



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-19

May 16, 2012

Verizon Massachusetts Annual Verification of Lifeline Subscribers

ORDER

I. Introduction

The Department of Telecommunications and Cable (“Department”) determines that, the annual Lifeline verification audit, filed on September 13, 2011, by Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon”) complies with the Department’s existing requirements. However, going forward, the Department directs Verizon to comply with the audit and reporting requirements recently established by the Federal Communications Commission (“FCC”), unless and until the Department orders otherwise. Consistent with the FCC’s directives, Verizon must submit to the Department: (1) the recertification results of Verizon’s annual eligibility audit of 100% of its Lifeline customers and certain ETC-specific certification by January 31 of every year commencing in 2013; and (2) copies of all biennial audits, when implemented, that an independent audit firm conducts on Verizon’s behalf to assess Verizon’s overall compliance with the FCC’s Lifeline requirements.

II. Background

Verizon, an eligible telecommunications carrier (“ETC”), offers Lifeline service in Massachusetts. Lifeline is a universal service support mechanism designed to provide qualifying low-income consumers with discounted monthly voice telephony service for a single subscription per household. *In the Matters of Lifeline and Link Up Reform and Modernization,*

Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training, WC Docket Nos. 11-42, 03-109, and 12-23, CC Docket No. 96-45, *Report and Order and Further Notice of Proposed Rulemaking* (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”), *recon. pending*, at ¶¶ 47-50, 76; 47 C.F.R. § 54.401(a). As an ETC,¹ Verizon receives federal reimbursements for every qualifying low-income consumer that it provides with Lifeline service through the Low Income Program of the Universal Service Fund (“USF”). 47 C.F.R. § 54.407(b).

Pending the Department’s establishment of a more stringent requirement applicable to all ETCs in Massachusetts, the Department permitted Verizon to recertify Lifeline subscribers annually, utilizing a sample size of 500 random subscribers.² *See* D.T.C. Stamp Approval, Letter from Verizon to the Department dated July 16, 2010 (stamp-approved July 30, 2010) (“*Verizon Recertification Approval*”); *Investigation by the Department on its Own Motion into the Lifeline and Link-Up Programs for Massachusetts Telephone Customers*, D.T.C. 10-3, *Order Opening Investigation* at 2 (Sept. 17, 2010); *TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* (June 30, 2010), at 13-16. The Department permitted Verizon to send a sample list of 500 subscribers each year to the Department of Transitional Assistance (“DTA”) and Department of Medical Assistance (“DMA”) for the agencies’ review and determination if any of the subscribers in the sample provided were no longer receiving benefits from low-income programs overseen by those

¹ Only carriers designated as ETCs under 47 U.S.C. § 214(e), may receive universal service reimbursement for providing Lifeline services.

² The Department notes that this number exceeds the number derived from the statistically-valid sample guidelines previously supplied by the FCC. *See Verizon Recertification Approval; Lifeline Reform Order* at ¶ 95. Prior to the *Lifeline Reform Order*, the FCC provided a formula for calculating the size of a statistically valid sample based upon the total customer base and the percentage of Lifeline subscribers found to be inappropriately receiving Lifeline services the previous year.

agencies and consequently, no longer eligible for Lifeline service.³ *See Verizon Recertification Approval*. Additionally, the Department required Verizon to comply with specific reporting requirements, designed to facilitate Department review of the audit results.⁴ *See Verizon Recertification Approval*. Consistent with this process, Verizon completed its 2011 recertification of Lifeline subscribers in Massachusetts on July 20, 2011. *See Verizon Letter to the Department* (dated August 15, 2011). On September 13, 2011, Verizon submitted its second Annual Audit Report to the Department. Notice of Filing, Annual Audit Report (“Audit Report”).

On February 6, 2012, the FCC released its *Lifeline Reform Order*, comprehensively reforming the Lifeline program. The reforms include new minimum reporting requirements imposed on ETCs operating in all states,⁵ including those in non-federal default states such as Massachusetts.⁶ Consequently, the FCC’s reforms override the Department’s existing annual Lifeline verification requirements.

III. Analysis and Findings: Annual Verification Audit

³ Prior to the FCC’s *Lifeline Reform Order*, Massachusetts low-income consumers only qualified for Lifeline services if they subscribed to other low-income assistance programs deemed eligible by the Department. DTA and DMA oversee many of these eligible programs. As of June 1, 2012, Massachusetts consumers may qualify for Lifeline services if they meet certain income-based criteria, in addition to the program-based eligibility already in effect.

⁴ The Department directed Verizon to submit a summary of its recertification results within 30 days of its completion utilizing the “Annual Lifeline Certification & Verification” form required by the Universal Service Administrative Company. *See Lifeline Recertification Approval*.

⁵ The reforms also broaden additional requirements nationwide, including consumer eligibility requirements, consumer de-enrollment procedures, and ETC outreach. However, due to the limited nature of this proceeding, the Department focuses only on the amended reporting requirements.

⁶ Federal default states are those that have not adopted their own certification and verification procedures, have opted to follow the federal requirements, or do not assert jurisdiction over those ETCs operating in their states. Prior to the *Lifeline Reform Order*, the FCC imposed limited requirements on ETCs operating in non-federal default states, since state commissions asserted jurisdiction.

The Department finds that Verizon has satisfied the Department annual Lifeline verification requirements. Verizon conducted its annual audit on a random sample of 500 subscribers, as required. *See* Audit Report at Attachment 1. In addition, Verizon submitted its Audit Report in compliance with the Department's reporting requirements. *See* Audit Report at Attachment 1. The Department notes its concerns, below, with regard to Verizon's annual audit results. It also notes, however, that the mandatory changes to the audit and verification processes stemming from the FCC's reforms address these concerns, at least in part.

Verizon indicates in the Audit Report that it verified the eligibility of 388 (or 77.6%) of the subscribers in the sample. Audit Report at Attachment 1. The remaining 112 subscribers (or 22.4% of the sample) were ineligible because they were no longer participating in qualifying programs.⁷ Audit Report at Attachment 1. Of those 112 subscribers, 67 (or 13.4% of the entire number sampled) failed to respond to Verizon's communication seeking verification of continued eligibility. Audit Report at Attachments 1.

The Department is concerned by the high rate of ineligible subscribers. This audit result raises the possibility that a number of customers may be receiving Lifeline services inappropriately. *See TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 10-6, *Order* (Oct. 19, 2010) ("*D.T.C. 10-6 TracFone Order*") at 2 (noting that the rate of ineligible subscribers raises the issue "of possibly significant numbers of customers" inappropriately subscribing to Lifeline services). Additionally, since 13.4% of subscribers in the sample failed to respond completely, the response rate of subscribers is itself an issue in the verification process. *D.T.C. 10-6 TracFone Order* at 3; Audit Report at

⁷ Customers identified by DTA and DMA as no longer receiving services were thus identified by Verizon as no longer qualifying for Lifeline services. *See Verizon Recertification Approval*. Verizon then would send a letter to those customers informing them that unless they took action to verify their Lifeline eligibility, their Lifeline discount would be eliminated. *See Verizon Recertification Approval*.

Attachments 1. Although the Department is presently examining both of these issues in its own ongoing proceeding, the Department acknowledges that the FCC has recently taken action to, at least in part, address these issues.⁸ *See generally Lifeline Reform Order.*

Accordingly, the Department finds that Verizon's Audit Report satisfies the Department's annual audit requirement and it is approved. However, in light of the FCC's actions, going forward the Department will no longer accept from Verizon an annual audit of 500 of its Massachusetts Lifeline subscribers. Instead, the Department directs Verizon to comply with the new audit and reporting requirements discussed below.

IV. Analysis and Findings: Lifeline Reform Order Reporting Requirements

On February 6, 2012, the FCC released its *Lifeline Reform Order*. The Order's reforms include new minimum reporting requirements imposed on ETCs operating in all states, including those in non-federal default states such as Massachusetts. *Lifeline Reform Order* at ¶¶ 129-148 and at Appendix C ("Certification Requirements for Lifeline Subscribers");⁹ 47 C.F.R. § 54.410 (§§ 54.410 (a)-(f) effective June 1, 2012"). Accordingly, consistent with the FCC's directives, Verizon must submit to the Department: (1) the recertification results of Verizon's annual eligibility audit of 100% of its Lifeline customers and certain ETC-specific certifications by January 31 of every year commencing in 2013 (*Lifeline Reform Order* at ¶¶ 125-148); and (2) copies of all biennial audits, when implemented, that an independent audit firm conducts on Verizon's behalf to assess Verizon's overall compliance with the FCC's Lifeline requirements (*Lifeline Reform Order* at ¶ 291).

⁸ The Department's investigation, docketed as D.T.C. 10-3, was initially opened as a result of concerns about TracFone's audit submitted in 2009. *See Investigation by the Department on its Own Motion into the Lifeline and Link-Up Programs for Massachusetts Telephone Customers*, D.T.C. 10-3, *Order Opening Investigation* at 2 (Sept. 17, 2010); *TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, *Order* (June 30, 2010), at 13-16.

⁹ The Department attaches a copy of Appendix C to this order.

a. Annual Recertification Audit and Reporting of Ongoing Consumer Eligibility and ETC-Specific Certifications

Through the *Lifeline Reform Order*, the FCC adopts new rules imposing a set of uniform recertification procedures that requires ETCs in all states to verify the ongoing eligibility of 100% of their Lifeline subscriber base annually. *Lifeline Reform Order* at ¶¶ 129-148 and at Appendix C (“Certification Requirements for Lifeline Subscribers”); 47 C.F.R. § 54.410 (§§ 54.410(a)-(f) effective June 1, 2012”). Since these requirements are more stringent than the 500-person sample permitted by the Department, the FCC’s requirements will now apply going forward.

The FCC directs ETCs to conduct the first recertification of their Lifeline subscriber base as of June 1, 2012, by the end of 2012. *Lifeline Reform Order* at ¶ 130. Where ongoing consumer eligibility cannot be determined through access to a qualifying database, either by the ETC or the state, and there is no state administrator verifying the continued eligibility of Lifeline subscribers, the FCC directs ETCs to contact their subscribers directly to confirm the subscribers’ continued eligibility by obtaining a recertification form from each subscriber. *Lifeline Reform Order* at ¶ 130. The recertification form must include, at a minimum, certain information required by the FCC, contained in the attached Appendix C. *Lifeline Reform Order* at ¶¶ 111-124, 130, 133. Although Verizon has sent a sample list of subscribers to the DTA and DMA for determination of subscribers’ continued participation in low-income programs, Massachusetts does not have a qualifying database accessible to Massachusetts ETCs to recertify 100% of Lifeline subscribers, nor does it have a state administrator to verify the continued eligibility of Massachusetts Lifeline subscribers. See 47 C.F.R. § 54.410(f)(2)(iii) (effective June 1, 2012); *Investigation by the Department on its Own Motion into the Lifeline and Link-Up Programs for Massachusetts Telephone Customers*, D.T.C. 10-3, *Request for Comment and*

Notice of Public Hearing at 3-4 (Sept. 17, 2010). Therefore, ETCs operating in Massachusetts, including Verizon, are required to confirm their subscribers' ongoing eligibility directly with their subscribers.

The FCC requires ETCs to submit their re-certification data to the Universal Service Administrative Company ("USAC") and the FCC by January 31, 2013, in a format to be determined by the FCC's Wireline Competition Bureau ("Wireline Bureau") and USAC. *Lifeline Reform Order* at ¶ 148. The FCC also requires ETCs to provide this data to state commissions for subscribers in those states where the state commission designates those ETCs. *Lifeline Reform Order* at ¶ 148; 47 C.F.R. § 54.416(b) (effective May 1, 2012).

In Massachusetts, the Department asserts jurisdiction over all ETCs operating in the state. *See D.T.C. 09-9 TracFone Order* at 2-3; *Investigation by the Department of Telecommunications & Energy on its own motion concerning (1) designation of eligible telecommunications carriers, pursuant to Section 102 of the Telecommunications Act of 1996; (2) participation in the FCC's modified Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. Part 54 sections 54.400-54.417 et seq.; and (3) participation in the FCC's program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to Section 254(h) of the Telecommunications Act of 1996*, D.T.E. 97-103, *Order Opening Investigation*, at 6 (Dec. 8, 1997). Accordingly, the Department directs Verizon to submit its annual recertification data for Massachusetts with the Department by January 31, 2013, and no later than January 31 every year thereafter unless directed to do otherwise by the Department. *Lifeline Reform Order* at ¶ 148; 47 C.F.R. § 54.416(b) (effective May 1, 2012).

The FCC indicates that, after the first annual recertification, ETCs may elect to have USAC administer the self-certification process on their behalf. *Lifeline Reform Order* at ¶ 133.

However, the FCC also mandates that “[o]ngoing eligibility of Lifeline subscribers must continue to be verified annually after 2012[.]” *Lifeline Reform Order* at ¶ 133. The FCC directs USAC to work with ETCs and its Wireline Bureau to develop a plan for USAC to conduct annual re-certifications in lieu of ETCs, estimated to start in 2013. *Lifeline Reform Order* at ¶ 133. If Verizon elects to have USAC conduct its annual recertification in the future, the Department directs Verizon to notify the Department of this election at the same time that it notifies the FCC and USAC. Until USAC successfully implements a process to certify Verizon’s subscribers, however, and unless the FCC mandates otherwise, Verizon will still need to conduct its own annual recertification of Massachusetts consumers and provide that information to the Department by January 31 of each year.

Finally, in addition to annual recertifications of consumers’ ongoing eligibility, the FCC also requires ETCs to provide certain ETC-specific certifications. *Lifeline Reform Order* at ¶¶ 125-128; 47 C.F.R. § 54.416 (effective May 1, 2012). These ETC-specific certifications must be made annually and must be submitted with the annual consumer recertification data to USAC. *Lifeline Reform Order* at ¶¶ 125-128. Specifically, an officer of each ETC must certify that the carrier: (1) has policies and procedures in place to review consumers’ documentation of income- and program-based eligibility;¹⁰ (2) is in compliance with all federal Lifeline certification procedures; and (3) has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement. *Lifeline Reform Order* at ¶¶ 125-128; 47 C.F.R. §§ 54.416(a)(1)-(3) (effective May 1, 2012). Since the FCC requires ETCs to submit these state-specific certifications annually to USAC with the results of their annual consumer recertification

¹⁰ In instances where an ETC confirms consumer eligibility by relying on qualifying databases, the representative must attest to the specific data sources used to confirm consumer eligibility in each state. Qualifying eligibility databases are those described in new §§ 54.410(b)(1)(A) or (c)(1)(A) of the FCC’s regulations. As discussed above, Massachusetts does not have qualifying databases in place.

results, the Department directs Verizon to submit copies of these annual certifications to the Department, as well.

b. Biennial Audit

The Department directs Verizon to submit a copy of its biennial audit reports to the Department within 30 days of issuance of its final audit reports. The FCC further imposes a biennial audit requirement on every ETC that collects \$5 million or more nationwide, at the holding company level, in Lifeline reimbursements to assess the ETC's overall compliance with the federal requirements. *Lifeline Reform Order* at ¶ 291 (to be codified in 47 C.F.R. § 54.420(a)). Audits must be completed within one year after the FCC issues a standardized audit plan. *Lifeline Reform Order* at ¶ 292 (to be codified in 47 C.F.R. § 54.420(a)(2)). The FCC directs ETCs to provide copies of audit reports to the FCC, USAC, and relevant state and Tribal governments within 30 days of issuance of the final reports. *Lifeline Reform Order* at ¶ 294 (to be codified in 47 C.F.R. § 54.420(a)(4)). The FCC indicates that it will issue a Public Notice that establishes a deadline for completion of the first biennial audits. *Lifeline Reform Order* at ¶ 292. USAC data indicates that the Verizon's holding company collects more than \$5 million annually from the Lifeline program. See USAC Low Income Disbursement Data Webpage, at <http://www.usac.org/li/tools/disbursements/default.aspx> (data calculated by inputting company name). As a result, the Department's requirement that Verizon submit to it copies of Verizon's biennial audits is appropriate and consistent with the FCC's directives.

V. Order

Accordingly, it is:

ORDERED: That the Department approves Verizon's verification audit results; and

FURTHER ORDERED: That the Department's annual audit requirements involving 500 random Verizon subscribers are no longer in effect; and

FURTHER ORDERED: That Verizon contact its Massachusetts Lifeline subscribers as of June 1, 2012, directly to confirm the subscribers' continued eligibility by obtaining a recertification form from each subscriber, consistent with the FCC's annual recertification requirements; and

FURTHER ORDERED: That Verizon submit its annual recertification data for Massachusetts with the Department on January 31, 2013, and every January 31 thereafter consistent with the directives herein; and

FURTHER ORDERED: That Verizon's annual recertification report also include copies of ETC-specific certifications as described herein; and

FURTHER ORDERED: That Verizon submit a copy of its holding company's biennial audit reports to the Department within 30 days of issuance of any final audit reports.

By Order of the Department,

/s/ *Geoffrey G. Why*_____
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws, including M. G. L. c. 25, § 5.