is entirely voluntary. We believe that this approach appropriately balances the need to ease the Lifeline application and enrollment process for consumers in rural Tribal areas during the pandemic with the need to ensure that Lifeline funding is directed toward actual qualifying low-income consumers and to avoid incentivizing Lifeline providers to enroll ineligible subscribers in the program.

10. To identify rural areas on Tribal lands under this Order, we adopt the definition of "rural" used in the E-Rate program rules, which define "urban" as "an urbanized area or urban cluster area with a population equal to or greater than 25,000." All other areas shall be considered "rural" for purposes of implementing this temporary waiver.<sup>27</sup> Using the same definition of "rural" as used in the E-Rate program will help readily identify the rural areas on Tribal lands where low-income consumers are most likely to be facing barriers to completing the Lifeline enrollment process. Further, this definition allows USAC to apply and make available its existing materials to help providers and consumers identify the areas eligible for relief under this waiver, thereby facilitating the efficient administration of this waiver.

11. We direct USAC to make any necessary Lifeline system changes to allow a consumer residing in rural areas on Tribal lands to become temporarily eligible for Lifeline benefits even if the consumer has not yet provided the documentation needed to dispute the automated check errors discussed above. However, if the consumer does not submit the necessary documentation by the end of the 45-day period, we direct USAC to de-enroll the consumer from the Lifeline program. We also direct USAC to develop and make available a tool in the NLAD that will allow Lifeline service providers to determine whether a consumer resides in rural areas on Tribal lands under this Order.

12. Finally, we also extend our recent waivers of the Lifeline program's recertification, reverification, general de-enrollment, usage requirements, and three-month documentation requirements for income verification through August 31, 2020.<sup>28</sup> The circumstances necessitating those prior waivers have not changed, and 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.

13. Extension of the waiver of the recertification and 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 Verifier during the waiver period. Because the National Verifier sends

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<sup>25</sup> See 47 CFR § 54.410(a).

<sup>26</sup> See 47 CFR § 54.407(a).

<sup>27</sup> 47 CFR § 54.505(b)(3).

<sup>28</sup> *Second Lifeline Waiver Order*, at 3-5, paras. 7-11.

recertification notices to subscribers 90 days prior to their anniversary dates, this waiver will impact Lifeline subscribers with anniversary dates that fall on or between April 14, 2020 and November 29, 2020. Similarly, USAC also 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 August 31, 2020. We also direct USAC to not open any new reverification documentation requests on or before August 31, 2020 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

14. For the same reasons set forth in our *Second Lifeline Waiver Order*, we similarly extend, through August 31, 2020, our direction to USAC to pause its periodic, targeted reviews to identify and de-enroll ineligible subscribers.<sup>29</sup> USAC should not voluntarily de-enroll any subscriber nor seek additional documentation from an eligible telecommunications carrier or subscriber as part of those reviews until that date.

15. We similarly extend 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 through August 31, 2020.<sup>30</sup> 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.

16. *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 waiver granted 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. 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.

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<sup>29</sup> See *id.* at 4, para. 12.

<sup>30</sup> *Third Lifeline Waiver Order*, at 3-4, paras. 8-10.

**IV. ORDERING CLAUSES**

17. 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)(3), 54.405(e)(4), 54.407(c)(2), 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.

18. 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