

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Allband Communications Cooperative	)	
Petition for Waiver of Certain High-Cost	)	
Universal Service Rules	)	

**ORDER**

**Adopted: February 22, 2018**

**Released: February 22, 2018**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) grants in part and denies in part a petition for waiver filed by Allband Communications Cooperative (Allband) of section 54.302 of the Commission's rules.<sup>1</sup> The relief we grant today will enable this rate-of-return incumbent local exchange carrier (LEC) to continue to provide voice and broadband services in parts of rural Michigan, which otherwise would go unserved.

**II. BACKGROUND**

2. Allband is a rate-of-return eligible telecommunications carrier (ETC) incumbent LEC.<sup>2</sup> The company provides voice and broadband services in the Robbs Creek Exchange, which is in the northeast portion of the Lower Peninsula of Michigan, serving 156 loops in the study area.<sup>3</sup> Allband advertises residential rates of \$44.99 per month for unlimited 100/100 Mbps Internet.<sup>4</sup> In the rural communities surrounding the Robbs Creek Exchange, Allband provides high-speed broadband and VoIP services through its wholly owned subsidiary, Allband Multimedia LLC (AMM). AMM has approximately 650 customers,<sup>5</sup> and it advertises residential rates of \$59.99 per month for unlimited 100/50 Mbps Internet.<sup>6</sup> Allband constructed the plant inside the study area with an \$8 million loan from the Rural Utility Service (RUS) that originated in 2005. Allband constructed the plant outside its study

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<sup>1</sup> Petition of Allband Communications Cooperative for Waiver of the Part 54.302 Rule and for Increased Per-Line Support, WC Docket 10-90 et al. (filed July 27, 2017) (July 2017 Petition).

<sup>2</sup> July 2017 Petition, at Appx. B, Affidavit of Tim Morissey, Attach. 7.

<sup>3</sup> The Robbs Creek Exchange is an irregularly shaped 177-square-mile heavily forested, sparsely populated area that includes portions of four counties – Alcona, Alpena, Oscoda and Montmorency – that, prior to Allband, were unserved.

<sup>4</sup> See Allband, Allband Communications Cooperative Rates, <https://allband.org/allband-communications-cooperative-rates/#top> (last visited Feb. 20, 2018).

<sup>5</sup> See Allband Celebrates 10 Years (Aug. 6, 2015), <http://allband.org/blog/allband-celebrates-10-years/>.

<sup>6</sup> See Allband, Allband Multimedia Rates, <http://allband.org/allband-multimedia-rates/> (last visited Feb. 20, 2018). Advertised commercial rates are \$79.99 per month for unlimited 100/100 Mbps Internet. *Id.*

area with \$9.7 million in grants from the American Recovery and Reinvestment Act (ARRA) awarded in 2010.<sup>7</sup>

3. In the *USF/ICC Transformation Order*, the Federal Communications Commission (Commission) adopted section 54.302, establishing a presumptive per loop cap of \$250 per month on total high-cost universal service support for all ETCs, including incumbent LECs, to be phased in over three years.<sup>8</sup> The Commission concluded that support in excess of that amount should not be provided without further justification.<sup>9</sup> The *USF/ICC Transformation Order* noted that “any carrier negatively affected by the universal service reforms . . . [may] file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”<sup>10</sup> In the *Fifth Order on Reconsideration*, the Commission clarified that in evaluating waivers for additional support, it would also consider the impact on broadband-capable networks.<sup>11</sup>

4. On February 3, 2012, Allband petitioned for a waiver of section 54.302 until 2026 (the end of the RUS loan term).<sup>12</sup> On July 25, 2012, the Bureau granted the waiver, in part, waiving section 54.302 for three years until June 30, 2015.<sup>13</sup> On December 31, 2014, Allband requested a further waiver again asking that the Commission grant Allband a waiver until the end of 2026 so that Allband could repay its RUS loan and continue operations.<sup>14</sup>

5. The Bureau extended the July 25, 2012 waiver on an interim basis for six months and directed the Universal Service Administrative Company (USAC) to undertake factual inquiries on certain

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<sup>7</sup> See Allband, History and Mission, <http://allband.org/history-and-mission/> (last visited Feb. 20, 2018).

<sup>8</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17765, para. 274 (2011) (*USF/ICC Transformation Order*); *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). 47 CFR § 54.302.

<sup>9</sup> *Id.* at 17765, para. 274.

<sup>10</sup> *Id.* at 17839-40, paras. 539-40.

<sup>11</sup> *Connect American Fund, et. al*, WC Docket No. et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14547, para. 20 (2012) (*Fifth Order on Reconsideration*).

<sup>12</sup> Allband Communications Cooperative Petition for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs, WC Docket No. 10-90, et al. (filed Feb. 3, 2012).

<sup>13</sup> See *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 27 FCC Rcd 8310, 8315, para. 15 (WCB 2012) (*July 2012 Waiver Order*). On August 24, 2012, Allband filed an Application for Review that, among other things, sought review of a three-year waiver, again asking for waiver that would extend to the end of the RUS loan period. See Application for Review of Allband Communications Cooperative, WC Docket No. 10-90, et al. (filed Aug. 24, 2012). Allband also made several legal challenges to the \$250 cap and requested a waiver of the benchmarking rule, which the Commission subsequently eliminated. See *id.* at 1, 10-24. On July 11, 2013, Allband challenged certain aspects of the *USF/ICC Transformation Order* in the Tenth Circuit Court of Appeals, raising the same legal issues presented in the Application for Review of the Bureau’s action on the waiver request. See Appellate Brief, *In re FCC 11-161*, 753 F.3d 1015 (2014), 2013 WL 3795849 \*31-38 (Allband 10<sup>th</sup> Cir. Brief). On May 23, 2014, the Court denied all of Allband’s claims. *In re FCC 11-161*, 753 F.3d at 1089-93. On August 27, 2014, the Court denied Allband’s petition for rehearing en banc, see *In re FCC 11-161*, No. 11-9900, Order (10th Cir. Aug. 27, 2014) (en banc denial), and on May 4, 2015, the Supreme Court of the United States denied Allband’s petition for writ of certiorari. *Allband Communications Cooperative v. Federal Communications Commission*, 135 S.Ct. 2072 (2015).

<sup>14</sup> See Petition of Allband Communications Cooperative for Further Waiver of Part 54.302, WC Docket No. 10-90, et al., (filed Dec. 31, 2014) (Further Waiver Request).

accounting issues which the Bureau identified as requiring further review.<sup>15</sup> On December 7, 2015, the Bureau extended Allband's interim waiver until the earlier of June 30, 2016 or the date on which the Commission ruled on Allband's Further Waiver Request.<sup>16</sup>

6. On July 20, 2016, the Commission denied Allband's Further Waiver Request reducing Allband's high-cost support to \$250 per loop per month.<sup>17</sup> The Commission determined that Allband consistently misapplied the Commission's cost allocation rules rendering its cost accounting unreliable. Consequently, the Commission found that it could not determine how much, if any, support above the \$250 per loop per month cap was warranted.<sup>18</sup>

7. Furthermore, as part of the denial, the Commission ordered Allband "to revise its cost accounting practices to be consistent with [the Commission's] rules and submit information regarding its revised allocation of costs and associated revisions to its cost studies to USAC for review."<sup>19</sup> The Order required USAC to complete its review within three months of the date on which Allband submitted "detailed breakdowns by percentage of how each category of employee's time is allocated between regulated and nonregulated activities for at least a three-month period in such a way that USAC can determine if Allband's revised practices comply with [the Commission's] rules."<sup>20</sup>

8. On January 12, 2017, while USAC's review was in progress, Allband filed an emergency petition for an interim waiver of section 54.302, requesting \$375 per loop per month, pending completion of USAC's review and subsequent Commission approval of a further waiver increasing per-line support above \$375.<sup>21</sup>

9. USAC completed its review on April 13, 2017.<sup>22</sup> Allband petitioned for a waiver of 54.302 on July 27, 2017 requesting \$457 per loop per month as may be adjusted in future years based on annual cost studies, subject to a later determination of any claw-back, until the end of the RUS loan term or on a "reasonably long-term and certain basis."<sup>23</sup>

10. Prior to the January 2017 Emergency Petition, Allband petitioned the United States Court of Appeals for the Sixth Circuit for review of the *July 2016 Waiver Order*. The petition for review is

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<sup>15</sup> See *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 30 FCC Rcd 6955, 6955, 6957-59, para. 1, 6-13. (WCB 2015). On October 23, 2015, USAC submitted a memorandum on the results of its inquiry. See Sept. 23, 2015 Memorandum from Universal Service Administrative Company Internal Audit Division to Federal Communications Commission Wireline Competition Bureau, WC Docket No. 10-90 (filed Oct. 23, 2015).

<sup>16</sup> *Connect America Fund Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 30 FCC Rcd 14021 (WCB 2015).

<sup>17</sup> *Connect America Fund Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket 10-90, Order and Order on Review, 31 FCC Rcd 8454 (2016) (*July 2016 Waiver Order*). In the order, the Commission also denied Allband's August 24, 2012 Application for Review. See *id.* at 8465-66, paras. 29-32.

<sup>18</sup> See *id.* at 8462-63, paras. 21-22.

<sup>19</sup> *Id.* at 8463, para. 23.

<sup>20</sup> *Id.*

<sup>21</sup> See Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of 54.302 Rule and for Increased Per-Line Support, WC Docket 10-90 et al., at 2-3 (filed Jan. 12, 2017) (Jan. 2017 Emergency Petition).

<sup>22</sup> See Memorandum, USAC Review of Allband Communications Cooperative, WC Docket No. 10-90 (filed Apr. 13, 2017) (incorporating Allband's comments into the memorandum) (USAC Report).

<sup>23</sup> July 2017 Petition at 18.

currently in abeyance, at Allband's request, pending Commission review of the waiver petitions.<sup>24</sup>

### III. DISCUSSION

#### A. Allband's Corrected Cost Accounting Is Reliable

11. USAC concluded that Allband made the necessary adjustments to its cost accounting and allocations. Specifically, USAC determined that "Allband appears to have adjusted its cost accounting practices to substantially comply with the FCC's rules for cost allocation between regulated and nonregulated activities."<sup>25</sup> Based on our own review of the USAC Report, we agree with USAC's conclusion that Allband's adjusted cost accounting now complies with the Commission's rules.

12. While USAC reported an instance of improper time reporting and three instances where Allband lacked supporting documentation for time entries, Allband has since revised its procedures so that these mistakes are not likely to reoccur.<sup>26</sup> The changes Allband made to its time reporting procedures also address the Commission's concerns regarding compliance with the affiliate transactions rules.<sup>27</sup>

13. Additionally, USAC reviewed 57 general ledger transactions and found eight instances of improper expenditures.<sup>28</sup> We agree with USAC, however, that the majority of these eight transactions "involved complex classifications and a degree of subjectivity."<sup>29</sup> Moreover, Allband corrected its process for reporting expenses to account for USAC's findings.<sup>30</sup> Finally, Allband's new allocators for corporate operations, plant, customer service, and total company are reasonable given the number of lines between Allband and AMM and their respective revenues.<sup>31</sup> Accordingly, we find that Allband's cost accounting is reliable.

#### B. Standard in Evaluating Waiver of the \$250 Per Loop Per Month Cap

14. Because we determine that Allband's cost accounting is reliable, we apply our standard waiver criteria to Allband's petition accounting for the Commission's guidance in the *USF/ICC Transformation Order* and the *Fifth Order on Reconsideration*.<sup>32</sup> Generally, the Commission's rules may be waived if good cause is shown.<sup>33</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>34</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>35</sup> Waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public

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<sup>24</sup> *Allband Communications Coop v. FCC, et al*, Case No. 16-4059, (6th Cir. Jan. 17, 2017).

<sup>25</sup> USAC Report at 6.

<sup>26</sup> *Id.* at 2-3, 7.

<sup>27</sup> See *July 2016 Waiver Order*, 31 FCC Rcd at 8458-59, 8461, paras. 12, 19; USAC Report at 5.

<sup>28</sup> USAC Report at 5, Exhibit II.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17839-42, paras. 539-44; *Fifth Order on Reconsideration*, 27 FCC Rcd at 14556-60, paras. 18-32.

<sup>33</sup> 47 CFR § 1.3.

<sup>34</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>35</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

interest.<sup>36</sup>

15. In the *Fifth Order on Reconsideration*, the Commission said that it envisions “granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.”<sup>37</sup> In addition, the Commission said in the *USF/ICC Transformation Order* that “any company that seeks additional funding will be subject to a thorough total company earnings review.”<sup>38</sup>

**C. Allband Has Demonstrated Good Cause Exists to Grant a Waiver of Section 54.302**

16. Allband contends that a waiver is necessary and in the public interest because the revenue reductions caused by section 54.302 and the *July 2016 Waiver Order* will irreparably harm Allband and its customers by providing insufficient revenues to continue to provide voice and 911 incumbent LEC services, pay the principal and interest on the RUS loan, and continue operations as an incumbent LEC in an otherwise unserved territory.<sup>39</sup> We agree. At current support levels, factoring in expenses, non-USF revenues, cash reserves, and no relief from debts/accounts payable, Allband’s customers are at significant risk of losing access to voice and broadband services.<sup>40</sup>

17. Furthermore, since the Commission denied Allband’s waiver request, the company has taken further actions to reduce its expenses. It eliminated paid holidays, reduced the number of employees, implemented a new commission-only bonus structure, and negotiated with the State of Michigan to reduce property taxes.<sup>41</sup> Even with the cost cutting measures, based on our total company earnings review, with no relief from debts/accounts payable, Allband still needs support above \$250 per loop per month to be cash flow positive and keep its account balances above zero both in the near and long term. Moreover, because Allband serves a sparsely populated area, it cannot increase the number of customers to raise revenues enough to materially change its situation. Even significant rate increases for its existing customers would be insufficient to bring the amount of support below \$250 per loop per month. Combined, these facts amount to special circumstances, and without the requested waiver, Allband is at risk of no longer being financially viable. Because there are no alternative service providers, Allband’s customers are at risk of losing access to voice and broadband services.<sup>42</sup>

18. We find that other special circumstances support Allband’s waiver request as well — the same circumstances that existed in 2012 when the Commission first granted relief. Allband is still a relatively new company (compared to other rural incumbent LECs);<sup>43</sup> it had significant start-up costs and

<sup>36</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>37</sup> *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

<sup>38</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17739, para. 202.

<sup>39</sup> July 2017 Petition at 5.

<sup>40</sup> See *id.* at 4 (noting that the RUS loan payment obligation alone equals \$54,147.17 per month, or \$334 per-line); see *id.* at 5 (“The continuing revenue reductions caused by the implementation of the part 54.302 rule and the Commission’s July 20, 2016 Order will irreparably harm Allband and its customers by providing insufficient revenues to: (a) continue to provide voice and 911 ILEC services to any of its customers, (b) pay the principal and interest on its existing RUS loan based upon the financial security provided by the previously authorized and contemplated USF funding, and (c) continue operations as an ILEC telecommunications carrier in its otherwise unserved territory”); see *id.* at Appx. A, Affidavit of Ron Siegel, Attach. 1, 2; Jan. 2017 Emergency Petition at Appx. B, Affidavit of Ron Siegel, 11-12.

<sup>41</sup> See July 2017 Petition at 8, Appx. A, Affidavit of Ron Siegel, at 8-9.

<sup>42</sup> See *id.* at 5 (noting that Allband offers service to “otherwise unserved territory”).

<sup>43</sup> *Id.* at 4.

still has undepreciated plant. Allband serves a remote, heavily forested and unserved area in the lower peninsula of Michigan, including portions of four counties that previously had no service.<sup>44</sup> Allband's service territory is difficult to serve and has very few potential customers.<sup>45</sup> For these reasons, it is reasonable that Allband still experiences higher costs than carriers serving other more densely populated areas.

19. Allband has demonstrated that special circumstances exist, and we grant the \$457 per loop per month as requested, based on Allband's cost study using corrected cost allocation procedures.<sup>46</sup> However, to the extent that Allband's annual cost studies show that its costs per loop decrease, we find that it should receive support based on those lower costs per loop. Accordingly, we grant Allband the lesser of \$457 per loop per month or support based on actual costs per loop.<sup>47</sup> Support during the waiver period shall not increase above \$457 per loop per month.<sup>48</sup> We cap it at that amount because we expect Allband to continue making an effort to increase non-USF revenues and increase the number of its customers in a cost-efficient manner. Therefore, we deny Allband's request for support to be "adjusted in the future based upon continuing annual cost studies and reports" to the extent those cost studies would increase support above \$457 per loop per month.<sup>49</sup>

20. We do not grant a waiver until completion of all RUS loan payments as requested.<sup>50</sup> Instead, we grant Allband a waiver until March 1, 2021, which Allband may seek to renew thereafter. We continue to believe that three years is an appropriate length of time to account for changes in circumstances.<sup>51</sup> If a waiver is still necessary in 2021, Allband shall file with the Bureau its most recent annual cost study and most recent audited financial reports with notes. To the extent Allband has taken additional measures to increase revenues and/or reduce expenses, we ask Allband to provide that information.

21. Furthermore, this grant is subject to the condition that Allband submit to the Bureau when available complete audited financial statements for Allband and AMM with notes for 2016 and on a consolidated basis to ensure that there are no financial irregularities. In addition, Allband will submit to the Bureau audited financial statements for each year of the waiver when those statements are available. These financial statements should show the amount of interest payments and remaining principal on all

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<sup>44</sup> See *id.*, and Allband Communications, <http://allband.org/history-and-mission/> (last visited Feb. 20, 2018).

<sup>45</sup> See *July 2012 Waiver Order*, 27 FCC Rcd at 8313-14, para. 11.

<sup>46</sup> See *July 2017 Petition* at 1, Appx. B, Affidavit of Tim Morissey, para. 14, and Appx. C, Affidavit of Christine A. Duncan, CPA, paras. 13-15.

<sup>47</sup> We grant this increase in support retroactively to August 1, 2017. If Allband seeks protection under U.S. bankruptcy laws or is found to be in default on its loan payments to the Rural Utilities Service (RUS), this waiver will terminate, and Allband's support will revert to the lesser of \$250 per loop per month (or the maximum support available per line, per month without a waiver) or actual costs. This waiver is based on the cost studies provided to USAC. If Allband seeks bankruptcy protection or defaults on its RUS loan, it will have significantly different accounting and expense requirements than it currently does. If subsequent to bankruptcy proceedings (or other proceedings initiated by RUS as a result of Allband defaulting on its loan) Allband were still to require support in excess of \$250 per loop per month, Allband could file a renewed petition for waiver of §54.302 supported by revised cost studies demonstrating that such a waiver is financially necessary.

<sup>48</sup> We also, on our own motion, waive application of the budget control mechanism (47 CFR §§ 54.901(f), 54.1310(d)) to Allband's support for the duration of this waiver. 47 CFR § 1.3. Given the totality of the circumstances, particularly Allband's financial condition, we believe that further reductions in Allband's support may jeopardize the provision of service and would not be in the public interest.

<sup>49</sup> See *July 2017 Petition* at 18.

<sup>50</sup> See *id.*

<sup>51</sup> See *July 2012 Waiver Order*, 27 FCC Rcd at 8314, para. 14.

outstanding loans separately, as well as an explanation in the notes if any loans have been restructured. If Allband fails to meet these conditions, the Bureau will direct USAC to stop disbursing to Allband all support above the limit allowed in §54.302.

22. As the Commission did in the *July 2016 Waiver Order*, we seek “to balance the various objectives of section 254(b) of the Communications Act, including the objective of providing support that is sufficient but not excessive so as to not impose an excessive burden on consumers and businesses who ultimately pay to support the Fund.”<sup>52</sup> By permitting support of up to an additional \$207 per loop per month more than Allband currently receives, we are not imposing an excessive burden on consumers and businesses. We note that this amount is less per loop than Allband’s disbursements at the end of its interim waiver and will therefore have a *de minimis* impact on overall high-cost support funds. Moreover, \$457 per loop per month provides Allband a path to financial viability and continued voice and broadband services for Allband’s customers who otherwise would face risk of losing service.

23. Even though we grant Allband a maximum of \$457 per loop per month in support, we note that the financial information we reviewed shows considerable expenses for legal, accounting, and cost studies.<sup>53</sup> Because these expenses were associated with now-completed litigation and a revision of Allband’s cost accounting to comply with our rules, this relatively high-level of expenses was anticipated. However, we anticipate that Allband will reduce those expenses going forward, which will in turn decrease the amount of support per loop per month.

24. Because we grant Allband a longer-term waiver, we dismiss the January 2017 Emergency Petition as moot. We note that Allband’s actions to come into compliance, and its commitment to continued compliance with our cost accounting rules, does not factor into whether good cause exists to grant a waiver. We caution Allband and any other regulated company that they should not conclude that coming into or committing to continued compliance with our rules supports a waiver grant in similar circumstances.<sup>54</sup> Here, coming into compliance was necessary before the Bureau could even consider the merits of Allband’s petition. We also remind Allband that neither its size nor its corporate structure justifies any deviation from the Commission’s affiliate transaction and cost accounting rules.<sup>55</sup>

**D. We Grant in Part and Deny in Part Allband’s Request to Offset Any Claw-back of Support**

25. In the *July 2016 Waiver Order*, the Commission concluded that once USAC determined the appropriate allocation of costs between regulated and nonregulated activities, it shall apply the same methodology to Allband’s costs during the interim waiver period from June 30, 2015 until the date of the *July 2016 Waiver Order* – July 20, 2016 – to determine what Allband’s support would have been if Allband had correctly allocated its costs. The Commission further directed USAC to initiate through its regular procedures recovery actions for all high cost loop support (HCLS) and interstate common line support (ICLS) support above the amount Allband should have received during the interim waiver.<sup>56</sup>

26. In addition, the Commission directed USAC to examine Allband’s cost allocations during the initial waiver period (2012-2015) to determine whether Allband was overcompensated by the USF during this time.<sup>57</sup> The Commission stated that USAC’s findings would be used “to determine what Allband’s support would have been if Allband had correctly allocated its costs during the initial waiver

<sup>52</sup> *July 2016 Waiver Order*, 31 FCC Rcd at 8462, para 22, and *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57. See 47 U.S.C. § 254(b).

<sup>53</sup> July 2017 Petition, Appx. B, Affidavit of Tim Morissey, Attach. 4, at 3.

<sup>54</sup> See July 2017 Petition at 13-16.

<sup>55</sup> See *id.* at 14-15.

<sup>56</sup> *July 2016 Waiver Order*, 31 FCC Rcd at 8463, para 24.

<sup>57</sup> *Id.* at 31 FCC Rcd at 8463-64, para. 25.

period and to determine whether to take any further appropriate actions, such as the recovery of HCLS and ICLS support above the amount Allband should have received during this period.”<sup>58</sup>

27. Allband requests that the Commission consider two offsets to any claw-back. First, Allband claims it was “shorted” by the *July 2012 Waiver Order* because it could not collect support for 2011 and 2012 cost studies; and, second, it claims it was “shorted” by the shortage of reimbursements that occurred after the *July 2016 Waiver Order*.<sup>59</sup>

28. With respect to Allband’s first claim, we deny its request. The *July 2012 Waiver Order* granted Allband “the lesser of high-cost universal service support based on its actual costs or the annualized total high-cost support that it received for the period January 1, 2012 through June 30, 2012.”<sup>60</sup> While true that Allband was precluded from recovering additional fixed or sunk costs for 2011 or 2012 incurred prior to the *USF/ICC Transformation Order*, the same was true for all carriers. The *July 2012 Waiver Order* did provide Allband support above the amount it would have received absent a waiver. We will not offset any claw-back with support Allband believes it should have received but was not awarded. This decision is especially appropriate here because the Commission did not authorize any carriers to receive the support that Allband requests we factor into a claw-back.

29. With respect to its second claim, we grant Allband’s request. For purposes of the offset only, to avoid financial harm in possible detriment to consumers, we determine that it is in the public interest to reduce any claw-back by \$207 per loop per month since the adoption of the *July 2016 Waiver Order*.<sup>61</sup> Any partial months will be calculated on a prorated per day basis. Accordingly, we direct USAC to adjust the claw-back described in the *July 2016 Waiver Order* pursuant to our direction in this paragraph.

#### IV. CONCLUSION

30. Allband has come into compliance with the Commission’s cost accounting rules. After review of the company’s financial information and, other special circumstances as discussed above, we find that there is good cause to grant Allband a waiver of the section 54.302(a) so that it can receive the lesser of \$457 per loop per month or support based on costs. Providing Allband high-cost support above the \$250 per loop per month cap ensures that Allband’s customers will not be at significant risk of losing access to voice and broadband services. Furthermore, the amount of support we grant Allband will not impose an excessive burden on consumers and businesses. Accordingly, we grant Allband’s request until March 1, 2021. USAC shall continue to implement the *July 2016 Waiver Order* and any claw-back of support will be offset as if Allband received \$457 per loop per month since the release of the *July 2016 Waiver Order*.

#### V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that this order IS ADOPTED.

32. IT IS FURTHER ORDERED that the Petition for Waiver of Section 54.302 of the Commission’s rules, 47 C.F.R. § 54.302 filed by Allband Communications Cooperative on July 27, 2017, as discussed herein, IS DENIED IN PART and GRANTED IN PART until March 1, 2021, conditioned upon Allband submitting complete audited financial statements with notes for 2016 for Allband, AMM,

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<sup>58</sup> See *id.*

<sup>59</sup> July 2017 Petition at 16, Appx. A, Affidavit of Ron Siegel at 10.

<sup>60</sup> *July 2012 Waiver Order*, 27 FCC Rcd at 8315, para. 15.

<sup>61</sup> The \$207 per loop per month is the difference between \$457 (what we grant in the Order) and \$250 (what Allband has been receiving) per loop per month for the period since the *July 2016 Waiver Order* to the present.



and on a consolidated basis to the Bureau.

33. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that sections 54.901(f) and 54.1310(d) of the Commission's rules, 47 C.F.R. §§ 54.901(f) and 54.1310(d), are waived to the limited extent provided herein.

34. IT IS FURTHER ORDERED that the Emergency Petition for Waiver of Section 54.302 of the Commission's rules, 47 C.F.R. § 54.302 filed by Allband Communications Cooperative on January 12, 2017, IS DISMISSED as moot.

35. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Wireline Competition Bureau