

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

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**PETITION FOR TEMPORARY WAIVER
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”)¹ respectfully submits, once again, on behalf of its members and other similarly situated operators, a Petition for Temporary Waiver of the updated minimum service speed standard applicable to fixed, wireline broadband Internet access service (“BIAS”) eligible for support by the Lifeline Universal Service Fund (“USF”) program.² This waiver renews a nearly identical request made in 2017,³ in which NTCA requested that the Commission temporarily waive the strict application of the new minimum service speed standard and “grandfather” low-income BIAS customers subscribing to a service that did not meet the standard as of its effective date. The

¹ NTCA represents nearly 850 small rural incumbent local exchange carriers (“RLECs”). All of NTCA’s members provide quality voice and broadband services, and many of its members provide wireless, cable, satellite, and long distance and other advanced communications services to their rural communities.

² *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, DA 18-739 (rel. Jul. 18, 2018) (“*Public Notice*”).

³ NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (fil. Oct. 20, 2017).

Commission did not act upon the 2017 petition and, with a Public Notice announcing new minimum standards having now been issued, the need arises for NTCA to renew and effectively resubmit its petition this year.

Grant of the requested relief would enable low-income consumers to continue, *on a voluntary basis*, receiving the service they already subscribe to as of December 1, 2018 or move *on a voluntary basis* to the new higher speed standard of service if that choice fits within their budget.⁴ NTCA's still-pending 2017 Petition, as well as this renewed petition, are necessary because the increase in speed (in this instance to 18 Mbps download/2 Mbps upload) will likely come with an increase in monthly rates that may be unaffordable for some low-income consumers. As a result, the Lifeline minimum speed standard could have the unintended consequence of forcing some low-income rural consumers to discontinue their service. Such a result is entirely counter to the *2016 Lifeline Modernization Order's*⁵ goal of ensuring that low-income Americans have access to all that an Internet connection can provide.

It must be noted for purposes of clarity that the instant waiver would resolve a question not contemplated by the Commission's exception to the minimum service speed standard. Specifically, that exception provides relief from the minimum service speed standard "if the Lifeline provider does not offer any generally available residential fixed broadband packages

⁴ This Petition for Temporary Waiver seeks relief only with respect to the 18 Mbps download/2 Mbps upload broadband speed standard as announced by the Wireline Competition Bureau on July 18, 2018 and set to become effective December 1, 2018. *Public Notice*, p. 1. The requested relief would not apply to the updated broadband data usage standard also set to become effective December 1, 2018 nor would the requested relief apply to any minimum service standard as applicable to mobile wireless providers. *Id.*, p. 2.

⁵ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) ("*2016 Lifeline Modernization Order*" or "*Order*").

that meet the minimum service standard at a subscriber's residence.”⁶ The instant Petition attempts to solve for the problem where BIAS service meeting the minimum speed standard – in this case 18/2 – *is* available to the low-income consumer, but is *not* a service the consumer wants to adopt. More specifically, the problem arises due to the fact that the increase in speed likely will come with an increase in price that may render the service unaffordable for the low-income consumer. Grant of the requested relief would allow the low-income consumer to choose *on a voluntary basis* to keep the service they already have and continue to enjoy the Lifeline discount on that, or to take the faster 18/2 service *on a voluntary basis*.⁷

Finally, while grant of the waiver would offer short-term relief to *some rural low-income consumers*, the root cause underlying the need for the requested relief is a High-Cost USF budget that is insufficient to provide even a “reasonable comparability” baseline with respect to *any* consumer in an RLEC service area, low-income or otherwise.⁸ Simply put, increasing the minimum service standards for the Lifeline program without also ensuring that

⁶ *Public Notice*, p. 2.

⁷ It must also be stated that the need for the relief as requested herein is even more urgent today. Pursuant to the Commission's rules, low-income consumers can apply the Lifeline discount to a voice/BIAS bundle even if the BIAS service does not meet the minimum service speed standard (if the discount is specifically applied to the voice service portion of that bundle). Thus, a Lifeline-eligible consumer currently receiving the discount for a service lower than 18/2 can in effect continue to do so after December 1, 2018 if they subscribe to voice service as well and apply the discount to the voice. However, the Lifeline discount for that voice service is subject to a phase-down beginning December 1, 2019 – the \$9.25 discount shrinks by \$2 on that date.

⁸ Comments of NTCA, WC Docket No. 10-90, et al. (fil. May 25, 2018), pp. 30-31. In particular, as NTCA has explained in other contexts, the most direct method of mitigating the need for the requested relief is a high-cost USF budget that: (1) reflects reasonable expectations as to demands over time based upon the approved design of the components of the USF programs; (2) is sized sufficiently to promote “true universal service” of the kind of necessary to drive the availability of scalable, forward-looking networks that can evolve and keep pace with consumer demand, or at the very least, is sized sufficiently to correspond to the set of buildout and other performance tasks designed by the Commission; (3) is sized sufficiently as well to ensure “reasonable comparability” in terms of services and pricing; (4) provides greater predictability to the extent that any projected budget nonetheless turns out to be insufficient in a future period; and (5) includes an appropriate inflationary factor just as other USF programs do today.

the RLEC High-Cost program functions properly only pushes a broadband connection further out of reach for the very consumers these programs were intended to benefit. In short, a two-fold approach, in which USF programs work in concert, is needed to enable low-income rural consumers to adopt broadband: (1) the RLEC High-Cost program must ensure that *all* rural consumers enjoy broadband at rates reasonably comparable to those of their urban brethren; and (2) the Lifeline program must do its important work of bringing a BIAS service that is in the first instance reasonably comparable as between rural and urban areas then within the reach of a low-income rural consumer. At least until such time as sufficient universal service support is provided and, as a result, there is a more realistic prospect for RLECs to offer broadband services at rates that even begin to resemble those available in urban areas, the Commission should grant this Petition to ensure that any broadband adoption gains by low-income consumers in the wake of the *2016 Lifeline Modernization Order* are not lost.

II. GOOD CAUSE EXISTS TO GRANT THE REQUESTED TEMPORARY WAIVER PURSUANT TO SECTION 1.3 OF THE COMMISSION’S RULES.

Section 1.3 of the Commission’s rules states that the agency’s “rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”⁹ The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest.¹⁰ Generally, waiver of the Commission’s rules is granted when both (i) special

⁹ 47 C.F.R. § 1.3.

¹⁰ *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹¹

Good cause exists to grant the requested temporary waiver. Because any increase in speed is likely to come with an increase in the monthly rates for broadband service, strict compliance with the updated minimum speed standard would not be in the public interest if it forces thousands of low-income rural consumers to face rate increases (even if discounted) and drop their suddenly unaffordable BIAS service. Grant of the waiver would ensure that low-income consumers now “on the network” and enjoying the benefits of BIAS as a result of the Lifeline program will have the choice of continuing to subscribe to the service they have as of the effective date of the new standards *should they determine that such a service still better meets their needs and fits their budget*. Special circumstances would seem to compel deviation from strict application of the rule at issue herein, as it is abundantly clear that the Commission never intended the annual update to the Lifeline program minimum service standards to reverse any gains in broadband adoption by low-income consumers spurred by the *2016 Lifeline Reform Order*. Grant of a waiver would enable many rural consumers to continue enjoying connections to employers and educational opportunities they might not have had in the absence of access to affordable broadband, and thus deviation from the rule would serve the public interest.

¹¹ NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

III. GRANT OF THE NTCA TEMPORARY WAIVER PETITION WOULD ULTIMATELY FURTHER THE COMMISSION'S BROADBAND ADOPTION GOALS BY ENSURING THAT LOW-INCOME RURAL CONSUMERS NOW ENJOYING THE BENEFITS OF BROADBAND SERVICE CAN CONTINUE TO DO SO.

By way of background, NTCA's RLEC members are designated as Eligible Telecommunications Carriers ("ETCs") and have a long history of providing service to rural low-income consumers pursuant to the Lifeline program. NTCA has long been an active participant in the Lifeline proceeding, as its members share the Commission's goals of promoting the affordability of broadband service as well as the effective use of resources in this and other USF programs. Thus, this Petition should be seen as an effort to ensure that the Lifeline program has the greatest positive impact on as many rural consumers as possible.

More specifically, NTCA is filing the instant Petition on a renewed basis to ensure that the increase in the minimum speed standard set to take effect December 1, 2018 will not force any low-income rural consumer to drop his or her broadband connection because it is no longer affordable once a new tier of service is mandated. Like any broadband provider, RLECs' rates for broadband service typically increase as the speed provided increases. As a result, the value of the Lifeline discount is being eroded more each year as the speed standard goes up, the discount stays the same, and the underlying problem of an insufficient High-Cost USF budget that drives rates for all consumers in RLEC services areas beyond that which is "reasonably comparable" remains unsolved. Ultimately, many low-income rural consumers may find that their BIAS service that they may have been fortunate enough to obtain due to the Lifeline program is suddenly unaffordable.

When adopting the provision requiring the Wireline Competition Bureau to annually update the program's minimum service standards, the Commission surely did not intend that such annual updates would have any negative impact on existing broadband utilization by low-income consumers. To be sure, the provision requiring the update was based on the Commission's understandable concern that rapid changes in technology should not quickly render the minimum service standards out of date.¹² Yet, another countervailing concern should be the deciding factor here: at bottom, the Lifeline program aims to address the affordability of a supported service for low-income consumers for whom such service would otherwise be financially out of reach. Grant of the Petition would therefore ensure that rural low-income consumers that were able to obtain a BIAS connection due to the Lifeline program are not forced to now drop it because it is now suddenly unaffordable.

To be clear, NTCA's Petition for a temporary waiver *is not* an attempt to foist lower-quality broadband service on low-income consumers or to in any manner back away from the notion of "reasonably comparable" service quality for *all* rural consumers. To the contrary, NTCA has at every turn advocated for universal service policies that ensure the availability and affordability of high-quality and "reasonably comparable" broadband service for every rural consumer, low-income or otherwise. NTCA is also in support of enabling consumers of all kinds, including but not limited to lower-income consumers, to have the ability to adopt higher-speed broadband services that meet their evolving and increasing needs for access. That said, the Commission should look at its universal service programs with an eye towards making sure they function correctly and as intended, and do not have the unintended consequence of

¹² 2016 Lifeline Modernization Order, ¶ 77.

undermining access. Here, the Commission must confront the simple fact that the increase in the minimum speed service standard could run counter to the broadband adoption goals of the Lifeline program if certain low-income consumers can no longer afford the service to which they currently subscribe. In this regard, a deviation from strict compliance with the newly updated minimum service standards would ensure that the program “works” for a larger number of low-income consumers.

In terms of clarity of the relief sought herein, pursuant to the “grandfathering” relief as requested by NTCA, existing low-income broadband consumers would be free to choose to subscribe to the 18/2 service if they determine that such a service fits within their budget, yet would also remain free to continue subscribing to the service they already have as of December 1, 2018 *should they choose to do so*. Thus, the choice would ultimately remain with the low-income consumer.

It must also be noted that the situation the instant Petition seeks to address exists, in part, due to the lack of coordination between the Lifeline and High Cost USF programs. Unfortunately, this lack of coordination exists because it is often forgotten that, in rural America, the High-Cost USF program is essential to promoting *both* the availability and basic affordability of services for *all users* on a community-wide basis. While the High Cost USF program is often viewed almost exclusively through a prism of mere availability – “how many locations can we reach?” – the ultimate aim of the High Cost program as explicitly directed by Congress is *also* to ensure that all consumers’ rates on rural networks will as a baseline be reasonably comparable to those in urban areas. The Lifeline program then “picks up the ball” to help get low-income Americans specifically across the goal line, ensuring that this discrete

class of users within rural communities receives the additional support needed for them to afford a connection, just like low-income consumers in urban areas. In other words, the Lifeline program ensures that any additional support needed against that baseline of “reasonable comparability” is available to enable adoption of services by low-income consumers that would otherwise remain stuck in the digital divide. Unfortunately, current universal service policy fails to make this important connection, as budget constraints, as well as other structural issues, render 18/2 or 15/2 or even 10/1 BIAS unaffordable for many rural consumers, low-income or not. A waiver is therefore needed, at least on a temporary basis, while additional changes are considered in the context of the High-Cost program to help promote affordability of services and enable ongoing adoption and utilization by low-income rural consumers in particular.

IV. CONCLUSION

For the reasons stated above, the Commission should grant the Petition for Temporary Waiver to ensure that any broadband adoption gains spurred by the current Lifeline program are not lost.

Respectfully submitted,

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