

# FCC Grants Temporary Universal Service Fund Relief for Hurricane Victims

Jennifer Rodden Wainwright

October 13, 2017

On October 6, 2017, the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (Bureau) issued an [order](#) temporarily waiving several rules and requirements related to the federal Universal Service Fund (USF) for persons and businesses in areas affected by Hurricanes Harvey, Irma and Maria. This Order is part of a broader effort by the FCC to modify or waive its rules in response to the disruptions caused by the August and September hurricanes in the Southeast. The Order generally extends deadlines for service providers participating in three of the USF's four major programs, eased the USF contribution burdens in the affected areas and provides relief for schools, libraries and other applicants for program benefits. The waivers discussed below are self-effectuating, but parties needing further relief than what is granted should consult with counsel regarding options for seeking additional relief. Parties are advised to review each of the waivers carefully and seek advice of competent counsel to determine the impact on the company's obligations.

**Geographic Scope** . The order generally applies to so-called "Affected Disaster Areas," defined as "areas of **Texas, Florida, Georgia, Puerto Rico, and the United States Virgin Islands (USVI)** that have been designated as Major Disaster Areas eligible for Individual Assistance for the purposes of federal disaster relief by the Federal Emergency Management Agency (FEMA)." Footnote 8 in the order further explains that all counties in Puerto Rico and the USVI have received such designation from FEMA, and directs parties to the FEMA website to view the counties in Texas, Florida and Georgia that have been designated as Affected Disaster Areas. Generally, relief is available to entities that serve or have headquarters in the Affected Disaster Areas and, in some cases, to entities outside the affected areas if their consultant is located within one of the Affected Disaster Areas. As explained in more detail below, the length of the specific waivers granted varies. Note also that Texas is excluded from the Lifeline provisions of the order.

**USF Recipient Waivers**. The order grants temporary waivers of certain rules for three USF programs – E-Rate, Rural Health Care, and Lifeline. The Commission had previously granted relief under the High Cost program by an order issued on October 4, 2017 which allowed eligible telecommunications carriers (ETCs) in Puerto Rico and the USVI to receive up to \$76.9 million in advance payments from the Connect America Fund to facilitate repairs of their networks in these territories. Through this latest order, the Bureau granted the following relief:

- *E-Rate*: The order generally grants three types of relief:
  - Extension of Filing Deadlines: The deadline to file FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act Certification (CIPA) Form), Form 472

(Billed Entity Applicant Reimbursement (BEAR) Form), and Form 474 (Service Provider Invoice Form), is extended until **March 5, 2018**. Requests for review or waiver of decisions by the Universal Service Administrative Company (USAC), directed to USAC or the Commission, also may be filed until **March 5, 2018**.

- Extension of Construction Deadlines: The order extends until **September 30, 2018** the FY 2016 implementation deadline for non-recurring services, other than special construction, and extends until **June 30, 2019** the FY 2017 deadline to complete special construction and light new fiber. (Applicants that wish to invoke the waiver of the special construction deadline must submit a valid FCC Form 500 before **June 30, 2018** certifying that construction for the special construction project was unavoidably delayed due to damage caused by the hurricanes.)
- Waiver of Record Retention Requirements: For records that were destroyed as a result of the hurricanes, the order waives the FCC's rule that "requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request." However, "Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Hurricanes. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission."
- *Rural Health Care*: Similar to the E-Rate program, the order waives certain filing and record retention requirements. Specifically:
  - Extension of Filing Deadlines: The deadline to file Form 463 (Healthcare Connect Fund (HCF) Program Invoice and Request for Disbursement Form) and the FY 2016 Annual Report Questionnaire by consortia under the HCF Program is extended until **March 5, 2018**. Requests for review or waiver of decisions by the Universal Service Administrative Company (USAC), directed to USAC or the Commission, also may be filed until **March 5, 2018**.
  - Waiver of Record Retention Requirements: For records that were destroyed as a result of the hurricanes, the order waives the FCC's rules that "require health care providers and service providers to retain all documents covered by those rules for at least five years after the last day of the delivery of supported services in a given funding year." Similar to the E-Rate record retention waiver, "[a]pplicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the Hurricanes."
- *Lifeline*: The order extends in terms of time, geographic scope, and rules a waiver that was previously granted on September 7, 2017. The new waiver of the Lifeline rules was granted in part in response to petitions filed by Telrite Corporation and PRWireless, Inc. d/b/a Open Mobile. (As noted above, the Bureau excluded Texas from the Lifeline waiver because "the Public Utility Commission of Texas (Texas PUC) administers eligibility and recertification processes in that

state and has indicated that such processes continue to function at this time.”) The key Lifeline provisions of the order are as follows:

- Non-Usage: Until **February 28, 2018**, Lifeline providers will not be required to de-enroll subscribers in the affected areas that do not comport with the FCC’s usage requirement. “At the expiration of the waiver period, Lifeline subscribers who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission’s rules.”
- Recertification: The requirement for subscribers to annually recertify their eligibility for Lifeline is temporarily waived for subscribers whose anniversary dates fall on or **between September 7, 2017 and February 28, 2018**. “At the expiration of the waiver period, ETCs are expected to begin recertification efforts promptly and subscribers who were subject to the waiver period will have 60 days to respond to their ETC’s recertification efforts.” Additionally, “[a]ny subscriber whose anniversary date falls within the waiver period but has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission’s rules.”
- Port Freeze: The order grants a temporary waiver until **February 28, 2018** of the port freeze rule, and “will permit subscribers to apply their Lifeline benefit to a different Lifeline provider even if they would otherwise be prohibited from doing so due to section 54.411 of the Commission’s rules. At the expiration of this waiver period, subscribers will be subject to the port freeze requirements of section 54.411, as measured from the date of that subscriber’s latest Lifeline enrollment or transfer.” The Bureau granted this waiver on its own motion, finding that “Lifeline subscribers may find that they are unable to obtain service from their current Lifeline provider in their area, even if another Lifeline provider’s service is operational.”

**USF Contributor Waivers.** The order extends the filing deadlines for certain USF contributor forms, waives late filing fees, and instructs USAC to refrain from imposing certain monetary and non-monetary penalties against providers. In particular, the order grants the following relief:

- *Form 499-Q Revisions*: For contributors serving the Affected Disaster Areas, the order extends the 45-day deadline for revisions to the August 2017 and November 2017 Form 499-Q until **January 2, 2018**. The Bureau found that such extension “will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of the Hurricanes on contributor revenues rather than having to wait until next year’s Form 499-A true-up process” and “will allow affected providers to utilize all available dollars for service restoration efforts in the Affected Disaster Areas.”
- *Late Fees for November 1 Form 499-Q*: The Bureau directs USAC, until after **January 2, 2018**, to “refrain from assessing late fees on late [November 1] Form 499-Q filings made by” either “providers with headquarters in the Affected Disaster Areas” or third party consultants or other external entities that prepare Form 499-Q filings on behalf of USF contributors and “are based in Affected Disaster Areas and whose operations have sustained damage due to the Hurricanes.”
- *Collection Activities*: The Bureau grants relief from the following “collection activities” by USAC:
  - Interest and Penalties: The order waives “all interest and penalties incurred by providers

with headquarters in Affected Disaster Areas between the effective date of this Order and January 2, 2018.”

- Red Light: Providers with headquarters in Affected Disaster Areas “will not be placed on Red Light due to debts that became delinquent after July 1, 2017, between the effective date of this Order and January 2, 2018.”
- Transfer to Treasury: “[A]ny debts incurred by providers with headquarters in the Affected Disaster Areas will not be transferred to Treasury for collection activities between the effective date of this Order and January 2, 2018.”

**Audit/Compliance Reminder.** The order reminds waiver recipients that the Bureau “retain[s] the discretion to evaluate the uses of monies disbursed through the USF Programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. Additionally, in the event [the Bureau] discover[s] any improper activity resulting from [its] action today, [the Bureau] will subject the offending party to all available penalties at [its] disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both.”

\* \* \*

Please contact the authors or your regular Kelley Drye attorney should you have any questions regarding the waiver order or the regulatory effects of the 2017 hurricanes.