

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: RULES AND REGULATIONS GOVERNING :  
THE CERTIFICATION AND VERIFICATION :  
PROCEDURES FOR TELECOMMUNICATIONS CARRIERS : DOCKET No. 4337  
ELIGIBLE TO RECEIVE PAYMENTS FROM THE :  
FEDERAL UNIVERSAL SERVICE FUND :

REPORT

On February 6, 2012, the Federal Communications Commission (“FCC”) released the Lifeline Reform Order which is designed to reform, modernize and preserve the Lifeline Program which provides for reduced monthly rates for telephone services for eligible individuals. The Lifeline Reform Order mandates several important changes to the Lifeline Program which affect eligibility, the enrollment process and recertification of individuals. In addition, the Lifeline Reform Order also eliminated the Link-Up Program except for Native Americans living on Tribal Lands.

What the Lifeline Reform Order did not do was alter the Rhode Island Public Utilities Commission’s (“Commission”) role to certify telecommunications service providers as eligible to receive funds from the federal Universal Service Fund. Rhode Island is considered a “non-default” state because it has retained jurisdiction over this classification. However, in the Lifeline Reform Order, the FCC set forth various minimum criteria that must be met by telecommunications service providers seeking eligibility, even from non-default states. Following a review of the Lifeline Reform Order, the Commission determined that while the FCC had not pre-empted the Commission’s authority, it had occupied much of the field by setting minimum eligibility standards for program participants, minimum certification procedures and minimum annual verification procedures for Eligible Telecommunications Carriers (“ETCs”). Given the extent of the changes that would need to be made to the then-

existing “Rules and Regulations Governing the Certification and Verification Procedures for Telecommunications Carriers Eligible to Receive Payments from the Federal Universal Service Fund and Certification and Verification Processes for Compliance with Providing Lifeline and Linkup Service,” (“Old ETC Rules”) the Commission determined that it would be necessary to adopt new “Rules and Regulations Governing the Certification and Verification Procedures for Telecommunications Carriers Eligible to Receive Payments from the Federal Universal Service Fund” (“New ETC Rules”) which would completely supersede the Old ETC Rules.

On June 22, 2012, the Commission posted a Notice of Proposed Rulemaking on the Rhode Island Secretary of State’s website seeking comments from interested parties and explaining that an oral hearing would be granted if requested by twenty-five persons or by a governmental subdivision or agency.<sup>1</sup> In addition, a copy of the Notice of Proposed Rulemaking and the Proposed Rules was provided to the Rhode Island Department of Human Services, the Governor’s Office and the Economic Development Corporation’s Small Business Administrator. No hearing was requested, but three companies filed comments by the date in the notice, July 23, 2012.

After a review of the Comments, on August 8, 2012, the Commission conducted an Open Meeting to finalize the New ETC Rules. The Commission noted that the New ETC Rules were designed to be consistent with federal law requirements to the extent possible while also incorporating state law requirements that exceed the minimums required by federal law. In order to avoid the need to adopt rules each time the FCC changes its rules, the New ETC Rules reference and incorporate the federal rules. The idea was that the Rhode Island rules should not overly burden ETCs which will allow for more competition to serve low-income customers.

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<sup>1</sup> Prior to noticing the proposed New ETC Rules, the Commission sought input from interested parties ranging from telecommunications carriers to consumer advocates to officials from other state agencies to ensure an inclusive process which would result in fair and comprehensive rules.

After discussing the comments received in response to the Commission's Notice of Proposed Rulemaking, the Commission voted to adopt the New ETC Rules as proposed on June 22, 2012.

In drafting the proposed New ETC Rules, the Commission considered alternative approaches with the current rules being deemed the least burdensome on those affected, including ETCs and consumers. The Commission is not aware of any overlap or duplication with other statutory and regulatory provisions. The Commission found that there would be no significant impact on small businesses except to the extent that they would need to follow federal law. The Commission has ensured that any other state agency which may be implicated by the FCC's Lifeline Reform Order was involved in the initial process of developing the proposed rules.

Comments were received from three entities: Verizon, Cox and Budget PrePay, Inc. In its comments, Verizon posited no objection to the proposed rules, but advised the Commission that one reporting requirement may need to be revisited "in a few years...depending on the nature and implementation of the federal subscriber database anticipated in the Order. In that eventuality, the Commission may need to revise the state filing requirement to ensure consistency with federal practice." The Commission thanks Verizon for its advance notification, but will address any changes to the reporting requirement when the need arises.

In its comments, Cox suggested two additional provisions be added. First, under the definition of Household, Cox suggested adding the full definition provided in the cited Code of Federal Regulations ("C.F.R.") and the requirement that the Lifeline applicant must complete the Universal Service Administrative Company ("USAC") "Household Worksheet" to determine whether the applicant resides at an address with one household, or multiple households in accordance with the cited C.F.R. The Commission declines to restate this definition in the New

ETC Rules because it is incorporated in the cited C.F.R. and allows the Commission's ETC Rules to remain consistent with federal law in the event the definition is changed by the FCC. Additionally, while including the requirement that the applicant must fill out the USAC Form is not harmful and could be included, the Commission does not believe it is necessary where it is required by USAC. Second, Cox suggested the inclusion of language from the FCC's rules that require re-certification of customers living at temporary addresses every 90 days. However, a review of USAC's guidelines for ETCs reveals that this portion of the FCC's rules is not currently in force and effect. Therefore, the Commission declines to incorporate this proposal into the final rules.

In its comments, Budget PrePay, Inc. suggests that the Commission increase the income threshold limit from the proposed 135% of Federal Poverty Level ("FPL") to 175% of FPL. Budget argues that this would expand the field of those eligible, but would still be a modest expansion. Second, Budget rightly notes that many of the eligibility programs set forth in RI law have higher income caps. Therefore, Budget PrePay maintains there would be no harm in allowing the increase. Finally, Budget PrePay notes that there are a handful of states that set the threshold at 150% FPL and two which utilize 175% FPL under limited circumstances. The Commission declines to increase the threshold above that which was set by the FCC. The Commission notes that Rhode Island State Law does not include income-based eligibility as a sole means for qualifying for lifeline service. Instead, Rhode Island law lists the programs. The law also allows the Commission to take necessary actions to enable to state to participate in an FCC lifeline program, in this case, to allow customers to qualify for the lifeline discount if they are at or below the threshold set forth in the Lifeline Reform Order which is 135% FPL. Therefore, while the Commission has been granted the authority by state law to implement rules

necessary to allow participation in the lifeline program, it is unclear whether the Commission has the authority to implement rules that exceed those minimum requirements set by the FCC where the legislature has not chosen to include those requirements in state law. Therefore, the Commission declines to incorporate Budget PrePay's proposal.

The Commission thanks everyone who participated in this rulemaking process for their thoughtful comments on this matter.

(20841)

EFFECTIVE AT WARWICK, RHODE ISLAND ON AUGUST 30, 2012 PURSUANT TO AN OPEN MEETING DECISION ON AUGUST 8, 2012. FINAL RULES FILED WITH THE SECRETARY OF STATE'S OFFICE ON AUGUST 10, 2012. REPORT ISSUED ON OCTOBER 5, 2012.

PUBLIC UTILITIES COMMISSION



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Elia Germani, Chairman

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