

**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 AND
WTA – ADVOCATES FOR RURAL BROADBAND**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association (“NTCA”)¹ and WTA – Advocates for Rural Broadband² (“the Rural Associations”) respectfully submit this Petition for Temporary Waiver of certain provisions of the *Lifeline Modernization Order* adopted in the above-captioned proceeding.³ Specifically, the Rural Associations seek a temporary waiver for their members and similarly situated RLECs of the language contained in the *Lifeline*

¹ NTCA represents nearly 900 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.

² WTA – Advocates for Rural Broadband is a national trade association representing more than 300 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

³ 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) (“*Lifeline Modernization Order*”).

Modernization Order that requires “ETCs receiving high-cost support [to] offer a Lifeline-supported standalone broadband offering where the ETC is required to offer Lifeline-supported BIAS.”⁴

I. INTRODUCTION AND SUMMARY

Good cause exists to grant the requested temporary waiver because, unfortunately, the high-cost universal service fund (“USF”) programs that enable the provision of standalone broadband offerings by RLECs in rural areas currently provide insufficient support to ensure reasonable comparability between the rates paid by rural and urban consumers.⁵ More specifically, the record in the High-Cost USF reform proceeding makes unmistakably clear that, due to budget controls and the structure of the current non-model support mechanism, the rates for standalone broadband provided by those RLECs that do not elect model support will in most cases exceed \$100 per month.⁶ This consumer rate is \$25 or more per month higher than the Commission’s “reasonable comparability” benchmark⁷ and more than \$40 per month

⁴ *Id.*, fn. 133.

⁵ NTCA–The Rural Broadband Association, Petition for Reconsideration, WC Docket No. 10-90, et al. (fil. May 25, 2016), pp. 2-9.

⁶ Letter from Regina McNeil, Vice President of Legal, NECA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 16, 2015), p. 5.

⁷ Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations, WC Docket No. 10-90, Public Notice (rel. Apr. 5, 2016), p. 2 (announcing a “reasonable comparability” benchmark of \$75.20 per month for 10/1 broadband with unlimited usage).

higher than what the average urban consumer actually pays for the very same service.⁸ Although RLECs would be pleased to offer a reduced price standalone broadband offering to low-income rural consumers, the unfortunate reality is that applying a \$9.25 monthly discount to a \$100 or higher monthly standalone broadband bill will do little, if anything, to stimulate and enable adoption of such services by rural low-income consumers.⁹ Until such time as the High-Cost USF mechanism in fact enables access by *all* rural consumers to standalone broadband services at “reasonably comparable” rates, it would be futile for RLECs to undertake the effort to create and track specialized standalone broadband Lifeline offerings for low-income rural consumers, and a temporary waiver of this requirement is thus warranted.

II. ARGUMENT

By way of background, the Rural Associations’ 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. The Rural Associations have been active participants in this proceeding, as their members share the Commission’s goals of promoting the affordability of broadband Internet access service (“BIAS”) as well as the effective use of resources in this and other USF programs while also reducing the administrative burdens of participation in such programs.

The instant petition concerns a troubling intersection of the Commission’s Lifeline *and* High-Cost program rules that frustrates, if not undermines, the shared goal of ensuring

⁸ See, 2016 Urban Rate Survey Data and Resources, 2016 Broadband Survey Results (available at: <https://www.fcc.gov/general/urban-rate-survey-data-resources>) (showing an average urban rate of \$57.87 per month for 10/1 broadband with unlimited usage).

⁹ In fact, ironically, this structure would result in a rural *low-income* consumer still paying \$30 more month than a *wealthy* urban consumer for the same level of broadband.

that all Americans, urban or rural, low-income or otherwise, have access to BIAS that is affordable and available at “reasonably comparable” rates. Specifically, the *Lifeline Modernization Order* states that ETCs receiving High-Cost support are required to offer standalone BIAS (*i.e.*, not bundled with voice service) to Lifeline-eligible consumers.¹⁰

Good cause exists to grant a temporary waiver of this requirement. 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.”¹¹ 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.¹² 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.¹³

As discussed briefly above and further below, the operation of the High-Cost USF program will unfortunately preclude most RLECs and/or their Internet Service Provider (“ISP”) affiliates through which many RLECs offer broadband from offering to *any* consumer standalone broadband service at rates that are reasonably comparable to those in urban areas, much less at rates that any rural Lifeline-eligible consumer would find affordable even with the Lifeline discount. In addition, a number of the Rural Associations’ members currently do not offer or actively market standalone broadband service to *any* customer precisely because the lack of sufficient high cost support renders this product prohibitively expensive. Creation of a

¹⁰ *Lifeline Modernization Order*, fn. 133.

¹¹ 47 C.F.R. § 1.3.

¹² *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

¹³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

new and separate standalone BIAS offering for Lifeline-eligible consumers only solely to comply with the new regulatory requirement would require a number of RLECs to undertake significant changes to their billing systems and other internal administrative processes simply to offer a product that most – indeed likely all – Lifeline-eligible consumers will reject as unaffordable. These efforts to create a new service offering will also come at a time when the Rural Associations’ small business members are charged with implementing the numerous other administrative changes adopted in the *Lifeline Modernization Order* – including “rolling recertification”¹⁴ and “port freeze”¹⁵ provisions as well as changes to eligibility criteria.¹⁶ Compliance with these measures alone are already straining RLECs’ limited staff resources and thus these special circumstances justify a deviation from strict adherence to the rule. Such deviation will serve the public interest by enabling such carriers to concentrate their limited resources efforts on implementing the other provisions of the *Lifeline Modernization Order* and, more importantly, enabling the Commission itself to begin a much-needed conversation as to how to bridge the standalone broadband “reasonable comparability” gap that unfortunately persists in RLEC service areas.

While the Rural Associations have long advocated for reforms to the High Cost program rules to provide support for standalone BIAS as offered by RLECs and are indeed grateful for the efforts taken to set up a standalone broadband support mechanism under the High-Cost program, the overwhelming evidence in the record of that proceeding demonstrates that the unfortunate combined effect of: (1) the \$42 broadband-only loop

¹⁴ *Lifeline Modernization Order*, ¶ 416.

¹⁵ *Id.*, ¶ 385.

¹⁶ *Id.*, ¶¶ 167-196.

benchmark adopted as part of the new standalone broadband support mechanism in the High-Cost program; (2) other cuts, caps, and constraints on support, and (3) other costs associated with delivering retail BIAS to rural consumers, is highly likely to result in standalone BIAS rates far beyond what any consumer (or policymaker) could consider reasonably “affordable.” More specifically, data filed by the National Exchange Carrier Association at the direction of the Wireline Competition Bureau leading up to the *Rate-of-Return Reform Order* shows that the rates for standalone BIAS in RLEC service areas are likely to be unaffordable for any rural consumer:¹⁷

- Consumers served by some of the lowest-cost RLECs (those in the 25th percentile of NECA rate bands) are estimated to pay on average **\$89.66** per month for retail standalone broadband.
- Consumers served by an “average cost” RLEC (in the 50th (median) percentile of NECA rate bands) are estimated to pay on average **\$104.86** per month for retail standalone broadband.
- Consumers served by some of the highest-cost RLECs (those in the 75th percentile of NECA rate bands) are estimated to pay on average **\$123.35** per month for retail standalone broadband.

Quite simply, there is no realistic Lifeline discount large enough to enable a rural low-income consumer to obtain standalone broadband when the “starting price” for all rural consumers is *approximately \$90 per month and far more in most cases*. Indeed, the current structure of the High-Cost program compels the average rural low-income consumer to pay at least \$40 more per month for standalone broadband than what the average urban consumer pays, and in many cases the monthly charge is even higher still. This reality highlights the

¹⁷ See, Letter from Regina McNeil, Vice President of Legal, NECA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 16, 2015), p. 5.

urgent need for the Commission to address in rapid order this shortcoming in its High-Cost rules as reformed. In current form and at its current budget, the High-Cost program still leaves rural consumers of all kinds – Lifeline-eligible or otherwise – facing a serious barrier to adoption of standalone broadband services.

To be clear, the Rural Associations’ Petition for a temporary waiver should not be taken as an attempt to foist unwanted voice services as part of a bundle upon Lifeline-eligible subscribers or to limit the choice of services available to low-income rural Americans. To the contrary, the Rural Associations’ Petition simply underscores the fact that the current mechanisms operate to deny *all* rural consumers such choice. As a result, absent a much-needed further conversation as to what must happen to make sure that the High-Cost program reforms the Commission adopted actually work for rural consumers, the Commission’s Lifeline reforms will fail to work as well. The collective success of these programs depends in significant part on each individual program being properly modernized (and sized) to achieve their individual but interrelated goals. Outdated or poorly functioning rules in either program can defeat the success of the other – and here, the Commission’s Lifeline goals are unfortunately frustrated, if not altogether defeated, across rural America because the High-Cost program fails to enable “reasonable comparability” between urban and rural services and rates. Put another way, the only way the Commission’s broadband Lifeline goals can succeed in rural America, rather than shutting out the rural poor from affordable broadband, is to provide a better broadband baseline to start for *all* rural Americans through a more predictable and sufficient High-Cost program.

To further clarify the scope of the instant petition, the Rural Associations do not object to the requirement that RLECs receiving high-cost support offer Lifeline-eligible consumers the very same choices (including standalone BIAS) as are available to every other consumer in their service area. The Rural Associations' member companies would be delighted to offer Lifeline discounts off of standalone broadband offerings to the extent that consumers would actually find such offerings of interest. However, compelling modifications to RLECs' billing systems and changes to internal processes and advertising with respect to the availability of "Lifeline standalone broadband" at a rate that no low-income consumer can reasonably afford is an effective exercise in futility, particularly at a time where RLECs are implementing other reforms in their administration and participation in the Lifeline and High-Cost programs. Thus, the Rural Associations seek a temporary waiver from the Lifeline-specific provision at issue until such time as the High-Cost program enables the availability of standalone broadband services at "reasonably comparable" rates for *all* rural consumers.

III. CONCLUSION

For the foregoing reasons, NTCA and WTA respectfully request grant of the temporary waiver requested herein.

Respectfully submitted,

NTCA–The Rural Broadband Association

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

By: /s/ Brian J. Ford
Brian J. Ford
Regulatory Counsel
bford@ntca.org

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

WTA – Advocates for Rural Broadband

By: /s/ Derrick B. Owens
Derrick B. Owens
Vice President of Government Affairs

By: /s/ Patricia Cave
Patricia Cave
Director of Government Affairs

400 7th Street NW, Ste. 406
Washington, DC 20004