

PUBLIC LAW RESOURCE CENTER PLLC

Public Law Resource Center PLLC
University Office Place
333 Albert Avenue, Suite 425
East Lansing, Michigan 48923
T (517) 999-7572
firm@publiclawresourcecenter.com

March 26, 2018

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

**Re: *Application for Review of Allband Communications Cooperative of the
February 22, 2018 Order of the Wireline Competition Bureau***

In the matter of: Connect America Fund, WC Docket No. 10-90
A National Broadband Plan for Our Future, GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers,
WC Docket No. 07-135
High-Cost Universal Service Support, WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime,
CC Docket No. 01-92
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109
Universal Service Reform--Mobility Fund, WT Docket No. 10-208

Dear Ms. Dortch:

Please find enclosed for filing in the lead docket 10-90 the Application for Review on behalf of Allband Communications Cooperative.

A copy of this filing is being sent via e-mail to Kris Anne Monteith, Chief, Wireline Competition Bureau (WCB) (kris.monteith@fcc.gov); Ryan Palmer, Chief, Telecommunications Access Policy Division (TAPD) WCB (Ryan.Palmer@fcc.gov); Suzanne Yellen, TAPD, WCB (Suzanne.Yelen@fcc.gov); Joe Sorresso, TAPD, WCB (joseph.sorresso@fcc.gov); Victor Gaither, Vice President, High Cost Division (Victor.Gaither@usac.org); Brandon Ruffley, Supervisor of Compliance, High Cost (brandon.ruffley@usac.org); and to the Commission's copy contractor at fcc@bcpiweb.com.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

Don L. Keskey

Don L. Keskey (P23003)
Public Law Resource Center PLLC
University Office Place
333 Albert Avenue, Suite 425
East Lansing, MI 48823
Telephone: (517) 999-7572
E-mail: donkeskey@publiclawresourcecenter.com

DLK/cad
Atts.

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**APPLICATION FOR REVIEW
OF ALLBAND COMMUNICATIONS COOPERATIVE**

ALLBAND COMMUNICATIONS COOPERATIVE

By its counsel:

Don L. Keskey (P23003)
Public Law Resource Center PLLC
University Office Place
333 Albert Avenue, Suite 425
East Lansing, MI 48823
Telephone: (517) 999-7572
E-mail: donkeskey@publiclawresourcecenter.com

Dated: March 26, 2018

TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND	1
II.	QUESTIONS PRESENTED BY REVIEW.....	2
III.	FACTORS WARRANTING COMMISSION CONSIDERATION OF QUESTIONS FOR REVIEW PRESENTED BY ALLBAND.....	3
IV.	ALLBAND’S REQUESTED CHANGES TO THE WCB ORDER.....	4
V.	DISCUSSION IN SUPPORT OF ALLBAND’S APPLICATION FOR REVIEW	6
VI.	ALLBAND’S REQUESTED RELIEF	15

APPLICATION FOR REVIEW

Allband Communications Cooperative (Allband), pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, respectfully requests Commission review of the Wireline Competition Bureau's (WCB's) February 22, 2018 Order in these dockets (**Appendix A** hereto).

I. INTRODUCTION AND BACKGROUND

Allband acknowledges and greatly appreciates several favorable findings presented in WCB's February 22, 2018 Order, including: (i) the determination of Allband's qualification for per-line reimbursement in the amount of \$457 per-line; (ii) the finding that Allband's per-line costs justify a finding of \$457 per-line in USF support commencing with July 1, 2016; (iii) the Order's restart of Allband's per-line reimbursement effective February 1, 2018; (iv) the finding that Allband should also be reimbursed an additional \$207 per-line (for a total of \$457 per-line), retroactive from August 1, 2017 through January 2018; and (v) favorable findings that Allband's cost accounting is now determined to be reliable. This Application for Review thus does **not** seek review of those portions of the WCB's February 22, 2018 Order that are favorable to Allband.

On March 20, 2018, Allband received a letter from the Universal Service Administrative Company (USAC), attached as **Appendix B**, purporting to calculate the implementation of the WCB order. While the WCB Order and USAC letter lacks clarity in some respects, the combined effect of the WCB Order and USAC letter appear to determine the following: (i) The total period of time for the claw-back applies from 2012 to July 20, 2016 (Order, paragraphs 25-26); (ii) USAC's letter determined that Allband was "overcompensated **\$92,323** between July 2012 and July 20, 2016;" (iii) The Order, paragraphs 29-30, requires USAC to offset the claw-back amount by the additional \$207 per loop per month times the number of loops for the time period of

July 20, 2016 (the release date of the July 2016 Waiver Order) until August 1, 2017;¹ (iv) For the six month period from August 1, 2017 – January 31, 2018, a retroactive payment will be made to Allband in the amount of no more than \$207 per loop per month. The USAC’s letter calculates this amount as \$185,422, to be issued as part of the February 2018 support payments to be disbursed to Allband in March.²

II. QUESTIONS PRESENTED BY REVIEW

Allband’s Application for Review seeks Commission review of those portions of the WCB Order that denies relief in part to Allband or which lack clarity at this time, which matters include the following questions:

- (1) Whether the WCB Order arbitrarily and unreasonably fails to reimburse Allband for a proper and reasonable additional per-line amount, for the period July 2016 through July 2017, which USAC calculates in the amount of \$335,742;
- (2) Whether the WCB Order, by its action identified in Question 1, and without any explanation or reasoning, arbitrarily and unreasonably imposes upon Allband a substantial unreasonable and unjustified penalty;
- (3) Whether the WCB Order is incomplete and lacks clarity with respect to the matters referenced in issues (1) through (2) above;

¹ This is the period of time for which Allband asserts a further refund is due to Allband.

² The WCB Order (paragraph 19 and footnote 47) states that Allband is granted the lesser of \$457 per loop per month or support based on actual costs per loop; during this period Allband should be fully refunded for the difference between \$250 per loop per month and either \$457 per loop per month or a lower amount based on actual cost per loop. Allband generally agrees with the USAC determination regarding the August 2017 through January 2018 refund amount (see attached Affidavit of Timothy Morrissey, **Appendix C** hereto, paragraph 4).

(4) Whether the WCB Order (paragraph 24) erroneously finds that Allband's January 12, 2017 Emergency Waiver Petition with supporting documents and analysis is moot, when in fact the Emergency Petition remains highly relevant because it establishes that Allband's per-line costs for fixed investment or other costs is \$375 per-line, wholly aside from any disputed employee time or cost accounting allocations identified by USAC, and documented in their September 23, 2015 Memorandum.

(5) Whether the WCB Order (paragraphs 27 and 28) arbitrarily and unreasonably rejects, or misunderstands, Allband's request for recognition of, and reimbursement for, the amount Allband was "shorted" by the July 2012 Waiver Order; Allband's request was not seeking to recover costs above the 2012 interim cap;

(6) Whether the WCB Order (as challenged in part herein) is contrary to statutory provisions and the goals of the Commission's 2011 Rulemaking Order and the other various orders applicable to Allband, and is contrary to the public interest.

III. FACTORS WARRANTING COMMISSION CONSIDERATION OF QUESTIONS FOR REVIEW PRESENTED BY ALLBAND

Allband asserts that several factors warrant the Commission's consideration of the questions presented above pursuant to the criteria stated in the Commission's rule Section 1.115(b)(2), 47 C.F.R. § 1.115(b)(2), which states:

(2) The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

- (i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.
- (ii) The action involves a question of law or policy which has not previously been resolved by the Commission.
- (iii) The action involves application of a precedent or policy which should be overturned or revised.
- (iv) An erroneous finding as to an important or material question of fact.
- (v) Prejudicial procedural error.

As discussed further in Section IV, *infra*, Allband meets all of the above criteria warranting Commission consideration of the review questions presented by Allband herein.

Specifically, under Rule 1.115(b)(2)(i), the WCB Order in part is in conflict with statutory provisions, and the Commission's own policy and goals as stated in its Rules, Rulemaking Orders, and also Waiver Orders applicable to Allband.

Pursuant to Rule 1.115(b)(2)(ii), the WCB Order involves questions of law or policy, with respect to the issue questions presented above, that have not been previously resolved and remain pending before the Commission, or before the WCB or USAC pursuant to delegated authority.

Pursuant to 1.115(b)(2)(iii), the WCB Order involves an application of precedent or policy, or in part the application of same, which should be overturned or revised, or which remains yet to be resolved, requiring needed clarification and completion of procedures by delegation to the WCB with the assistance of USAC.

Pursuant to Rule 1.115(b)(2)(iv), the WCB Order in part involves an erroneous or yet undetermined finding as to an important or material question of fact, namely, determinations regarding the proper and reasonable amount of USF reimbursements that should be refunded to Allband.

Pursuant to Rule 1.115(b)(2)(v), the WCB Order, constitutes prejudicial procedural errors in failing to determine or resolve the important questions presented above, and which appear to impose an unspecified and arbitrary penalty to Allband, without any explanation or reasoning, and without any clear procedure for Allband to participate in the redetermination and elimination or reduction of the referenced penalty.

IV. ALLBAND'S REQUESTED CHANGES TO THE WCB ORDER

Allband, pursuant to this Application for Review, and Rule 1.115(b)(3) and (4), requests the Commission to reverse that portion of the WCB Order which: (i) arbitrarily and without any

explanation and reasoning, withholds justified USF reimbursement support from Allband for the period July 2016 to August 2017, and for the shorting of Allband's recovery under the 2012 Waiver Order; (ii) that fails to explain any reasonable basis for imposing upon Allband a penalty which would deny the proper per-line reimbursement due to Allband; and (iii) that fails to recognize that, at minimum, an undisputed amount of \$375 in per-line support to Allband is justified to cover fixed investment or other costs that have no relevance or nexus to Allband's compliance with the Commission's cost allocation accounting or affiliate rules, and which were not even within the scope of the WCB or USAC reviews as assigned by the Commission in its July 2016 Order.

Allband requests that this relief can be delegated to the WCB with the assistance of USAC, with a fair process for Allband participation, to resolve and clarify these remaining aspects of the WCB Order. Allband specifically states and proposes that the subject part of the WCB Order should be changed to provide for the reimbursement or recoupment of per-line support to Allband based on USAC's calculations of an additional total amount of \$335,742, to include \$243,419 for the reimbursement shortfall for the period July 2016 to August 2017, and an amount relating to the 2012 Waiver Order. Allband also asserts that the WCB Order should be changed to remove any unexplained penalty imposed upon Allband.

As a "worst case" alternative, if a penalty were to be imposed upon Allband over Allband's objection, Allband asserts that, under any scenario, said penalty cannot reasonably include the \$375 per-line amount that arises from Allband's fixed and other costs having no relevance or nexus whatsoever to the FCC's cost allocation rules, or to the accounting reviewed by USAC or the WCB. **To clarify further, Allband asserts that any potential alternative penalty, after recognizing the \$375 per-line costs, should be eliminated or further minimized in view of the claw-back subtraction, the unintentional nature of Allband's accounting misallocations, and**

Allband's diligent and exhaustive efforts to bring Allband's accounting into compliance with the Commission's Rules.

Allband also requests that the WCB Order should be changed to provide a prompt and fair process for completing the calculation of a net additional reimbursement or recoupment to Allband which incorporates Allband's input and participation.

V. DISCUSSION IN SUPPORT OF ALLBAND'S APPLICATION FOR REVIEW

Allband asserts that the WCB Order has arbitrarily and unreasonably denied \$243,419 of Universal Service high cost recovery for the period July 20, 2016 through July 31, 2017, after the netting for claw-back.³ In addition, the WCB Order arbitrarily and unreasonably rejects an additional amount that Allband was shorted under the 2012 Waiver Order, and which should be added to Allband's net reimbursement refund.⁴

The Morrissey Affidavit, attached as **Appendix C** to this Application for Review, fully details and supports the additional reimbursement justified for the period July 2016 to August 2017, and also the amount the WCB Order has arbitrarily and unreasonably denied reimbursement to Allband that Allband was shorted by the 2012 Waiver Order. Referencing the March 20, 2018 USAC letter (**Appendix B** to this Application for Review), the Morrissey Affidavit states that USAC has apparently concluded no amount is due for the July 20, 2016 through July 31, 2017 disbursement period, and that USAC's approach denies Allband an essential cost recovery for that disbursement period in the amount of \$243,419 (being the difference between the \$335,742 prior period adjustment and the \$92,323 claw-back) which "serves to penalize Allband without clear explanation and support."⁵

³ See Affidavit of Tim Morrissey, **Appendix C** hereto, paragraphs 2 and 4.

⁴ See attached Affidavit of Tim Morrissey, **Appendix C**, paragraph 8.

⁵ *Id.*, paragraphs 3(a) through (e), and paragraph 4.

The Morrissey Affidavit also states that Allband worked diligently and in a timely manner to comply with FCC rules and USAC reviews, and that “it is unclear why a penalty would be imposed on Allband.”⁶

The Morrissey Affidavit also presents a “worst case” alternative if the FCC and USAC were to impose a penalty, stating that Allband’s support should not be reduced below \$375 per-line/month for the July 20, 2016 through July 31, 2017 disbursement period.⁷ Morrissey’s Affidavit (**Appendix C** hereto) references Allband’s January 12, 2017 Emergency Petition, with supporting Affidavits and analysis to that Petition (including Morrissey’s Affidavit and Appendix D thereto), that justified an undisputed support amount to Allband of \$375 per-line/month, based on the undisputed costs from USAC’s September 23, 2015 Memorandum reviewing Allband’s compliance with FCC accounting and cost allocation rules, and which fixed or other costs (justifying the \$375 per-line support) were not even within the scope of the cost allocation rules.⁸ Thus, if a penalty were to be imposed, the worst case alternative scenario would have to preserve the \$375 per-line cost reimbursement to Allband. The Morrissey Affidavit calculated that a \$375 per-line/month support level for the July 20, 2016 to July 31, 2017 disbursement period would be \$241,605, which would yield a net difference to Allband of \$149,262 after netting the USAC calculated claw-back of \$92,343.⁹

Under this worst case alternative penalty scenario, this would represent the “worst case” cost recovery to Allband for the July 20, 2016 through July 31, 2017 disbursement period (net of the claw-back amount).¹⁰ The Morrissey Affidavit also clarified, however, that he recommends

⁶ *Id.*, paragraphs 5.

⁷ *Id.*, paragraphs 5, 6, 7.

⁸ *Id.* paragraph 6.

⁹ *Id.*, paragraph 7.

¹⁰ *Id.*, paragraph 5, 6, 7.

the full reimbursement for this period (after claw-back), and not the lower “worst case” scenario. This recommendation of no penalty would also be consistent with Allband’s request and the rationale stated in bold on pp 5-6, *supra*, of this application.

Allband also requests that the Commission pursuant to this Application for Review reconsider and clarify the provisions of part of paragraph 27, and of paragraph 28, of the WCB Order, which stated in relevant part:

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...

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 July 1, 2012 through June 30, 2012.” [fn omitted]. 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.

The WCB Order on this issue is arbitrary, unreasonable, and unsupported by any facts or explanation of any kind, and for several reasons:

(i) while the WCB Order calculates a claw-back going back to 2012, the Order fails to consistently consider the manner in which Allband was shorted for the same contemporaneous period resulting from the “across-the-board” presumptive impositions of the *USF/ICC Transformation Order*, in disregard of Allband’s unique circumstances, as well documented in the

2005 Order¹¹ and 2012 order¹² applicable to Allband, and now the WCB's own February 2018 Order;¹³

(ii) while the WCB Order forthrightly admits “that Allband was precluded from recovering additional fixed or sunk costs for 2011 or 2012 incurred prior to the *USF/ICC Transformation Order*, the WCB Order fails to recognize that Allband, as a new entity, was completing its capital investment program in those years to carry out its duties under Orders of the FCC, the Michigan Public Service Commission granting Allband licenses and authorizations, and pursuant to the RUS loan that provided for said construction program; logically, if the WCB goes back retroactively to 2012 with respect to its claw-back review, it should also consider the inclusion of these inadvertently excluded costs in redetermining a proper and reasonable reimbursement of support to Allband;

(iii) the WCB Order's observation that the exclusion of these costs “was true for all carriers” is wholly unexplained and unsupported, and appears presumptively erroneous; there appears no basis to assume that any other carriers were subject to the same disallowance or

¹¹ For example, a 2005 FCC Order granted Petitioner Allband's waiver of certain FCC rules to allow Allband to be treated as an Incumbent Local Exchange Carrier (ILEC) for NECA (National Exchange Carriers Association) pooling and USF purposes. FCC Order *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2[hh] and 69.601 of the Commission's Rules in WC Docket No. 05-174*, 20 F.C.C. Rcd. 13566 (2005). The 2005 Order recognized that Allband's provision of services to the unserved/unassigned areas would be costly on a per-line basis, but would be consistent with the 1996 Act. The 2005 Order, paragraph 19, specifically concluded that “[b]ased on the record . . . these waivers are in the public interest because they will facilitate the ability of Allband to serve previously unserved areas.”

¹² *In the Matter of Allband Communications Coop Petition for Waiver of Certain High-Cost Universal Serv Rules*, 27 F.C.C. Rcd. 8310 (2012).

¹³ *In the Matter of Connect America Fund, Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, DA 18-177 (February 22, 2018).

exclusion, and this conclusion appears inconsistent with the Commission's own findings¹⁴ and with the USF budget information;¹⁵ the reality is that WCB makes no showing (and Allband believes there exists no basis for any showing) for the WCB's Order's finding that "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." WCB has not identified any other carriers that could qualify for, or requested, this relief; the WCB simply ignores the very unique circumstances of Allband that have been repeatedly found in previous WCB or agency orders in 2005,¹⁶ 2012,¹⁷ and now in 2018;¹⁸

(iv) the fact that the July 2012 Waiver Order "did provide Allband support above the amount it would have received absent a waiver" constitutes an unexplained distractive irrelevancy; Allband received that Waiver Order on its own independent merits, which does not justify denial of a recoupment to Allband of the referenced amount shorted when determining a claw-back reconciliation at this time; the proper conclusion is that the above-referenced shortfall should be recognized as a further reimbursement to Allband to resolve this case matter.

¹⁴ The Commission's *USF/ICC Transformation Order*, paragraph 273, stated:

273. For calendar year 2010, out of a total of approximately 1,442 incumbent LEC study areas receiving support, fewer than twenty incumbents received more than \$3,000 per-line annually (*i.e.*, more than \$250 monthly) in high-cost universal service support; all of those study areas were served by rate of return companies.⁴⁵⁰

¹⁵ The USF budget for the same year suggests that, in comparison to the annual \$4.5 billion USF budget, that fewer than 20 out of 1,442 incumbent LEC study areas received more than \$3,000 per-line annually (more than \$250 per month) in USF support, with an overall USF budget impact of less than \$15 million, and that 99% of incumbent LEC study areas received USF support under the \$250 monthly amount.

¹⁶ *Id.* fn 11.

¹⁷ *Id.* fn 12.

¹⁸ *Id.* fn 13.

(v) There exists, at minimum, a lack of clarity with respect to the WCB Order concerning the 2012 Waiver Order issue as discussed in the Morrissey Affidavit, **Appendix C** hereto, paragraph 8.

Allband also asserts that the grant of this Application also would be consistent with previous orders applicable to Allband and would permit Allband to move forward without expending yet further substantial amounts of time and expenses on these repetitive matters, and to allow Allband to redirect its resources to meeting the goals of the Congress and the Commission to expand telecommunications and broadband and services in unserved areas of Northeast Michigan.

In support of the above, the accompanying Affidavit of Allband General Manager Ron K. Siegel (**Appendix D** hereto) requests the Commission to reconsider its decision to withhold retroactive USF support due Allband between the period July 6, 2016 and July 2017.¹⁹ The denial of this reimbursement would cause Allband to lose a considerable amount of funding which is desperately needed for capital investment, revenue generation, loop growth, network maintenance and to strengthen Allband's ability to restructure its loan with RUS.²⁰ Granting these funds will also strengthen Allband's ability to continue to provide high quality and reliable voice, 9-1-1 ILEC services and broadband to its customers, and to continue operations as an ILEC telecommunications carrier in its otherwise underserved exchange.²¹ The Siegel Affidavit also details the several steps that Allband undertook to comply with and pursue the goals stated by the Commission in its July 25, 2012 Waiver Order, such as: (i) reduction of expenses, including a formal challenge to State of Michigan property taxation and mitigation thereof; (ii) to pursue

¹⁹ Affidavit of Ronald K. Siegel, **Appendix D**, paragraph 4.

²⁰ *Id.*, paragraph 4.

²¹ *Id.*, paragraph 4.

revenue enhancement strategies, which included Allband's creation of the subsidiary, Allband Multimedia, to provide full reliable broadband services in its immediate region of Northeast Michigan pursuant to an outright RUS grant of several million dollars; (iii) and to work with the RUS with respect to meeting its loan obligations and seeking some deferrals of principal payments in recent months.²² The Siegel Affidavit further details why the reimbursement of additional funds (over that apparently provided for in the February 22, 2018 WCB Order) is necessary and comports with the statutory purposes of the Universal Service Fund, and is in the public interest in order for Allband to (i) meet its ILEC duties; (ii) to assist with seeking a restructuring of its RUS loan; (iii) to provide needed capital to alleviate the severe impacts of the reduction in Allband's per-line support as of July 2016; (iv) to provide capital to fund efforts to increase its loops and reduce Allband's reliance on waivers on a prospective basis; and (v) to address Allband's dangerously low and insufficient cash flow.²³

Allband requests the above clarifications and relief from the referenced portions of the WCB Order, for several compelling reasons:

(i) the July 20, 2016 Commission Order²⁴ and the February 22, 2018 WCB Order,²⁵ appear to acknowledge that the reduction in per-line support to \$250 per-line effective July 2016 was an interim temporary measure, and not a permanent reduction or denial of a proper amount of per-line support, pending completion of a prompt review by USAC and the WCB of Allband's cost allocation accounting and to obtain a determination of what Allband's per-line support should have been, and should be;

²² *Id.*, paragraphs 5, 6, 7.

²³ *Id.*, paragraph 8..

²⁴ *Connect America Fund, et al*, WC Docket No. 10-90, Order and Order on Review, dated July 20, 2016, FCC-16-94A1_Rcd (2016).

²⁵ *In the Matter of Connect America Fund, Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, DA 18-177 (February 22, 2018).

(ii) Allband, in compliance with the July 2016 Order, subsequently undertook exhaustive efforts to cooperate with USAC and the WCB to make any corrections to its cost accounting, and to establish a solid basis for its proper per-line support based upon Allband's costs;

(iii) Allband has already expended exhaustive time and financial resources in establishing the grounds for several waiver petitions granted by the Commission, including the waiver petition leading to the WCB Order of February 22, 2018;²⁶

(iv) the additional retroactive reimbursement requested above is also necessary to restore some modicum of financial stability to assist Allband in complying with its RUS loan requirements, and in seeking a restructuring of its RUS loan to assist in reducing Allband's needed per-line support;

(v) the full net reimbursement of per-line support as requested above is also necessary to ensure that Allband can ensure the continuation of reliable service to its customers, maintain its network, and to pursue economically cost-effective additions in lines as recommended by the Commission or the WCB in its 2012 Waiver Order,²⁷ and in the WCB's February 22, 2018 Order;²⁸ and,

²⁶ Allband's previous waiver filings include: (1) Allband's February 2012 waiver petition with supporting attachments; (2) Allband's December 31, 2014 waiver petition with supporting attachments, and supplemental filing with attachments; (3) Allband's November 12, 2015 response to the September 23, 2015 audit issued by Universal Service Administrative Company (USAC), with supporting attachments, and supplemental filings thereto, (4) Allband's June 29, 2016 Emergency Petition of Allband Communications Cooperative for Interim Partial Restoration of its Waiver of the Part 54.302 Rule; and (5) Allband's nine-page handout analysis presented to the FCC staff at meetings held on June 28, 2016; (6) Allband's January 12, 2017 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); (7) Allband's July 27, 2017 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).

²⁷ *Id.*, fn 12 *supra*.

²⁸ *Id.*, fn 13 *supra*.

(vi) The grant of this Application for Review would also be consistent with and in furtherance of the goals and purposes of this Commission's Order implementing the 2011 Rules,²⁹ and the waiver provisions therein, and with the Commission's 2012 Order,³⁰ and subsequent 2016,³¹ and 2018³² Orders applicable to Allband referenced earlier, and also with the objectives and purposes of Congress as set forth in various statutes aimed at promoting the deployment of telecommunications and broadband services in rural areas of this nation.³³

This Application for Review is supported by the attached Affidavit of Allband's General Manager, Ronald Siegel, with his attachment 1 (**Appendix D** hereto) and by its accounting consultant, Timothy Morrissey, of the FWA, attached as **Appendix C** hereto, with supporting grounds, cost calculations and analysis, justifying the grant to Allband of the additional reimbursement requested herein. These affidavits establish that Allband's request for full reimbursement of its per-line support, and clarifications of same, would be in the public interest, and would assist Allband in meeting the goals asserted by the Commission or WCB in its

²⁹ The WCB Order, *Id.*, paragraph 3, referencing *Connect America Fund et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (*USF/ICC Transformation Order*) and *Connect America Fund, et al.*, WC Docket No. et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, (2012) (*Fifth Order on Reconsideration*).

³⁰ *Id.*, fn 12 *supra*.

³¹ *Id.*, fn 24 *supra*.

³² *Id.*, fn 13 *supra*.

³³ E.g., 1996 Amendments to the FCC Act, Section 214(e), 47 U.S.C. § 214(e); Section 253(b), 47 U.S.C. § 253(b), Section 253(f), 47 U.S.C. § 253(f); Section 254, 47 U.S.C. § 254). See also: the Food, Conservation, and Energy Act of 2008 ("Farm Bill"), Pub. L. No. 110-234, § 6112(a), 122 Stat. 923, 1966 (2008); amendments to Section 706, 47 U.S.C. § 1302(a) and (b) and Section 1302(d)(1), 47 U.S.C. § 1302(d)(1), and other Section 706 amendments enacted in the Broadband Data Improvement Act ("Broadband Act"), Pub. L. 110-385, Title I, §§ 101, 103, 122 Stat. 4096, 4096-97 (2008), 47 U.S.C. § 1303, and Section 1304, 47 U.S.C. § 1304. Congress also enacted the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), directing in Section 1305, 47 U.S.C. § 1305, the FCC to submit to Congress a National Broadband Plan, and Broadband Technology Opportunities program in Sections 1304 and 1305, 47 U.S.C. §§ 1304 and 1305(k).

Orders, and would assist Allband's upcoming request to the RUS for a restructuring of its loan issued by the RUS.

VI. ALLBAND'S REQUESTED RELIEF

Allband requests, pursuant to this Application for Review, that the Commission issue its Order in determining that:

- (A) Allband should receive an additional per-line reimbursement as requested herein;
- (B) No penalty should be determined or rendered to Allband to reduce the requested additional per-line reimbursement requested by Allband herein;
- (C) The WCB Order should be reversed in part as requested herein, or alternatively, that the Commission remand this matter to WCB to redetermine and grant the additional per-line reimbursement requested by Allband herein;
- (D) The issuance of findings that the above relief is consistent with the public interest, and the goals established by the Commission in its Rulemaking and previous waiver orders applicable to Allband, and the purposes and objectives of Congress in adopting several statutes aimed at promoting the deployment of voice and broadband services in rural areas such as that served by Allband;
- (E) The grant of such further and consistent relief that is lawful and reasonable.

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE
By Its Counsel:

Don L. Keskey

Don L. Keskey (P23003)
Public Law Resource Center PLLC
University Office Place
333 Albert Avenue, Suite 425
East Lansing, MI 48823
Telephone: (517) 999-7572
E-mail: donkeskey@publiclawresourcecenter.com

Dated: March 26, 2018

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX A

TO

**APPLICATION FOR REVIEW
OF ALLBAND COMMUNICATIONS COOPERATIVE**

March 26, 2018

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.¹ 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.² 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.³ Allband advertises residential rates of \$44.99 per month for unlimited 100/100 Mbps Internet.⁴ 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,⁵ and it advertises residential rates of \$59.99 per month for unlimited 100/50 Mbps Internet.⁶ 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

¹ 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).

² July 2017 Petition, at Appx. B, Affidavit of Tim Morissey, Attach. 7.

³ 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.

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

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

⁶ 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.*

(continued....)

area with \$9.7 million in grants from the American Recovery and Reinvestment Act (ARRA) awarded in 2010.⁷

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.⁸ The Commission concluded that support in excess of that amount should not be provided without further justification.⁹ 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.”¹⁰ 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.¹¹

4. On February 3, 2012, Allband petitioned for a waiver of section 54.302 until 2026 (the end of the RUS loan term).¹² On July 25, 2012, the Bureau granted the waiver, in part, waiving section 54.302 for three years until June 30, 2015.¹³ 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.¹⁴

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 accounting issues which the Bureau identified as requiring further review.¹⁵ On December 7, 2015, the

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

⁸ *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.

⁹ *Id.* at 17765, para. 274.

¹⁰ *Id.* at 17839-40, paras. 539-40.

¹¹ *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*).

¹² 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).

¹³ 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 10th 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).

¹⁴ 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).

¹⁵ 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, (continued....)

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.¹⁶

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.¹⁷ 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.¹⁸

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."¹⁹ 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."²⁰

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 \$375.²¹

9. USAC completed its review on April 13, 2017.²² 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."²³

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

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).

¹⁶ *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).

¹⁷ *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.

¹⁸ See *id.* at 8462-63, paras. 21-22.

¹⁹ *Id.* at 8463, para. 23.

²⁰ *Id.*

²¹ 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).

²² 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).

²³ July 2017 Petition at 18.

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

(continued....)

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."²⁵ 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.²⁶ The changes Allband made to its time reporting procedures also address the Commission's concerns regarding compliance with the affiliate transactions rules.²⁷

13. Additionally, USAC reviewed 57 general ledger transactions and found eight instances of improper expenditures.²⁸ We agree with USAC, however, that the majority of these eight transactions "involved complex classifications and a degree of subjectivity."²⁹ Moreover, Allband corrected its process for reporting expenses to account for USAC's findings.³⁰ 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.³¹ 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*.³² Generally, the Commission's rules may be waived if good cause is shown.³³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁵ 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 interest.³⁶

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

²⁵ USAC Report at 6.

²⁶ *Id.* at 2-3, 7.

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

²⁸ USAC Report at 5, Exhibit II.

²⁹ *Id.* at 6.

³⁰ *Id.* at 5-6.

³¹ *Id.* at 5.

³² *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.

³³ 47 CFR § 1.3.

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

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

³⁶ *Northeast Cellular*, 897 F.2d at 1166.

(continued....)

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.”³⁷ 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.”³⁸

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.³⁹ 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.⁴⁰

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.⁴¹ 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.⁴²

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);⁴³ it had significant start-up costs and 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.⁴⁴ Allband’s

³⁷ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

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

³⁹ July 2017 Petition at 5.

⁴⁰ 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.

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

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

⁴³ *Id.* at 4.

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

service territory is difficult to serve and has very few potential customers.⁴⁵ 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.⁴⁶ 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.⁴⁷ Support during the waiver period shall not increase above \$457 per loop per month.⁴⁸ 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.⁴⁹

20. We do not grant a waiver until completion of all RUS loan payments as requested.⁵⁰ 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.⁵¹ 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 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.

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

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ See July 2017 Petition at 18.

⁵⁰ See *id.*

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

(continued....)

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.”⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵

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.⁵⁶

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.⁵⁷ 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

⁵² *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).

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

⁵⁴ See July 2017 Petition at 13-16.

⁵⁵ See *id.* at 14-15.

⁵⁶ *July 2016 Waiver Order*, 31 FCC Rcd at 8463, para 24.

⁵⁷ *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.”⁵⁸

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*.⁵⁹

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.”⁶⁰ 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*.⁶¹ 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, and on a consolidated basis to the Bureau.

⁵⁸ See *id.*

⁵⁹ July 2017 Petition at 16, Appx. A, Affidavit of Ron Siegel at 10.

⁶⁰ *July 2012 Waiver Order*, 27 FCC Rcd at 8315, para. 15.

⁶¹ 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.

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

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX B

TO

APPLICATION FOR REVIEW

OF ALLBAND COMMUNICATIONS COOPERATIVE

March 26, 2018



Universal Service
Administrative Co.

Via Electronic Mail

March 20, 2018

Mr. Ron Siegel
Allband Communications Cooperative
7251 Cemetery Road
Curran, MI 48728

Re: Action to be Taken Pursuant to FCC Orders

Dear Mr. Siegel:

On July 20, 2016, the Federal Communications Commission (FCC or Commission) issued an order denying Allband Communications Cooperative's (Allband or Company) Petition for Further Waiver of Section 54.302 of the Commission's *Allband Order*.¹ In the *Allband Order*, the Commission ordered Allband to revise its cost accounting practices and directed the Universal Service Administrative Company (USAC) to: (1) determine what Allband's support would have been if Allband had correctly allocated its costs, and (2) recover any Universal Service Fund (USF) compensation paid to Allband from 2012-2015 that exceeded what is permitted by FCC rules (the "Claw-back").

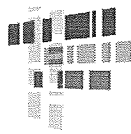
On February 22, 2018, the FCC issued the *2018 Allband Waiver Order*, allowing Allband to receive High Cost support in excess of the \$250 per loop per month cap applicable to High Cost support recipients.² Under the *2018 Allband Waiver Order*, Allband may receive the lesser of \$457 per loop per month or support based on costs, effective retroactively as of August 1, 2017. In addition, USAC was directed to reduce the Claw-back by \$207 per loop per month since the adoption of the *July 2016 Waiver Order*.³

This memorandum summarizes (1) USAC's calculation of the Claw-back and (2) the implementation plan for the *2018 Waiver Order*, including the revised Claw-back calculation.

¹ *Connect America Fund; Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order and Order on Review, 31 FCC Rcd 8454 (2016) (*Allband Order*). In 2011, the Commission adopted section 54.302, establishing a presumptive per line cap of \$250 per month on high-cost universal service support. See 47 C.F.R. § 54.302 (monthly per-line limit on High Cost support). Allband received a waiver to receive support above the \$250 cap beginning in July 2012 through July 2015. *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).

² *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Order, DA 18-77 (WCB Feb. 22, 2018) (*2018 Allband Waiver Order*).

³ *Id.* at para. 29.



Original Claw-back Calculation

In the *Allband Order*, the Commission directed USAC to review Allband's revised cost accounting practices to assess whether Allband's revisions adhered to the Commission's rules.⁴ USAC reviewed data for the first and second quarters of 2016 and concluded that Allband's revised cost accounting practices substantially complied with the FCC's rules for cost allocation between regulated and nonregulated activities. USAC provided a report of these findings to the FCC in April 2017.⁵ In addition, the Commission directed USAC to apply the revised accounting practices to Allband's costs during period from June 30, 2015 to July 20, 2016 (the date of the *Allband Order*) in order to determine what Allband's support would have been if Allband had correctly allocated its costs and to initiate recovery action for the excess amounts of support received by Allband.⁶ The Commission authorized USAC to utilize alternative methods to allocate costs between regulated and nonregulated activities if the information and records to apply the revised accounting practices were not available.⁷ Finally, the Commission directed USAC to examine Allband's cost allocations during the initial waiver period from 2012 to 2015 to determine whether Allband was overcompensated by the USF during that period.⁸

Allband developed a methodology to determine by how much it was overcompensated by the USF during that period. Based on USAC's review, Allband derived regulated cost allocation percentages for 2016 using a cost allocation methodology consistent with FCC rules.⁹ Allband identified Allband and nonregulated Allband Multimedia (AMM) line counts during calendar years 2012 through 2015, which were utilized to adjust these regulated percentages. The result of this adjustment was a new regulated percentage, unique to each year, for development of allocation factors for regulated operations such as plant in service, reserves, expenses and taxes, which Allband then used to update its cost study data for program years 2012 through 2015.¹⁰ Based on this methodology, USAC determined that Allband was overcompensated \$92,323 between July 2012 and July 20, 2016.

⁴ *Allband Order*, 31 FCC Rcd at 8463, para. 23.

⁵ See Memorandum from High Cost Division, USAC, to the Wireline Competition Bureau, Federal Communications Commission (Feb. 24, 2017, rev. Apr. 10, 2017) (USAC Cost Accounting Memorandum); see also *Allband Order*, 31 FCC Rcd at 8463, para. 23.

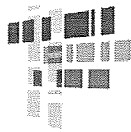
⁶ *Allband Order*, 31 FCC Rcd at 8463, para. 24.

⁷ *Id.* at 8463, para. 24, n.81.

⁸ *Id.* at 8463, para. 25. However, the Commission indicated that if Allband could not provide the information and records necessary to properly allocate employee time between regulated and nonregulated activities, USAC may utilize alternative methods to allocate costs between regulated and nonregulated activities, such as allocating costs based on the relative number of lines for the regulated entity compared to nonregulated AMM lines. *Id.*

⁹ See 47 C.F.R. Part 64, Subpart I (cost allocation); 47 C.F.R. Part 36 (jurisdictional separations).

¹⁰ See *Allband Order*, 31 FCC Rcd at 8463–64, para. 25. Allband provided corrected revised cost study information for program year 2016, and, for each year, cost study information modifying the allocations between the regulated and non-regulated expenses based on the relative regulated and non-regulated line counts for each year using adjusted regulated percentages derived from the 2016 corrected data.



Application of the 2018 Waiver Order

Under the *2018 Waiver Order*, Allband may receive support, effective retroactively on August 1, 2017, exceeding the \$250 per loop per month up to the lesser of \$457 per loop per month or support based on costs.¹¹

USAC will issue the following prior period adjustments (PPA) to Allband:

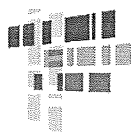
- (1) A PPA for the time period from August 1, 2017 until January 2018, for which USAC calculates that Allband is owed a total of \$185,422, per the table below. Consistent with the *2018 Waiver Order*, this amount does not include application of the budget control mechanism. This amount will be issued as part of the February 2018 support payments to be disbursed in March.

Support Before Budget Control Waiver Applied				Support After Budget Control Waiver Applied	
Fund	Current Month Support (201802)	201708 - 201801 PPA's	Sum of current month support plus PPA's	201708 - 201802	Diff
HCL	\$44,344	\$117,568	\$161,912	\$146,446	\$ (15,466)
ICLS	\$0	\$0	\$0	\$0	\$0
CAF BLS	\$24,815	\$67,854	\$92,669	\$86,391	\$ (6,278)
Total	\$69,159	\$185,422	\$254,581	\$232,837	\$ (21,744)

- (2) The Commission waived application of the budget control mechanism to Allband's support during the period of the new waiver.¹² However, due to the complexity of exempting Allband from the budget control adjustments in USAC's High Cost system, USAC estimates that it will not complete this calculation until April 2018. Therefore, USAC will proceed with issuing support immediately without the adjustments for the waived budget control mechanism. USAC will issue a PPA for the adjustments resulting from the budget control mechanism once these calculations are made.

¹¹ *2018 Allband Waiver Order* at para. 32.

¹² The budget control mechanism is an algorithm applied to High Cost Loop Support and Connect America Fund Broadband Loop Support if total support is forecasted to exceed the budget in a given year, in order to ensure that this High Cost support for rate-of-return carriers stays within \$2 billion. *See Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3144, paras. 150–53 (2016).



Universal Service
Administrative Co.

Claw-back Reduction.

In the *2018 Waiver Order*, WCB directed USAC to reduce the \$92,323 Claw-back by \$207 per loop per month since the adoption of the *July 2016 Waiver Order*, i.e. July 19, 2016.¹³ Because the Claw-back adjustment is greater than the Claw-back, the result will be a **\$0** Claw-back. The table below shows the results of the PPA calculations to arrive at the adjustment amount:

	Adjustment to Allband's Claw-back
Fund	Prorated PPA for 20160720 - 201707 ¹⁴
HCL	\$ 214,890
ICLS	\$ 44,377
CAF	
BLS	\$ 76,475
Total	\$ 335,742

If there are any questions or concerns that you would like USAC to address, please direct inquiries to Victor Gaither, Vice President, High Cost Division, Victor.Gaither@usac.org or (202) 414-2707.

Sincerely,

High Cost Division
Universal Service Administrative Co.

cc:

Don L. Keskey, Esq., Public Law Resource Center PLLC
Ryan Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau
Suzanne Yelen, Assistant Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC
Radha Sekar, Chief Executive Officer, USAC
Charles Salvator, Chief Financial Officer, USAC
Victor Gaither, Vice President, High Cost Division, USAC
Ernesto Beckford, General Counsel, USAC

¹³ *Id.* at para. 29.

¹⁴ The *2018 Allband Waiver Order* does not specify that the budget control mechanism should be waived for applicable months in calculating High Cost support payable from July 20, 2016 until August 1, 2017. Accordingly USAC has retained application of the budget control mechanism for this period in calculating the Claw-back adjustment.

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX C

TO

**APPLICATION FOR REVIEW
OF ALLBAND COMMUNICATIONS COOPERATIVE**

March 26, 2018

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX C

AFFIDAVIT OF TIM MORISSEY

IN SUPPORT OF

APPLICATION FOR REVIEW OF ALLBAND COMMUNICATIONS COOPERTIVE

Tim Morrissey, first being duly sworn, files this affidavit in support of Allband Communication Cooperative's (Allband) accompanying Application For Review of the Wireline Competition Bureau's Order released on February 22, 2018 (Order). The Order concerned Allband's waiver request of section 54.302 of the Commission's rules.

1. My name is Timothy J. Morrissey. I am employed by Fred Williamson & Associates (FWA) as President. I also hold a Certified Public Accountant (CPA) Certificate.

FWA is a consulting firm that specializes in financial and regulatory compliance for rural telecommunications providers. I have worked for over ten years as a consultant for Allband with respect to its regulatory and financial matters. This included providing analysis and documents to support Allband's various waiver petitions associated with its universal service support payments filed in this docket and analysis to respond to the Universal Service Administrative Company's (USAC) September 23, 2015 Memorandum.

2. The purpose of this Affidavit is to show that the Order and related implementation by USAC has served to deny Allband of essential cost recovery for the provision and maintenance of universal service. Specifically, based on information provided in USAC's letter to Allband dated March 20, 2018 (attached as **Appendix B** to Allband's Application for Review). Allband, after the netting for claw-back was denied \$243,419 of universal service high cost recovery for the July 20, 2016 through July 31, 2017 disbursements. My Affidavit will also show that under any alternative "worst case", Allband is due \$149,262 of universal service high cost recovery for this time period. Additionally, I will clarify how the interim cap imposed in the July 2012 Waiver Order was accounted for as part of Allband's claw back calculations.
3. USAC's letter implemented the Order as follows:
 - a) It provided that "Allband was overcompensated \$92,323, between July 2012 and July 20, 2016. This amount was based on cost study data provided by Allband for program years 2012 through 2015 and is referred to as claw-back.
 - b) \$69,159 was established as the support due Allband for the current month, February 2018. This is before application of the budget control mechanism.
 - c) A \$185,422 prior period adjustment (PPA) due Allband was provided for August 2017 through January 2018. This amount represents the cost recovery Allband would have received if the \$250 support cap wasn't imposed for August 2017 through January 2018.

- d) A \$335,742 PPA due Allband was provided for July 20, 2016 through July 31, 2017. This amount represents the cost recovery Allband would have received if the \$250 support cap wasn't imposed for July 20, 2016 through July 31, 2017.
 - e) As instructed in the FCC Order, USAC reduced the \$92,323 Claw-back by \$207 (\$457 less \$250) per loop per month since the adoption of the July 2016 Waiver Order. USAC asserted that because the \$335,742 PPA is greater than the \$92,323 claw-back, the result will be a \$0 claw-back. Apparently, USAC concluded no amount is due Allband for the July 20, 2016 through July 31, 2017 disbursement period.
4. Allband, at this time is not in possession of information supporting the USAC calculations. Allband has requested this information from USAC. Although Allband hasn't reviewed USAC's supporting calculations, it doesn't have significant concerns with numbers 3(a) through 3(d) above. The claw-back amount in 3(a) appears to fall within a reasonable range of claw-back amounts that Allband provided to USAC. Numbers 3(b) through 3(c) reasonably depict the application of the \$457 per line support level authorized in the FCC's Order. The \$457 per line that was applied, reasonably reflects the cost levels Allband provided to USAC. Generally, Allband's costs per line slightly exceed this amount. There are, however, concerns with number 3(e) above. The approach taken by USAC, denies Allband of essential cost recovery required for the July 20, 2016 through July 31, 2017 disbursement period. The FCC Order and USAC's implementation has specifically denied Allband \$243,419 of cost recovery, the difference between the \$335,742 PPA and the \$92,323 Claw-back. This serves to penalize Allband without clear explanation and support.
5. Allband worked diligently and in timely manner to comply with FCC rules and provide USAC all necessary information for calculation of the claw-back impacts. It is unclear why a penalty would be imposed on Allband. However, if the FCC and USAC believe that cost recovery reductions are in order, the alternative worst case is that Allband's support should not be reduced below \$375 per line/month for the July 20, 2016 through July 31, 2017 disbursement period.

6. In an Emergency Petition and my accompanying Affidavit provided in Appendix D of that petition, Allband justified an undisputed support amount of \$375 per line/month.¹ In summary, the \$375 support level is based on undisputed costs per USAC's September 23, 2015 Memorandum regarding the review of Allband's compliance with FCC accounting and cost allocation rules. The Memorandum didn't contain any findings concerning non-compliance with FCC rules regarding Allband's regulated network investments and related costs including return on investment, depreciation expense and operating taxes. Additionally, the Memorandum didn't contain findings nor express concerns with expenses associated with preparation of Allband's cost study that is necessary for determination of its high cost support amounts. Allband's support should not be reduced to deny recovery of costs that weren't disputed by USAC. The \$375 per line/month support amount only recovers the undisputed costs as described. It excludes all other expenses for which USAC expressed compliance issues, including plant specific expenses, plant non-specific expenses, customer service expenses and corporate expenses, except cost study fees.
7. The PPA amount restated to reflect a \$375 per line/month support level for the July 20, 2016 through July 31, 2017 disbursement period would be \$241,405. Support for this amount is provided in the table below.

1. Undisputed Support Per Line/Month	\$375
2. Section 54.302 Per Line Cap	250
3. Difference (Ln 1 – Ln 2)	\$125
4. Lines	156
5. Months (12 Months and 12 Days)	12.39
6. Restated PPA (L3*L4*L5)	\$241,605

Netting the USAC calculated Claw-back amount of \$92,343 against the restated PPA of \$241,605, yields a net difference due Allband of \$149,262. Net of the claw-back

¹ See *Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of 54.302 Rule for Increase Per-Line Support* (Emergency Petition), WC Docket 10-90, Et. Al., January 12, 2017

amount, this represents the amount of additional cost recovery Allband should receive for the July 20, 2016 through July 31, 2017 disbursement period under an alternative worst-case scenario. However, I recommend that Allband be granted the full net reimbursement of \$243,419 for the July 20, 2016 through July 31, 2017 (as stated in paragraph 2 above) rather than the lower worst case alternative of \$149,262.

8. In the Order, the FCC denied Allband's request to offset the claw-back calculations by the impact of the cap imposed in the July 2012 Waiver Order.² Specifically, this cap limited Allband's support payments based on the total high-cost support that Allband received for the period January 1, 2012 through June 30, 2012. If Allband's costs exceeded the interim cap amount, Allband was precluded from recovering the costs that exceeded the cap. As part of the claw back calculations, Allband accounted for the impacts of the interim cap. Allband simply incorporated the reductions in support payments that it already realized due to the application of the interim cap. In calculation of the claw back for the 2011 and 2012 cost studies, if the revised costs (accounting for Allband's modified accounting procedures) were above the interim cap amount, Allband was not seeking recovery of such costs. It was simply accounting for support reductions that were already applied as part of the interim cap. The Bureau in denying Allband's treatment of the cap imposed in the July 2012 Wavier Order stated:

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." 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.

As explained above, Allband in its calculation of the claw-back was not seeking to recover "support above the amount it would have received absent a waiver."

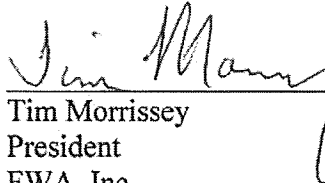
² *In the Matter of Connect America Fund Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, Released: February 22, 2018, at 28

Further, Allband in the claw-back calculations didn't seek to "offset any claw-back with support Allband believes it should have received but was not awarded." In my opinion the Bureau misunderstood what Allband was asserting regarding the application of the cap imposed in the July 2012 Wavier Order. In summary, Allband as part of the claw-back, didn't assert nor attempt to recover costs or support above the capped amounts imposed in the July 2012 Waiver Order.

VERIFICATION


I, Tim Morrissey, declare under penalty of perjury that the statements in the Affidavit are true and correct to the best of my knowledge and belief.

Dated: March 26, 2018



Tim Morrissey
President
FWA, Inc.
121 East College Street
Broken Arrow, Oklahoma
(918) 298-1618
tmorrissey@fwainc.com

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF March A.D. 20 18



NOTARY PUBLIC STATE OF MISSOURI
MY COMMISSION EXPIRES: 08/30/2020
COUNTY OF St. Charles

SANDRA M. VANCE
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Charles County
My Commission Expires: August 30, 2020
Commission Number: 12411264

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX D

TO

APPLICATION FOR REVIEW

OF ALLBAND COMMUNICATIONS COOPERATIVE

March 26, 2018

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

In the Matter of)	
)	
Connect America Fund	)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
)	
Lifeline and Line-Up	)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

APPENDIX D

AFFIDAVIT OF RON K. SIEGEL

IN SUPPORT OF APPLICATION FOR REVIEW

OF ALLBAND COMMUNICATIONS COOPERATIVE

I, Ronald K. Siegel Jr., being of lawful age and duly sworn, state as follows:

1. My name is Ronald K. Siegel Jr. My business address is 7251 Cemetery Rd., Curran, MI 48728. My title is General Manager of Allband Communications Cooperative ("Allband", "Cooperative" or "ACC") and its non-regulated affiliate, Allband Multimedia (AMM). I have worked for ACC in a management capacity since 2004 and for AMM since 2009. I am

responsible for overseeing the daily operations of ACC and AMM, including regulatory affairs, network design/administration, project development, community outreach, operations and the general viability of ACC. I have conducted extensive research and project management in ACC's rural area since 2002 and have actively pursued strategies to address the communication digital divide that exists between rural and urban areas.

2. I submit this Affidavit in support of Allband Communications Cooperative's accompanying March 26, 2018 Application for Review of the Wireline Competition Bureau's (WCB's) Order issued on February 22, 2018.

3. I hereby verify that as the General Manager of ACC and AMM, I have reviewed all the attachments in support of the accompanying petition and verify to the best of my knowledge and belief that the financial information provided by Tim Morrissey of FWA and by me as attachments to this affidavit, accurately present the financial status of ACC and AMM.

4. Allband is greatly appreciative of the relief provided in the February 22, 2018 WCB Order, but respectfully requests the Commission to review and to grant relief to Allband with respect to that portion of the WCB Order that withholds retroactive USF support due to Allband between the period of July 2016 to July 2017. While the WCB Order has offset Allband's claw-back liability as determined by USAC with the unpaid support in this pay period, Allband stands to lose a considerable amount of funding if the remaining balance is not reimbursed to Allband, which is desperately needed for capital investment, revenue generation, loop growth, network maintenance and to strengthen Allband's ability to restructure its loan with RUS. Granting these funds will also allow Allband to strengthen its ability to:

- Continue to provide high-quality and reliable voice, 911 ILEC services and broadband to its customers.

- Continue operations as an ILEC telecommunications carrier in its otherwise underserved exchange.

5. In addition to the relief sought in paragraph 4, Allband also requests that the WCB's decision to deny reimbursement of past support stemming from the July 2012 Commission Order be reconsidered. As referenced in past waiver requests, the Commission's July 25, 2012 Waiver Order limited Allband's support based on the first six months of its 2012 disbursements (annualized). Per Allband's 2012 Cost Study, which impacted 2014 USF disbursements, Allband lost a considerable amount of USF recovery related to the 2012 order. Allband still asserts that this should be considered by the Commission and USAC in determining Allband's USF reimbursement, as it did not receive the entire amount of USF support it was entitled to in 2013 and 2014. These funds, like the funds referenced in paragraph 4 will replenish the much-needed recovery Allband requires for capital investment, revenue generation, loop growth, network maintenance and to strengthen Allband's ability to restructure its loan with RUS. Granting these funds will also allow Allband to strengthen its ability to:

- Continue to provide high-quality and reliable voice, 911 ILEC services and broadband to its customers.
- Continue operations as an ILEC telecommunications carrier in its otherwise underserved exchange.

6. Since ACC received its original waiver of the \$250 Cap on July 25, 2012,¹ ACC has worked diligently to reduce its expenses and to steadily reduce the amount of its per line USF support, and to run a "lean" operation without negatively impacting growth. The FCC recognized Allband's attention to its expenses and staffing levels in its original 2012 Waiver Order. The

¹ Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, DA 12-1194, WC Docket no. 10-90, Order, Released: July 25, 2012 Order.

Commission's 2012 Waiver Order (paragraph 12) inherently recognized that USF per-line support considerably above the \$250 per line level was justified in order to provide service, continue operations, and to meet its payment obligations on its RUS loan.² ACC has also diligently exerted efforts in accordance with the 2012 Waiver Order to reduce expenses and pursue strategies referenced therein, as follows:

- The elimination of paid holidays
- Staffing layoffs
- The implementation of a new bonus structure which is tied solely to revenue and not performance. Performance bonuses which were also a part of ACC's compensation system, were frozen immediately once the FCC issued its July 20, 2016 Order suspending its waiver pending further review by USAC.
- Allband has fought a high level of property taxation from the State of Michigan and contended, as it still does, that the high level of taxation is a barrier to rural growth. After many years of appeals, Allband was successful in its settlement negotiations with the State and convinced the State of Michigan Tax Commission that relief was

² The Order, paragraph 12, stated: We also find that the public interest would be served by granting a waiver for a limited period of time. Specifically, we find that the record supports Allband's claims that consumers in the area will not be able to continue to receive voice service, absent a waiver in the near-term. In reviewing Allband's financial statements, it appears that the management of Allband is mindful of its expenses and limited financial resources given the size of its business. For example, in our view, the salaries and wages of Allband's seven employees are modest.⁴¹ Similarly, while certain other expenses, such as legal, accounting, and insurance are ongoing and an unavoidable cost of doing business, Allband's level of expenses, on a total dollar basis, are reasonable given the size and age of Allband's operation. Accordingly, we find that Allband is not in a position to immediately reduce its expenses in these areas. Similarly, given the low population density in Allband's service territory, Allband also will not be in a position to increase its revenues from consumers in the short-term.

needed to help bridge the digital divide in our community. These savings further reduce the amount of recovery that ACC requires from the Universal Service Fund.

- The creation of AMM in 2012 has reduced the amount of support required from the USF Fund and has provided new sources of revenue that were previously absent. This comports with the FCC's July 25, 2012 order (paragraph 14) granting Allband its original waiver which urged ACC, "to actively pursue any and all cost cutting and revenue generating measures in order to reduce its dependency on federal high-cost USF support".³
- Due to the sudden reduction in per-line support imposed by the July 2016 Commission Order, ACC has depleted all of its capital reserves, which directly impacts ACC's ability to make its RUS loan payments, maintain/repair its network and to pay its vendors and staff. This directly obstructs Allband's ability to seek and expand revenues to further reduce Allband's dependency on Universal Service Funding. While the FCC and Allband has emphasized the need for further loop development⁴, the FCC itself in paragraph 12 of its 2012 Waiver order stated that, "given the low population density in Allband's service territory, Allband also will not be in a position to increase its revenues from consumers in the short-term", relying on Coop expansion alone to dilute Allband's per-line support is not feasible."

³ Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, DA 12-1194, WC Docket no. 10-90, Order, Released: July 25, 2012 Order, paragraph 14.

⁴ Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, DA 12-1194, WC Docket no. 10-90, Order, Released: July 25, 2012 Order, Section 14.

ACC's successful efforts so far have complied with the Commission's July 2012 Waiver Order, paragraph 14, which stated:

"During this time, we expect Allband to actively pursue any and all cost cutting and revenue generating measures in order to reduce its dependency on federal high-cost USF support. Specifically, we anticipate that Allband, during this three-year waiver period, will continue efforts to expand its subscriber base to the extent possible and lower its support needs on a per-line basis, while at the same time taking all necessary steps to reduce its total costs as the company matures".⁵

As the General Manager, I can confirm that Allband has taken dramatic steps to reduce its dependency on USF funding by maintaining existing loops and pushing for not only regulated loop growth, but non-regulated growth as well.⁶ Despite line loss in 2014, ACC has been able to maintain and even grow its loops while increasing its non-regulated access lines, which inserts non-USF revenue streams and dilutes the operational expense that is attributable to USF. Allband has undertaken valiant and successful efforts to address all the goals set by the Commission's 2012 Waiver Order. At the same time, Allband, a carrier of last resort, still provides 911 and ILEC services to a very rural area and remains the only reliable provider of voice and Internet services in its exchange and has fully met the Universal Service goals and objectives of the 1996 Telecommunications Act.

Allband has no further ability to reduce expenses without impacting the quality of service we are expected to provide as an Eligible Telecommunication Carrier (ETC) and is now faced with a decision: maintain the status quo or push forward to drive new sources of revenue and USF-

⁵ Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, DA 12-1194, WC Docket no. 10-90, Order, Released: July 25, 2012 Order, paragraph 14.

⁶ The continued loyalty of ACC's customer/members contrasts with the current national trend of loop cannibalization by wireless networks.

supported loop growth. It is obviously in the best interest of the Allband to push forward and target revenue growth, but this takes financial stability and capital investment to do so.

7. In the 2012 Order, the FCC requested that Allband work with the USDA Rural Utility Service (RUS) on the reorganization of our loan⁷ and since then, ACC has kept RUS abreast of our activities, challenges and frequently requested feedback on how to proceed with our loan obligations in the event that our USF funding was reduced. When the July 2016 order was released, ACC immediately requested relief from RUS, and after much financial analysis and hard work from both ACC management and RUS staff, ACC's loan was placed in an interest-only deferral state for 6 months with payments totaling approximately \$20,000-\$22,000 per month as opposed to its normal loan payment of approximately \$54,150. Due to ongoing delays with the USAC review process and the FCC Order process, RUS subsequently extended Allband's deferral on September 14, 2017 and again recently on March 14, 2018 for additional 3-month periods to allow time for Allband's increased support from the February 22, 2018 order to take effect and to restructure its loan. This relief allowed ACC to maintain enough cash flow to operate and maintain its network and stay current with its payables.

8. As demonstrated by the attached cash flow analysis (**Attachment #1**), the expected increase in USF support at the end of March 2018 from the February 22, 2018 Order improves Allband's cash flow position, but it is not enough. The cash flow analysis takes in to account the following assumptions:

- Continuing growth in new wireless technology and fiber service installations.
- Focus to maintain network and build reserves.

⁷ In its 2012 Waiver Order, the Commission stated, "we further note that Allband has expressed its willingness, if necessary, to work with RUS to rework its loan terms. We envision that this is just one of the steps Allband may take to improve its financial position."

- Does not include any claw-back of previous years that is presently being determined with USAC. Offset credits should negate or be positive cash flow to Allband per the March 20, 2018 USAC letter referenced in this Application for Review.
- Allband's leasing company deferred lease payments until 4/1/2018 and principal payments towards equipment financing from January 2018 to May 2018, with full payments commencing again on 6/1/18.
- Principal payments towards a cash flow loan with Allband's Board President in August 2017 was deferred and to is scheduled to commence on 6/1/18.
- RUS Loan principal deferment until 5/31/18.

Allband still requires a loan restructuring from RUS and is in desperate need of an insertion of capital. Allband to date has lost a considerable amount of USF support since July 2016 and has had to subsidize this loss of recovery with revenue that would have other-wise been used for growth. Not having its full cost recovery support has kept Allband in a continuing state of financial stagnation and decline, which could be reversed with revenue growth, fueled by retroactive USF cost recovery. Despite aggressive expense reduction activities as outlined in paragraph 6 and loan deferral arrangements with RUS per paragraph 7, Allband still faces the reality that it's bottom-line is declining and the capital it accrued prior to the July 2016 Order has been siphoned off to subsidize its cash flow needs. Therefore, it is critical that Allband receive the entire sum of its retroactive support between July 2016 and March 2018, less the claw-back liability, so that it can:

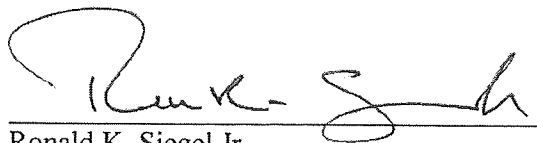
- Accrue capital for network repair and maintenance to ensure reliability and quality of service.

- Offset a portion of the burden being placed on RUS so that Allband can restructure its loan and determine a maturity date and monthly loan payment that is satisfactory to both RUS and Allband. If Allband is unable to restructure its loan, the reinstatement of principal will cause its payments to balloon further agitating its cash flow position.
- Provide capital for new investment planned for its Robbs Creek Exchange, which will increase its loops and reduce Allband's reliance on waivers, as loop additions will bring its cost per line closer to the \$250 cap requirement.
- Pursue other revenue generating activity that may require capital expenditures free of interest generating loans.

9. This completes my affidavit.

VERIFICATION

I, Ronald K. Siegel Jr., declare under penalty of perjury that the statements in this Affidavit are true and correct to the best of my knowledge and belief.



Ronald K. Siegel Jr.
General Manager
Allband Communications Cooperative
7251 Cemetery Rd.
Curran, MI 48728

Subscribed and sworn before me, this

26th day of March, 2018.

Lisa L. Mullaney
Lisa L. Mullaney (Printed Name)

Notary Public, Alpena County

Acting in the County of: Alcona

My Commission Expires: 12/3/20

Attachment #1

Allband Communications Cash Flow Analysis March 2018 - December 2018

	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
USDA-RUS Loan*	19,550.00	19,550.00	19,550.00	56,320.27	56,320.27	56,320.27	56,320.27	56,320.27	56,320.27	56,320.27
Total Cash Flow Out	114,428.16	158,007.21	113,813.07	177,335.34	184,546.34	164,259.44	158,559.34	159,043.69	141,624.28	178,294.68
HCLS @ 250 cap then 457	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62	40,974.62
ICLS @ 250 cap then 457	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75	25,477.75
TS	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00	8,403.00
NECA (clawback) - unknown										
Total NECA Income**	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37	74,855.37
Total Customer Payments	65,396.72	55,101.18	58,060.76	64,614.05	70,483.58	68,904.54	59,296.97	66,398.59	61,949.88	58,510.07
CABS Payments	1,677.70	1,757.80	1,671.91	2,307.16	2,573.32	2,313.95	2,480.31	2,312.87	2,523.78	2,279.64
Total Cash In Flow	141,929.79	131,714.35	134,588.04	141,776.58	147,912.27	146,073.86	136,632.65	143,566.83	139,329.03	135,645.08
Net Cash Flow Effect	27,501.63	(26,292.86)	20,774.97	(35,558.76)	(36,634.07)	(18,185.58)	(21,926.69)	(15,476.86)	(2,295.25)	(42,649.60)
Current Bank Balance+ Net Cash Flow	189,301.63	163,008.77	183,783.74	148,224.98	111,590.91	93,405.33	71,478.64	56,001.78	53,706.53	11,056.93

* RUS principal to start in June 2018 (restructuring pending)

** Assuming USF Increase per 2-22-18 FCC Order to begin in March