

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

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	
Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

ORDER

Adopted: February 28, 2006

Released: March 1, 2006

By the Commission:

I. INTRODUCTION

1. In this Order, we extend certain steps taken to assist victims of Hurricane Katrina through targeted universal service fund (USF) support.¹ Specifically, we grant a petition filed by the states of Louisiana and Mississippi requesting that the Commission extend the filing window for E-rate Funding Year (FY) 2006 until September 30, 2006, and waive the two-in-five rule for FY 2006 for schools and libraries in Louisiana, Mississippi, and Alabama that were directly affected by Hurricane Katrina.² In addition, we grant, in part, petitions filed by the Louisiana Public Service Commission and T-Mobile USA, Inc. (T-Mobile), by extending the temporary federal Lifeline Katrina support by three months so that eligible telecommunications carriers (ETCs) may continue to make available wireless service to victims of Hurricane Katrina until June 1, 2006.³

II. BACKGROUND

2. Hurricane Katrina struck the Gulf Coast of the United States on Monday, August 29, 2005, causing significant and unprecedented damage in Alabama, Louisiana, and Mississippi.⁴ As the

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*).

² Request for Further Waiver of FCC Rules to Extend Relief Provided in FCC 05-178 to Directly Affected Schools and Libraries in Louisiana and Mississippi, CC Docket No. 96-45 (filed Nov. 28, 2005) (E-rate Petition). Although we recognize that the E-rate Petition was limited to Louisiana and Mississippi, we include all the areas covered by the *Hurricane Katrina Order* here because we are unpersuaded that we should discriminate among the Katrina-affected areas.

³ Letter from Foster Campbell, Commissioner, Louisiana Public Service Commission, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket 96-45 (dated Feb. 22, 2006) (Louisiana Petition); Request to Extend the Temporary Universal Service Wireless Lifeline Program, CC Docket 96-45 (filed Feb. 24, 2006) (T-Mobile Petition).

⁴ See Federal Emergency Management Administration, About Hurricane Katrina, at http://www.fema.gov/hazards/floods/recoverydata/katrina_about.shtm (updated Dec. 5, 2005).

Commission noted in the *Hurricane Katrina Order*, countless houses, office buildings, apartment buildings, schools, libraries, and health care facilities were destroyed or damaged.⁵ Moreover, thousands of people – many evacuated to neighboring states – remain without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment.⁶

3. Accordingly, in the *Hurricane Katrina Order*, the Commission adopted, among other things, temporary modifications to the schools and libraries universal service support mechanism (also known as E-rate) to assist schools and libraries affected by Hurricane Katrina and a provision to allow evacuees and other persons displaced by the hurricane to qualify for wireless service under the federal Lifeline program.⁷

4. *Hurricane Katrina Order E-Rate Provisions and Petitions for Additional E-Rate Relief*. With regard to the E-rate program, the Commission “treat[ed] all schools and libraries that were directly affected by Hurricane Katrina at the highest level of priority for Priority Two services (*i.e.*, 90 percent) for Funding Years 2005 and 2006.”⁸ The Commission also “allow[ed] affected parties in eligible counties/parishes in Alabama, Louisiana, and Mississippi to ‘restart the clock’ for the purposes of calculating compliance with the ‘two-in-five rule.’”⁹

5. On November 28, 2005, the states of Louisiana and Mississippi requested similar relief for FY 2006 for schools and libraries in Louisiana and Mississippi that were directly affected by Hurricane Katrina.¹⁰ They note that the FY 2006 filing window closed on February 16, 2006.¹¹ Therefore, they ask the Commission to extend the FY 2006 filing window until September 30, 2006, to give schools and libraries throughout the Katrina-affected areas more time to evaluate reconstruction needs and thereby submit more accurate funding requests.¹² They also request a waiver of the two-in-five rule for directly affected schools and libraries in the Katrina-affected areas that will receive internal connections funding in FY 2006.¹³

6. *Hurricane Katrina Order Federal Lifeline Provisions and Need for Additional Relief*. To facilitate the access of evacuees and other displaced persons to telecommunications services, the Commission determined that any person approved for individual FEMA housing assistance or determined by FEMA to be eligible for such individual housing assistance relating to the hurricane would be eligible

⁵ *Hurricane Katrina Order*, para. 2.

⁶ *Id.*

⁷ *Id.* paras. 9, 37.

⁸ *Id.* para. 38.

⁹ *Id.*

¹⁰ E-rate Petition at 2-3.

¹¹ Universal Service Administrative Company, Latest News from the Schools and Libraries Program, at <http://www.universalservice.org/sl/tools/latest-news.aspx> (last visited February 27, 2006).

¹² Section 54.507(c) of the Commission’s rules provides that E-rate funding is available on a first-come-first-served basis for applications filed within the filing window established by the Universal Service Administrative Company (Administrator). 47 C.F.R. § 54.507(c). The Administrator determined to close the filing window for FY 2006 on February 16, 2006. Therefore, Petitioners seek an extension of the FY 2006 filing window to ensure that schools and libraries in the Katrina-affected areas that were directly affected by Hurricane Katrina are able to apply for and receive E-rate funding for FY 2006.

¹³ *Id.* § 54.506(c).

for federal Lifeline support for a free wireless handset¹⁴ and a package of at least 300 minutes of use, not to exceed \$130 per household, until March 1, 2006.¹⁵

7. To work within the parameters of the existing program, the Commission ordered this temporary support available to ETCs providing the supported wireless service.¹⁶ In order to receive the temporary support, the Commission prohibited participating wireless carriers from requiring consumers to enter into a long-term contract or require service beyond 300 minutes or March 1, 2006, whichever was shorter.¹⁷ The Commission set the federal Lifeline Katrina relief to expire on March 1, 2006 because it “anticipated that after this time period hurricane victims [would] no longer need this temporary relief.”¹⁸ By adopting the temporary rules, the Commission found that it must forbear from the ETC requirement,¹⁹ pursuant to section 10(a) of the Act,²⁰ until March 1, 2006.²¹

8. On February 24, 2006, T-Mobile filed a petition requesting that the Commission extend the temporary federal Lifeline Katrina support so that eligible telecommunications carriers (ETCs) may continue to make available wireless service to victims of Hurricane Katrina for an additional three months.²² According to T-Mobile, they have signed up more than 25,000 customers under the federal Lifeline Katrina program.²³ T-Mobile continues to receive a constant stream of eligible customers and

¹⁴ The Commission used its ancillary authority under Title I to include a free wireless handset. *See Hurricane Katrina Order*, para. 13.

¹⁵ The Commission estimated that this special relief would have approximately a \$39 million impact on the low-income fund, based on an estimated \$130 per approximately 300,000 eligible evacuee households without telephone service. *See id.* n.23.

¹⁶ *Id.* paras. 19-20.

¹⁷ *Id.* para. 12.

¹⁸ *Id.* n.23.

¹⁹ Section 254(e) requires that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.” 47 U.S.C. § 254(e). Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area. 47 U.S.C. § 214(e)(1). Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2). *See also Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (“*Twelfth Report and Order*”). Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” 47 U.S.C. § 214(e)(6). *See, e.g., Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001). Of the three states designated for FEMA assistance (Louisiana, Mississippi and Alabama), only Alabama does not exercise jurisdiction over ETC designation. *See Federal-State Joint Board on Universal Service, Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd 6854 (WCB 2005).

²⁰ Section 10 of the Act requires that the Commission forbear from applying a regulation or any provision of the Act to telecommunications services or telecommunications carriers if the Commission determines that the three conditions set forth in section 10(a) are satisfied. 47 U.S.C. § 160. In the *Hurricane Katrina Order*, the Commission determined that requirements of 10(a) were met until March 1, 2006. *Hurricane Katrina Order*, paras. 19-20.

²¹ *Id.*

²² *See generally* T-Mobile Petition.

²³ *Id.* at 2.

believes that extending the program will assist in the rebuilding of the damaged region.²⁴ The Louisiana Public Service Commission also requested that we extend the federal Lifeline Katrina program.²⁵

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.²⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁸ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁹

10. As explained below, we find that good cause exists to extend certain provisions of the *Hurricane Katrina Order*. To continue to deter waste, fraud, and abuse, however, the safeguards adopted in the *Hurricane Katrina Order* (e.g., audits of participating service providers and beneficiaries by the Office of Inspector General) and existing safeguards and measures in the USF programs will continue to apply.³⁰

11. Extended Relief for E-Rate Program. We find that there is good cause to extend the filing window for Funding Year 2006 until September 30, 2006, and to waive the two-in-five rule for Funding Year 2006 for schools and libraries in the Katrina-affected areas that were directly affected by Hurricane Katrina.³¹ This will allow these schools and libraries to be treated at the highest level of priority for Priority Two services. Many school students and library patrons in Louisiana, Mississippi, and Alabama that were forced from their homes may not return for months.³² As a result, many schools and libraries in the Katrina-affected areas did not have sufficient information about their reconstruction needs to prepare appropriate requests for E-rate funding by the end of the FY 2006 filing window.³³ Granting these temporary modifications will provide schools and libraries that were directly affected by Hurricane Katrina additional time to assess damage and evaluate reconstruction needs based upon reasonable projections for returning populations.³⁴

12. In addition, the temporary modifications adopted herein will reduce the potential for waste during FY 2006. Enabling these schools and libraries to gain a better understanding of their FY

²⁴ *Id.* at 2-3.

²⁵ See generally Louisiana Petition.

²⁶ 47 C.F.R. § 1.3.

²⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁹ *Northeast Cellular*, 897 F.2d at 1166.

³⁰ *Hurricane Katrina Order*, paras. 59-61.

³¹ See 47 C.F.R. §§ 54.507(c) (concerning the timing of requests for E-rate funding); 54.506(c) (concerning the frequency of discounts for internal connections services).

³² Petition at 2.

³³ *Id.*

³⁴ Comments of Cox Communications, CC Docket Nos. 96-45, 02-6 and WC Docket Nos. 02-60, 03-109 (filed Dec. 9, 2005).

2006 funding needs will help avoid the commitment of funds that may ultimately be unneeded.³⁵ To further deter waste, fraud, and abuse, schools and libraries that take advantage of the relief adopted herein are required to comply with the certification requirements set forth in the *Hurricane Katrina Order*.³⁶ In addition, to qualify for the two-in-five waiver, schools and libraries should submit a request describing the damage incurred to the equipment that needs to be replaced.³⁷

13. In the *Hurricane Katrina Order*, the Commission estimated that the initial relief to schools and libraries would have a \$132 million impact on the schools and libraries universal service mechanism.³⁸ We will continue to monitor the amounts of E-rate funds granted under these special provisions, but this limited extension of support does not change that projection.

14. *Extended Relief for Federal Lifeline Program*. We also find that there is good cause to extend until June 1, 2006 the federal Lifeline Katrina relief. The purpose of the original relief was to provide some stability and continuity of access to telecommunications for Hurricane Katrina victims while they were away from their destroyed homes and transitioning to a more permanent living situation. Because many of the hurricane victims remain displaced, we find that it is in the public interest to extend the provision of the federal Lifeline Katrina relief until June 1, 2006.³⁹

15. In extending the temporary relief under the federal Lifeline program we also continue to find it necessary to maintain the alternative designation process for temporary ETCs.⁴⁰ Specifically, we continue to find that the requirements of section 10(a) are met and that in order to effectively and efficiently implement these temporary rules, we must continue to forbear from the ETC requirement⁴¹ for the purposes of this special relief, until June 1, 2006. Moreover, to continue to deter waste, fraud, and abuse, applicants seeking to take advantage of the relief provided herein and ETCs that provide this federal Lifeline Katrina relief are required to comply with the additional certification and program requirements set forth in the *Hurricane Katrina Order*.⁴²

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 251(e), and section 1.3 of the Commission's rules, 47

³⁵ Comments of the E-rate Service Providers Forum, CC Docket Nos. 96-45, 02-6 and WC Docket Nos. 02-60, 03-109 (filed Dec. 7, 2005).

³⁶ *Hurricane Katrina Order*, para. 39.

³⁷ *Id.* para. 48.

³⁸ *Hurricane Katrina Order*, para. 38 & n.107.

³⁹ This extension is not intended to alter the terms of any Lifeline Katrina offering entered into with subscribers prior to March 1, 2006. We do not extend the provisions of the Federal Link-up Hurricane Katrina support. We leave undisturbed the provisions of that program which provide, in part, that through March 1, 2007 eligible households may receive support for a single telecommunications connection at any temporary housing arrangement and may also receive support for a single telecommunications connection at the time of return to permanent housing. *Id.* para. 14.

⁴⁰ *Id.* para. 20.

⁴¹ *See supra* n.19.

⁴² *Hurricane Katrina Order*, paras. 21-24. In particular, we emphasize, as we did in the *Hurricane Katrina Order*, that federal Lifeline Katrina relief is limited to one support package per household. *Id.* paras. 17, 23. We further note, consistent with the *Hurricane Katrina Order*, that the federal Lifeline Katrina relief is limited to applicants that do not have any obligation under FEMA rules to repay FEMA for the FEMA disaster housing assistance. *Id.* para. 17.

C.F.R. § 1.3, that the Petition filed by the states of Louisiana and Mississippi filed on November 28, 2005 IS GRANTED.

17. IT IS FURTHER ORDERED, pursuant to 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 251(e), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Petition filed by T-Mobile USA, Inc. on February 24, 2006 IS GRANTED to the extent provided herein.

18. IT IS FURTHER ORDERED, pursuant to 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 251(e), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Petition by the Louisiana Public Service Commission dated February 22, 2006 IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary