



January 29, 2018

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: WC Docket No. 11-42, Lifeline and Link Up Reform and Modernization**

**WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support**

**WC Docket No. 10-90, Connect America Fund**

Dear Ms. Dortch:

On Thursday, January 25, 2018, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”),<sup>1</sup> along with David Gibson and Sandi Oveson with 3 Rivers Communications in Montana and Geoff Feiss with the Montana Telecommunications Association (the “Rural Representatives”), met with Ryan Palmer, Chief of the Wireline Competition Bureau’s (“WCB”) Telecommunications Access Policy Division (“TAPD”), Jodie Griffin, TAPD Deputy Division Chief, as well as Michelle Schaefer, Allison Jones, and Jessica Campbell with the WCB. The parties discussed the NTCA Petition for Temporary Waiver (“Petition”)<sup>2</sup> of the updated minimum service standards applicable to fixed, wireline broadband Internet access service (“BIAS”) eligible for support by the Lifeline Universal Service Fund (“USF”) program.<sup>3</sup>

The Rural Representatives urged the WCB to expeditiously grant the NTCA Petition, which seeks a waiver from the strict application of the Lifeline program’s minimum service speed standard. If granted, the waiver would “grandfather” existing BIAS customers currently subscribing to 10 Mbps download/1 Mbps upload service, enabling such consumers to continue to keep that service and receive the Lifeline discount for it *should they so choose to do so*.

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<sup>1</sup> NTCA represents nearly 850 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

<sup>2</sup> NTCA Petition for Temporary Waiver, WC Docket Nos. 11-42, 09-197, and 10-90 (fil. Oct. 20, 2017).

<sup>3</sup> *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, DA 17-619 (rel. Jun. 26, 2017) (“Public Notice”).

As an initial matter, the Rural Representatives made clear that they do not oppose an increase in speed standards generally; to the contrary, the Rural Representatives strongly support updating minimum service standards throughout the USF programs, as the Commission should at every turn stay faithful to the “evolving level” of service and “preservation and advancement” of universal service mandates found in Section 254.<sup>4</sup> But, pursuant to the “grandfathering” relief as requested by NTCA, low-income consumers would be free to choose to subscribe to the 15/2 service if they determine that such a service fits within their budget—the waiver would merely enable such consumers to continue subscribing to the 10/1 service they already have as of December 1, 2017 *should they choose to do so*. Thus, the choice would ultimately and entirely remain with the low-income consumer.

The Rural Representatives then stated that they seek the requested relief on behalf of NTCA members and similarly situated RLECs because the increase in speed (to 15/2) will almost certainly come with an increase in the monthly rate, and that increase may be unaffordable for some low-income rural consumers. NTCA members have generally indicated that their rates for 15/2 BIAS are likely to be approximately \$15 to as much as \$30 higher per month as compared to 10/1 service, and even the Commission’s own data show that the average national rate for such a service is more than \$5 higher per month.<sup>5</sup> As NTCA stated in its Petition, good cause exists pursuant to Section 1.3 of the Commission’s rules to grant the requested waiver because such rate increases could have the unfortunate and unintended consequence of forcing some low-income rural consumers to discontinue their service.<sup>6</sup> Such a result is counter to the *2016 Lifeline Modernization Order’s*<sup>7</sup> goal of ensuring that low-income Americans have Internet access.

The Rural Representatives also stated that special circumstances justify a deviation from the strict application of the minimum service speed standard because waiver of the provision would promote and preserve the broadband adoption goals that were the principal driver of the *2016 Lifeline Reform Order*.<sup>8</sup> Low-income consumers have long been substantially underrepresented amongst the population of broadband users.<sup>9</sup> In rural America, the gap in broadband adoption by low-income consumers is even greater.<sup>10</sup> Grant of the waiver is important to *avert a backslide in adoption gains* made as a direct result of the *Order*, as it would prevent low-income consumers from having the “rug pulled out from under them” in terms of their ongoing ability to afford the connection that the 2016 program reforms may have enabled them to acquire.

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<sup>4</sup> 47 U.S.C. §254(b) and (c).

<sup>5</sup> According to the Commission’s “Reasonable Comparability Benchmark Calculator,” as of the date of this filing, the reasonable comparability benchmark is \$5.65 higher when going from a 10/1 to a 15/2 broadband service, with a 250 GB monthly usage cap. Federal Communications Commission, *Reasonable Comparability Benchmark Calculator*, available at: <https://www.fcc.gov/general/reasonable-comparability-benchmark-calculator>.

<sup>6</sup> Petition, pp. 3-4 (discussing the standard applicable to waivers sought pursuant to Section 1.3 of the Commission’s rules.)

<sup>7</sup> *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*”).

<sup>8</sup> *See Id.*, ¶¶ 12-29.

<sup>9</sup> *See Id.*, ¶¶ 18-22.

<sup>10</sup> *See Digital gap between rural and nonrural America*, Pew Research Center (May 19, 2017), available at: <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/>.

The Rural Representatives further stated that additional “good cause” exists to grant the waiver because of the even greater challenges facing consumers residing on tribal lands.<sup>11</sup> NTCA members serving tribal areas have reported their efforts to promote broadband adoption amongst this group of consumers and their concern that the increased rates that will flow from application of the increased speed standard may reverse adoption gains made in recent years.

Moreover, while the *Order* allows low-income consumers to apply the Lifeline discount to a voice/BIAS bundle even if the BIAS service does not meet the minimum service speed standard (provided that the discount is specifically applied to the voice service portion of that bundle),<sup>12</sup> that option is of little use or effect for Tribal Lifeline customers given that voice service typically costs less than the \$34.25 discount. As a result, tribal consumers face the choice of a higher-speed broadband service they may no longer be able to afford or a dilution of the Enhanced Tribal Lifeline discount.

In any case, while an overarching universal service goal should be for providers to offer consumers the choice of both voice or broadband service at affordable rates, no low-income consumer should be forced to choose a bundle and take a service they do not want to make the service they do want affordable. Even worse, this “bundle” option will no longer be available to any low-income consumer for much longer; 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 and phases down further and ultimately to zero by 2021.<sup>13</sup> Thus, even giving a low-income customer the “right” to buy a bundle to obtain discounted broadband is just a short-term reprieve absent Commission action to reconsider the stand-alone voice support phase-down as proposed separately by NTCA.<sup>14</sup>

The Rural Representatives then noted additional unintended consequences that result from the updated minimum service standards. While Section 54.408(d) of the Commission’s rules provides a Lifeline discount for BIAS that does not meet the minimum service standard where a provider does not offer any fixed service at the required level, the operation of the rule is confusing at best and problematic in some cases. For example, one NTCA member currently does not offer a 15/2 service to a portion of its service area; limitations inherent in the Asymmetric Digital Subscriber Line (“DSL”) technology used to provide service prevent the operator from offering more than 1.5 Mbps “upload” speed. These limitations do not similarly affect “download” speed, and thus this provider offers 20/1.5 speeds in the area in question. Yet to qualify for the Lifeline discount, the strict provisions of Section 54.408(d)(3) require the provider to offer its “highest performing generally available residential offering, lexicographically ranked by”<sup>15</sup> download, upload, and usage. In effect, this means that a

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<sup>11</sup> See *Tribal Broadband: Status of Deployment and Federal Funding Programs*, Congressional Research Service, December 20, 2016, p. 1, available at: <https://fas.org/sgp/crs/misc/R44416.pdf> (“High poverty rates and low income levels in tribal lands—along with the fact that many tribal communities are located in remote rural areas (often with rugged terrain)—are major factors that may explain why tribal areas have comparatively poor levels of broadband access, and why providers may lack an economic incentive to serve those areas.”).

<sup>12</sup> *2016 Lifeline Reform Order* ¶ 123.

<sup>13</sup> *Id.*, ¶ 64.

<sup>14</sup> Petition for Reconsideration/Clarification of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42 et al. (fil. Jun. 23, 2016).

<sup>15</sup> 47 C.F.R. § 54.408(d)(3).

customer applying the Lifeline discount to a 10/1 service prior to the effective date of the 15/2 minimum standard must choose this provider's 20/1.5 service package to qualify for the Lifeline discount under the exception. This forces customers to choose between a service package they may not be able to afford or continue subscribing to the 10/1 service absent the discount, a choice even more problematic in tribal areas.

Finally, the Rural Representatives stated that while grant of the NTCA Petition would offer short-term relief to some rural low-income consumers, the underlying problem that necessitates the filing of the Petition is not going away. This is because, unfortunately, current universal service policy fails to ensure that the High-Cost USF mechanism is sufficiently sized to provide even a "reasonable comparability" baseline with respect to standalone broadband in many RLEC service areas. Put another way, if a shortfall in High-Cost USF support results in standalone broadband prices tens (or even hundreds) of dollars per month above the urban average for *all* rural consumers in a given area, the Lifeline discount will not stimulate adoption by lower-income consumers in that rural area. While the Rural Representatives do not seek an "open-ended" waiver that would keep low-income rural consumers on a 10/1 service package in perpetuity, the inescapable fact is that shortcomings in the High-Cost program budget render even that service (much less 15/2 and beyond) unaffordable for *any* rural consumer. Yet for those low-income consumers that have managed to fit the service within their budget because of the Lifeline discount, failure to grant the waiver risks an unfortunate backslide that can and should be prevented. Moreover, if granted, the requested waiver would allow low-income consumers to choose the 15/2 service (or a higher performing service) in the future should their circumstances change or should their provider offer such a service at a rate that fits within their budget.

Sincerely,  
/s/ Michael Romano  
Michael Romano  
Senior Vice President –  
Industry Affairs & Business Development

cc: Ryan Palmer  
Jodie Griffin  
Michelle Schaefer  
Allison Jones  
Jessica Campbell