

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

DIGEST

Adds 170 IAC 7-8 to establish the Indiana lifeline assistance program. Effective 30 days after filing with the Publisher.

170 IAC 7-8

SECTION 1. 170 IAC 7-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Rules Regarding Certain Practices and Procedures for Wireless Lifeline-Only Eligible Telecommunications Carriers or ETCs.

170 IAC 7-8-1 Policy and scope

Authority: IC 8-1-1-3; IC 8-1-2.6-13(d)(5); IC 8-1-2.6-13

Affected: IC 8-1-2.6-13(c)(5)

Sec. 1. (a) The purpose of this rule is to:

- (1) establish standards for marketing and distribution of lifeline wireless phones;**
- (2) add additional safeguards to ensure wireless ETCs are performing due diligence in lifeline eligibility determinations and disclosures when marketing the lifeline program from temporary structures or locations; and**
- (3) ensure ETCs and their representatives are identifying themselves and their products to prospective customers, and safeguarding customer information appropriately.**

(b) This rule applies only to wireless lifeline-only ETCs that offer lifeline services in Indiana from locations other than bricks-and-mortar retail establishments owned or managed by the wireless lifeline-only ETCs.

170 IAC 7-8-2 Definitions

Authority: IC 8-1-1-3; IC 8-1-2.6-13

Affected: IC 8-1-2.6-13(c)(5)

Sec. 2. The following definitions apply throughout this rule:

- (1) “Eligible telecommunications carrier” or “ETC” means a communications service provider that is designated as an eligible telecommunications carrier by the commission under 47 CFR 54.201 and IC 8-1-2.6-13(c)(5).**
- (2) “Commission” means the Indiana utility regulatory commission.**
- (3) “FCC” means the Federal Communications Commission.**
- (4) “Federal lifeline program” means the local retail service wireless offering of an ETC that is subsidized by the federal universal service fund, as described in 47 CFR 54.401(a).**
- (5) “Lifeline eligibility determination” means the ETC’s process of obtaining and reviewing certifications from prospective customers:**

- (A) demonstrating qualification for the lifeline program; and
- (B) ensuring that the customer understands the nature and requirements of the program pursuant to the federal lifeline rules.

(6) “Participant” means a customer who applies for and is eligible for the federal lifeline program.

(7) “Prospective participant” means an individual inquiring or applying for the federal lifeline program.

(8) “Temporary structures or locations” means:

(A) tents, buses, vans, booths or other non-permanent structures intended to be at a locations for a limited time period of less than one year, that can be removed or transported and used in another location; or

(B) locations that are not owned or leased by the wireless lifeline-only ETC, unless the location is operated by a bricks-and-mortar retail establishment and the marketing takes place indoors.

(9) “Wireless lifeline-only ETC” means an entity that has been designated by the commission as a wireless ETC for the sole purpose of offering services under the federal lifeline program through the distribution of wireless mobile devices to participants in Indiana.

170 IAC 7-8-3 Lifeline Agents
Authority: IC 8-1-1-3; IC 8-1-2.6-13
Affected: IC 8-1-2.6-13(c)(5)

Sec. 3. A wireless lifeline-only ETC shall perform a criminal background check on each employee or independent agent who interacts with participants or prospective participants on the wireless lifeline-only ETC’s behalf. A document evidencing the criminal background check shall be maintained by the wireless lifeline-only ETC for a period of two years.

i-wireless Comment: The proposed rule lacks a pass/fail criteria and we seek guidance on what an acceptable standard would be perceived by the PUC.

Additionally, we seek guidance from the PUC on an acceptable storage and redundancy protocol in order to best protect such sensitive and personally identifiable information.

170 IAC 7-8-4 Temporary Structures and/or Locations
Authority: IC 8-1-1-3; IC 8-1-2.6-13
Affected: IC 8-1-2.6-13

Sec. 4. Enrollment of prospective participants in the federal lifeline program by a wireless lifeline-only ETC from a temporary structure or location is prohibited unless the following conditions are met:

- (a) **There are at least two banners identifying the name of the wireless lifeline- only ETC, in print that is readable from at least thirty (30) feet away.**

i-wireless Comment: This is not a requirement of the FCC's rules for advertising. Compliance with the FCC's advertising rules was included as part of the mandatory biennial audit. Results of i-wireless' biennial audit are available to the Indiana PUC for review.

Spatial limitations of some enrollment locations, such as food pantries, job fairs, shelters or church ministry-related events are often conducted in areas with limited real estate, prohibiting the visibility of banners from the suggested 30 feet.

- (b) **The banners are at least three (3) foot by five (5) foot in size and the identification of the wireless lifeline-only ETC takes up at least fifty (50) percent of the banner.**

i-wireless Comment: This is not a requirement of the FCC's rules for advertising.

Creating a separate set of rules for branding materials in Indiana places an unnecessary burden of expense and complexity on the ETC that is fully compliant with the FCC's advertising rules.

- (c) **All agents of employers must wear a shirt that has the name of the wireless lifeline-only ETC permanently affixed to the shirt.**

i-wireless Comment: This is not a requirement of the FCC's rules for advertising.

All representatives of i-wireless are provided with a branded lanyard and apparel, but this rule is unenforceable. It does not account for circumstances beyond the ETC's control, such as, if a representative is cold and puts a jacket on over a branded t-shirt or is hot and removes a branded sweatshirt. It is implausible that an ETC could be in violation of such requirement.

- (d) **The available terms, conditions and rates for the federal lifeline program product(s) must be prominently posted at the location where the marketing is taking place.**

i-wireless Comment: Available rate plan options and Terms and Conditions of Service are available to the consumer.

- (e) **The wireless lifeline-only ETC must have written permission, available on-site, from either the owner of the property where the marketing is taking place or from the individual or entity responsible for the property.**

i-wireless Comment: All property owners have a wide set of rights available to them afforded by local, state and federal law and we work with owners to ensure their consent, but prior written approval is not a requirement for two parties to demonstrate an agreement.

Additionally, it is important to note that while verbal permission may be granted to an ETC to set-up an enrollment location by a store manager or clerk, the owner of a property is not always present on-site to provide written permission.

- (f) The wireless lifeline-only ETC must have all required city and county licenses necessary for selling a service at that location.**

i-wireless Comment: If city and county licensing are required in order to set-up an enrollment location, we comply with the requirement.

- (g) All marketing conducted or services provided by the wireless lifeline-only ETC must be provided in a manner that does not create a traffic hazard.**

i-wireless Comment: This is a common sense practice to ensure the safety and well being of prospective participants, representatives of the ETC and the general public.

- (h) The temporary structure must have the name of the wireless lifeline-only ETC permanently affixed on the outside of the temporary structure, in letters that are at least eighteen (18) inches in height;**

i-wireless Comment: This is not a requirement of the FCC's advertising rules and would pose an additional cost burden on ETC's to produce a separate set of point-of-sale materials and display merchandising to satisfy this branding requirement.

- (i) The wireless lifeline-only ETC must provide the commission a list of locations by email where mobile marketing is taking place, including the date, time and location, at least two weeks prior to the marketing from temporary structures. ;**

i-wireless Comment: Mobile marketing is a practice employed by all major telecommunications companies. Isolating wireless Lifeline-only ETCs to provide advance notice is an unreasonable competitive burden.

Enrollment locations are not always known two weeks in advance. FCC advertising and outreach requirements require an ETC to "publicize the availability of Lifeline service in a manner designed to reach those likely to qualify for the service." ETCs may often be asked to set-up an enrollment location on short notice at locations (i.e. local job fairs, senior citizen expos) that are designed to attract low-income consumers that are likely to qualify for Lifeline service and rely on the advertising efforts of others to drive consumer traffic to the event.

Additionally, unpredictable events, such as severe weather (hurricanes, floods, tornadoes) can cause significant damage to areas, creating an immediate need for ETCs to provide Lifeline enrollment opportunities in the community.

- (j) Any wireless handset provided by the wireless lifeline-only ETC in conjunction with the federal lifeline program must clearly and permanently identify the wireless lifeline-only ETC.

i-wireless Comment: This is not a requirement of the FCC's rules for advertising.

Handsets provided to Lifeline eligible consumers are not funded by the Federal Lifeline Assistance program. Phone model may vary based on inventory availability and is at the discretion of the ETC.

Customized branding is expensive. A handset equipment manufacturer will only accommodate permanent branding of a mobile phone when a substantial inventory purchase is placed, a threshold by which many ETCs don't satisfy.

Such permanent branding requirements are not applicable to traditional wireless services providers (AT&T, Verizon, Sprint or T-Mobile), and are explicitly counter to the expressed sentiment of FCC Commissioner Mignon Clyburn that a Lifeline phone should be indistinguishable from a non-Lifeline phone.

- (k) Lifeline eligibility determinations must be conducted before the customer is enrolled in the federal lifeline program and provided with a lifeline phone. The participant or prospective participant must be given adequate time to review the lifeline certification form, which shall be signed and initialed by the participant or prospective participant.

i-wireless Comment: In today's digital economy, consumers understand that clicking a box, using a digital stylus, or clicking an "I ACCEPT" button are legally valid and binding. For this reason, requiring a heightened standard beyond what is required by the E-SIGN Act is unnecessary. Doing so would impose upon low-income consumers, requiring them to comply with additional regulatory requirements that don't apply to other Americans.

170 IAC 7-8-5 **Process for checking accurate subscriber address**
Authority: **IC 8-1-1-3; IC 8-1-2.6-13**
Affected: **IC 8-1-2.6-13(c)(5)**

Sec. 5. In addition to adherence to federal lifeline program rules, when using an online public records database to verify the address of the prospective participant and the online public records database returns an error code, or signal that the address is vacant, non-existent or otherwise non-conforming, the wireless lifeline-only ETC must obtain a document verifying the address. Appropriate documentation may include a utility bill, a driver's license, credit card bill, other government identification, or federal postal service

verification of the address. The wireless lifeline-only ETC must retain such documentation for a period of two years.

i-wireless Comment: Formal adoption of this rule mirrors a process that i-wireless already has in place.

DRAFT