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
	)	
	)	WC Docket No. 10-90
Connect America Fund	)	

ORDER

Adopted: November 16, 2020 **Released: November 16, 2020**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau addresses the petition of the National Lifeline Association (NaLA or Petitioner), seeking a waiver of the Commission's rules updating the Lifeline program's minimum service standard for mobile broadband usage, which otherwise would take effect on December 1, 2020.[1] Petitioner also seeks to halt the phase-down of the support amount for Lifeline service that does not meet the broadband minimum standard,[2] which will decrease from $7.25/month to $5.25/month on December 1, 2020.[3]

2. Relying on the roadmap provided by the Commission last year in response to an almost identical request for waiver, we find that, given the large increase to the mobile broadband minimum service standard that would result from the formula the Commission adopted in 2016, the Commission's stated intent to regularly and predictably increase the minimum service standard for mobile broadband usage to ensure that Lifeline supports an evolving level of service, and the increased reliance by Americans on mobile broadband as a result of the pandemic, good cause exists to partially grant the Petition on this issue. Specifically, we waive the rule to the extent it would establish a minimum service standard greater than 4.5 GB/month, beginning on December 1, 2020, finding that this moderate 50% increase—equal to the 50% increase permitted by the Commission's partial waiver of the rule last year—balances the program's goals of accessibility and affordability. We further find that Petitioners have not shown that good cause exists to halt the scheduled phase-down of support for Lifeline voice service, and we therefore deny that portion of the Petition.

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[1] National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service standard and Voice Support Phase-Down, WC Docket No. 11-42 et. al. (filed Aug. 27, 2020) (Petition); *see also* 47 CFR § 54.408(b)(2)(ii)(D).

[2] Throughout this Order, references to phasing down the support amount for "voice service" or "voice-only service" include a phase-down in support for Lifeline offerings that do not meet the Lifeline broadband minimum service standards.

[3] *See* 47 CFR § 54.403(a)(2)(iii).

II. BACKGROUND

3. In 2016, the Commission made several improvements to the Lifeline program, including the implementation of minimum service standards for Lifeline-supported services[4] to ensure that subscribers receive the type of "robust service which is essential to participate in today's society"[5] and can subscribe to the services which have "been subscribed to by a substantial majority of residential customers."[6] The minimum service standards were also created with the hope of striking "a balance between the demands of affordability and reasonable comparability,"[7] consistent with the Commission's relevant governing statute.[8]

4. The *2016 Order* set forth a formula to calculate the updated minimum service standard for mobile broadband usage based on certain data regarding consumer broadband usage.[9] Specifically, the minimum service standard for mobile broadband is calculated by finding the product of: (1) the average number of mobile subscriptions per household; (2) the percentage of Americans who own a smartphone; and (3) the average data used per mobile smartphone subscriber. The product of (1)-(3) is then multiplied by 0.7, and the result is rounded up to the nearest 250 MB. To give providers time to adjust to the new minimum service standards, the Commission specified the minimum standard for mobile broadband service for the first two annual updates of that standard, with the standard increasing in each successive year. As a result, the minimum standard for mobile broadband usage, initially set at 500 MB/month beginning on December 2, 2016, increased to 1 GB/month on December 1, 2017, and increased again to 2 GB/month on December 1, 2018.[10] The formula adopted by the Commission in 2016 would govern the mobile broadband standard starting on December 1, 2019.

5. The *2016 Order* also established, with limited exceptions, a scheduled phase-down of the support amount for Lifeline offerings—including Lifeline voice-only offerings—that did not meet the broadband minimum service standards. In the *2016 Order*, the Commission concluded that a forward-looking Lifeline program would be better served by focusing on broadband services meeting certain minimum criteria, and as part of shifting the program's focus to broadband, the Commission concluded that support for Lifeline service not meeting the broadband minimum service standards would be reduced to $7.25 per month on December 1, 2019, then reduced again to $5.25 per month on December 1, 2020, and thereafter eliminated in most areas on December 1, 2021.[11]

6. In 2019, CTIA and others filed a petition to waive the Commission's rules with respect to the scheduled increase in the mobile broadband minimum service standards and voice phase-down support.[12] With respect to the mobile broadband minimum service standards, the Commission granted the petition in part, noting that formula established in the *2016 Order* resulted in an unexpectedly large increase—a more than four-fold increase from 2 GB/month to 8.75 GB/month—and found that a more

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[4] *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, 3989-97, paras. 73-98 (2016) (*2016 Lifeline Order* or *2016 Order*); 47 CFR § 54.408.

[5] *Id.* at 3988, para. 69.

[6] *Id.* at 3988, para. 70 (quoting 47 U.S.C. § 254(c)(1)(B)).

[7] *Id.* at 3989, para. 71.

[8] *See* 47 U.S.C. § 254(b)(1), (3) (directing the Commission to base policies on the principles of ensuring affordable rates and reasonably comparable services, respectively).

[9] *Id.* at 3995-96, para. 94; 47 CFR § 54.408(c)(2)(ii)(A)-(D).

[10] *2016 Order*, 31 FCC Rcd at 3995, para. 93; 47 CFR § 54.408(b)(2)(ii)(A)-(C).

[11] *2016 Order*, 31 FCC Rcd at 4003, para. 117.

[12] *See* Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket Nos. 11-42, 09-197, 10-90 (June 27, 2019).

moderate increase of 50% to 3 GB/month was appropriate because it balanced the core objectives of bringing the mobile broadband usage available to our nation's most vulnerable consumers more in line with what other Americans expect and receive from their mobile broadband service, while maintaining a service that is affordable for low-income consumers.[13] With respect to the scheduled phase-down of support for voice service, the Commission denied the petition, finding that the petition did not show good cause for waiving the scheduled phase-down.[14]

7. On July 31, 2020, the Bureau released a Public Notice that announced, based on the formula set forth in the *2016 Order*, the mobile broadband minimum service standard would increase from 3 GB/month to 11.75 GB/month, on December 1, 2020.[15] On August 27, 2020, Petitioner sought a waiver of both the Commission's December 2020 update to the minimum service standard for mobile broadband usage, and the Commission's December 2020 phase-down of the support amount for Lifeline-supported voice service.[16] On August 31, 2020, the Wireline Competition Bureau issued a Public Notice seeking comment on the Petition.[17]

III. DISCUSSION

8. On the basis of the record before us, we grant in part the Petition with respect to the scheduled increase in the mobile broadband usage minimum service standards and deny the Petition with respect to the scheduled phase-down of voice support. As a general matter, "an agency must adhere to its own rules and regulations."[18] Strict application of a rule may be justified "to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve."[19] However, the Commission's rules may be waived for good cause shown.[20] To warrant consideration for waiver, a petitioner must "plead with particularity the facts and circumstances" which warrant the granting of the requested waiver.[21] In evaluating good cause for waiver, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[22] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.[23] Waiver of the Commission's rules is therefore only appropriate if special circumstances warrant a deviation from the general rule, and such deviation

[13] *Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, 11020, 11024, paras. 2, 13 (2019) (*2019 Waiver Order*).

[14] *Id.* at 11020, 11026-27, paras. 2, 18-20.

[15] *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 20-820 (July 31, 2020).

[16] Petition at 1.

[17] *Wireline Competition Bureau Seeks Comment on National Lifeline Association Petition for Waiver of Mobile Broadband Minimum Service Standard and Voice Support Phase-Down*, Public Notice, WC Docket No. 11-42 et. al. (Aug. 31, 2020), available at https://www.fcc.gov/document/comment-sought-nala-minimum-service-voice-phase-down-waiver.

[18] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

[19] *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

[20] 47 CFR § 1.3.

[21] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 & n.9 (D.C. Cir. 1969).

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

[23] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

will serve the public interest.[24] The Bureau, under delegated authority, may act on requests for waiver of rules.[25]

9. *Minimum Service Standard for Mobile Broadband Usage.* Our review of the record convinces us that an increase in the minimum service standard from 3 GB/month to 11.75 GB/month is inconsistent with the careful balance contemplated when the Commission established the minimum service standards in the *2016 Order*, and there is good cause to waive the Commission's rule to the extent that it would raise the standard above 4.5 GB/month as of December 1, 2020. We do so by relying, in part, on the careful balancing done and factors considered by the Commission in the *2019 Waiver Order*.

10. In the *2016 Order,* the Commission established a gradual, stair-step increase in the minimum service standards to give Lifeline providers time to adjust to the new standards.[26] Indeed, the mobile broadband usage minimum service standard was initially set at 500 MB/month in December 2016, doubled first to 1 GB/month in December 2017 and again to 2 GB/month in December 2018. Last, year, when faced with a more than four-fold increase, the Commission continued this gradual approach by instead implementing a more limited 50% increase to 3 GB/month. Now, absent Bureau or Commission action, Lifeline subscribers and providers face a dramatic increase in the mobile broadband usage standard from 3 GB to 11.75 GB—a nearly four-fold increase. This increase potentially threatens the affordability of Lifeline services, constituting special circumstances, and we find that deviating from the rule in this instance will serve the public interest by avoiding disruption in the program. Although we acknowledge that any increase in the mobile broadband usage standard would undoubtedly aid many Americans relying on the Lifeline program, we nevertheless find the benefits of a dramatic increase are outweighed by the likely hardship on Lifeline subscribers as it risks making Lifeline service prohibitively expensive for at least some Lifeline subscribers.

11. Even though, for the reasons discussed below, we are not persuaded that any increase at all in the mobile broadband minimum service standard would result in unaffordable service options, we find it reasonable to anticipate that a nearly four-fold increase in the minimum usage allowance would require significantly greater network resources and, in turn, the associated costs would ultimately be passed on to consumers.[27] Without a significantly longer transition period to enable long-term planning by providers, this increase in costs for providers and consumers could unduly disrupt service for existing Lifeline subscribers. We therefore find that the potential benefits of a significantly increased mobile broadband usage minimum service standard are outweighed by the possible hardship that could be imposed on Lifeline subscribers in the form of increased prices at this time.

12. At the same time, we recognize the careful balancing necessary to meet the goals paved by the creation of the minimum service standards. A core tenet of the *2016 Order* was to enable "Lifeline customers to obtain the type of robust service which is essential to participate in today's society."[28] If anything, this need for robust service is even greater today as the ongoing COVID-19 health and economic crisis impacts the needs of low-income Americans for quality communications services. The pandemic has created an increased reliance on broadband nationwide as significant aspects of today's society move to a virtual environment, with health care, education, work, disabilities access, public safety,

[24] *Northeast Cellular Telephone Co*, 897 F.2d at 1166.

[25] 47 CFR § 0.291(b).

[26] *2016 Order*, 31 FCC Rcd at 3995-96, paras. 93, 95. *See also 2019 Waiver Order*, 34 FCC Rcd at 11023, para. 11 (concluding that the *2016 Order* established a stair-step approach and established the precedent of no more than doubling the usage standard from one year to the next).

[27] *See 2019 Waiver Order*, 34 FCC Rcd at 11023, para. 10 (citing *Connect America Fund; ETC Annual Report and Certifications*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1633-34, para. 27 (2017) (noting the "generally greater costs of deploying a higher capacity network at higher speeds.")).

[28] *2016 Order*, 31 FCC Rcd at 3988, para. 69.

and social events taking place largely online. Consideration of these unique factors leads us to find that providing no increase to the mobile broadband usage minimum service standards would risk leaving low-income Americans behind during a pandemic that has disproportionately affected them, while permitting a dramatic and sudden increase in the standard could result in unaffordable service for low-income consumers during a time when they need that service more than ever.[29]

13. In deciding to increase the mobile broadband standard, rather than maintain the status quo of 3 GB/month as requested by the Petitioner, we look to the Commission's intent when establishing the minimum standards as well as the Commission's decision last year to increase the mobile broadband usage standard. The Commission in the *2016 Order* determined that, for low-income consumers, "it is vital that the offered service provides sufficient speed and capacity to allow the user to utilize all that the Internet has to offer."[30] The Commission accordingly not only established a structure by which the Bureau would announce annual updates to the Lifeline mobile broadband usage minimum service standard but also created a method to continue increasing that standard even if the Bureau failed to issue its annual update.[31] The Commission did so in part to meet its statutory obligation to ensure that Lifeline supports an evolving level of service.[32]

14. And last year, the Commission faced similar concerns from, among others, the Petitioner in this proceeding and deemed a limited, 50% increase in the mobile broadband usage minimum service standard to 3 GB/month sufficient to appropriately balance the needs of the program. As explained in the Commission's *2019 Waiver Order*, the wireless market continues to evolve in the direction of larger data allowances.[33] More recently, according to the Commission's updates to data in the *2018 Communications Marketplace Report*, the average smartphone subscriber used 6.6 GB/month in 2018, which was an increase of 385% from the average usage of 1.361 GB per month in 2014 that the Commission took notice of in the *2016 Lifeline Order*,[34] and an increase of 1.5 GB from the average usage of 5.1 GB per month in 2017.[35] Today's moderate increase in mobile broadband usage minimum service standards takes careful consideration of these factors, mirrors the increase in usage that the average smartphone user experienced in the latest year for which data is available, and ensures that low-income Americans are not left behind during the pandemic with "second class" service, and "remove[s] the incentive for providers to offer minimal, un-innovative services."[36]

15. Thus, while we find that an increase to 11.75 GB/month at this time is unreasonably dramatic with insufficient time for Lifeline providers to plan over the long term, we also find that a freeze to the scheduled increase is equally unreasonable and counter to our statutory obligations and the Commission's goals. And, absent substantial evidence that a stair-step increase threatens to make the program prohibitively expensive, we find a moderate increase to 4.5 GB/month to be consistent with the

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[29] Pew Research Center, Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest at 4-5 (2020), https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2020/09/SDT_2020.09.24_COVID-19-Personal-Finances_FINAL.update2.pdf.

[30] *Id.* at 3994, para. 91.

[31] *See* 47 CFR § 54.408(c)(2)(ii), (iii).

[32] 47 U.S.C. § 254(c)(1).

[33] *2019 Waiver Order*, 34 FCC Rcd at 11023-24, para 12.

[34] *Communications Marketplace Report et al.*, GN Docket No. 18-23 et al., Report, 33 FCC Rcd 12558, 12568-69, para. 12, Fig. A-8 (2018) (*2018 Communications Marketplace Report*).

[35] *FCC Releases Certain Data Updated as of December 31, 2018 for the Communications Marketplace Report*, Public Notice, 36 FCC Rcd 1479 (rel. Feb. 20, 2020); FCC, Mobile Wireless Data Usage Updates, https://us-fcc.box.com/s/k8xxnlzw9qjjtui3maik3pxzr1vv16of.

[36] *See 2016 Order*, 31 FCC Rcd at 4000, para. 104.

2016 Order's gradual transition to increase the minimum service standard for mobile broadband usage, as well as with the partial waiver granted by the Commission last year. This moderate increase balances the core objectives of bringing the mobile broadband usage available to our nation's most vulnerable consumers more in line with what other Americans expect and receive from their service while maintaining a service that is affordable for low-income consumers.[37]

16. Petitioner and commenters argue that any increase at all would be unjustified; however, the record here contains no substantial evidence that an increase to 4.5 GB/month would risk making Lifeline service unaffordable for providers or many current subscribers. While the Petition argues that any increase in the minimum service standards would prevent free-to-the-end-user service, the Petitioner relies upon retail pricing data rather than cost data to support its position, which the Commission last year rejected as a sufficient basis to demonstrate the impact of usage allowance on the cost of providing Lifeline service.[38] As to cost data, Petitioner argues that wireless eligible telecommunication carriers (ETCs) have stated on the record that the cost of providing 4.5 GB/month will vastly exceed the $9.25 Lifeline subsidy for broadband service, and that carriers would consider relinquishing their ETC designation if the increase to 4.5 GB went into effect.[39] However, these conclusory statements are undermined by evidence of continued pursuit of designation as an ETC, even in states without additional state Lifeline subsidies, by some of the very same wireless ETCs now arguing that they are not interested in serving those states.[40] Petitioner also cites T-Mobile's 2019 Annual Report for the proposition that the Lifeline program is uneconomical due to "current and future regulatory changes."[41] But this statement provides no guidance as to which "current and *future* regulatory changes" led to this conclusion, and the statement is made in the context of financial data pertaining to wholesale partners offering the Lifeline program, which T-Mobile also states that it will continue to support.[42] In fact, T-Mobile has recently stated that, to the contrary, it was willing to offer a Lifeline service plan at 4.5 GB/month with no end user recurring charge, and that this offer would remain available through November 30, 2021.[43]

17. Other commenters also argue that an increase in the standard would mean a co-pay for the service by the Lifeline subscriber.[44] These assertions similarly lack particularity and are again

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[37] *See id.*

[38] *See id.*

[39] Petition at 14.

[40] *See, e.g.*, *Petition of Sage Telecom Communications, LLC dba TruConnect*, Decision and Order No. 37408 (Hawaii Public Utilities Commission, Oct. 28, 2020); *Petition of TruConnect Communications, Inc. for Designation as an Eligible Telecommunications Carrier Solely to Provide Lifeline Service to Qualifying Vermont Consumers*, Final Order Approving Designation as an Eligible Telecommunications Carrier (Vermont Public Utility Commission, Sept. 17, 2020); *Petition of Q Link Wireless LLC for Redesignation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service to Qualifying Vermont Households*, Order Approving Redesignation as an Eligible Telecommunications Carrier (Vermont Public Utility Commission, Sept. 3, 2020); *Petition of Q Link Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Mississippi*, Order (Mississippi Public Service Commission, Sept. 1, 2020); *Petition of TruConnect Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Rhode Island*, Order (Rhode Island Public Utilities Commission, July 29, 2020).

[41] T-Mobile 2019 Annual Report at 29 (available at https://investor.t-mobile.com/financial-performance/annual-reports-and-proxy-statements/default.aspx).

[42] *Id.* (emphasis added).

[43] *See* Letter from Michele K. Thomas, Vice President, Regulatory, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et. al. (filed Nov. 16, 2020).

[44] *See* Joint Public Interest Organizations Comments, WC Docket No. 11-42 et. al. (filed Sept. 14, 2020); Comments of the National Association of Regulatory Utility Commissioners Comments, WC Docket No. 11-42 et. al. (filed Sept. 14, 2020) (NARUC Comments); Letter from Eric Schimpf, Chief Operating Officer, Global Connection Inc.

(continued….)

unsupported by clear data. Commenters argue that an increase in the minimum service standards does not take into consideration providers' costs, such as, marketing, outreach, customer acquisition, customer service, and compliance, yet commenters also fail to provide evidence or concrete data supporting the claim that carriers would need to apply a co-pay for a modest increase in service or would otherwise be unable to support a moderate increase in the minimum service standard for mobile broadband data capacity. Without more, we remain unconvinced that the Lifeline marketplace does not follow the broader telecommunications marketplace trend of decreasing consumer prices over time, which would indicate that ETCs could support a moderate increase in minimum usage allowance for Lifeline consumers.[45]

18. What is more, these arguments parallel those recited last year to the Commission, rejected, and proven to be false. For example, Petitioner and Q Link Wireless (a Lifeline provider) argued that the increase from 2 GB to 3 GB was "too costly to provide to consumers in states where substantial additional subsidies cannot be combined with the standard Lifeline subsidy of $9.25 per month without raising prices and forcing a co-pay in these states."[46] Later, the two argued that a lower-than-3-GB "option" was necessary to "make enrollment of new Lifeline subscribers outside of California and Tribal lands (i.e., states without substantial subsidies that can be combined with the basic federal Lifeline subsidy of $9.25 – '$9.25 states') possible on the same no co-pay basis as existing subscribers" and complained that "contains no evidence that 3 GB mobile broadband plans will be offered by ETCs outside of California or Tribal areas to existing and new Lifeline subscribers without imposing a price increase over current mobile broadband [minimum service standard]-compliant plans, which makes the supported service less affordable for Lifeline-eligible low-income."[47] One year later, neither Petitioner nor Q Link Wireless can point to a single situation in which a Lifeline provider ended its zero-cost offering and forced a co-pay on subscribers (nor stopped enrolling new subscribers on a no-copay basis nor imposed a price increase). In short, the argument that a moderate increase will result in ruin has not aged well.

19. While Petitioner and some commenters argue that ETCs have stopped providing free handsets as a result of the increase last year,[48] they fail to support that claim with evidence of such changes.[49] Moreover, the Lifeline program is designed to support mobile broadband service, and a carriers' choices regarding marketing services and products not supported by Lifeline are beyond the scope of our inquiry into the impact of the Lifeline rules on the affordability of services supported by the Lifeline program. Additionally, arguments attributing all changes to Lifeline subscribership or Lifeline

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of America, Jose Cortes, Chief Strategy Officer, Easy Telephone Services Company, Jim Carpenter, President, Telrite Corporation, Dennis Henderson, CEO, Boomerang Wireless, LLC, Nathan Johnson, Co-CEO, TruConnect Communications, Inc., Stephen Klein, President, Amerimex Communications Corp., David Dorwart, CEO, Assist Wireless, LLC, and Jeff Ansted, President, American Broadband and Telecommunications Company, to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et. al. (filed Sept. 14, 2020); Letter from Judson H. Hill, Counsel for Sage Telecom Communications LLC d/b/a TruConnect, to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et. al. (filed Sept. 14, 2020); TracFone Wireless Comments, WC Docket No. 11-42 et. al. (filed Sept. 14, 2020).

[45] *See 2018 Communications Marketplace Repo*rt, 33 FCC Rcd at 12570-77, paras. 14-22. Indeed, given that the very providers that complain about the costs of an increase in the minimum service standard fail to disclose any specific details or cost information that would allow us to review or validate such claims (despite them being in the best position to provide that information to the Commission), we could draw an adverse inference that such providers are overstating the costs of such an increase—although we need not draw such an inference for present purposes.

[46] Letter from John J. Heitmann & Joshua Guyan, Counsel for the National Lifeline Association and Q Link Wireless LLC, WC Docket No. 17-287 et al., at 3 (filed Nov. 1, 2019).

[47] *Id.*

[48] Petition at 11; TracFone Wireless Comments at 3; NARUC Comments at 12 (citing TracFone's website).

[49] We note that Petitioner does not provide a citation to support this claim. *See* Petition at 11.

providers' business practices to updates in the minimum service standards ignore other important program integrity efforts that have been implemented in the past year, including the launch of the Lifeline National Eligibility Verifier nationwide and the implementation of new rules designed to prevent marketing practices that made the program vulnerable to waste, fraud, and abuse.[50]

20. Based on the record before us, we find that the moderate increase to 4.5 GB/month is consistent with the gradual increase and core objectives contemplated by the *2016 Order* and confirmed in the *2019 Waiver Order*. We find that failing to provide low-income consumers a moderate increase in the mobile broadband usage minimum service standard at a time when broadband usage is growing more essential by the day risks inhibiting their participation in today's society and leaving them further behind. And, in the absence of clear data that today's moderate increase would prevent providers from providing affordable service, we again decline to fill that gap with speculation.

21. *Voice Support Phase-Down.* Petitioners also request a waiver of the scheduled phase-down of Lifeline support for voice service. Petitioners and commenters fail to establish, however, that compliance with this rule would be inconsistent with the public interest nor that the effects of the voice support phase-down were uncontemplated by the Commission in the *2016 Order*. In the *2016 Order*, the Commission adopted the phase-down in Lifeline support for voice service to ensure that the Lifeline program is focused on supporting "modern service offerings" to help low-income consumers participate in an evolving economy.[51] Indeed, providers have known for over four years that support for service not meeting the broadband minimum service standards would be reduced on December 1, 2020. They have had ample time to adjust their practices, notify subscribers, negotiate contracts, and otherwise modify their business plans.

22. Additionally, neither the Petitioner nor commenters have shown clear evidence that implementing the proposed phase-down would result in harm to Lifeline subscribers that would justify a waiver of the Commission's rules. While the Petitioner and commenters state that voice is still the primary means of communication for many low-income Americans, they do not show that the phase-down in voice support would result in unaffordable services or lead to de-enrollments from the program.

23. In fact, the Commission rejected a similar argument last year prior to the beginning of the phase-down in voice support.[52] There, providers argued that low-income consumers preferred voice-only services or bundles of services that include more voice usage and less data usage.[53] They argued that without a pause in the Lifeline voice support phase-down, over 3.8 million Lifeline subscribers would be negatively impacted by not having a choice in services.[54] Despite this concern, Petitioner now fails to provide evidence that last year's decrease in voice support resulted in inconsistencies with the *2016 Order*'s goal of supporting modern service offerings. Indeed, Petitioner even notes that, for several months in 2020 after the phase-down in Lifeline voice support had begun, the largest Lifeline-only ETCs included unlimited voice minutes in their Lifeline service offerings in response to the COVID-19

[50] *See Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in Oregon and Texas*, Public Notice, DA 20-1237 (rel. Oct. 19, 2020) (announcing the full launch of two additional states and marking the full launch of the National Verifier in every state and territory except California); *Bridging the Digital Divide for Low-Income Consumers*, 34 FCC Rcd 10886, 10915-22, paras. 68-86 (2019) (prohibiting commission-based compensation for ETC enrollment representatives and requiring ETC enrollment representatives to register with the Universal Service Administrative Company).

[51] *See 2016 Order*, 31 FCC Rcd at 3981, 4002, paras. 52, 110.

[52] *See 2019 Waiver Order*, 34 FCC Rcd at 11026-27, paras. 18-21; *see also* Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket No. 11-42 et al. (filed June 27, 2019) (2019 Joint Petition).

[53] 2019 Joint Petition at 7-8.

[54] *Id.* at 8.

pandemic, and Petitioner does not now present any direct cost or usage data from that experience to show that the voice support phase-down has or will impede low-income consumers' access to affordable communications services.[55]

24. Ultimately, because the Petitioner has failed to establish that the planned phase-down for Lifeline voice support would be inconsistent with the public interest (let alone surmount the hurdle that the Commission found in the *2016 Lifeline Order* that this precise phase-down would be in the public interest), we deny that portion of the Petition.

IV. ORDERING CLAUSES

25. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 47 CFR § 54.408(b)(2)(ii)(D) of the Commission's rules is WAIVED to the limited extent provided herein.

26. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by NaLA is GRANTED in part and otherwise DENIED.

27. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

[55] For these reasons we also find Petitioner's arguments that the voice support phase-down will impact consumers' ability to access public safety services unpersuasive. *See* Petition at 17-18.