

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

In the Matter of)
) WC Docket No. 11-42
Lifeline and Link Up Reform and)
Modernization)

REQUEST FOR SIX-MONTH EXTENSION OF COVID-19 LIFELINE RELIEF

Smith Bagley, Inc. (“SBI” or “Company”), by counsel and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby seeks a six-month extension of the Lifeline rule waivers currently scheduled to expire September 30, 2021. As described below, COVID-19 case numbers are on the rise again, both in SBI’s service area and across the country. The resulting economic hardships and restrictions on mobility on the Tribal lands that SBI serves in Arizona, New Mexico and Utah continue to present significant obstacles to providing service and complying with the Lifeline rules discussed below. Based on recent reports, the crisis is likely to deepen during the fall and winter months, increasing the need for critical communications and broadband connectivity for remote schooling, telehealth, working from home, and other needs. As a result, SBI requests an extension of these waivers through March 31, 2022.

I. INTRODUCTION

As noted previously, SBI is a facilities-based commercial mobile wireless operator and an eligible telecommunications carrier (“ETC”) in Arizona, New Mexico and Utah.¹ SBI is the

¹ See Request for Six-Month Extension of COVID-19 Lifeline Relief, filed by Smith Bagley, Inc. (June 13, 2021) accessed at <https://www.fcc.gov/ecfs/filing/1061354991311>.

leading provider of Lifeline in its service area, providing Lifeline-supported service to over 60,000 people, more than 50,000 of whom live in low-income households on the Navajo, Hopi, White Mountain Apache, Zuni, and Ramah Navajo Tribal lands. These Tribal areas are large—the Navajo Nation alone covers 27,000 square miles—with sparse populations and limited road infrastructure.

The vast majority of SBI’s subscribers face hardships unknown in most areas of the U.S. – living in remote areas, lacking postal addresses, and oftentimes having to travel long distances to reach mail, shopping, or an SBI store. Most have limited means of transportation and do not have access to Wi-Fi or scanning equipment, making it difficult or impossible to complete forms online or upload documents. A significant portion of SBI’s Lifeline subscribers, upwards of 10,000 households, do not have access to the electrical grid, meaning they must leave their phones switched off for extended periods.

On June 28, 2021, the Wireline Competition Bureau (“Bureau”) extended temporary waivers of the Lifeline program rules governing documentation requirements for subscribers residing in rural areas on Tribal lands – including recertification, reverification, general de-enrollment, and income documentation – through September 30, 2021.² This was the latest

² See *Lifeline and Link Up Reform and Modernization*, Order, DA 21-760, 2021 WL 763665 (WCB rel. June 28, 2021) (“*June Waiver Order*”). The Bureau’s *June Waiver Order* built upon the following prior actions: *Lifeline and Link Up Reform and Modernization*, Order, DA 20-285, (WCB rel. March 17, 2020); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-354 (WCB rel. March 30, 2020) (temporarily waiving Lifeline usage and general de-enrollment requirements and directing the Universal Service Administrative Company (“USAC”) to suspend periodic reviews); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-462 (WCB rel. April 29, 2020) (temporarily waiving the three-month documentation requirement for subscribers to demonstrate income eligibility); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-577 (WCB rel. June 1, 2020) (temporarily waiving documentation requirements for subscribers residing in rural areas on Tribal lands); *Lifeline and Link Up Reform and*

extension of waivers that have been instrumental in assisting SBI in its efforts to keep its customers connected through the pandemic, and to help its employees do their jobs safely. For good cause as set forth below, an additional six-month extension of the waivers set to expire on September 30 is needed.

II. DISCUSSION

A. Health and Economic Impacts of COVID-19 Are Once Again Worsening Across the United States.

After a brief reprieve, COVID-19 is currently seeing a resurgence in virtually every area of the country. Whereas the nationwide percentage of positive COVID-19 tests was 2.5% on June 28, the date of the last order extending Lifeline waivers, that percentage has nearly quadrupled to 9.4%.³ In the month of June, there were 34 COVID-19 cases per 100,000 people; by the end of August, that number had risen nearly tenfold to 328 cases per 100,000, the highest number reported since January 2021.⁴

While vaccinations have protected large swaths of the population from severe illness, such risks remain acute for people who have not received vaccines. With only 53.3% of the U.S.

Modernization, Order, DA 20-891 (WCB rel. Aug. 17, 2020) (extending prior waivers through November 30, 2020); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-1357(WCB rel. Nov. 16, 2020) (extending prior waivers through February 28, 2021); *Lifeline and Link Up Reform and Modernization*, Order, DA 21-229 (WCB rel. Feb. 24, 2021) (extending prior waivers through June 30, 2021).

³ Johns Hopkins University of Medicine Coronavirus Research Center, Daily State-by-State Testing Trends, accessed at <https://coronavirus.jhu.edu/testing/individual-states>.

⁴ Centers for Disease Control and Prevention (“CDC”), Assistant Secretary for Preparedness and Response, Community Profile Report, National and Regional Metrics (September 7, 2021), accessed at <https://healthdata.gov/Health/COVID-19-Community-Profile-Report/gqxm-d9w9>.

population fully vaccinated,⁵ this risk is widespread. Additionally, the continued spread of the virus has enabled variants to develop, including the Delta variant which is estimated to be four times more contagious than the original virus.⁶ Moreover, some people have experienced “breakthrough infections” – COVID-19 infection despite being vaccinated.⁷ Such infections, while representing a relatively small percentage of vaccinated people, can result in transmission to others who are not vaccinated. Because vaccines have not yet been approved for children under 12, school-age children have been particularly vulnerable.⁸ The combination of these and other factors has been an end-of-summer surge and a renewed health crisis.⁹ Moreover, cases and hospitalizations are expected to worsen during the fall and winter.¹⁰ The prospect for

⁵ CDC COVID-19 Data Tracker, COVID-19 Vaccinations in the U.S., *accessed at* https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total.

⁶ Ed Browne, “Delta Variant May Be 4 Times More Infectious Than Original COVID Virus,” *Newsweek* (Sept. 7, 2021), *accessed at* <https://www.msn.com/en-us/health/medical/delta-variant-may-be-4-times-more-infectious-than-original-covid-virus/ar-AAOc7dt?ocid=BingNewsSearch>.

⁷ Teri Sforza, “Breakthrough: When the fully vaccinated get COVID-19 anyway,” *THE MERCURY NEWS* (Sept. 7, 2021), *accessed at* <https://www.mercurynews.com/2021/09/07/breakthrough-when-the-fully-vaccinated-get-covid-19-anyway/>.

⁸ Gregory Barber, “The Delta Variant Is Making Covid a Pandemic of the Young,” *WIRED* (Aug. 30, 2021), *accessed at* <https://www.msn.com/en-us/news/us/the-delta-variant-is-making-covid-a-pandemic-of-the-young/ar-AAANTCdT?ocid=BingNewsSearch>.

⁹ Matthew Perrone and Dee-Anne Durbin, “COVID-19 surge in the US: The summer of hope ends in gloom”, *KXAN* (Sept. 8, 2021), *accessed at* <https://www.kxan.com/news/coronavirus/covid-19-surge-in-the-us-the-summer-of-hope-ends-in-gloom/>

¹⁰ Jon Kamp, Brianna Abbott and Anthony DeBarros, “As a Delta Wave Peaks in Some States, Others Brace for What’s Next,” *THE WALL STREET JOURNAL* (Sept. 8, 2021), *accessed at* <https://www.wsj.com/articles/as-a-delta-wave-peaks-in-some-states-others-brace-for-whats-next-11631107425> (“[P]ublic-health experts said the return of unvaccinated schoolchildren to

worsening spread, as well as the occurrence of outbreaks, has prompted some businesses to roll back planned reopenings.¹¹ And it is reported that more than 1,000 schools across 35 states have shut down in-person learning due to COVID-19 outbreaks.¹²

B. Pandemic Impacts Continue to Be Particularly Severe on Tribal Lands SBI Serves.

As with previous waves of the pandemic over the last eighteen months, Tribal lands have experienced positive COVID-19 tests, serious illness, and deaths at greater rates than the rest of the United States. Native Americans have had more than twice the death rate and 3.5 times the hospitalization rate from COVID-19 compared to white Americans.¹³ The areas in which SBI provides essential Lifeline service have been hit especially hard, because of historical factors such as lack of running water, poor health care service, and crowded multigenerational homes.¹⁴ Across Navajo Nation, the 7-day average of daily new infections has seen a more than

classrooms, cold weather in Northern states and the holiday season could yet give the virus new opportunities to spread.”)

¹¹ Jordan Novet, “Microsoft indefinitely postpones returns to U.S. offices as Covid cases surge,” CNBC (Sept. 9, 2021), *accessed at* <https://www.cnbc.com/2021/09/09/microsoft-indefinitely-postpones-return-to-us-offices.html>; Salvador Rodriguez, “Facebook delays return to office until January 2022 for U.S., some international employees,” CNBC (Aug. 12, 2021), *accessed at* <https://www.cnbc.com/2021/08/12/facebook-delays-return-to-office-until-january-2022-for-us-some-international-employees.html>.

¹² Jeanine Santucci and Grace Hauck, “At least 1,000 schools in 35 states have closed for in-person learning since the start of the school year: COVID-19 updates,” USA TODAY (Sept. 5, 2021), *accessed at* <https://www.usatoday.com/story/news/health/2021/09/05/covid-updates-mu-variant-spreads-hawaii-begs-travelers-stay-away/5735064001/>.

¹³ Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity (updated Sept. 9, 2021), *accessed at* <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

¹⁴ Hailey Sadler and Darian Woehr, “For Navajo, crowded homes have always been a lifeline. The pandemic threatens that.”, THE WASHINGTON POST (Aug. 30, 2021), *accessed at* https://www.washingtonpost.com/opinions/interactive/2021/navajo-pandemic-multigenerational-homes-covid/?tid=usw_passupdatepg.

eightfold increase since the end of June, from an average of 4.8 new infections per day to the current level of 40.6.¹⁵

Due to the new surge in COVID-19 infections, Tribal governments are issuing shelter-in-place advisories, limited capacity requirements, and social distancing measures. The Navajo government has issued an advisory regarding uncontrolled spread of COVID-19 in 36 communities.¹⁶ This is on the heels of a “Safer at Home” order urging residents to remain at home as much as possible to contain viral spread. The order includes masking requirements, social distancing, and limits on the number of people who can gather for various purposes.¹⁷ In many locations where a consumer can obtain eligibility documents, hours are by appointment only, limiting access.¹⁸ Conditions have also worsened on the other Tribal lands that SBI serves, similarly prompting government restrictions. On the White Mountain Apache reservation, the Tribal government has rolled back reopening plans, including the reintroduction of curfews,¹⁹ and directed all schools to provide an online learning option in response to recent outbreaks.²⁰

¹⁵ Navajo Nation COVID-19 Dashboard, *accessed at* <https://www.ndoh.navajo-nnsn.gov/COVID-19/Data>.

¹⁶ See [Health Advisory No. 041 COVID 19 Uncontrolled Spread 8.30.2021.pdf \(navajo-nnsn.gov\)](#).

¹⁷ Navajo Dept. of Health, Public Health Emergency Order No. 2021-019 (Aug. 12, 2021), *accessed at* <https://www.navajo-nnsn.gov/>.

¹⁸ See https://www.socialsecurityoffices.info/details/chinle_social_security_office_86503.

¹⁹ Barbara Bruce, “WMAT goes back to Phase II,” WHITE MOUNTAIN INDEPENDENT (Aug. 24, 2021), *accessed at* https://www.wmicentral.com/news/latest_news/wmat-goes-back-to-phase-ii/article_035bee0d-55f6-5a44-844c-51f0f5dfdc3f.html.

²⁰ Barbara Bruce, “WMAT issues public health notification on schools, White Mountain Independent (Sept. 7, 2021), *accessed at* https://www.wmicentral.com/covid-19/wmat-issues-public-health-notification-on-schools/article_b5065735-2b3d-582b-b7b8-94cc5cd09ed7.html.

The Pueblo of Zuni has similar business and congregation restrictions in place, including shelter-in-place advisories.²¹

C. COVID-19 Has Continued to Severely Impact Lifeline Operations.

Because of the late-summer COVID-19 surge and resulting government advisories and restrictions, it extremely difficult for Lifeline customers to comply with the FCC’s Lifeline documentation rules. Limited ability to travel and restricted access to government offices adversely affects those who would, as a result of the waivers’ expiration, need to provide proof of participation in government aid programs to retain their Lifeline service. As SBI has previously explained, these restrictions disproportionately impact Tribal citizens who often must travel more than 50 miles to reach a government office or SBI retail location.

These challenges continue to be made worse by the lack of essential database connectivity for verifying participation in qualifying programs.²² In Arizona, the National Verifier has the ability to check only two programs via database, as connectivity still has not been secured for the Supplemental Nutrition Assistance Program (“SNAP”) eligibility in that state.²³ With an estimated 25% of Lifeline customers qualifying through participation in

²¹ See, e.g., <https://www.ashiwi.org/COVID19/DailyCovidUpdate9-7-21.pdf>.

²² See USAC Eligibility Verification at, <https://www.usac.org/lifeline/national-verifier/eligibility-verification/>.

²³ In early 2019, USAC confirmed that it was negotiating with local authorities in Arizona to secure National Verifier access to the state database listing SNAP recipients. On information and belief, progress stalled in 2020 as priorities were reallocated during the COVID-19 pandemic. In response to recent inquiries, USAC has stated that it is unable to comment on the status of its discussions with Arizona officials.

SNAP,²⁴ this lack of connectivity means a significant portion of SBI’s customers must demonstrate their eligibility by obtaining documents – sometimes requiring a trip to a government office – and bringing documents to an SBI retail location.

D. Request for Waiver.

The Commission may waive its rules based upon a showing of good cause,²⁵ and it may exercise its discretion to waive a rule where the facts of a particular case support a conclusion that strict enforcement of the rule would not be in the public interest.²⁶ The Commission may also take into consideration, on a case-by-case basis, factors involving equity, hardship, and more effective implementation of overall Commission policy.²⁷ “Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”²⁸

Moreover, the Commission has the authority to carry out its responsibilities by promulgating rules of general application that establish the “public interest” for a broad range

²⁴ See 2021 National Verifier Plan, available at <https://www.usac.org/wp-content/uploads/lifeline/documents/nv/plans/National-Verifier-Plan-%E2%80%93-January-2021-version-1.pdf>.

²⁵ See 47 C.F.R. § 1.3.

²⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“*WAIT Radio*”), *cert. denied*, 409 U.S. 1027 (1972)).

²⁷ See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

²⁸ *Micronesian Telecommunications Corporation and PTI Pacifica, Inc., Request for Waiver of Section 54.418 of the Commission’s Rules*, CC Docket No. 96-45, *DTV Consumer Education Initiative*, MB Docket No. 07-148, DA 08-1029, Order (WCB rel. Apr. 30, 2008), at ¶ 6 n.20 (citing *Northeast Cellular*, 897 F.2d at 1166).

of cases. In adopting these general rules, however, the Commission is not relieved of its obligation to seek to advance the “public interest” in particular, individualized cases. Thus, the Commission’s authority to waive its rules is akin to an obligation, in that this waiver authority is a *sine qua non* to its ability to adopt rules that otherwise are inflexible. This waiver authority is a necessary “safety valve” that makes the system work.²⁹

There is good cause to grant SBI’s request for an extension of the ongoing Lifeline rule waivers through March 31, 2022. As set forth above, the worsening infection rates in SBI’s service areas and across the country have prompted governments to roll back phased reopenings and issue shelter-in-place advisories. Lack of database connectivity means many customers cannot have their program participation checked automatically. If the reverification and recertification rule waivers are allowed to expire September 30, 2021, thousands of Tribal Lifeline subscribers will be required to obtain and provide copies of eligibility documentation in the midst of a pandemic that is unlikely to improve as winter approaches.

1. Reverification.

Currently approximately 2,800 SBI Tribal Lifeline customers continue to be subject to reverification by the National Verifier. To date, USAC has not been able to verify eligibility for these customers in searches of available databases, and as a result they will be required to submit documents demonstrating proof of eligibility within 60 days after the reverification waiver expires. Thus, if the waivers are permitted to expire September 30, these subscribers

²⁹ See *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”).

would face de-enrollment in November or December, after expiration of the relevant notice periods that would commence on October 1, 2021.

Accordingly, the Commission should extend its waiver of the reverification requirement until March 31, 2022. Specifically, the Commission should 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 March 31, 2022.³⁰ The Commission should also direct USAC to not open any new reverification documentation requests on or before March 31, 2022 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

2. Recertification.

The expiration of the recertification rule waiver would mean that a large portion of SBI's already reverified Lifeline customers would face de-enrollment in the first quarter of 2022. USAC begins the recertification process about three months before a customer's anniversary date. If the customer's eligibility cannot be confirmed by database, USAC sends notices giving the customer 60 days within which to submit a completed recertification form, or complete the process by calling into USAC's recertification IVR. If a customer originally qualified by having their eligibility confirmed in a database but they do not pass any database check for recertification, the customer must provide documents to USAC.³¹

When the National Verifier launched, USAC reset the anniversary dates of Lifeline customers to the date the reverification process was completed for a given customer. Due to

³⁰ See *June Waiver Order, supra*, at para. 4.

³¹ 47 C.F.R. § 54.410(f)(3)(iii).

the reverification timeline for New Mexico and Utah (which were in the same batch of states for the National Verifier launch), 37% of SBI's Tribal Lifeline subscribers in those two states have August anniversary dates. In Arizona, 56% of SBI's Tribal Lifeline subscribers have November anniversary dates. Because of the rule change requiring all customers to be recertified each calendar year, the majority of SBI's Lifeline customers will undergo USAC's recertification process soon after the waiver expires.³² And the limited ability to check eligibility via database means thousands of SBI's Lifeline customers will likely have to respond to recertification requests and, in many cases, obtain and return documents needed to prove eligibility. This would mean a significant percentage of otherwise eligible subscribers may be de-enrolled, losing service during a crisis when voice and data connectivity are more essential than ever.

Once de-enrolled, many of these subscribers would lack the ability to re-enroll until the situation eases, perhaps after several more months. In such cases, the inability to re-enroll would have nothing to do with their eligibility for Lifeline, but rather would be a direct result of the restrictions on travel and other activities that were adopted to address the COVID-19 pandemic. Tribal citizens will lose their Lifeline-discounted service, at a time when isolation forces people everywhere to use telecommunications and broadband devices to stay connected.

³² See *June Waiver Order, supra*, at para. 5. With two days remaining in Calendar Year 2021 after December 29, 2021, it is unclear whether USAC will commence the recertification process for 100% of Lifeline customers immediately after September 30 in order to ensure all customers complete the recertification process once during the current calendar year. The requested six-month extension would remove this potential for sudden mass de-enrollment by enabling USAC to conduct a staggered recertification process during the remainder of 2022.

Accordingly, the Commission should extend its waiver of its recertification rules until March 31, 2022. The waiver extension should impact Lifeline subscribers with anniversary dates that fall on or between April 14, 2020 and June 29, 2022.

III. CONCLUSION

For the reasons set forth above, SBI requests a six-month extension of the waivers governing documentation requirements for subscribers residing on Tribal lands it serves, that is, recertification, reverification, general de-enrollment, and income documentation, through March 31, 2022 to prevent eligible consumers from losing critical service during the pandemic.

Respectfully submitted,

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