

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

In the Matter of)	
)	
Federal-State Joint Board On)	
Universal Service)	
)	
Bell Atlantic-Pennsylvania, Inc.,)	CC Docket No. 96-45
Petition for Waiver of Section 54.409(b) of)	
the Commission’s Rules and Regulations)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 26, 2000

Released: December 27, 2000

By the Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant the petition of Bell Atlantic-Pennsylvania, Inc. (Bell Atlantic¹) for a waiver of section 54.409(b) of the Commission’s Lifeline eligibility rules² to permit Bell Atlantic to use Pennsylvania’s Department of Public Welfare (DPW) database to verify the eligibility of Lifeline subscribers.³ We find that this waiver will both speed the provision of Lifeline service to eligible subscribers and diminish the administrative costs of providing such service, without imposing any significant cost.

II. BACKGROUND

A. The Commission’s Lifeline Rules

2. The Commission’s Lifeline program is designed to ensure that telephone service is affordable to low-income consumers by providing federal funds to reduce the price they pay for basic local telephone service.⁴ Federal Lifeline support supplements discounts that may be provided by similar state-mandated programs. In states that mandate their own Lifeline support for low-income customers, subscribers are eligible for federal Lifeline support if they meet the eligibility standards for the

¹ Subsequent to filing this waiver petition, Bell Atlantic merged with GTE to become Verizon.

² 47 C.F.R. § 54.409(b).

³ See *Bell Atlantic-Pennsylvania, Inc., Petition for Waiver of Section 54.409(b) of the Commission’s Rules and Regulations*, filed Dec. 22, 1999 (Waiver Petition).

⁴ See 47 U.S.C. 254(b)(1)(“Quality services should be available at just, reasonable, and affordable rates.”).

state Lifeline program.⁵ In states that do not mandate Lifeline support, customers are eligible for federal Lifeline support if they participate in at least one of five specific federal low-income programs.⁶ In such states, Commission rules require that the carrier providing Lifeline support obtain the signature of each qualifying subscriber “on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs listed in [the rules] and identifying the program or programs from which that consumer receives benefits.”⁷ The rules also require that the consumer “agree to notify the carrier if that consumer ceases to participate in the program or programs.”⁸

B. Pennsylvania’s Lifeline Programs & Petition for Waiver

3. Pennsylvania has two separate Lifeline programs. Lifeline Option 1, which was Pennsylvania’s sole Lifeline program until September 1999, includes state Lifeline support. Accordingly, Bell Atlantic has not needed to obtain written certifications to verify subscriber eligibility, as would be required under the federal rules, for the Lifeline Option 1 program. Rather, for the past four years, Bell Atlantic has relied upon the Pennsylvania DPW’s database, which indicates subscriber participation in many of the low-income assistance programs that would qualify a customer for federal Lifeline support under the Commission’s rules.⁹ Lifeline Option 2, adopted by the Pennsylvania Public Utilities Commission in September 1999, does not include state-mandated support. Option 2 expands eligibility for support to all subscribers with incomes at or below 150% of the federal poverty level and permits those customers to add vertical services. Because the program is funded entirely from federal support, Commission rules require Bell Atlantic to obtain written certifications of eligibility from subscribers to Lifeline Option 2.

4. Bell Atlantic seeks a waiver of the written certification requirement for subscribers of the Lifeline Option 2 who are listed in the Pennsylvania DPW database. It asks that, given its four years of successful experience with the DPW database, it be allowed to continue to rely on that database when the database indicates that a customer is eligible for Lifeline Option 2. Bell Atlantic agrees that if its waiver request is granted, it will continue to require the written certification specified in section 54.409(b) of the rules where consumers qualify for the program based on their enrollment in the federal public housing assistance or Low-Income Home Energy Assistance programs, because data about participation in those programs is not contained in the DPW database.¹⁰

⁵ 47 C.F.R. § 54.409(a).

⁶ The programs are: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, and Low-Income Home Energy Assistance Program. 47 C.F.R. § 54.409(b) & (c). In addition, customers living on Indian reservations, as defined in 25 C.F.R. § 20.1(v), qualify for federal Lifeline support if they participate in one of the following programs: Bureau of Indian Affairs general assistance, Tribally administered Temporary Assistance for Needy Families, Head Start (only those meeting its income qualifying standard), and National School Lunch Program’s free lunch program. 47 C.F.R. § 54.409(c).

⁷ 47 C.F.R. § 54.409(b). Section 54.409(c) imposes a similar requirement for customers living on Indian reservations. 47 C.F.R. § 54.409(c).

⁸ 47 C.F.R. § 54.409(b) & (c).

⁹ Waiver Petition at 2.

¹⁰ *Id.* at 2 n.2.

III. DISCUSSION

5. We find that Bell Atlantic has demonstrated that good cause exists to waive section 54.409(b) of the Commission's rules. Accordingly, we waive Section 54.409(b) to permit Bell Atlantic to rely on the Pennsylvania DPW database in lieu of customer certifications for those subscribers whose Lifeline eligibility can be determined from the database.¹¹

6. Generally, the Commission's rules may be waived for good cause shown.¹² As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁶

7. We find that Bell Atlantic has shown good cause for waiving this rule under the circumstances indicated. The Commission imposed the customer certification requirement in section 54.409(b) of the rules to deter fraud, waste, and abuse in the distribution of federal Lifeline support. Where states were mandating intrastate Lifeline support, the Commission's May 1997 *Universal Service Order* recognized that the states have an incentive to control fraud, waste, and abuse of the support mechanism, and, thus, it found no need to impose stricter federal verification requirements.¹⁷ Although Lifeline Option 2 includes no intrastate support, we find that Pennsylvania has an incentive to limit fraud, waste, and abuse with respect to the other programs for which it uses its DPW database and thus it has an incentive to ensure the accuracy and reliability of the DPW database. This diminishes the need for additional federal verification requirements. Furthermore, we note that Bell Atlantic's waiver petition is limited in scope. Bell Atlantic agrees to comply with the written certification requirement for customers who claim eligibility based on participation in federal public housing assistance or Low-Income Home Energy Assistance, which are programs not covered by the DPW database.

8. We are persuaded that Pennsylvania's DPW database contains reliable information about customers who are enrolled in Medicaid, food stamps, and Supplemental Security Income

¹¹ We note that the Common Carrier Bureau has previously granted waivers of the Lifeline rule. See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 8544 (1999), *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 13 FCC Rcd 1 (1997).

¹² 47 C.F.R. § 1.3.

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert.denied*, 409 U.S. 1027 (1972).

¹⁴ *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *WAIT Radio*, 418 F.2d at 1159.

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8975, para. 376 (1997), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997) (*Universal Service Order*), subsequent history omitted.

programs, which qualify such customers for federal Lifeline support under Pennsylvania's Lifeline Option 2.¹⁸ Accordingly, we find that Bell Atlantic's reliance on the DPW database to determine Lifeline eligibility should be as effective, in most cases, as written certification.

9. Finally, we conclude that it is in the public interest to permit Bell Atlantic to employ the most efficient and reliable means of verifying eligibility for Lifeline. The Commission has explicitly endorsed the use of databases as an efficient method of verifying eligibility.¹⁹ We find that granting this waiver will not only speed the verification process, but it will also diminish the burden on Bell Atlantic and Lifeline customers without imposing any significant costs.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Bell Atlantic-Pennsylvania on December 22, 1999 is GRANTED.

¹⁸ Waiver Petition at 2 n.2.

¹⁹ The Commission encouraged states to adopt Lifeline administrative procedures, including eligibility verification procedures, that are as efficient as possible. The Commission observed that New York, among other states, has substantially cut Lifeline overhead by mandating the exchange of computer files between social services agencies, which administer participation in the other public assistance programs that constitute Lifeline eligibility, and the states' LECs. *Universal Service Order*, 12 FCC Rcd. at 8976, para. 378.

11. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder
Chief, Accounting Policy Division
Common Carrier Bureau