

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WT 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 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 Waiver (“Petition”) of the updated minimum service speed standard applicable to fixed wireline broadband Internet access service (“BIAS”) eligible for support under the Lifeline Universal Service Fund (“USF”) program.² This waiver renews nearly identical petitions submitted in

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, DA 19-704 (rel. July 25, 2019) (“*Public Notice*”).

2017 and 2018,³ in which NTCA requested that the Commission temporarily waive strict application of the new minimum service speed standard and “grandfather” low-income BIAS customers subscribing to a service below the speed standard prior to the effective date. The Commission sought comment on NTCA’s 2018 Petition,⁴ but has not acted on either the 2018 or 2017 Petition. Given the Commission’s recent *Public Notice* announcing new minimum standards commencing December 1, 2019, combined with the decrease in Lifeline support for voice services scheduled to take effect on the same date, NTCA requests that the Commission grant the relief requested in this Petition.

Grant of the requested relief would enable existing low-income consumers to continue, *on a voluntary basis*, receiving the service they already subscribe to as of December 1, 2019, or move *on a voluntary basis* to the new higher speed standard of service if that choice fits within their budget.⁵ This relief is necessary because the increase in speed mandated by the *Public Notice* will likely come with an increase in monthly rates that may make broadband services unaffordable for some low-income consumers. As a result, the Lifeline minimum speed standard, while intended to ensure low-income consumers receiving Lifeline support are not relegated to lower speed tiers than other consumers, could have the unintended consequence of forcing some low-income consumers that already have service to discontinue that service

³ NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (filed Oct. 20, 2017); NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (filed July 23, 2018).

⁴ Wireline Competition Bureau Seeks Comment on NTCA Petition for Temporary Waiver, *Public Notice*, WC Docket No. 11-42 et al., DA 18-793 (rel. July 31, 2018).

⁵ This Petition for Waiver seeks relief only with respect to the 20 Mbps download/3Mbps upload broadband speed standard as announced by the Wireline Competition Bureau on July 25, 2019, and set to become effective December 1, 2019. *Public Notice* at p. 1. The requested relief would not apply to the updated broadband data usage standard also set to become effective December 1, 2019, nor would the requested relief apply to any minimum service standard applicable to mobile wireless providers. *Id.* at p. 2.

altogether due to the increased cost associated with being required to subscribe to a higher speed service. Such a result is entirely counter to the Commission’s goal of ensuring that low-income Americans have access to all that an Internet connection can provide.⁶

The instant waiver also seeks to resolve a matter not contemplated by the Commission’s exception to the minimum service speed standard. Specifically, that exception allows subscribers to apply their Lifeline discount to BIAS speeds lower than the minimum service speed standard “if the Lifeline provider does not offer any generally available residential fixed broadband packages that meet the minimum service standard at a subscriber’s residence.”⁷ The instant Petition, however, requests that the Commission allow Lifeline subscribers the option of continuing to purchase speeds lower than the minimum speed standard – even if the provider offers higher speeds – if the subscriber chooses to do so. Grant of the instant waiver is especially critical now as, beginning December 1, 2019, the amount of support provided to Lifeline customers subscribing to a combined voice and data service will decrease by \$2 per month, to \$7.25. Thus, even the Commission’s “remedy” of allowing Lifeline subscribers to continue to apply their discount to lower speed services *if* the subscriber chooses to purchase a combined voice and data package – in lieu of a BIAS only package at the minimum speed standard – will offer very little support as of December 1, 2019.

⁶ *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*”).

⁷ *Public Notice* at p. 1.

II. GOOD CAUSE EXISTS TO GRANT THE REQUESTED 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 ... if good cause therefor is shown.”⁸ 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.⁹ 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.¹⁰

Good cause exists to grant the requested waiver in this instance because any increase in Internet service speed is likely to be accompanied by an increase in the monthly subscription rate for the service.¹¹ This increased rate could force many price-sensitive Internet subscribers who are dependent upon the Lifeline discount to discontinue their service because it is no longer affordable. Such a result is not only contrary to the Commission’s goal in the *2016 Lifeline Modernization Order*, but also to the Commission’s goal of ensuring everyone in the U.S. has the ability to receive high-speed Internet service.¹² Grant of this requested waiver would ensure that

⁸ 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *NetworkIP, LLC v. FCC*, 548 F. 3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F. 2d at 1166.

¹¹ See *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, DA 18-1280 (WCB Dec. 20, 2018) (according to the 2019 reasonable comparability benchmark for broadband services, the rate for unlimited 10/1 service is \$77.30 while the price for unlimited 25/3 service is \$82.66, and \$100.85 for unlimited 100 Mbps).

¹² See, e.g., *Connect America Fund et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, WC Docket No. 10-90 et al., ¶ 2 (rel. Dec. 13, 2018) (“Rural Americans

low-income consumers who currently rely on the Lifeline discount to make their existing Internet service affordable will have the ability to continue to subscribe rather than be forced to disconnect their service due to the inability to afford the increased rate resulting from the *Public Notice*. 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’s minimum service speed standard to result in consumers having to discontinue receiving Internet service. Furthermore, grant of the instant waiver would enable many consumers to continue to maintain much needed connections to employers and educational opportunities – as well as jobs and even healthcare – that could be nonexistent without access to affordable broadband service.¹³ Accordingly, deviation of the rule would also serve the public interest.

III. GRANT OF THE INSTANT WAIVER WOULD FURTHER THE COMMISSION’S GOALS BY ENSURING LOW-INCOME CONSUMERS CAN CONTINUE TO RECEIVE ESSENTIAL BROADBAND SERVICE.

By way of background, NTCA’s RLEC members are designated Eligible Telecommunications Carriers 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 Lifeline proceedings, as its members share the Commission’s goals of promoting the affordability of broadband service and the effective use of resources in all USF programs.

deserve to reap the same benefits of the Internet – and not run the risk of falling yet further behind.”) (*“2018 USF Order”*).

¹³ See *2018 USF Order* at ¶ 2 (“Broadband access is critical to economic opportunity, job creation, education, and civic engagement.”). See also, *Packingham v. NC*, 582 U.S. ____ (2017) (recognizing that even the ability to access social media can be essential for those seeking employment).

More specifically, NTCA is filing the instant Petition on a renewed basis to ensure that the increase in the minimum service speed standard set to take effect December 1, 2019, will not force any low-income rural consumer to drop his or her broadband connection because it is no longer affordable. Like any broadband provider, RLECs' rates for broadband service typically increase commensurate with increases in service speed.¹⁴ As a result, the value of the Lifeline discount is being eroded more each year as the speed standard increases and the discount remains the same. Ultimately, many low-income rural consumers may find that the BIAS they have been able to afford, and quite possibly have come to rely on, is suddenly unaffordable due to the Commission's minimum speed standard. Such a result is directly contrary to the Commission's goal of ensuring every American has access to BIAS in his or her home.¹⁵

When adopting the provision requiring the Wireline Competition Bureau to annually update the Lifeline program's minimum speed standards, the Commission surely did not intend to create rules that would result in low-income consumers being forced to discontinue their broadband service due to their inability to afford such service. To be sure, the provision requiring annual updates to carriers' minimum speed standards was based on the Commission's understandable concern that Lifeline customers should not be "relegated" to low-speed service and thus left behind as technology and speeds advanced.¹⁶ However, another countervailing concern should be the deciding factor regarding how the minimum speed standard affects Lifeline subscribers: the very essence of the Lifeline program is to make telecommunications and broadband services affordable to low-income consumers who, without the program, would not

¹⁴ See n. 11, *supra*.

¹⁵ See n. 12, *supra*.

¹⁶ 2016 *Lifeline Modernization Order* at ¶ 77.

have the financial ability to subscribe to these essential services. Grant of the Petition would therefore ensure that low-income consumers who have been able to subscribe to BIAS due to the Lifeline program are not forced to drop the service on or soon after December 1, 2019, because the Lifeline support is now insufficient to keep the service affordable.

To be clear, NTCA's Petition is not an attempt to foist lower-quality broadband service on low-income consumers or to avoid in any way offering reasonably comparable service to all 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 also fully supports rules that make it possible for all consumers to subscribe to high-speed broadband service that meets their evolving and increasing needs for access. That said, the Commission should ensure the Lifeline program's minimum speed standard does not have the unintended consequence of undermining consumers' ability to subscribe to broadband services or, in this case, effectively *pushing customers off* of services they already have. Accordingly, the Commission must expeditiously confront the simple fact that the increase in the minimum speed service standard could run counter to the Lifeline program's broadband adoption goals if even one low-income consumer must discontinue their broadband service due to increased cost once the new speed standard becomes effective. Given this probable outcome, a deviation from strict compliance with the newly updated minimum service speed standard would ensure the Lifeline program continues to achieve the intended result.

In terms of clarity of the relief sought herein, pursuant to the "grandfathering" relief as requested by NTCA in the instant Petition, when the minimum speed service standard increases, *existing* low-income broadband subscribers would have the option of either upgrading their

service to 20/3 Mbps service, and applying their Lifeline discount to such service, or continuing to subscribe to the same service level to which they subscribed on December 1, 2019, while still continuing to be able to apply their Lifeline discount to such service. The choice would remain solely with the consumer.

IV. CONCLUSION

For the reasons stated above, NTCA respectfully requests the Commission grant the Petition to ensure that low-income rural consumers will continue to have the ability to subscribe to affordable BIAS and that any broadband adoption gains made possible by the Lifeline program are not lost.

Respectfully submitted,



By: /s/ Michael Romano
Michael Romano
Senior Vice President –
Industry Affairs & Business Development
mromano@ntca.org

By: /s/ Tamber Ray
Tamber Ray
Regulatory Counsel
tray@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)

July 29, 2019