Before the
Federal Communications Commission
Washington DC 20554

In the Matter of	)	
	)	WC Docket No. 11-42
Lifeline and Link Up Reform and Modernization	)	
	)	
	)	

PETITION FOR RECONSIDERATION OF NTCH, INC.

Pursuant to Section 1.429 of the Commission's Rules, NTCH, Inc. files this Petition for Reconsideration of the Wireline Competition Bureau's April 30, 2012 *Public Notice* in the above-captioned proceeding.[1] Specifically, NTCH seeks reconsideration of the July 2, 2012 deadline for broadband Pilot Program applications established by the *Public Notice*.[2] This deadline summarily excludes dozens of able and willing broadband carriers from participating in the Pilot Program, thus compromising the Program data and ultimately impairing the economic and social benefits that are expected to result from greater broadband adoption.

A. THE JULY 2 DEADLINE WILL PRECLUDE MANY CARRIERS FROM PARTICIPATING IN THE PILOT PROGRAM.

There are currently dozens of dozens of petitions for ETC designation pending at the Wireline Competition Bureau.[3] Yet to the best of our knowledge, the Bureau has not yet designated *any* ETCs in 2012 and only one in 2011. Some petitions have been pending for more than two years. This pace of processing ETC designations is glacially slow, even by Commission standards.

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1 *Wireline Competition Bureau Announces Application Procedures and Deadline for Applications to Participate in the Broadband Adoption Lifeline Pilot Program*, Public Notice, DA 12-483 (released April 30, 2012) ("*Public Notice*").

2 *Public Notice*, *supra* note 1, at 1.

3 See WC Docket 09-197.

Given the length of time to process an ETC designation request, it is unimaginable that even applications submitted immediately after the creation of the Pilot Program in February will be granted in time for newly-designated entities to develop and file a pilot program proposal by July 2, 2012.[4] In fact, this precipitous deadline casts a shadow over the credibility of the *Lifeline Order* itself, which expressly states that "[i]f a carrier is contemplating becoming an ETC to participate in the Lifeline program, including participation in the Pilot Program, it should act promptly to begin the process. The Commission will make every effort to process such ETC applications in a timely fashion, and we urge the states to do likewise."[5] If the Bureau is to make good on the Commission's promise, it must have enough time to process the currently-pending ETC applications before proceeding with the Pilot Program, including allowing a reasonable period of time for newly-designated ETCs to develop and submit their project proposals.

B. THE JULY 2, 2012 DEADLINE WORKS AGAINST THE PUBLIC INTEREST AND THE COMMISSION'S BROADBAND AGENDA

The Pilot Program seeks to test the most effective means of promoting broadband adoption. To this end, the Commission seeks data input from "a diversity of projects, with different amounts and duration of subsidies, different types of geographic areas (e.g. rural, urban) and different types of broadband networks (e.g. fixed and mobile) and technologies."[6]

Excluding a large group of potential participants will vastly narrow this "diversity of projects." Even more significantly, it will exclude precisely those participants whose business

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[4] *Lifeline and Link Up Reform and Modernization*, EC Docket 11-42 *et al.*, Report and Order and Notice of Proposed Rulemaking, FCC 12-11 (2012).

[5] *Lifeline Order*, *supra* note 4, ¶ 334. We understand that many carriers, because of the logjam in ETC processing at the FCC, have switched their focus to states in which they can be more speedily designated as ETCs. In these circumstances, the Commission's exhortation to the states to follow its example seems particularly ironic.

[6] *Lifeline Order*, *supra* note 4, ¶ 326.

plans target demographic groups among whom broadband adoption has been historically lower, such as rural and low income consumers.

NTCH, for example, operates primarily in rural and low-income areas. Its service plans provide, as consumers increasingly prefer, mobile voice *and* broadband at a single low monthly rate. Yet NTCH is not a wireless reseller—it builds and operates its own towers to reach underserved parts of the country. It is therefore wholly committed to the communities it serves and to the unique broadband needs of those communities.

Furthermore, NTCH's network is technologically innovative: it uses cutting edge "software-defined" base stations that use a third less power than traditional installations and deliver enhanced signal strength and coverage. The key advantages to NTCH's network technology are: 1) user experience is the same for all users; 2) last mile service technology is mobile, and middle mile service is based on a technology that can reach out to last mile users almost anywhere, anytime; 3) installations have small, split architecture that is highly energy efficient; and 4) base stations use "software-defined radio" that allows different air interfaces to work through a single radio. These radios are available to extend the networks of the large carriers into these rural areas and are easily upgradable to the next generation 4G standards.

Therefore NTCH is an outstanding example of a carrier that offers a unique blend of business strategy and distinctive technology that could provide very useful data regarding broadband adoption in its customer base. Carriers like NTCH are essential to help the Commission pinpoint how—and how much—to help consumers adopt broadband. Excluding such carriers from participating in the Pilot Program because of a premature deadline would undermine the goals of *Lifeline Order* and the National Broadband Plan.

The future ubiquitous availability of broadband, achieved in part using the findings of the Pilot Program, is expected to improve a wide spectrum of American life: economic

opportunities, education, health care, energy and the environment, government performance, civic engagement, and public safety.[7] With these important goals at stake, there is no reason to rush the establishment of a new Lifeline broadband support mechanism if doing so will result in severely limited data. It simply does not make sense to exclude this many geographies and business models from the Program for the gain of a few months' time.

C. THE JULY 2, 2012 DEADLINE COMPOUNDS THE HARM ALREADY CAUSED TO CARRIERS WHOSE ETC APPLICATIONS HAVE BEEN PENDING FOR YEARS.

NTCH originally filed its petition for ETC designation on March 5, 2010. This petition was accompanied by a petition for forbearance that was not acted upon by the Commission for a year and a half; until September 16, 2011. NTCH submitted its required compliance plan one month later, October 17, 2011.[8] Its compliance plan is still pending now, seven months later. Meanwhile, on the ETC designation side, by the time NTCH's forbearance request was granted the Bureau had simply stopped processing ETC designation petitions under the then-existing rules because the *Lifeline Order* was in the pipeline. The *Lifeline Order* was released in February, 2012.[9] NTCH filed a revised ETC designation petition April 30, 2012, to reflect the *Lifeline Order* rules (many of which were not yet even in effect). This application is still pending.

NTCH has already spent untold hours and dollars in this process. It has made every attempt to cooperate with staff and comply with the rules. Indeed, its adherence to the law may have meant that its competitors, who may have been less forthcoming about the extent to which

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[7] FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, THE NATIONAL BROADBAND PLAN (2010), *available at* http://www.broadband.gov/plan/ .

[8] This compliance plan was amended to take into account the *Lifeline Order* provisions on March 2, 2012.

[9] *Lifeline Order*, *supra* note 4.

their proposed service area overlaps with rural study areas,[9] were moved ahead in line and received their ETC designations faster.

The Pilot Program deadline would compound the harm that NTCH has already suffered through this enormous delay. Not only is NTCH still awaiting final authorization to offer "regular" Lifeline, it is now—unless the deadline is changed—irrevocably precluded from participating in the development of next generation of Lifeline support. This would be an unconscionable and administratively indefensible result.

D. ANY NEW DEADLINE SHOULD EXPEDITE LONGSTANDING APPLICATIONS AND ALLOW TIME AFTER ETC DESIGNATION TO DEVELOP AND SUBMIT THEIR PROPOSALS.

To implement the *Lifeline Order*'s mandate regarding the prompt processing of ETC applications, NTCH requests the Bureau, in addition to extending the deadline, establish expedited processing procedures for longstanding ETC applicants that seek to participate in the Pilot Program. In particular, these pending applications should take priority over the numerous reseller compliance plans that have been submitted in the same docket in response to the *Lifeline Order*'s blanket forbearance for resellers from the "own-facilities" requirement.[10]

The costs of developing a pilot program are substantial, so a prudent carrier cannot reasonably expect to go through the exercise of developing the program if it is not even sure that it will have its designation by the deadline. Accordingly, a new deadline should be set that allows for grant of expedited ETC designations at least 60 days *before* the Pilot Program application deadline, to allow newly-designated ETCs to formulate and submit their Pilot Program projects.

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[9] This is the issue for which NTCH requested forbearance. See 47 C.F.R. § 214(e)(5).

[10] *Lifeline Order*, supra note 4, ¶ 368. This blanket forbearance codified and streamlined the *TracFone* line of forbearance cases for Lifeline-only ETCs. *See, e.g.*, *Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095 (2005).

CONCLUSION

There is no reason to think that pending ETC designation petitions will be granted by the current Pilot Program application deadline of July 2, 2012. Because a wide pool of participants is essential to the Pilot Program's fact-finding mission, we respectfully request that the Bureau expedite processing of longstanding applications and extend this deadline by six months or whatever time period it determines is necessary to process pending applications and give new ETCs time to prepare and submit Pilot Program proposals.

Respectfully submitted,

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