

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
NTCA – The Rural Broadband Association and) WC Docket No. 11-42
WTA – Advocates for Rural Broadband)
)
Petition for Temporary Waiver) WC Docket No. 09-197
)
Connect America Fund) WC Docket No. 10-90

ORDER

Adopted: January 6, 2017

Released: January 6, 2017

By the Chief, Wireline Competition Bureau:

1. In this Order, we clarify that an eligible telecommunications carrier (ETC) must permit Lifeline-eligible customers to apply the Lifeline discount to standalone broadband Internet access service (BIAS) if the ETC subject to high-cost public interest broadband obligations commercially offers a standalone BIAS service. This clarification renders moot the Petition for Temporary Waiver filed by NTCA – The Rural Broadband Association (NTCA) and WTA – Advocates for Rural Broadband (WTA) on October 24, 2016 and, accordingly, we dismiss that petition.

2. In their Petition, NTCA and WTA seek a temporary waiver for their members and similarly situated rural rate-of-return regulated telecommunications providers of language contained in note 133 of the 2016 Lifeline Modernization Order. Petitioners interpret that language to require ETCs receiving high-cost support to “create and track specialized standalone broadband Lifeline offerings” even where the ETCs do not otherwise offer standalone BIAS.1 NTCA and WTA argue that good cause exists to grant a temporary waiver because the operation of the high-cost USF program will preclude most rural rate-of-return regulated telecommunications providers and/or their Internet Service Provider (ISP) affiliates from offering standalone broadband service at rates that are reasonably comparable to those in urban areas.2

3. The Bureau dismisses the NTCA/WTA Petition as moot and clarifies that the 2016 Lifeline Modernization Order requires high-cost ETCs that are required to offer BIAS pursuant to high-cost public interest obligations to apply the Lifeline discount to standalone BIAS for qualifying subscribers where the ETC commercially offers standalone BIAS. ETCs that do not have a standalone BIAS offering in areas where they receive high-cost support are not required to create a new standalone Lifeline BIAS offering as a result of the 2016 Lifeline Modernization Order. While high-cost recipients are required to offer BIAS consistent with specified benchmarks as a condition of receiving high-cost support, there is no specific requirement that high-cost recipients offer standalone BIAS service.3 Rather,

1 Petition for Temporary Waiver of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, WC Docket No. 11-42 et al., at 2-3 (filed Oct. 24, 2016) (NTCA/WTA Petition or Petition) (citing Lifeline and Link Up Reform and Modernization et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3980 n.133 (2016) (2016 Lifeline Modernization Order or Order)).

2 NTCA/WTA Petition at 4.

3 Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17695, para. 86 n.127 (2011) (USF/ICC Transformation Order), aff’d sub nom. In re: FCC 11-161, 753 F.3d 1015

recipients of high-cost support may meet their broadband public interest obligations by offering BIAS as part of a bundle with voice or on a standalone basis, at the carrier's discretion. The language in note 133 of the *2016 Lifeline Modernization Order* does not eliminate that avenue for meeting broadband public interest obligations.

4. Requiring high-cost recipients that do not currently offer standalone BIAS to offer such a service for the first time would entail a major regulatory and policy shift, and we do not interpret the brief language of note 133 as announcing a development of that magnitude without further explanation and justification for the creation of such a new obligation. Note 133 consists of a single sentence that does not purport to announce a major new rule, and we find it cannot bear the sweeping interpretation ascribed to it by Petitioners.

5. In addition, note 133 was written in the context of a Lifeline program order. Had the Commission intended to impose a new requirement to offer standalone BIAS on high-cost recipients, such a significant change involving service obligations of rate-of-return carriers receiving high-cost support logically would have been made in the context of the Commission's *Rate-of-Return Reform Order*, which was adopted the same month as the *2016 Lifeline Modernization Order*. By contrast, requiring high-cost recipients *that already offer standalone BIAS* to allow eligible customers to apply the Lifeline discount to that existing standalone service is a much more reasonable reading of the language in note 133 as well as policies discussed at some length in the *2016 Lifeline Modernization Order*. For example, the *2016 Lifeline Modernization Order* highlighted the growing popularity of standalone broadband service and recognized the importance of providing consumers with the choice of applying their Lifeline benefits to standalone offerings.⁴ According to the Commission, "Permitting a Lifeline provider to offer standalone broadband offerings will also ensure that Lifeline consumers are not forced to purchase services they may not want within a bundle."⁵ The *2016 Lifeline Modernization Order* expanded consumer choice by stating that Lifeline benefits can be applied to standalone broadband service.

6. We therefore interpret the language in note 133 of the *Order* as establishing that if an ETC offers standalone BIAS in a portion of its service area that receives high-cost support, the ETC *must* allow eligible consumers to apply the Lifeline discount to that standalone service. If, however, an ETC does not currently offer a standalone BIAS plan in areas where it is receiving high-cost support, it is not required to create a new standalone BIAS offering based solely on the language contained in the *2016 Lifeline Modernization Order*. This interpretation of the *2016 Lifeline Modernization Order* also comports with the Commission's existing rule requiring ETCs to apply the Lifeline discount "to reduce the cost of any generally available residential service plan or package offered."⁶

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(10th Cir. 2014) (indicating that the Commission expected that ETCs that offer standalone broadband service in any portion of their service territory also offer such service in all areas that receive Connect America Fund support). Nothing in that language – again, briefly articulated in a footnote – can be read as imposing an absolute obligation to offer standalone BIAS on high-cost recipients.

⁴ *2016 Lifeline Modernization Order*, 31 FCC Rcd 3962, 3980, para. 49.

⁵ *Id.* at 3980-1, para. 50.

⁶ *See* 47 CFR § 54.403(b)(1) (establishing how ETCs must apply the Lifeline discount to end-user charges).

7. Accordingly, IT IS ORDERED that, pursuant to 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Petition of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

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Chief
Wireline Competition Bureau