STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 19, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-C-0171 - Proceeding on Motion of the Commission to Review the Targeted Accessibility Fund.

ORDER DIRECTING TARIFF FILINGS REGARDING LIFELINE ELIGIBILITY

(Issued and Effective April 19, 2018)

BY THE COMMISSION:

INTRODUCTION

The Federal Lifeline Service Program (Lifeline) offers discounted voice telephone service to qualifying low income customers as a means to promote universal telecommunications service availability. In New York, the Targeted Accessibility Fund (TAF) provides a supplemental discount to Federal Lifeline wireline customers. As a result of an April 27, 2016 Order, the Federal Communications Commission (FCC) adopted changes to the federal Lifeline eligibility rules that, most significantly, removed three low income assistance programs – Low Income Home Energy Assistance Program (LIHEAP), National School Lunch Program (NSLP), and Temporary Assistance to Needy Families (TANF) – as qualifying programs for eligibility for Lifeline

Service.[1] The Commission thereafter caused a Notice of Proposed Rulemaking pursuant to the State Administrative Procedure Act (SAPA Notice) to be published in the State Register soliciting comments as to whether the Commission should similarly change its policies governing eligibility for the supplemental New York Lifeline discount, and how such changes may impact how the supplemental Lifeline discount is funded through the TAF or, authorize state support for customers only eligible under programs that have been eliminated by the FCC.

After considering the comments received in response to the SAPA Notice, as well as the impact of losing Lifeline service, the Commission concludes that it would be in the interest of New York State to continue to provide support for those customers otherwise not eligible under the new federal eligibility requirements. Accordingly, the Commission will require all Commission certified ETCs to continue to provide reduced-cost basic local telephone service to consumers who would otherwise lose or be unable to obtain Lifeline service pursuant to the FCC's changes to Lifeline eligibility. Moreover, the Commission will authorize continued state support, through the New York Targeted Accessibility Fund (TAF), for low-income customers who are only eligible for Lifeline under programs that have been eliminated by the FCC. Finally, the Commission will authorize additional funding from the TAF to

[1] See, WC Docket Nos. 11-42 et al., In the Matter(s) of Lifeline and Link Up Reform and Modernization, Third Report and Order, Further Report and Order and Order on Reconsideration, FCC 16-38 (issued April 27, 2016) (Lifeline Modernization Order). In addition to the reforms discussed in this Order, the FCC also required the phase-out of voice only Lifeline service in favor of broadband and broadband-voice bundled Lifeline service, which will be phased in between 2016 and 2020. These changes may necessitate future Commission action in this area, but are not addressed in this Order.

offset the loss in federal reimbursement funding that service providers will no longer receive due to such subscribers' loss of Federal Lifeline eligibility. The actions taken here will preserve access to a discounted telephone service to a population among the most vulnerable in the State.

Additionally, the Commission will commence a new phase in this proceeding to examine the nature and level of future state support for Lifeline service in light of the FCC's decision to transition the federal program toward broadband service and away from traditional voice telephone service.

BACKGROUND

Lifeline Modernization

Consistent with promoting and ensuring that all residents have access to affordable basic telephone service, otherwise referred to as "universal service," the FCC's Lifeline Program offers discounted service to qualifying low income consumers. Customers eligible for the federal Lifeline program currently receive a $9.25 discount toward their monthly bill, and qualifying service providers, known as ETCs, may request reimbursement of their aggregate Lifeline discounts from the federal Lifeline administrator, Universal Service Administrative Co. (USAC).

In its April 27, 2016 Lifeline Modernization Order, the FCC adopted changes to Lifeline eligibility rules to become effective on December 1, 2016.[2] Specifically, the Veterans and Survivors Pension Benefit Program was added as a qualifying program for Lifeline eligibility, while three low income assistance programs – LIHEAP, NSLP, and TANF – were removed as qualifying programs. Additionally, all State-specific

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[2] Id.

eligibility programs were eliminated as qualifiers for the federal program.[3] According to the FCC, these changes were made to simplify enrollment in the Lifeline program, focus enrollment on the most highly-used eligibility programs, and to reduce fraud and waste in the program. The FCC also instituted a National Verifier Program (National Verifier) to determine subscriber eligibility for Lifeline in place of service provider verification of eligibility.

Although the revised eligibility requirements were scheduled to take effect for new subscribers as of December 1, 2016, and to be effective for existing subscribers according to rolling annual recertification dates that occurred after December 31, 2016, the United State Telecommunications Association (USTelecom) and multiple states filed waiver petitions with the FCC requesting more time to implement the revised Lifeline eligibility rules. New York requested and was granted a one-year waiver to allow more time to determine if New York would choose to retain LIHEAP (or other eliminated programs) as eligibility criterion for a New York low income program and to make the necessary changes to the automated verification system administered by the Office of Temporary Disability Assistance that any provider may use to determine subscriber eligibility for Lifeline support. Pursuant to that

[3] Thus, under the new FCC rules, participation in any of the following assistance programs allows a consumer to be eligible for Lifeline program benefits: 1) Medicaid; 2) Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; 3) Supplemental Security Income (SSI); 4) Federal Public Housing Assistance; and 5) Veterans Pension and Survivors Benefit. The FCC also continued to allow all current Tribal qualifying programs and continued to allow low-income consumers to qualify for Lifeline by demonstrating income of less than 135 percent of the federal poverty guidelines.

waiver, Lifeline service providers in New York would have had to fully implement the modifications to the federal Lifeline Program by December 1, 2017. On November 27, 2017, New York was granted an additional waiver extending the date by which the modifications would be implemented and effective to May 1, 2018.[4]

The Lifeline Modernization Order also directed that broadband services - fixed broadband, mobile broadband, or a broadband-voice bundle – become supported services beginning December 1, 2016, and that support for “voice-only” Lifeline service be phased out. Beginning December 1, 2019, federal lifeline support for voice-only Lifeline service will be reduced from $9.25 per month per Lifeline subscriber to $7.25. Effective December 1, 2020 that support will be further reduced to $5.25, and effective December 1, 2021, federal support will cease to exist for voice-only Lifeline service.

The Targeted Accessibility Fund

The TAF was established by the Commission in June, 1998 by Opinion 98-10 to fund specific programs such as Lifeline, Enhanced 911 (E911), and Telecommunications Relay Service (TRS) for the deaf and hard-of-hearing.[5] TAF is funded through assessments on all certified telecommunications carriers operating in New York State.[6] Assessments for each carrier are calculated based on each carrier’s assessable revenue, which is defined as intrastate regulated revenue, net of payments made to

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[4] WC Docket No. 11-42, Order (issued November 27, 2017)

[5] Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion and Order Establishing Access Charges and Instituting a Targeted Accessibility Fund (issued June 2, 1998).

[6] Cellular and Personal Communications Service (PCS) carriers were exempted from TAF participation in Opinion 98-10.

other carriers.[7] All carriers participating in the TAF who provide Lifeline are eligible to be reimbursed by the TAF for their legitimately incurred costs associated with providing New York State's supplemental Lifeline discount. The TAF assessable revenues and costs are reported on a monthly basis by carriers to the TAF Administrator. Companies with less than $25,000 annual assessable revenue are not required to participate for purposes of assessment and settlement. Such companies that choose not to participate are not eligible for reimbursement.

TAF Reimbursement Eligibility Requirements for Lifeline

To be eligible for TAF reimbursement of the New York State supplemental Lifeline discount, a carrier must be a Commission-approved ETC[8] and provide Lifeline in conformance with Commission directives. The per-customer supplemental Lifeline discount recoverable through the TAF is defined as the difference between the provider's retail rate and the rate charged to a Lifeline customer for basic service, exclusive of any federal Lifeline support.

Customer eligibility requirements to receive the New York State supplemental Lifeline discount are contained in their Commission-approved tariffs and are currently aligned with the federal eligibility requirements as defined prior to the FCC's Lifeline Modernization Order. TAF reimbursement is

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[7] Payments made to other carriers include interexchange carrier access charges, local terminating access, bottleneck billing and collection elements, wholesale services (i.e., total service resale "TSR"), wholesale network elements and operator services when bundled with services purchased at wholesale rates.

[8] There are currently 57 carriers in New York designated by the Commission as ETCs. In addition to traditional incumbent and competitive local exchange carriers, one VoIP-based provider, Time Warner Cable Information Services (New York) became certified as an ETC and offers Lifeline service.

contingent upon company verification, to the satisfaction of the TAF Administrator, of each Lifeline recipient's eligibility on a periodic basis. Customers must, at present, either be income eligible (i.e., household income is below 135% of the Federal Poverty Guidelines), or be a recipient of benefits from any one of the following low-income assistance programs: SNAP, LIHEAP, Medicaid, SSI, NSLP, Federal Public Housing Assistance, TANF, or Veterans Disability Pension/ Veterans Surviving Spouse Pension. Pending the implementation of the FCC's National Verifier, ETCs remain responsible to confirm each Lifeline customer's eligibility initially and annually thereafter, by obtaining proof from the customer that he or she is either certified as income eligible, or is eligible to receive one or more of the benefits identified above.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking was published pursuant to the State Administrative Procedure Act (SAPA) §202(1) in the State Register on September 13, 2017 (SAPA No. 17-C-0171SP1). The Commission sought comments on the following questions:

1. Should New York follow the federal lead and eliminate Low Income Home Energy Assistance Program (LIHEAP), National School Lunch Program (NSLP), and Temporary Assistance to Needy Families (TANF) as qualifying programs for the New York supplemental Lifeline discount?

2. Should the Commission continue to provide state support for customers only eligible under programs that have been eliminated by the FCC?

3. Should the Commission provide additional funding from the TAF to offset the loss in federal funding (currently $9.25 per customer per month) that the providers would no longer receive due to the subscribers' loss of Federal Lifeline eligibility.

The deadline for submission of comments pursuant to the SAPA Notice expired on October 31, 2017.

COMMENTS

In response to the Notice of Proposed Rulemaking, the Commission received comments from four parties: Frontier Communications (Frontier),[9] the New York State Telecommunications Association, Inc. (NYSTA), Verizon New York Inc. (Verizon), and Charter Communications, Inc. (Charter). The first three parties are, or represent, the State's incumbent local exchange carriers (ILEC), while Charter is the largest wireline competitive local exchange carrier (CLEC) in the state. All four parties are, or represent, wireline ETCs who provide Lifeline service in New York.

The commenting parties unanimously urge the Commission to align the New York Lifeline eligibility rules with the federal Lifeline rules adopted by the FCC in the Lifeline Modernization Order. In support, they cite the same reasoning the FCC used for eliminating LIHEAP, NSLP, and TANF as qualifying programs federal support. For example, the FCC decided to retain the programs used by the "overwhelming majority" of Lifeline subscribers and did not include LIHEAP, NSLP, and TANF because only 2.74% of Lifeline customers across the United States enroll through those three programs. Also, insofar as there is substantial overlap between the three programs being eliminated and eligibility for the programs that still qualify under the FCC Lifeline program, there would be

[9] Frontier, for purposes of this proceeding is comprised of Frontier Telephone of Rochester, Inc., Citizens Telecommunications Company of New York, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of AuSable Valley, Inc., Frontier Communications of Seneca-Gorham, Inc. and Ogden Telephone Company.

minimal loss of subscriber participation by eliminating the three programs from eligibility for the state discount program. Also, because some individuals in these programs are likely eligible under other qualifying programs, the number of people who could potentially lose federal Lifeline benefits as a result of the streamlining process should be small.

They further comment that the FCC was justifiably concerned with reducing waste, fraud and abuse in the federal Lifeline program, and that a separate, state-specific Lifeline program would greatly increase the opportunity for fraud and waste, as customers qualifying only under state programs will not be entered into the National Lifeline Accountability Database (NLAD).

The commenters also state that New York-specific eligibility criteria would create costly administrative burdens. For example, because Lifeline customers who qualify only through state programs will not be in NLAD, service providers would be required to manually manage the recertification of these customers outside of the USAC process. Additionally, a separate New York-specific system would be required to track and seek reimbursement for Lifeline customers qualified based solely on state-specific eligibility rules. Also, they opine that bifurcating the existing process of determining eligibility into two processes – where some subscribers participate in a program approved by the FCC, and other subscribers participate in a program that is not approved by the FCC – will require significant investments in billing design, training, reporting, customer notice, complaint handling, etc. These costs, which in large part are independent of the total number of Lifeline subscribers that would only qualify under the differing state requirements, are not recoverable from the TAF and would further create an imbalance in the competitive telecommunications marketplace between carriers that incur the costs to administer the Lifeline program with those that do not.

The commenters do not support continued Commission authorization of any state support for customers only eligible under programs that have been eliminated by the FCC. They cite several disadvantages in supporting programs that do not comport with the FCC rules, including: consumer confusion resulting from different eligibility criteria; increased pressure on the overall size of TAF; complexity in the administration of TAF; and complexity in subscriber sign-up and renewal forms. On the other hand, a state program that is fully consistent with federal rules will streamline processes and make the program less confusing and more "user-friendly" for customers, thereby enhancing the customer experience. They reiterate that only a very small percentage of Lifeline beneficiaries enroll in Lifeline utilizing the programs that have been eliminated by the FCC, and many of these beneficiaries are likely eligible to continue their participation through the remaining federal programs. Thus, if the Commission authorizes the TAF to pay ETCs for both the federal and state component of the discount provided to customers who apply through the abandoned programs, it will in fact be paying for discounts in some cases that should otherwise be paid for by the federal program.

LEGAL AUTHORITY

Article 5 of the Public Service Law (PSL) gives the Commission broad authority over telecommunications carriers in New York State. Pursuant to PSL §91, the Commission must ensure that customers are provided adequate service at just and reasonable rates that are not unreasonably discriminatory or preferential. The Lifeline program helps to ensure that rates are just and reasonable for low-income customers.

Further under 47 U.S.C. §214(e) the Commission is authorized to designate ETCs to serve New York municipalities, assuming such designation is found to be in the public interest. Those ETCs so designated by the Commission must follow all rules proscribed by the Commission associated with the Lifeline program, including state supplemental support for Lifeline eligible customers.

Finally, pursuant to PSL §92(2)(a) the Commission must approve any changes to any rate schedule filed by the telephone corporation. Further, due to the changes made by the FCC to the Lifeline program in the Lifeline Reform Order, any ETC with a New York State tariff is required to file tariffs to implement those reforms. This order directs carriers to make appropriate tariff changes to remain in compliance with the Commission's requirements discussed herein. Tariff changes are, however, exempt from rulemaking pursuant to SAPA §102(2)(b)(xii).

DISCUSSION

The Commission, upon, consideration of the comments submitted in this case, as well as data from USAC, finds that it is in the public interest to maintain a low-income assistance program for basic telephone service for those consumers in New York who would lose federal and state Lifeline support based on their qualifying for Lifeline service solely under programs eliminated by the FCC.

According to data provided by USAC, the number of New York wireline Lifeline subscribers who qualify for Lifeline through their participation in LIHEAP, TANF or the NSLP has been decreasing over time, from approximately 8,200 in December 2016 to approximately 6,900 in December 2017, nearly all of which qualified under LIHEAP.

LIHEAP has two tiers of recipients: Tier 1 recipients will be eligible for Lifeline under the revised FCC criteria based on their income meeting the 135% federal poverty level test,[10] while Tier 2 recipients will not qualify for Lifeline based on their income criteria, but may potentially be eligible for Lifeline under another qualifying program. According to OTDA, in 2016 86% of LIHEAP recipients were Tier 1. Using this percentage, Staff estimates that of the 6,900 December 2017 wireline Lifeline subscribers who will not qualify for Lifeline based on their participation in one of the three eliminated programs, approximately 5,900 are Tier 1 recipients and will continue to be eligible for Lifeline based on their income, while approximately 1,000 wireline Lifeline recipients will lose their eligibility for the federal Lifeline subsidy beginning May 1, 2018 unless they are participating in one of the remaining Lifeline qualifying programs.[11]

The action taken by the Commission here will preserve the availability of a wireline discounted telephone service; without this action, these customers will lose access to any discounted telephone service, including wireless alternatives currently available to them. They are among the most vulnerable populations in New York State and taking away access to communications services, or making them otherwise unaffordable is simply not in the public interest.

The Commission will therefore direct the TAF to continue to provide state support for those low-income customers

[10] The FCC will continue to qualify customers for Lifeline if their income is below 135% of the Federal Poverty Guidelines.

[11] This figure represents a worst-case scenario because it assumes that these Tier 2 LIHEAP customers would not qualify for Lifeline under any other federally allowed program. In fact, many of these customers might qualify for Lifeline under other programs.

who qualify for Lifeline only under programs that have been eliminated by the FCC. In addition, and in order to keep basic telephone service rates for those customers affected by the FCC's change in Lifeline eligibility requirements unchanged, the Commission authorizes additional funding from the TAF to offset the $9.25 per customer loss in monthly federal reimbursement that service providers will no longer receive due to a subscribers' loss of Federal Lifeline eligibility. Considering the relatively small number of customers who will presumably be benefiting from this decision, the additional funding authorized here should not cause an excessive increase to TAF disbursements. TAF is directed to change its operations manual as necessary to accommodate the changes the Commission is ordering here.

The Commission does not agree with commenters that it will be too administratively burdensome to manage a separate New York-specific verification system to track and seek reimbursement for low income customers who will otherwise lose their benefits due to the revised Lifeline eligibility requirements. The Commission and the carriers, following the issuance of this Order will work with OTDA to administer a dual verification system which all service providers may use. However, providers may also manually manage the verification of these customers for New York purposes, which many of them do now.

Some Lifeline telephone service providers filed tariff revisions, listed in Appendix A, to eliminate Low Income Home Energy Assistance Program, National School Lunch Program, and Temporary Assistance to Needy Families as qualifying programs for the New York supplemental Lifeline discount, in anticipation that the Commission would align its Lifeline eligibility criteria with the changes adopted by the FCC. In light of the

Commission's decision here to maintain support for those customers who will lose Lifeline eligibility, these providers are directed to cancel their tariff revisions. All carriers providing Lifeline service are directed to file, on not less than one-days' notice, to become effective May 1, 2018, the tariff revisions necessary to implement the changes the Commission directs in this Order.

On a broader basis, the FCC's Lifeline Modernization Order includes additional changes to the federal Lifeline program, including the phasing-out of federal support for voice-only Lifeline service discussed earlier. To examine this change, as well as others, the Commission will commence a new phase in this proceeding to examine the future nature and level of state support for Lifeline service. In this regard, Staff is directed to prepare a SAPA Notice and a Notice for Comment.

CONCLUSION

For the reasons stated herein, the Commission will require all Commission certified ETCs to continue to provide discounted service to those customers that would otherwise lose such benefits as of May 1, 2018. The TAF shall assess and provide such funding as appropriate. This action is designed to ensure that those among New York's most vulnerable populations continue to have access to low-cost communications services.

The Commission orders:

1. The Targeted Accessibility Fund is directed to make the necessary changes to its operations manual to reflect the changes herein.

2. The New York State Telecommunications Association, Inc., Windstream New York, Inc., and Verizon New York Inc. are directed to cancel their respective tariff revisions listed in

Appendix A, consistent with the discussion in this Order, on not less than one-days' notice to become effective on May 1, 2018.

3. All regulated Eligible Telecommunications Carriers are directed to file necessary tariff revisions to implement the changes herein, on not less than one-days' notice to become effective on May 1, 2018.

4. The requirement of newspaper publication of the tariff amendments required in this Order (Public Service Law §92(2)(a)) is waived.

5. Consistent with the discussion in this Order, the Commission commences a new phase in this proceeding to examine the nature and level of future state support for Lifeline service.

6. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

ADMINISTRATIVE DETAILS

Filing by: New York State Telecommunications Association, Inc.

Revisions to: P.S.C. No. 2 – Telephone

Section 9
2nd Revised Page 4.1

Issued: November 20, 2017 Effective: December 20, 2017*

*Postponed until April 30, 2018 by SPO 18-02504SP1

Supplement No. 1 to Schedule PSC No. 2 – Telephone

Issued: November 28, 2017 Effective: December 28, 2017*

*To become effective on December 1, 2017 on short notice by SPO 17-02504SP1

SPECIAL PERMISSION APPLICATION: 17-02504SP1

Filing by: Windstream New York, Inc.

Revisions to: P.S.C. No. 1 – Telephone

Section 3
12th Revised Leaf 37

Issued: November 22, 2017 Effective: December 1, 2017*

*Postponed until April 30, 2018 by SPO 17-02507SP1

Supplement No. 5 to Schedule PSC No. 1 – Telephone

Issued: November 28, 2017 Effective: December 28, 2017*

*To become effective on December 1, 2017 on short notice by SPO 17-02507SP5

SPECIAL PERMISSION APPLICATION: 17-02507SP5

ADMINISTRATIVE DETAILS

Filing by: Verizon New York Inc.

Revisions to: P.S.C. No. 15 – Communications

Section 2

1st Revised Page 4
1st Revised Page 5

Issued: November 27, 2017 Effective: December 1, 2017*

*Postponed until May 1, 2018 by SPO 17-02516SP4

Supplement No. 4 to Schedule PSC No. 15 – Communications

Issued: November 28, 2017 Effective: December 28, 2017*

*To become effective on December 1, 2017 on short notice by SPO 17-02516SP4

SPECIAL PERMISSION APPLICATION: 17-02516SP4