

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
Requests for Review of Decisions of the Universal )
Service Administrative Company by )
AmeriMex Communications Corp., et al. )
Lifeline Universal Service Support Mechanism )

ORDER

Adopted: August 8, 2024

Released: August 8, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny six requests<sup>1</sup> seeking review of decisions made by the Universal Service Administrative Company (USAC) concerning upward revisions of reimbursement claims related to the Wireline Competition Bureau’s (Bureau) Seventh COVID-19 Waiver Order.<sup>2</sup>

II. BACKGROUND

2. The Lifeline program provides support for communications services provided by eligible telecommunications carriers (ETCs) to qualifying low-income consumers.<sup>3</sup> An ETC may only receive support for the number of actual qualifying low-income consumers it serves.<sup>4</sup> ETCs “must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.”<sup>5</sup> Under sections 54.405 and 54.407 of the Commission’s rules, ETCs may only claim Lifeline

<sup>1</sup> Request for Review by AmeriMex Communications Corp. d/b/a SafetyNet Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (AmeriMex Request for Review); Request for Review by Assist Wireless, LLC, WC Docket No. 11-42 (filed Jan. 12, 2024) (Assist Request for Review); Request for Review by Boomerang Wireless, LLC d/b/a enTouch Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Boomerang Request for Review); Request for Review by Easy Telephone Services Company d/b/a Easy Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Easy Request for Review); Request for Review by Global Connection Inc. of America d/b/a StandUp Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (Global Request for Review); Request for Review by i-Wireless, LLC d/b/a Access Wireless, WC Docket No. 11-42 (filed Jan. 12, 2024) (i-Wireless Request for Review) (collectively, Requests for Review and the requesting parties are referred to herein as Petitioners).

<sup>2</sup> Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Order, 36 FCC Rcd 4448 (WCB 2021) (Seventh COVID-19 Waiver Order).

<sup>3</sup> See 47 U.S.C. § 254(b)(1), (3); 47 CFR § 54.401.

<sup>4</sup> 47 CFR § 54.407(a) (“Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month.”).

<sup>5</sup> 47 CFR § 54.410(a).

support for Lifeline subscribers who do not pay an end-user fee for their service if that subscriber has recently used that service.<sup>6</sup> Section 54.405(e) of the rules requires that when a subscriber who does not pay an end-user fee fails to use their Lifeline service for 30 consecutive days, the ETC must provide the subscriber with a notice period of 15 days to cure their non-usage by using the service or else be de-enrolled.<sup>7</sup> ETCs shall only continue to receive reimbursement for Lifeline service provided to subscribers who do not pay an end-user fee if the subscriber has used the service within the last 30 days or cured their non-usage.<sup>8</sup>

3. In March 2020, the Bureau issued the first in a series of orders waiving certain Lifeline rule requirements in an effort to address the increased importance of access to affordable communications services for low-income households during the COVID-19 pandemic.<sup>9</sup> On March 30, 2020, in its second such order, the Bureau temporarily waived the Lifeline usage requirements to help ensure that no Lifeline subscribers were involuntarily de-enrolled.<sup>10</sup> The Bureau issued its *Seventh COVID-19 Waiver Order* on February 24, 2021.<sup>11</sup> That order declined to further extend the waiver of the non-usage rule.<sup>12</sup> However, to provide an orderly re-start of the non-usage notice process to subscribers, the order “extend[ed] the waiver and require[d] ETCs to send cure notices to subscribers who, as of May 1, 2021, ha[d] not used their service in the previous 30-days.”<sup>13</sup>

4. *Requests for Review.* In April 2022, each Petitioner submitted upward revisions to their April 2021 reimbursement claims to include subscribers who, on May 1, 2021, had not used their service for 30 days and did not cure that non-usage during a subsequent cure period.<sup>14</sup> On May 24, 2022, USAC rejected Petitioners’ upward revisions.<sup>15</sup> On July 25, 2022, Petitioners requested that USAC review its rejections.<sup>16</sup> On November 16, 2023, USAC denied Petitioners’ appeal.<sup>17</sup> On January 12, 2024, Petitioners filed their Requests for Review of USAC’s decision with the Bureau.<sup>18</sup>

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<sup>6</sup> See 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

<sup>7</sup> 47 CFR § 54.405(e)(3).

<sup>8</sup> 47 CFR § 54.407(c)(2).

<sup>9</sup> See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 35 FCC Rcd 2729 (WCB 2020).

<sup>10</sup> *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 35 FCC Rcd 2950, 2950-52, paras. 2, 6-8 (WCB 2020) (*Second COVID-19 Waiver Order*).

<sup>11</sup> *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 36 FCC Rcd 4448 (WCB 2021) (*Seventh COVID-19 Waiver Order*).

<sup>12</sup> *Id.* at 4451, para. 9.

<sup>13</sup> *Id.* at 4451, para. 10.

<sup>14</sup> Requests for Review, at 5. Petitioners’ Requests for Review are largely identical and so citations are the same across all requests, unless otherwise noted. One difference between requests is that only some of the requests identify the specific amount of additional reimbursement sought. See AmeriMex Request for Review, at 5; i-Wireless Request for Review, at 6. For the purposes of this Order, the Bureau did not identify any material differences between the Requests for Review.

<sup>15</sup> Requests for Review, at 1.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> We accept the Requests for Review as filed consistent with Commission rules. See 47 CFR § 54.719. The Bureau has the authority to act on the Requests for Review, where, as is the case here, the request does not raise novel questions of law or fact. 47 CFR § 54.722.

5. In the Requests for Review, Petitioners seek to vacate USAC's denial of Petitioners' requests for upward revisions of their April 2021 Lifeline reimbursement claims.<sup>19</sup> Specifically, Petitioners argue that the final non-usage waiver period announced in the *Seventh COVID-19 Waiver Order* extended through May 1, 2021, and that the non-usage cure period did not begin until May 2, 2021, at the earliest. The Petitioners state that USAC erred when it determined that the non-usage cure period for subscribers who, as of May 1, 2021 had not used their service in the prior 30 days, began on May 1, 2021.<sup>20</sup> Petitioners argue that a plain reading of the *Seventh COVID-19 Waiver Order* demonstrates the relevant waiver period included May 1, 2021 and subscribers who, as of May 1, 2021, had not used their service for the past 30 days were not yet in a non-usage cure period. Therefore, the Petitioners contend that they may claim all subscribers that appeared on the May 1, 2021 snapshot report.<sup>21</sup> Petitioners further claim that under the Commission's computation of time rules and the *2016* and *2019 Lifeline Orders*, since the end of the waiver period included May 1, cure notices were not required to be sent until the following day, May 2, and that the 15 day cure period did not begin until May 3, the day following the day on which cure notices were to have been sent.<sup>22</sup> In addition, Petitioners claim that extending the waiver through May 1, 2021 serves the public interest by giving subscribers an extra day to use their service and avoid improper de-enrollment.<sup>23</sup> Finally, Petitioners contend that "several major Lifeline providers" claimed and received April 2021 reimbursements based on the May 1, 2021 snapshot and had not had their reimbursements rescinded, although Petitioners do not provide further support for this claim.<sup>24</sup>

### III. DISCUSSION

6. We deny the Petitioners' Requests for Review and affirm USAC's decision to deny Petitioners' request for upward revisions of their April 2021 reimbursements. We find that permitting Petitioners to make the requested upward revisions would violate the Commission's rules by providing reimbursement for Lifeline subscribers who did not pay an end-user fee for their service and who failed to use their Lifeline service for at least 30 days prior to the end of the waiver and during the 15-day cure period that began on May 1, 2021.

7. We reject Petitioners' first argument that a plain reading of the *Seventh COVID-19 Waiver Order* demonstrates that the earliest date the cure period could have started for impacted subscribers was on May 2, 2021.<sup>25</sup> To the contrary, the order was clear that the non-usage cure period was to begin on May 1, 2021. Specifically, when the order stated that we "require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the *previous* 30-days,"<sup>26</sup> the Bureau plainly meant that the 30 day period during which subscribers could have demonstrated usage

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<sup>19</sup> Requests for Review, at 1.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 7-9. Generally, "[ETCs] must rely on the plain language of the non-usage rules, as codified by the Commission, which state that ETCs will not be eligible to be reimbursed for those subscribers who are in a 15-day non-usage cure period regardless of whether the subscriber's 15-day cure period includes the snapshot date." *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10937-38, para. 120 (2019) (*2019 Lifeline Reform Order*).

<sup>22</sup> Requests for Review, at 8-12.

<sup>23</sup> *Id.* at 8-9, 13-14.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 8-9.

<sup>26</sup> *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 (emphasis added).

ended the day before May 1 (on April 30), and therefore the waiver would not extend into the month of May, and the cure period for those subscribers would begin May 1.<sup>27</sup>

8. We further reject Petitioners' argument that providers were not required to send non-usage cure notices to subscribers until the following day, May 2, and that the 15-day cure period could not start until May 3.<sup>28</sup> First, this argument is built on the faulty premise that subscribers had not already entered their cure period as of May 1. There is no Commission rule or discussion to support this conclusion in this context. To the contrary, the *2019 Lifeline Reform Order* explained that "ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage."<sup>29</sup> The *Seventh COVID-19 Waiver Order* "require[s] ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days."<sup>30</sup> The "previous 30-days," as of May 1, included the days of April 1 through April 30, 2021. The 30<sup>th</sup> day of non-usage in that scenario is April 30. Thus, because the *2019 Lifeline Reform Order*, requires notice to be sent, at the latest, "on the 30th day of non-usage," in this scenario the notice should have been sent on April 30. Second, Petitioners' approach would impermissibly provide subscribers with 47 days to cure non-usage. As Petitioners note,<sup>31</sup> Lifeline orders have clarified that subscribers have 45 days to demonstrate usage (30 during the non-usage period and 15 during the cure period).<sup>32</sup> But Petitioners would provide subscribers an initial 31 days of non-usage (April 1 through May 1), another day on which the ETC would send notice (May 2), and then 15 days to respond and cure their non-usage (May 3 through May 17). Petitioners' approach impermissibly gives subscribers 47 days to demonstrate usage, rather than, as the rules require, only "a total of 45 days in which to demonstrate 'usage.'"<sup>33</sup>

9. In addition, we reject Petitioners' application of the Commission's computation of time requirement that when interpreting a rule and "computing a period of time the last day of such period of time is included in the computation."<sup>34</sup> Petitioners interpret the language in the *Seventh COVID-19 Waiver Order* stating the Bureau would "require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days,"<sup>35</sup> to mean the waiver period must include

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<sup>27</sup> Petitioners note that "[p]revious COVID-19 waiver orders had set the waivers to expire as of the end of a month (e.g., August 31, 2020; November 30, 2020)." Requests for Review, at 9-10 (citations omitted). This fact actually bolsters our reading that the non-usage period permitted under the *Seventh COVID 19 Waiver Order* was similarly set to expire at the end of the month on April 30, and impacted subscribers would enter their cure period on May 1, along with receiving their notices of potential de-enrollment. The order does not indicate an intention to break with past practice or otherwise indicate that the Bureau "took a different approach" with the *Seventh COVID-19 Waiver Order*. *Id.*

<sup>28</sup> *See id.* at 8, 10-12.

<sup>29</sup> *See, e.g., 2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116 (emphasis added).

<sup>30</sup> *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10.

<sup>31</sup> Requests for Review, at 10-11 & n.37.

<sup>32</sup> *See 2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116 ("ETCs must notify subscribers of possible de-enrollment on the 30th day of non-usage and de-enroll the subscriber if, during the subsequent 15 days, the subscriber has not used the service."); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4115, para. 415 (2016) (*2016 Lifeline Reform Order*) ("In this way, the subscriber will have a total of 45 days in which to demonstrate 'usage.'").

<sup>33</sup> *2016 Lifeline Reform Order*, 31 FCC Rcd at 4115, para. 415.

<sup>34</sup> Requests for Review, at 12 (quoting 47 CFR § 1.4(d). *See also* 47 CFR § 1.4(c) ("Unless otherwise provided, the first day to be counted when a period of time begins with the occurrence of an act, event or default is the day after the day on which the act, event or default occurs.")).

<sup>35</sup> *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10.

May 1 and cure notices need not be sent until May 2.<sup>36</sup> However, the order does not state that the waiver ends on May 1. It makes clear that the cure period begins on May 1.<sup>37</sup> The rule cited by petitioners is inapposite because the waiver is not stating when a period of time is ending, it is stating when a new one is beginning (that is, the cure period begins on May 1). Furthermore, as discussed, the *2019 Lifeline Reform Order* has provided specific guidance on the timing for interpreting the non-usage rule and when such non-usage notices are to be sent, which is on the 30<sup>th</sup> day of non-usage.<sup>38</sup>

10. We also reject Petitioners' next contention that public policy supports their interpretation.<sup>39</sup> Petitioners are correct that during the initial portion of the pandemic there was a public interest in "subscribers receiv[ing] the full time provided to use their Lifeline service and the full cure period to avoid being unnecessarily de-enrolled" at the end of the waiver period.<sup>40</sup> However, that public interest does not warrant the relief requested by Petitioners. Petitioners are seeking to allow providers to claim Lifeline support for subscribers subject to the non-usage rule who failed to use their service for *more* than the full time provided by the Commission's rules and order, after the rule had already been waived for almost a full year.<sup>41</sup> Public policy does not support wasteful spending of limited public funds on communications services that go unused and therefore do not benefit any subscriber. As explained in the *Seventh COVID-19 Waiver Order*, as the length of the waiver increased, so too did the likelihood that that universal service funding was being disbursed for connections that had not been used.<sup>42</sup> In fact, various states raised concerns during the waiver period—which lasted approximately one year—that extending the waiver further would result in needless expenditures.<sup>43</sup> Thus, the Commission had a strong interest in protecting the success and integrity of the Lifeline program and ending disbursements for unused service as soon as it deemed the waiver was no longer necessary to support the unique connectivity needs that occurred during the initial portion of the COVID-19 pandemic, finding that "extension after an almost year-long waiver of the rule will only result in further disbursements being used to support a service that no one is using."<sup>44</sup> Additionally, the Bureau reminded ETCs to inform subscribers about the implications of non-usage long before the waiver at issue ended in order to decrease the likelihood of subscribers being unnecessarily de-enrolled.<sup>45</sup> This suggests that few, if any, subscribers would be de-enrolled due to confusion about whether a cure period ended on May 15 rather than May 17.

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<sup>36</sup> Requests for Review, at 12.

<sup>37</sup> *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 ("[W]e extend the waiver and require ETCs to send cure notices to subscribers who, as of May 1, 2021, have not used their service in the previous 30-days.").

<sup>38</sup> See *2019 Lifeline Reform Order*, 34 FCC Rcd at 10936, para. 116.

<sup>39</sup> See Requests for Review, at 8-9, 13-14.

<sup>40</sup> *Id.* at 13.

<sup>41</sup> Not following the proper application of the non-usage requirements without good cause would also undermine the purpose of the rules. See, e.g., *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6769, para. 258 (2012) (*2012 Lifeline Reform Order*) ("Adopting usage requirements should reduce waste and inefficiencies in the Lifeline program by eliminating support for subscribers who are not using the service and reducing any incentives ETCs may have to continue to report line counts for subscribers that have discontinued their service.").

<sup>42</sup> *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See, e.g., *2012 Lifeline Reform Order*, 27 FCC Rcd at 6769, para. 257 ("Moreover, in order to make sure consumers are fully informed about the consequences of non-usage, we require pre-paid ETCs to notify their subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time."); *Second COVID-19 Waiver Order*, 35 FCC Rcd at 2952, para. 9 ("We will continue to monitor the situation to determine whether any additional waiver of these rules and deadlines is needed and we otherwise direct carriers to send non-usage

(continued....)

11. Petitioners' unsupported claim that "several major Lifeline providers" claimed and received April 2021 reimbursements based on the May 1, 2021 snapshot and had not had their reimbursements rescinded does not warrant a different result.<sup>46</sup> The Commission takes seriously its obligation to protect the success and integrity of the Lifeline program and the Bureau has overseen and will continue to oversee USAC in conducting audits and program integrity reviews to identify and recover any improper payments, including any that may have been paid for the period that is at issue in these petitions.<sup>47</sup>

#### IV. ORDERING CLAUSES

12. 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 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.4, 54.405, and 54.407, that the Requests for Review filed by the Petitioners ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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Chief  
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notifications, as needed, to subscribers impacted by the waiver who have continued not to use their Lifeline service at the end of the waiver period."); *Seventh COVID-19 Waiver Order*, 36 FCC Rcd at 4451, para. 10 (noting the common practice "that many ETCs start the outreach required by this rule long before the expiration of the usage period").

<sup>46</sup> Requests for Review, at 2.

<sup>47</sup> See, e.g., *TracFone Wireless, Inc.*, DA 23-1078, 5, para. 9 (EB 2023) (post-NAL Consent Decree describing reimbursements to the Universal Service Fund for improperly claiming support for Lifeline customers who lacked qualifying usage).