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July 27, 2017

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

Re: ***Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of Part 54.302 Rule and for Increased Per-Line Support***
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 **Petition of Allband Communications Cooperative for Waiver of the Part 54.302 Rule and for Increased Per-line Support, with supporting Appendices.**

A copy of this filing is being sent via e-mail to Staff of the Wireline Competition Bureau, including Ryan Palmer (ryan.palmer@fcc.gov), Suzanne Yelen (suzanne.yelen@fcc.gov), Alexander Minard (alexander.minard@fcc.gov), Joe Sorresso (joseph.sorresso@fcc.gov), and to the Commission's copy contractor at fcc@bcpiweb.com, and also to Staff of the Universal Service Administrative Company (USAC) including: Brandon Ruffley (brandon.ruffley@usac.org), Anna J. Mihalsky (anna.mihalsky@usac.org), Amanda Bilodeau (amanda.bilodeau@usac.org), Deborah Eltgroth (deborah.Eltgroth@usac.org), and Sammy Khan (Sammy.Khan@usac.org).

Respectfully submitted,

ALLBAND COMMUNICATIONS COOPERATIVE
By its counsel

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DLK/cd
Atts.

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

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	)	
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	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

PETITION OF ALLBAND COMMUNICATIONS COOPERATIVE
FOR WAIVER OF THE PART 54.302 RULE
AND FOR INCREASED PER-LINE SUPPORT

Allband Communications Cooperative (Allband or ACC) files this Petition for Waiver of the Commission's Part 54.302 Rule, and for increased per-line support. Allband seeks pursuant to this Waiver Petition a prompt increase in Universal Service Fund (USF) per-line support to $457 per line, as further documented in this petition and attached supporting affidavits and attachments.

Allband files this Waiver Petition pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, and the Commission's 2011 Order in these dockets[1] and the Commission's July 25, 2012 Waiver Order,[2] and the Commission's July 20, 2016 Order.[3]

I. ALLBAND'S REQUESTED WAIVER AND INCREASE IN PER-LINE SUPPORT TO $457 PER LINE IS JUSTIFIED AT THIS TIME

Allband's requested Waiver Petition and increase in per-line support to $457 per line is supported by the following supporting documents:

- The Affidavit of Allband General Manager Ronald K. Siegel, with attached latest 2016 unaudited financial statements of Allband Communications Cooperative (ACC) and its affiliate subsidiary, Allband Multimedia LLC (AMM), attached as **Appendix A** hereto.

- The Affidavit of Timothy J. Morrissey of Fred Williamson & Associates (FWA) sponsoring a cost of service study based upon 2016 allocation methodologies complying

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[1] Connect America Fund, et al, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order).

[2] Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket no. 10-90, Order, *In the Matter of Allband Communications Coop. Petition for Waiver of Certain High-Cost Universal Serv. Rules*, 27 F.C.C. Rcd. 8310 (2012), 27 FCC Rcd 8310, Released: July 25, 2012 (Order). The Commission's July 25, 2012 Order granting Allband a 3-year waiver, footnote 36, stated:

> Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waiver a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d 1166. In this context, the Commission has made clear that it envision granting waivers "only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony using the same or other technologies that provide the functionalities required for supported voice service. *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para 540.

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

with the results of the review and guidance of the Universal Service Administrative Company (USAC), attached as **Appendix B** hereto;

- The Affidavit of Christine Duncan, CPA, Director of Separations in JSI's Greenbelt, MD headquarters, further asserting and confirming that Allband's 2016 cost study complies with the recommendations of USAC, attached as **Appendix C** hereto.

The above supporting documents establish that Allband requires on a prompt basis a minimum of $457 per line in order to continue its services and operations as an Incumbent Local Exchange Carrier (ILEC), and to meet its expense obligations, including payments on its current federal loan issued by the United States Department of Agriculture (USDA), Rural Utility Service (RUS).

II. THIS WAIVER PETITION IS FURTHER SUPPORTED BY ALLBAND'S JANUARY 12, 2017 EMERGENCY WAIVER PETITION

This Waiver Petition is further supported by Allband's January 12, 2017 Emergency Petition and supporting documents, incorporated herein by reference (hereafter, "Emergency Petition").[4] The Emergency Petition established that an increase in Allband's Universal Service Fund (USF) support to $375 per line was necessary to cover Allband's <u>fixed costs</u> only, which costs exist irrespective of the employee time or affiliate cost allocations assigned for USAC review by the Commission's July 20, 2016 Order. These Allband Communications Cooperative (ACC) costs relate to non-operating ACC costs such as capital investment, depreciation, and taxes, which are all unrelated to the cost-allocations matters reviewed by USAC.[5]

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[4] Emergency Petition of Allband Communications Cooperative for Interim Partial Waiver of the Part 54.302 Rule and For Increased Per-line Support Waiver Petition. The supporting documents included extensive information and financial facts presented in attachments to the Emergency Petition, including: (1) the Affidavit of Allband's Board President, John Reigle (**Appendix** A); (2) the Affidavit and attachments of Allband General Manager Ron Siegel (**Appendix B**); (2) the Affidavit and attachments of Allband Controller Tammy Veasy (**Appendix C**); (3) the Affidavit and attachments of Tim Morrissey of FWA (**Appendix D**); and (4) the Affidavit of JSI Director and CPA Christine Duncan (**Appendix E**).

[5] This is established by affidavits attached to Allband's Emergency Petition, including the Affidavit of FWA President and CPA Tim Morrissey (**Appendix D** thereto) which confirmed

This Waiver Petition requesting a per-line increase in USF reimbursements is also supported by additional overriding objective benchmark tests that establish that ACC's regulated per-line costs qualifying for reimbursement under the USF program is significantly above the "presumptive level" of $250 per-line level imposed in the Commission's 2011 Transformational Rules and in the Commission's July 20, 2016 Order. ACC's higher capital costs (along with associated depreciation and property tax expenses) exist because ACC was a somewhat new entity (establishing a wholly new broadband-capable network in an unserved territory that had never had any communications services previously).[6]

Another objective benchmark justifying grant of this Waiver Petition involves the amount of ACC's monthly payments for principal and interest on its RUS loan to establish its wholly regulated network during the period 2006-2011 (wholly aside from and before AMM). This RUS loan was used entirely to fund the planning, engineering, and construction of ACC's network as entirely a regulated ILEC entity. Aside from the temporary six-month partial deferral of the RUS loan payment obligation approved by RUS in March 2017, this RUS loan payment obligation equals $54,147.17 per month, or $334 per-line. This monthly cash payment obligation to RUS has

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that these non-operating Allband costs equate to a revenue requirement of $375 per-line, an amount far above the $250 per-line cap imposed by the July 20 Order, and the affidavit of CPA Christine Duncan of JSI (**Appendix E** thereto); Allband discussed this request in advance with representatives of USAC assigned to Allband's compliance review, and submitted an October 5, 2016 formal submission, with attached Memorandum from CPA and FWA President Tim Morrissey, to USAC requesting concurrence in this request for an interim partial emergency increase in per-line support (see paragraph 10, p 15, and Attachment 5 to the Affidavit of General Manager Ronald Siegel (**Appendix B** to Allband's Emergency Petition).

[6] Notably, the $8 million loan from the U.S. Rural Utility Service (RUS), approved for ACC after rigorous review (and long before the existence of ACC's subsidiary, Allband Multimedia (or AMM), was utilized in its entirety to establish regulated service by ACC in accordance with the Act and the USF programs. Allband incurred this investment in reliance upon the USF program established by Congress in the 1996 Amendments to the Act, and this Commission's approval of Allband as an ILEC in 2005, *In the Matter of Allband Communications Coop.*, 20 F.C.C. Rcd. 13566 (2005), and RUS' approval of a loan in 2005, and the commencement of service to its first customer in 2006, when Allband's then "sunk" investment was far in excess of $250 per line.

always been associated with ACC and not AMM.[7] The $250 per-line support caps imposed by the Commission's July 20, 2016 Order falls considerably short of even covering ACC's monthly payments on its RUS loan.

III. PROMPT APPROVAL OF ALLBAND'S WAIVER PETITION IS NECESSARY TO PREVENT IRREPARABLE HARM TO ALLBAND, ITS CUSTOMERS, AND THE PUBLIC INTEREST

The prompt approval of this Waiver Petition is necessary to prevent irreparable harm to Allband, its customers, and the public interest. 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.[8]

The Commission's July 20, 2016 Order (paragraph 26) recognized the Commission's obligations to preserve and advance universal service, a mission which Allband has successfully pursued and achieved:

> The Commission is mindful of its obligation to preserve and advance universal service. Consistent with Commission precedent, any determination into the appropriate amount of waiver support will take into account evidence presented by Allband regarding the impact of any support reductions on its ability to

[7] Affidavit of Tammy Veasy, Allband Controller, attached to Allband's January 12, 2017, Emergency Petition as **Appendix C**, pp 4-5, and Attachments 1 and 2 thereto, and the RUS loan amortization schedule and payment history attached to her affidavit.

[8] Affidavit of Allband General Manager Ron K. Siegel, dated July 26, 2017, attached as **Appendix A** hereto; see also Allband's Emergency Petition and attachments thereto, including affidavit of ACC President John M. Reigle, **Appendix A**, pp 2-3, paragraphs 5-7; Affidavit of ACC General Manager Ron K. Siegel, **Appendix B**, p 8, paragraph 5; Affidavit of ACC Controller Tammy S. Veasy, **Appendix C**, p 4, paragraph 8.

continue to serve areas where consumers have no alternatives. [fns omitted]
(July 20, 2016 Order, ¶ 26 and 47 U.S.C. § 254(b)(2)).

In accordance with this provision, Allband has presented extensive evidence to justify the grant of per-line support significantly above the presumptive $250 per-line level provided in the Commission's Transformational Rule.[9]

The grant of this waiver petition and an increase in Allband's per-line support is now unquestionably very urgent. Allband, with limited resources, has exhaustively responded to all of USAC's requests for information and data. Allband also has undertaken extensive efforts to cut costs, and vigorously sought and obtained a temporary six (6) month partial deferral of its RUS loan payments, among other actions. Allband, as a combined entity including ACC and AMM, has also been rapidly running out of cash resources to provide services and to make payments on its federal RUS loan.

Allband also clarifies that the four-month or so timeframe necessary to complete this Waiver Petition, with attached cost-study and financial statements following issuance of USAC's final report, does not diminish Allband's assertions of urgency. Since the Commission's July 20, 2016 Order, Allband necessarily had to cut expenses even further, including employees, which has greatly complicated efforts to maintain and operate Allband's network and service. During the ensuing period, Allband was also required to commit its limited resources to working with USAC

[9] Allband has now filed some five waiver petitions with attached supporting documents asserting this position, including: (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; and (6) Allband's January 12, 2017 Emergency Petition for Interim Partial Waiver of the Part 54.302 Rule and for Increased per-line support, and (7) this Waiver Petition.

to address all cost allocation issues, and to provide exhaustive responses (which resulted in a favorable report from USAC as of February 24, 2017 as amended on March 6, 2017 and April 10, 2017). Allband in the most recent six months of 2017 has also had to undertake a new cost-of-service study to implement USAC recommendations, and to compile associated financial documents to support this waiver petition.

In short, a dire need exists for prompt action to increase Allband's per-line supports at this time.

IV. THE GRANT OF ALLBAND'S WAIVER PETITION WOULD BE CONSISTENT WITH THE COMMISION'S TRANSFORMATIONAL RULES AND PREVIOUS ORDERS, AND THE PURPOSES AND OBJECTIVES OF CONGRESS ESTABLISHED IN THE 1996 ACT AND SUBSEQUENT ACTS

The prompt grant of this Waiver Petition would also be consistent with the Commission's Transformational Rules and previous Commission orders, and the purposes and objectives of Congress in applicable governing statutes.

A. Allband has Complied with the Commission's July 20, 2016 Order

Allband has diligently and exhaustively complied with the letter and spirit of the Commission's July 20, 2016, Order.[10] Promptly upon receiving the Order, Allband engaged with USAC in pursuing a plan and strategy to complete all aspects of the review directed by the Commission's Order. This review process included numerous phone discussions with USAC, the preparation and submission of numerous responses to USAC inquiries, the exchange of innumerable e-mails, and participation in meetings with USAC personnel in both Michigan and at USAC. Allband has also engaged in phone conferences, exchanges of emails and documents, and meetings with the Wireline Competition Bureau.

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

In efforts to continue service on an interim basis, Allband has also engaged in numerous discussions, exchange of emails and documents, and meetings with the Rural Utility Service (RUS) to seek and obtain in March 2017 a six-month partial deferral of Allband's monthly payments on its existing RUS loan.

Allband has also undertaken yet further drastic expense reductions in response to the Commissions July 20, 2016 Order, including a reduction in employees necessary to maintain and operate the services and network of both ACC and AMM, down to a level below that which existed when the 2012 Waiver Order was issued. To be certain the current employee level at AMM and ACC is not sustainable on a long-term basis, a reality that should be recognized if Allband is to make further progress on the goals, objectives, and recommendations stated in the Commission's foundational 2012 Waiver Order applicable to Allband.[11].

B. Allband's Compliance with and Reliance Upon the Commission's 2005 and 2012 Orders

Allband has undertaken extensive and conscientious efforts to comply with, and in reliance upon, the Commission's August 11, 2005 Order recognizing Allband as an ILEC qualified for USF support.[12]

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

[12] The 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."

Allband has also complied with and implemented the provisions and recommendations stated in the Commission's July 25, 2012 Waiver Order.[13] The 2012 Waiver Order found that Allband was "lean", had a small number of employees, and had modest salaries. The 2012 Waiver Order recognized the unique and difficult circumstances inherent in Allband's service area, and the important ILEC function that Allband performs in a previously unserved area. The 2012 Waiver Order also provided objectives for Allband to pursue in future years to cut costs, add lines and revenues, and to bring itself closer to the Commissions "presumptive cap" of $250 per line set on a national basis.

In its 2012 Waiver Order, the Commission granted Allband:

> [A] waiver of section 54.302 for three years to provide it additional time to take cost-cutting and revenue enhancing actions in order to improve its financial position and lessen its dependence on high-cost universal service support.

The Commission's 2012 Waiver Order (paragraph 2) stated that its 2011 USF/ICC Transformation Order, 26 FCC Rcd at 17670, para 11, imposed a "presumptive per line cap of $250 per month on total high-cost universal support for all eligible telecommunications carriers" and (para 4) that:

> The Commission also instituted a waiver process to allow "any carrier negatively affected by the universal service reforms … to 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.

The Commission's 2012 Waiver Order (para 12) also found that the grant of a waiver to Allband was in the public interest:

> 12. 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

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

> 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.[42] 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. [fn omitted].

The Commission's 2012 Waiver Order (para 14) also stated in part:

> 14. Therefore, we grant Allband a limited waiver of section 54.302 of the Commission's rules for a period of three years to give Allband a sufficient but not undue amount of time to make a good faith effort to come into compliance with the $250 cap. 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[44] 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. We further note that Allband has expressed its willingness, if necessary, to work with RUS to rework its loan terms.[45] [fn omitted].

ACC's track record since the 2012 Waiver Order establishes that ACC has successfully and conscientiously carried out all of the directives, goals, and recommendations included in the 2012 Waiver Order. ACC has kept its employee costs low, has cut employee costs and benefits, has strived to maintain and increase lines, pursued a federal grant under the separate ARRA program to facilitate the creation and expansion by AMM of broadband communications in its service area and contiguous areas (previously unserved by such services), and constructed, deployed, and operated a fully broadband-capable network.

ACC also established rates well within the range recognized by the Commission as meeting the requirements of the Act to promote services and facilities in its rural areas which are reasonably comparable and equivalent to urban areas. Allband has also strived to keep the RUS informed of its activities and efforts, and has strived to pay its monthly payments on its RUS loan, and to develop the credibility and credit-worthiness to support the grant in 2017 by RUS of a 6-month partial deferral of loan payments on its RUS loan.[14]

Allband's efforts since 2012 have resulted in declines in ACC's per line costs over the years, from $615 per-line in 2013 to the lower $457 per-line requested in this Waiver Petition.

Allband also asserts that the grant of this Waiver Petition is necessary and in the public interest to accomplish the commitments noted earlier relative to continued payment of RUS loan obligations and to continue to provide ILEC services in its territory, while Allband continues to strive to further reduce its per-line costs and USF reimbursements.

C. Allband's Waiver Petition is Consistent with the Commission's Transformational Rules

Allband's Waiver Petition herein is also fully consistent with the Commission's Notice of Proposed Rulemaking (NOPRM) and Transformational Rules. The Commission's 2011 NPRM, paragraph 10, indicated the Commission planned to be guided by four principles, rooted in Section 254 of the Act, to (i) "Modernize USF and ICC for Broadband…" and "to make affordable broadband available to all Americans," (ii) to "[c]ontrol the size of USF as it transitions to support broadband, including by reducing waste and inefficiency….”; (iii) to "[r]equire accountability from companies receiving support, to ensure that public investments are used wisely to deliver intended results….” and (iv) to "[t]ransition to market-driven and incentive-based policies that encourage technologies and services that maximize the value of scarce program resources and the

[14] Allband also has strived to pay its RUS loan that is funded by federal taxpayers. Allband has successfully made its RUS loan payments since the inception of its loan (see payment history and loan amortization attached to Affidavit of Allband Controller Tammy Veasy, **Appendix C**, pp 4-5, and Attachments 1 and 2 thereto), all attached to Allband's Emergency Petition.

benefits to all consumers," recognizing in fn 16 "that in some geographic areas there may be no private sector business case for offering voice and broadband services."

The Commission's NPRM (paragraph 80) also stated in relevant part:

> Consistent with the statute and the Joint Board recommendations, we propose four specific priorities for the federal universal service high-cost program. *First*, the program must preserve and advance voice service…. *Second*, we seek to ensure universal deployment of modern networks capable of supporting necessary broadband applications as well as voice service…. *Third*, the program must ensure that rates for broadband service are reasonably comparable in all regions of the nation…. *Fourth*, we seek to limit the contribution burden on households. As we have recognized in the past, "if the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable."[125] [fn 125: *Qwest II Remand Order*, 25 FCC Rcd at 4087, para. 28.]

Following the NPRM, the Commission's subsequent November 18, 2011 Transformation Order indicated an effort to increase accountability and incentives. The Order also indicated that the preservation of and promotion of communications facilities and services in unserved areas should be continued along with the promotion of broadband facilities and services in rural areas (e.g., 2011 Order, paragraphs 1-32). The 2011 Transformation Order also established a "presumptive" $250 per-line cap for USF support on a ("one-shoe-fits all") national basis, but also established a waiver process in apparent recognition that imposition of such a uniform cap would be arbitrary and inapplicable in some instances.

ACC, as a newly-created entity, having just then completed a new, modern broadband capable network by 2011, in an unserved area, clearly met the goals and objectives as stated in the NPRM and the Transformational Order and also the criteria for the grant of a waiver as established in the 2011 Transformation Order.[15]

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[15] In turn, the creation of AMM in 2010, and the implementation of its broadband network to commence AMM services in late 2012, pursuant to a separate RUS grant, was also fully

D. Allband's Waiver Petition is also Consistent with the Purposes and Objectives of Congress

The grant of increased per-line support pursuant to this Waiver Petition should also be viewed as being consistent with, and in furtherance of, the purposes and objectives of Congress in establishing the USF program in the 1996 Amendments to the Act, and in subsequent legislation clearly intended to promote the deployment of broadband services in rural areas. Congress in the 1996 Act, and related statutes, established unmistakable intent to promote the development and deployment of both voice and broadband communications infrastructure on a nationwide basis, to include rural areas, and with service quality and at rates which are comparable as between rural and urban areas, with "explicit and sufficient" USF support to achieve these purposes.[16] Allband has successfully carried out this mission in its previously unserved areas of northeast Michigan.

V. ALLBAND'S COMMITMENT TO ENSURE COMPLIANCE WITH COMMISSION RULES

Allband also commits as a condition for the grant of this Waiver Petition to fully comply with and ensure compliance with all FCC Rules, including the regulated/unregulated affiliate allocation rules, as interpreted by the Commission and its Staff. This commitment has been demonstrated by Allband's extensive work with USAC since the Commission's July 20, 2016 Order to reform Allband's accounting and allocations process to ensure compliance.

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consistent with and in compliance with the stated purposes and objectives of the 2011 Transformation Order.

[16] E.g., 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).

Allband is now in compliance with the Commission's cost allocation and affiliate transaction rules. ACC respects these rules, and has never intentionally departed therefrom. At the same time, as the Commission itself has recognized in its July 20, 2016 Order (paragraph 13 and fn 46), cost allocation issues can involve to some degree differences in judgment, interpretations, or discretion involving assignment of costs on a direct or common allocation or other basis.

Allband has gained invaluable information and experience from the in-depth review process implemented after the Commission's July 20, 2016 Order, with the assistance of an expanded consulting team, and USAC guidance. At the same time, variances in 2012–2015 from the allocation methodology recommended by USAC in 2016 and 2017 resulted in large part from the relatively recent establishment of the unregulated AMM, which connected its first customer in the fourth quarter of 2012.[17]

Perhaps another ameliorating factor is that the relationship and structure of Allband Communications Cooperative (ACC) and Allband Multimedia (AMM) is somewhat unique. While the Commission's NOPR, leading to the 2011 Transformation Order, expressed concerns regarding holding company or affiliate abuses, ACC has never been a holding company. ACC has always been a non-profit cooperative in which the customers served are the member-owners. Also, AMM is not a separate subsidiary of a profit-making holding company. AMM has always been an unregulated subsidiary of the non-profit ACC. Thus, the financial resources of both entities, ACC (with USF funding) and AMM (although not eligible for USF funding), have been utilized to undertake and promote the goals and objectives of the USF program established by

[17] There were no suggestions until the USAC's September 2015 audit report, that Allband was out of compliance with the Commission's cost allocation or affiliate transactions rules. This confirms the unintentional nature of variances from the Commission's rules as interpreted by USAC and Staff.

Congress in the 1996 Act (and consistent with the Commission's 2005 Order applicable to Allband, the 2011 Commission's Transformation Order, and the 2012 Waiver Order applicable to Allband).

Allband respects and intends to fully comply with all statutory and rule provisions proscribing subsidization of competitive services by noncompetitive services, among any other regulatory requirements. At the same time, the operations of AMM and ACC are largely integrated with shared use of limited employees and resources. By applying the FCC accounting safeguards under the Part 32 USOA as a whole, and especially Section 32.27 concerning affiliate transactions, and given the small size of ACC, the ability to share costs with AMM reduces costs, such as general and administrative, that would reside in ACC were it not for allocations to the affiliate AMM. The addition of AMM operations to ACC thus enhances ACC's ability to fulfil the goals of universal service, and also provides opportunities to economize on costs consistent with the Commission's 2012 Waiver Order and applicable rules.

Allband has utilized all resources of both ACC and AMM to meet its ILEC and universal service obligations, and to cover its expense and RUS loan payments. This unique context is different from many other situations existing nationally where an investor-owned or privately-owned profit-making enterprise is providing both regulated and unregulated services, via perhaps holding companies and multiple subsidiaries, and where the potential for affiliate transaction or cross-subsidization abuses may exist to enhance private profits through use in part of government funds. In contrast, the combined entities of ACC, and its subsidiary, AMM, do not constitute a profit-making holding company situation. With respect to ACC (and AMM) there exists no profits paid to private owners or investors, or incentives to vary from or abuse the Commission's cost-allocation or affiliate transaction rules.

Allband has also strived to be proactive in cooperating with the RUS, the MPSC, the FCC, NECA, and now USAC, to comply with all state and federal regulatory requirements and standards. Allband has also expended significant sums in accounting and consulting expenses in efforts to fully comply with all accounting matters and FCC rules. This is an overriding reality that supports the grant of this Waiver Petition.

VI. THE CLAW-BACK PROVISIONS OF THE COMMISSION'S JULY 20, 2016 ORDER NEED NOT DELAY THE GRANT OF THIS WAIVER PETITION

Allband urges that the claw-back provisions of the Commission's July 20, 2016 Order need not delay the grant of this waiver petition. Allband is acting promptly to work with USAC to address all claw-back issues referenced in the Commission's July 2016 Order.

The Commission's July 20, 2016 Order provided for a follow-up review and reconciliation of claw-back issues, a process that should be followed and honored.

The amount of any potential claw-back is unknown and speculative at this time. Allband also asserts that valid offsets to any claw-back should be considered and not pre-judged, such as: (i) an unintended shortfall in reimbursements that occurred when the Transformational Rules were implemented;[18] and (ii) the shortage in reimbursements that has occurred from the effective date of the July 20, 2016 Order (holding back the per-line reimbursement to the $250 per line limit), in contrast to the $457 per-line reimbursement established by this Waiver Petition (based upon the extensive review and remedial process undertaken with USAC in accordance with the July 20, 2016 Order), as further supported by Allband's January 12, 2017, Emergency Petition establishing a $375 per-line amount to cover fixed costs only, unaffected by affiliate allocation calculations).

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[18] The July 27, 2017 Affidavit of ACC's General Manager Ron Siegel, Appendix A, paragraph 10, hereto, and Affidavit of Ron Siegel, attached to Allband's Emergency Petition, **Appendix B**, paragraph 13, p 18, calculates this initial shortfall in the amount of $124,420 for 2011 and $110,102 related to 2012.

Moreover, if any net claw-back is determined upon resolution of claw-back issues, an appropriate reconciliation remedy can be readily implemented at that time.

In short, the potential claw-back referenced in the Commission's order does not diminish the appropriateness of, and critical need for, an increase in ACC's per-line support to $457 at this time.

VII. CONCLUSION AND RELIEF

Allband requests prompt action by the Commission, or the Wireline Competition Bureau, to grant Allband a waiver and increase in per-line support to $457 per-line. Allband has established herein (and in its January 12, 2017 Emergency Petition) that it qualifies for this per-line USF support to cover its fixed costs (of $375 per line) and the additional properly allocated costs as reviewed by USAC.

Allband has also established in its attached affidavits that it has exhausted all of its financial resources of both ACC and AMM on a combined basis, and that it soon will no longer be able to continue its services or to make payments on its RUS loan. The grant of Allband's waiver of the per-line cap is thus justified by these undisputed facts, and is urgent to avoid irreparable injury to Allband, its customers, and the public interest.

This Waiver Petition, in addition to its January 12, 2017 Emergency Waiver Petition incorporated herein by reference, with attached Affidavits and analysis, also demonstrate that Allband has conscientiously and successfully strived to work with USAC to reform its accounting process to ensure compliance with the Commission's waiver orders and accounting rules.

Allband therefore respectfully requests the grant of the following relief by the Commission and/or the Wireline Competition Bureau pursuant to delegated authority:

1. A prompt increase in per-line support to $457 per line, as may be adjusted in future years based upon continuing annual cost studies and reports;

2. A waiver of the Part 54.302 Rule on a reasonably long-term and certain basis; while Allband suggests that a period of years until completion of all payments on its present RUS loan would be reasonable, Allband requests such other maximum long-term waiver as can be approved by the Commission or the Wireline Competition Bureau;

3. The grant of this waiver and increase in per-line support on a prompt immediate basis, subject to a later determination of any claw-back issues based upon a proper review and a reasonable reconciliation that does not impair Allband's ability to continue to provide service and maintain its network, and to make payments on its RUS loan;

4. Such further and consistent relief that is lawful, reasonable, and equitable.

July 27, 2017

Respectfully Submitted,

ALLBAND COMMUNICATIONS COOPERATIVE

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