

**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

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”)¹ submitted on July 23, 2018, on behalf of its members and other similarly situated operators, a Petition for Temporary Waiver (“Petition”) of certain provisions of the agency’s Lifeline Universal Service Fund (“USF”) rules.² That Petition seeks a deviation from the strict application of the updated minimum service standards applicable to fixed, wireline broadband Internet access service (“BIAS”) eligible for support by the Lifeline program.³ As noted in the Petition, the relief requested is nearly identical to that sought in 2017,⁴ in which NTCA requested that 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 NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (fil. Jul. 23, 2018).

³ *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”).

⁴ NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (fil. Oct. 20, 2017).

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

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.

The NTCA Petition, having been subject to public notice and comment, is unopposed. The Petition was however strongly supported by the National Lifeline Association, which notes that in adopting the minimum service standards, the Commission “substituted their own judgment for that of consumers nationwide when it comes to making decisions about the types of communications services that are desired and affordable.”⁵ Grant of the Petition would do just the opposite: instead of forcing some low-income consumers to drop their suddenly unaffordable broadband connection,⁶ grant of the Petition would empower these consumers to *choose* to subscribe to 18/2 service *if they determine* that such a service fits within their budget and meets their demands. Yet these consumers would also remain free to continue subscribing

⁵ Comments of the National Lifeline Association1 (NaLA), WC Docket No. 11-42 et al. (fil. Aug. 30, 2018), p. 3.

⁶ NaLA, p. 3 (“As the applicable minimum service standards continue to rise without any corresponding increase in the monthly benefit, the rule will have the unintended consequence of raising prices for Lifeline subscribers (which is exactly the opposite effect that this program is intended to have”).

to the service they already have should that option fit their needs and financial resources. The choice would therefore ultimately remain with the low-income consumer to pick the service that fits his or her budget and need, *like any other consumer*.

WTA – Advocates for Rural Broadband supports the NTCA Petition as well, stating that “[i]f the purpose of the Lifeline program is to connect low-income households, forcing them to pay more for service would run counter to the program’s purpose.”⁷ Yet as noted above and in the NTCA Petition, the automatic application of the minimum service speed standard does just that. To be sure, the provision requiring the yearly update of the program’s minimum service standards was based on the Commission’s understandable concern that rapid changes in technology should not quickly render the minimum service standards out of date.⁸ Unfortunately, the *2016 Lifeline Reform Order* seems not to have contemplated that the increased speed would come with an increased rate, as with any other service for any other consumer. To be clear, the relief requested here 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 embraces policy objectives to ensure that services keep pace with consumer demands and that networks will be designed to meet those demands as they evolve over time. However, to return to the point raised by WTA, when adopting the provision requiring the Wireline Competition Bureau to annually update the program’s minimum service standards, the Commission surely

⁷ Comments of WTA – Advocates for Rural Broadband, WC Docket No. 11-42 et al. (fil. Aug. 30, 2018), p. 3.

⁸ *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*”), ¶ 77.

did not intend that such annual updates would have any negative impact on existing broadband utilization or adoption by low-income consumers. Thus, the Commission's decision here should turn on the ultimate role of the Lifeline program, that is, its aim of addressing 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 ensure that low-income consumers are able to obtain *and keep* a BIAS connection due to the Lifeline program and are not forced to now drop it because it is now suddenly unaffordable.

It must also be reiterated here that the NTCA Petition seeks a *temporary* waiver, one that would remain in place only until the underlying problem that necessitates the filing of this petition is solved. Specifically, NTCA asks the Commission to waive the application of the minimum speed standard until such time as sufficient High Cost universal service support is provided without budget shortfalls and consumers' rates on rural networks will as a baseline be reasonably comparable to those in urban areas. Only at that point can the Lifeline program then fulfill its critical role of ensuring that low-income consumers in rural communities receive the additional support needed for them to afford a connection, just like low-income consumers in urban areas.

Until such time as the High Cost program is fully funded to meet that program's demand for the benefit of rural consumers and can work in tandem with the Lifeline program to provide affordable broadband to every rural consumer, low-income or otherwise, the Commission should grant the Petition to ensure that any broadband adoption gains among low-income consumers in the wake of the *2016 Lifeline Modernization Order* are not lost.

For all of the reasons discussed above, good cause⁹ exists for the Commission to grant the NTCA Petition. 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 *should they determine that such a service better meets their needs and fits their budget*. Special circumstances 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 *Order*.

Respectfully submitted,

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⁹ Section 1.3 of the Commission’s rules states that “rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.” 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. Generally, waiver of the Commission’s rules is granted when both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.