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

PETITION FOR TEMPORARY 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, on behalf of its members and other similarly situated operators, this Petition for Temporary Waiver 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.[2] More specifically, NTCA requests that the Commission temporarily waive the strict application of the new minimum service speed standard and "grandfather" existing BIAS customers currently subscribing to 10 Mbps download/1 Mbps upload service, enabling

[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] *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*").

such consumers to continue to receive that service *should they so choose to do so*.[3] Because the increase in speed (to 15 Mbps download/2 Mbps upload) will almost certainly come with an increase in monthly rates that may be unaffordable for some low-income consumers,[4] the updated minimum speed standard could have the unintended consequence of forcing some low-income rural consumers to discontinue their service. Such a result is entirely counter to the *2016 Lifeline Modernization Order's*[5] goal of ensuring that low-income Americans have access to all that an Internet connection can provide.

While grant of the waiver would offer short-term relief to *some rural low-income consumers*, the underlying problem that necessitates the filing of this petition is not going away. Thus the styling of this petition as "temporary," one that asks the Commission to waive the application of the Lifeline minimum speed standard until such time as sufficient universal service support is provided and, as a result, there is a more realistic prospect for RLECs to offer standalone broadband service at more affordable rates that even begin to resemble those

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[3] The NTCA Petition for Temporary Waiver seeks relief only with respect to the 15 Mbps download/2 Mbps upload broadband speed standard as announced by the Wireline Competition Bureau on June 26, 2017 and set to become effective December 1, 2017. *Id.*, p. 1. The requested relief would not apply to the updated minimum service standard for fixed broadband data usage of 250 GB per month also set to become effective December 1, 2017 nor would the requested relief apply to any minimum service standard as applicable to mobile wireless providers. *Id.*, p. 2.

[4] This is not a dynamic unique to RLECs, of course. 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.

[5] *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*").

available in urban areas. Until such time, however, the Commission should grant the Petition for Temporary Waiver to ensure that any broadband adoption gains by low-income consumers in the wake of the *2016 Lifeline Modernization Order* are not lost.

II. GOOD CAUSE EXISTS TO GRANT THE REQUESTED TEMPORARY 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 on its own motion or on petition if good cause therefor is shown."[6] 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.[7] 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.[8]

Good cause exists to grant the requested temporary waiver. Because the increase in speed will necessarily come with an increase in the monthly rates for such broadband service, strict compliance with the updated standard would not be in the public interest if it forces thousands of low-income rural consumers to drop their suddenly unaffordable BIAS service. 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 10/1 BIAS *should they determine that such a service still better*

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[6] 47 C.F.R. § 1.3.

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

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

meets their needs and fits their budget. Special circumstances would seem to compel deviation from the 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*. Grant of the requested waiver would enable many rural consumers to continue enjoying connections to employers and educational opportunities they might not have had in the absence of access to affordable broadband, and thus deviation from the rule would serve the public interest.

III. GRANT OF THE NTCA TEMPORARY WAIVER PETITION WOULD ULTIMATELY FURTHER THE COMMISSION'S BROADBAND ADOPTION GOALS BY ENSURING THAT LOW-INCOME RURAL CONSUMERS NOW ENJOYING THE BENEFITS OF BROADBAND SERVICE CAN CONTINUE TO DO SO.

By way of background, NTCA's RLEC members are designated as Eligible Telecommunications Carriers ("ETCs") 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 the Lifeline proceeding, as its members share the Commission's goals of promoting the affordability of broadband service as well as the effective use of resources in this and the other USF programs. Thus this Petition should be seen as an effort to ensure that the Lifeline program has the greatest positive impact on as many rural consumers as possible.

More specifically, NTCA is filing the instant Petition to ensure that the increase in the minimum speed standard set to take effect December 1, 2017 will not force any low-income rural consumer to drop his or her broadband connection because it is no longer affordable once a new tier of service is mandated.[9] Like any broadband provider,[10] RLECs' rates for broadband service typically increase as the speed provided increases. Some NTCA members have 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. As a result, the Lifeline discount will not go as far, and many low-income rural consumers may subsequently find their BIAS service to be unaffordable. Indeed, even a $10 increase in the rate when moving from a 10/1 to a 15/2 service effectively cancels out the Lifeline discount and could cause a low-income consumer to discontinue service.

When adopting the provision requiring the Wireline Competition Bureau to annually update the program's minimum service standards, the Commission surely did not intend that such annual updates would have any negative impact on existing broadband utilization by low-income consumers. To be sure, the provision requiring the update was based on the Commission's understandable concern that rapid changes in technology should not quickly render the minimum service standards out of date.[11] Yet, another countervailing concern should be the deciding factor here: at bottom, the Lifeline program aims to address the

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[9] To be clear, NTCA understands that low-income consumers can apply the Lifeline discount to a voice/BIAS bundle even if the BIAS service does not meet the minimum service speed standard (if the discount is specifically applied to the voice service portion of that bundle). *Lifeline Modernization Order*, ¶ 123. Thus, a Lifeline-eligible consumer currently receiving the discount for a 10/1 service can in effect continue to do so after December 1, 2017 if they subscribe to voice service as well and apply the discount to the voice. However, 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. *Id*., ¶ 64. Thus, this is just a short-term reprieve for low-income consumers. Even worse, this forces low-income consumers to take a voice service they may not want. No consumer, rural or urban, low-income or otherwise, should be forced to take a service they do not want in order to make the service they do want affordable.

[10] *See* footnote 4, *supra.*

[11] *2016 Lifeline Modernization Order*, ¶ 77.

affordability of a supported service for low-income consumers for whom such service would otherwise be financially out of reach.

To be clear, NTCA's Petition for a temporary waiver should not be taken as 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 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 has also consistently argued that the Commission should set national broadband policies that ensure that all Americans will enjoy access to robust and advanced broadband services now and in the future. That said, the Commission should look at its universal service programs with an eye towards making sure they function correctly and as intended, and that they have *the greatest community-wide impact as possible*. Here, the Commission must confront the simple fact that the increase in the minimum speed service standard could run counter to the broadband adoption goals of the Lifeline program if certain low-income consumers can no longer afford the service to which they currently subscribe. In this regard, a deviation from strict compliance with the newly updated minimum service speed standard would ensure that the program "works" for a larger number of low-income consumers.

In terms of clarity of the relief sought herein, 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, yet would also remain free 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 remain with the low-income consumer.

It must also be noted that the situation the instant Petition seeks to address exists, in part, due to the lack of coordination between the Lifeline and High Cost USF programs. Unfortunately, this lack of coordination exists because it is often forgotten that, in rural America, the High-Cost USF program is essential to promoting *both* the availability and basic affordability of services for *all users* on a community-wide basis. While the High Cost USF program has in recent years been viewed almost exclusively through a prism of mere availability – "how many locations can we reach?" – the ultimate aim of the High Cost program as explicitly directed by Congress is *also* to ensure that all consumers' rates on rural networks will as a baseline be reasonably comparable to those in urban areas. The Lifeline program then picks up the ball to help get low-income Americans specifically across the goal line, ensuring that this discrete class of users within rural communities receives the additional support needed for them to afford a connection, just like low-income consumers in urban areas. In other words, the Lifeline program ensures that any additional support needed against that baseline of "reasonable comparability" is available to enable adoption of services by low-income consumers that would otherwise remain stuck in the digital divide. Unfortunately, current universal service policy fails to make this important connection, as budget constraints, as well as other structural issues, render 15/2 or even 10/1 BIAS unaffordable for many rural consumers, low-income or not.[12]

[12] It should also be noted that the High Cost program budget also fails to enable even 10/1 BIAS service, much less 15/2, to be available in many rural areas. And as the Lifeline minimum service speed standard continues to increase in the future on an annual basis while High Cost support continues to be

In short, while grant of the NTCA Petition for Temporary Waiver would offer short-term relief to *some rural low-income consumers*, the underlying problem that necessitates the filing of this petition is not going away. Thus this petition is no more than a short-term (or "temporary") waiver that the Commission should consider until such time as it resolves the fact that the High-Cost USF mechanism is insufficient to provide even a "reasonable comparability" baseline.

IV. CONCLUSION

For the reasons stated above, the Commission should grant the Petition for Temporary Waiver to ensure that any broadband adoption gains spurred by the current Lifeline program are not lost.

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limited (or even severely cut due to the Budget Control Mechanism for non-model support recipients), those future speed standards set by the Lifeline program will be merely aspirational for low-income rural consumers unable to get them from their provider. On a closely related issue, the 15/2 speed standard set by the Lifeline program highlights the fact that the Commission's speed standards set for all of the USF programs are not only inconsistent (10/1 for RLEC actual cost recovery and price cap high cost recipients; 4/1, 10/1 or 25/3 for model-based support recipients; 15/2 for Lifeline, etc.), they are also not tethered to any reality of what it takes to deliver such services. It is relatively clear that the Commission has previously created budget standards for the High Cost program, at least, with an eye toward fitting within an arbitrary number and less on a realistic assessment of what is actually necessary to ensure that rural schools, libraries, health care facilities, residents and businesses have access to the "reasonably comparable" broadband service mandated by Congress. In other words, the Commission should set the High Cost program budget on an assessment of what is necessary to ensure that the broadband available in rural areas is reasonably comparable in terms of price and quality and can then *also* meet the speeds necessary to achieve the goals of the Schools and Libraries, Lifeline, and Rural Health Care programs that depend upon the rural networks that the High Cost program enables in the first instance.

Respectfully submitted,

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