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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Lifeline Rulemaking) DOCKET NO. 14-999-06
Docket))
) COMMENTS OF UTAH RURAL
) TELECOM ASSOCIATION ON THE
) PROPOSED RULE AMENDMENTS
) TO UTAH ADMIN. CODE R746-341
)

On February 13, 2014, the Utah Public Service Commission (the “Commission”) issued a Notice of Rulemaking Docket and request for comments regarding proposed amendments to Utah Admin. Code R746-341 (the “Notice”). The draft proposed rule amendments, which address the Lifeline program administration (the “Proposed Rule Amendments”), were attached to the Notice.

Utah Rural Telecom Association (“URTA”) on behalf of its members All West Communications, Inc., Bear Lake Communications, Inc., Carbon/Emery Telcom, Inc., Central Utah Telephone, Inc., Direct Communications Cedar Valley, LLC, Emery Telephone, Manti Telephone Company, Skyline Telecom, South Central Utah Telephone Association, Inc., Strata Networks, and Union Telephone Company, hereby files these comments on the Proposed Rule Amendments. URTA will identify the particular section of proposed Rule

that it has comments on in italics, and will provide its comments on that particular rule section.

I. Definition of Applicant.

R746-341-2. Definitions.

A. *“Applicant”—means an ETC customer who legally resides in an ETC’s service area.*

URTA believes that use of the word “legally” is not required by Federal Lifeline Rules and is confusing. What does it mean to be “legally” residing in the ETC’s service territory? Who is responsible for making that determination? What factors must be reviewed to make such determination? The Applicant must provide a completed application for Lifeline Services. URTA suggests that “legally” be removed from the definition of R746-341.A, and that R746-341.A. be amended to read:

A. *“Applicant”—means an ETC customer who completes an application for Lifeline service.*

URTA believes this definition more accurately describes an “Applicant;” is less confusing; and does not add any unnecessary elements to the definition.

II. Definition of ETC.

R746-341-2 Definitions

B. *ETC – means the eligible telecommunications carrier.*

Although eligible telecommunications carrier has been referred to in R746-341-1, URTA believes that the definition section of the Rule should contain a definition of “Eligible Telecommunications Carrier.” Therefore, URTA suggests that R746-341-2.B be amended to read:

B. *“Eligible Telecommunications Carrier” or “ETC”—means*

telecommunications corporations that are designated as eligible telecommunications carriers by the Commission or Federal Communications Commission (FCC) pursuant to Section 214 of the Federal Communications Act (47 U.S.C. §214).

URTA believes that the addition of FCC is necessary in the event that a carrier not under state jurisdiction is designated as an ETC (i.e., VoIP provider).

III. Definition of Lifeline.

R.746-341-2 Definitions

F. “Lifeline” – means either federal or state programs defined by Section 214 of the Federal Communications Act and this rule.

URTA believes that this definition needs to be amended because 47 USC Section 214 does not define “Lifeline”. Rather, Lifeline is defined in the Federal Regulations, 47 CFR 54.401 as:

§ 54.401 Lifeline defined.

- (a) As used in this subpart, Lifeline means a non-transferable retail service offering:
- (1) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and
 - (2) That provides qualifying low-income consumers with voice telephony service as specified in § 54.101(a). Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

URTA suggests that R746-341-2.F be amended to read:

F. “Lifeline” – means either the federal program defined by 47 CFR 54.401, or the state program defined in Commission Rule R746-341-6.

IV. Additional Definitions.

URTA believes that the definition section of R746-341-2 should contain additional

definitions for “household” and “National Lifeline Accountability Database or NLAD,” that are consistent with Federal definitions. In particular, URTA suggests the following language:

“Household”—means any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians, as defined in 47 CFR §54.400(h).

“National Lifeline Accountability Database” or “NLAD” – means an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Federal Communications Commission, as defined in 47 CFR§54.400(i).

V. Modifications to Initial Program-Based Criteria.

R746-341-3.A

A. Initial Program-Based Criteria—An ETC shall provide Lifeline telephone service to any Applicant who using an approved application form either self-certifies, under the penalty of perjury (in the case of a Federal ETC), or is verified by a responsible agency (in the case of a State ETC) that the Applicant’s household is eligible for public assistance under one of the following or its successor programs:

- 1. Medicaid;*
- 2. Supplemental Nutrition Assistance Program (Food Stamps or SNAP);*
- 3. Supplemental Security Income (SSI);*
- 4. Federal Public Housing Assistance (Section 8);*
- 5. Low-Income Home Energy Assistance Program (LIHEAP);*
- 6. Temporary Assistance to Needy Families (TANF);*
- 7. National School Lunch Program's Free Lunch Program;*
- 8. Bureau of Indian Affairs General Assistance;*
- 9. Tribally-Administered Temporary Assistance for Needy Families (TTANF);*
- 10. Food Distribution Program on Indian Reservations (FDPIR); or*
- 11. Head Start (if income eligibility criteria are met).*

This proposed language does not appear to be consistent with the federal rules. First, self-certification for initial enrollment is not an option, regardless of whether the Applicant

chooses a Federal ETC or a State ETC. 47 CFR§54.410(c)(ii)(B) specifically states: "If an eligible telecommunications carrier cannot determine a prospective subscriber's program-based eligibility for Lifeline by accessing eligibility databases, the eligible telecommunications carrier **must review documentation demonstrating that a prospective subscriber qualifies** for Lifeline under the program-based eligibility requirements."

Therefore, the proposed language of R746-341-3.A must be changed. Initial program based eligibility must be verified either by accessing eligibility databases, or review of the documentation demonstrating Applicant qualification. Regardless of whether the Applicant is applying for Lifeline with a Federal ETC or a State ETC, program-based eligibility must be verified by either accessing the eligibility databases, or reviewing of appropriate documentation demonstrating qualification. Does this rule contemplate a different process for Federal ETCs and State ETCs? Is this rule proposing that this initial program-based eligibility be determined, in the case of a Federal ETC, by the Federal ETC, and in the case of a State ETC, by the responsible agency? Or is this rule contemplating that Federal ETCs can rely on self-certification without verification of documentation? Reliance on self-certification is not permitted under the Federal rules (47 CFR§54.410(c)(ii)(B)), so if that is the intent, this rule must be changes.

Additionally, Rule R746-341-4 seems to provide that the initial eligibility shall be determined by or verified by the responsible agency. Is there a distinction between initial eligibility determination and verification of initial eligibility? Or are they the same thing? If they are the same thing, it would appear that under R746-341-4, the responsible agency is verifying all initial eligibility, is that correct? R746-341-3 and R746-341-4 need to be consistent.

Finally, under federal rule 54.409(b), BIA General Assistance, Tribal TANF, FDPIR, and Head Start (only those households meeting its income qualifying standard) are only eligibility criteria for residents of federally-recognized Tribal lands. The language contained in the proposed rule seems to be saying that in Utah, anyone can qualify for Lifeline if they participate in one of these programs, rather than just those residents of federally-recognized Tribal land. If that is not the intent, the rule should specify that BIA General Assistance, Tribal TANF, FDPIR, and Head Start (only those households meeting its income qualifying standard) programs are only eligibility criteria for residents of federally-recognized Tribal lands.

URTA suggests that R746-341-3.A. be modified as follows:

A. Initial Program-Based Criteria – An ETC shall provide Lifeline telephone service to any Applicant who completes an approved application form, and whose program-based eligibility is determined by accessing eligibility databases or reviewing documentation to confirm that the Applicant’s household is eligible for public assistance under one of the following or its successor programs:¹

1. Medicaid;
2. Supplemental Nutrition Assistance Program (Food Stamps or SNAP);
3. Supplemental Security Income (SSI);
4. Federal Public Housing Assistance (Section 8);
5. Low-Income Home Energy Assistance Program (LIHEAP);
6. Temporary Assistance to Needy Families (TANF);
7. National School Lunch Program's Free Lunch Program;

Residents of federally-recognized Tribal lands may qualify for Lifeline if they meet the income guidelines, participate in any of the above programs, or if they participate in one of the following or its successor programs:

1. Bureau of Indian Affairs General Assistance;
2. Tribally-Administered Temporary Assistance for Needy Families (TTANF);
3. Food Distribution Program on Indian Reservations (FDPIR); or
4. Head Start (if income eligibility criteria are met).

VI. Modifying Eligibility Certification.

¹ Depending on the procedure desired, this verification can be completed by the responsible agency or the Federal ETC.

R746-341-3.C Eligibility Certification—The application form for participating will be supplied by the ETC or the responsible agency and shall be consistent with both the federal requirements then in effect and the following state requirements:

- 1. complete information for both the Applicant and qualifying household member, if the qualifying household member is different than the Applicant, including:
 - a. full Social Security Number(s);*
 - b. mailing and physical addresses;*
 - c. relationship between Applicant and qualifying household member;*and
 - d. a statement, under the penalty of perjury, as to whether the person is participating in one of the programs listed in Subsection R746-341-3 or other federal eligibility criteria; or a statement, under the penalty of perjury, as to whether the person's household income is at or below 135 percent of the current Federal Poverty Guidelines.*
 - e. If qualified by income-based criteria, a statement, under penalty of perjury, that identifies the number of individuals residing in the household and affirms that the documentation presented to support eligibility accurately represents the Applicant's household income.*
 - f. signature of Applicant, either physical or electronic.**

The date of birth for the Applicant is also required under 47 C.F.R. §54.410(d)(2)(v), so this should be added to the proposed rule.

VII. Clarification of the Duties of the Responsible Agency.

R746-341-4. Duties of the Responsible Agency.

A. Initial Eligibility

- 1. The responsible agency shall process all applications submitted for participation in the state Lifeline telephone service program. The responsible agency shall inform the Applicant and the ETC of the results of the application process.*
- 2. The responsible agency shall verify the initial eligibility status of all new federal only Lifeline telephone service recipients on a monthly basis and shall inform the ETC of its determination.*

This language is confusing. Does this mean that a Federal ETC can only enroll Lifeline customers once per month after the responsible agency verifies the initial eligibility? Is it the intent of this rule that the responsible agency shall process all applications for initial eligibility

for participation in either state or federal Lifeline telephone service? If so, it is not necessary to distinguish between state and federal ETCs for initial eligibility determination and Sections 1 and 2 above (R746-341-4(A)(1) and (2) can be collapsed into one section. If that is not the case, and a different procedure is contemplated for Federal ETCs and State ETC's the language of this rule and R746-341-3-A need to be revised.

VIII. Annual Eligibility Verification.

R746-341-4.C Annual Eligibility Verification

1. The responsible agency shall verify on an annual basis the continuing eligibility status of both state and federal ETC Lifeline telephone service participants. The annual eligibility verification shall be performed on a participant list current as of December 31, and shall be conducted the following January in place of the normal monthly review of the data submitted.

This language is not consistent with the federal requirements, and this process would require ETCs to manually modify the data to conform to the federal requirements. Federal requirements provide that ETCs are to use the FCC Form 497 February data (which is submitted in either March or April depending on how the ETC files its Form 497) to establish the baseline of subscribers who must be recertified. If the Utah rules require a participant list that is current as of December 31, the ETCs will need to assess which of the December 31 customers de-enrolled prior to the February 497 submission, and then subtract those customers from the December 31 list. This could be burdensome for the ETCs that have multiple Lifeline changes each month.

URTA would suggest that R746-341-4.C(1) be amended to read:

1. The responsible agency shall verify on an annual basis the continuing eligibility status of both state and federal ETC Lifeline telephone service participants. The annual eligibility verification shall be performed on the applicable subscribers who are listed on each ETC's FCC Form 497 February Data, and shall be conducted by March 15th of each year.

As a business rule, the State should require ETCs to submit their data in a format this consistent with the FCC Form 555 which would include the number of subscribers of Lifeline listed on the data month February FCC Form 497 as of December 31, and number of Lifeline subscribers that the ETC added after December 31. The State would then recertify accordingly. It appears that Utah ETCs submit on a monthly basis, so the March 15th deadline should eliminate voluntary de-enrolls and disconnects for failure to pay.

IX. Modification of R746-341-5.

R746-341-5.A (8)

8. Annually the State ETCs shall send the responsible agency a full list of all Lifeline Participants, and qualifying individuals if necessary, current as of December 31 of the current year. The list shall be provided to the responsible agency prior to January 15 of the following year. The list shall contain the full identifying information on each individual as specified in R746-341-3.

For the reasons set forth in Section IX above, URTA suggests that this language should be changed to permit ETCs to use the data submitted to the FCC on Form 497 for the February data month. Specifically, URTA believes this rule should be amended to read as follows:

8. Annually the State ETCs shall send the responsible agency a full list of all Lifeline Participants, and qualifying individuals if necessary, as listed on the ETCs' data month February FCC Form 497. The list shall be provided to the responsible agency within five business days of submitting the FCC Form 497 to USAC, and shall contain the full identifying information on each individual as specified in R746-341-3 and whether the subscriber enrolled prior January 1st of the current calendar year or after January 1st of the current calendar year.

X. Retention of Supporting Documentation.

R746-341-5.B

B. Federal ETCs

1. Each federal ETC shall process only initial applications for new Lifeline service from customers who have not been determined ineligible by the responsible agency. Each Federal ETC shall conduct its initial eligibility verification in accordance with both the federal guidelines and the state requirements. The applications and supporting documentation shall be

retained by the federal ETC in accordance with the federal requirements.

This proposed rule suggests that federal ETCs shall retain supporting documentation. However, under current Federal Rules, 47 CFR Section 54.410 (b)(ii) and (c)(ii), ETCs are prohibited from retaining copies of the documentation of a prospective subscriber's income-based eligibility or program-based eligibility for Lifeline. Rather, ETCs are required to keep and maintain accurate records detailing the data source the carrier used to determine an Applicant's income or program-based eligibility or the documentation the subscriber provided to demonstrate eligibility. In other words, the carrier must keep records of the documents reviewed, but is NOT permitted to keep copies of the documents themselves.

Therefore, URTA believes the proposed rule should be amended to read:

R746-341-5.B

B. Federal ETCs

1. Each federal ETC shall process only initial applications for new Lifeline service from customers who have not been determined ineligible by the responsible agency. Each Federal ETC shall conduct its initial eligibility verification in accordance with both the federal guidelines and the state requirements. The applications and accurate records detailing the data source, the carrier used to determine a subscriber's income- or program-based eligibility, or accurate records detailing the documentation the subscriber provided to demonstrate his or her eligibility for Lifeline shall be retained by the federal ETC in accordance with the federal requirements.

XI. Accessing the National Lifeline Accountability Database.

R746-341-5.B Federal ETCs

2. *Each federal ETC shall check the NLAD to determine if the Applicant, or any member of the Applicant's household, is already receiving a Lifeline Benefit.*

There is no such requirement in the proposed rules for State ETC's or the responsible agency. URTA believes that the NLAD should be checked in all instances (by federal ETCs and State ETCs) to determine if the Applicant or any member of the household is receiving a

Lifeline benefit. Is this rule contemplating that only Federal ETCs will check NLAD? Is it contemplated that the responsible agency will check the NLAD for State ETCs? The rule needs to be drafted to ensure that the NLAD is being checked in all instances.

XII. Failure to Address Contemporaneous Updating of the NLAD for State ETCs

R746-341-5.B

4. Each federal ETC shall contemporaneously update the NLAD to reflect the ETCs initial eligibility verification decision and Participant's Lifeline status.

The proposed rule does not have a similar requirement or procedure for State ETCs.

How is the rule contemplating that NLAD will be updated for State ETCs? Will the State ETCs update NLAD contemporaneously, or will this be completed by the responsible agency? This will need to be addressed in the rules.

XIII. Federal ETC List of Participants.

R746-341-5.B

9. Annually the Federal ETCs shall send the responsible agency a full list of all Lifeline Participants, and qualifying individuals if necessary, current as of December 31. The list shall be provided to the responsible agency prior to January 15 of the following year. The list shall contain the full identifying information on each individual as specified in R746-341-3.

As indicated in Sections VIII and IX above, URTA believes that the deadlines provided in this section of the proposed rule is inconsistent with the Federal requirements and will result in additional work for the ETCs. Specifically, URTA believes the lists should comport with the annual verification timelines of the Federal rules and use Federal Form 497 February Data, rather than December 31.

XIV. Formatting Issues Should Be Resolved.

URTA notes that throughout the proposed rules, there are several formatting inconsistencies. For example, defined terms such as "federal ETC," "state ETC," "participant," and "applicant," are capitalized in some instance and not capitalized in other instances. URTA

believes the rules should be consistent in this regard. Defined terms should either always be capitalized, or never be capitalized.

Additionally, throughout the proposed rules the treatment of numbers is inconsistent. For example, the rules refer to “30 days” and “thirty days”. URTA believes the rules should be consistent in the use of numbers or words to depict numbers.

XV. Conclusion

The URTA members appreciate the opportunity to work with the Commission and the other interested parties in developing rules pertaining to Lifeline services. URTA believes that a technical conference with the interested parties would be beneficial as the next step in this process.

Respectfully submitted this 21st day of March, 2014.

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CERTIFICATE OF SERVICE
Docket No. 10-2528-01

I hereby certify that on the 21st day of March, 2014, I served a true and correct copy of Utah Rural Telecom Association's Comments On the On-Going Administration of the Lifeline Program via e-mail transmission to the Public Service Commission Distribution list in this docket and the following persons at the e-mail addresses listed below:

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