

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

**ORDER DENYING STAY PETITION**

**Adopted: November 16, 2020**

**Released: November 16, 2020**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. On November 9, 2020, the National Lifeline Association (“NaLA”) and Assist Wireless, LLC (collectively, Petitioners), filed a petition for an administrative stay of the Commission’s rule updating the Lifeline program’s minimum service standard for mobile broadband usage, which otherwise would take effect on December 1, 2020.<sup>1</sup> For the reasons discussed below, we deny the Petitioners’ request for stay.

**II. BACKGROUND**

2. In 2016, the Commission made several improvements to the Lifeline program, including the implementation of minimum service standards for Lifeline-supported services<sup>2</sup> to ensure that subscribers receive the type of “robust service which is essential to participate in today’s society”<sup>3</sup> and can subscribe to the services which have “been subscribed to by a substantial majority of residential customers.”<sup>4</sup> The minimum service standards were also created with the hope of striking “a balance between the demands of affordability and reasonable comparability,”<sup>5</sup> consistent with the Commission’s relevant governing statute.<sup>6</sup>

3. The *2016 Order* set forth a formula to calculate the updated minimum service standard

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<sup>1</sup> Emergency Petition for Stay of Implementation of Section 54.408(b)(2)(ii)(D) of the Federal Communications Commission’s Rules Governing the Lifeline Mobile Broadband Minimum Service Standard, WC Docket No. 11-42 et. al. (filed Nov. 9, 2020), <https://www.fcc.gov/ecfs/filing/1109746112599> (Petition for Stay).

<sup>2</sup> *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.

<sup>3</sup> *Id.* at 3988, para. 69.

<sup>4</sup> *Id.* at 3988, para. 70 (quoting 47 U.S.C. § 254(c)(1)(B)).

<sup>5</sup> *Id.* at 3989, para. 71.

<sup>6</sup> *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).

for mobile broadband usage based on certain data regarding consumer broadband usage.<sup>7</sup> Specifically, the minimum service standard for mobile broadband usage 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.<sup>8</sup> The formula adopted by the Commission in 2016 would govern the mobile broadband standard starting on December 1, 2019.

4. In 2019, CTIA and others filed a petition that, in relevant part, asked the Commission to waive the Commission's rules with respect to the scheduled increase in the mobile broadband minimum service standards.<sup>9</sup> With respect to the mobile broadband minimum service standards, the Commission granted the petition in part, noting that formula established in the *2016 Order* would result 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 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.<sup>10</sup>

5. On July 31, 2020, the Bureau released a Public Notice announcing that, 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.<sup>11</sup> On August 27, 2020, Petitioner sought a waiver of the Commission's December 2020 update to the minimum service standard for mobile broadband usage.<sup>12</sup> On August 31, 2020, the Wireline Competition Bureau issued a Public Notice seeking comment on the Petition.<sup>13</sup>

6. On November 9, 2020, the Petitioners filed this Petition for Stay.<sup>14</sup> Petitioners request a ruling on their petition within seven calendars days, “so that Petitioners can seek appropriate relief from a court of competent jurisdiction if necessary.”<sup>15</sup> On November 16, 2020, the Bureau granted the NaLA petition for waiver in part, finding that, given the unexpectedly large increase to the minimum service standard that results from the formula the Commission adopted in 2016, and the unexpected increase in the reliance on mobile broadband as a result of the pandemic, good cause existed to partially grant the

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<sup>7</sup> *Id.* at 3995-96, para. 94; 47 CFR § 54.408(c)(2)(ii)(A)-(D).

<sup>8</sup> *2016 Order*, 31 FCC Rcd at 3995, para. 93; 47 CFR § 54.408(b)(2)(ii)(A)-(C).

<sup>9</sup> 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).

<sup>10</sup> *Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, 11020, 11024, paras. 2, 13 (2019) (*2019 Waiver Order*).

<sup>11</sup> *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 20-820 (July 31, 2020).

<sup>12</sup> Petition at 1.

<sup>13</sup> *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), <https://www.fcc.gov/document/comment-sought-nala-minimum-service-voice-phase-down-waiver>.

<sup>14</sup> Petition for Stay at 1.

<sup>15</sup> Petition for Stay at 54.

petition.<sup>16</sup> In doing so, the Bureau determined that a moderate increase in the mobile broadband minimum service standard to 4.5 GB/month balanced the objectives of accessibility, reasonable comparability, and affordability.<sup>17</sup>

### III. DISCUSSION

7. To qualify for the extraordinary remedy of an administrative stay, a petitioner must show that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.<sup>18</sup> The Commission's consideration of each factor is weighed against the others, with no single factor dispositive.<sup>19</sup> We conclude that Petitioners have failed to meet the test for this extraordinary equitable relief.

#### A. Petitioners Are Unlikely to Prevail on the Merits

8. Petitioners have not met their burden of showing that they are likely to succeed on the merits of their claim. Petitioners have failed to demonstrate either that the Commission arbitrarily and capriciously adopted section 54.408(b)(2)(ii)(D) in the *2016 Order*, or that the Commission has arbitrarily and capriciously failed to grant NaLA's August 2020 petition for waiver of the upcoming minimum service standard increase.

9. Petitioners fail to demonstrate that the *2016 Order* was arbitrary and capricious. Petitioners make three arguments with respect to the *2016 Order*: that it failed to consider the primary goals of access and affordability; that it is divorced from the problems it is trying to solve and the market it is supposed to serve; and that our use of the formula this year is inconsistent with our decision last year to waive the increase in part. We take each argument in turn.

10. Petitioners first argue that the *2016 Order* failed to address the affordability prong of the program's goals by adopting a formula that would now require low-income Americans to pay up to \$40 each month for 11.75 GB of broadband data.<sup>20</sup> Petitioners fail to acknowledge the *2016 Order*'s discussion of affordability, the need for low-income consumers to receive an evolving level of service, and the relevant data sources showing trends in the services consumers subscribed to and how much they used them.<sup>21</sup> What is more, the *2016 Order* took careful consideration of the affordability prong by implementing a gradual phased-in schedule to permit providers an adjustment period.<sup>22</sup> Petitioners point to this gradual phase-in as evidence that the formula was flawed from the outset; however, the phase-in period and the requirement that the Bureau issue a public notice well in advance of the scheduled changes served to ensure that Lifeline subscribers had access to an evolving level of service in an incremental, predictable way. The Commission did not intend for the mobile broadband minimum service standard to be static. And while Petitioners argue that the scheduled increase to 11.75 GB/month would ignore the statutory goal of affordability, the *2020 Waiver Order* appropriately addressed this concern by providing

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<sup>16</sup> See *Lifeline and Link Up Reform and Modernization, et. al.*, Order, WC Docket No. 11-42 et. al, DA 20-1358, para. 2 (Nov. 16, 2020) (*2020 Waiver Order*).

<sup>17</sup> *2020 Waiver Order* at para. 15.

<sup>18</sup> See *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (*Holiday Tours*); *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*VA Petroleum Jobbers*).

<sup>19</sup> *Protecting the Privacy of Customers of Broadband and Other Telecomm. Servs.*, Order Granting Stay Petition in Part, 32 FCC Rcd 1793, 1796 (2017).

<sup>20</sup> Petition for Stay at 25-26.

<sup>21</sup> See *2016 Order*, 31 FCC Rcd at 3988-91, 3994-97, paras. 69-77, 91-98.

<sup>22</sup> *2016 Order*, 31 FCC Rcd. at 3994-95, paras. 92-93.

a more moderate increase to 4.5 GB/month—a 50% increase in line with the 50% increase the Commission had authorized the year before.<sup>23</sup>

11. Next, Petitioners argue that the *2016 Order* formula fails to adequately facilitate the transition to broadband and low-income consumers' access to broadband because it accelerates a shift to Lifeline-supported voice service instead of Lifeline-supported broadband service.<sup>24</sup> While it is true that a dramatic and immediate jump in the minimum service standard to 11.75 GB/month could have risked making Lifeline-supported broadband service offerings unaffordable for low-income consumers and made Lifeline-supported voice service more attractive in comparison, such a concern is avoided with the *2020 Waiver Order*'s more moderate increase to 4.5 GB/month.<sup>25</sup> What is more, the *2016 Order* found that the “best way to conduct this transition [to broadband services] is by gradually reducing the monthly support level for voice-only service,” coupled with the phase-in of higher mobile broadband minimum service standards.<sup>26</sup> We find the approach in the *2020 Waiver Order* to be consistent with this intent.

12. Last, Petitioners also argue that they are likely to succeed on the merits of their claim because the Commission has been arbitrary and capricious in its failure to grant NaLA's August 2020 petition for waiver of the December 2020 update to the mobile broadband usage minimum service standard.<sup>27</sup> Petitioners are unlikely to prevail here because the Bureau has granted NaLA's petition in a way that prevents undue disruption to the program while fulfilling the statute's policy that low-income consumers should also have access to an evolving level of service.<sup>28</sup>

13. In the *2020 Waiver Order*, we agreed that the unexpectedly large increase in the mobile broadband minimum service standard to 11.75 GB could undermine the goals of the Lifeline program.<sup>29</sup> Instead, based on the record, including data from the *2018 Communications Marketplace Report*, we determined that a moderate increase in the mobile broadband standard to 4.5 GB/month was appropriate and consistent with the stair-step approach implemented by the Commission in the *2016 Order* and confirmed in the *2019 Waiver Order*.<sup>30</sup> We concluded this moderate increase in the standard appropriately balances the core objectives of reasonable comparability and affordability.<sup>31</sup> We further found that failing to provide low-income consumers *any* increase in the mobile broadband standard would provide a barrier from their participation in today's unique environment and risk leaving them further behind with second-class service during a pandemic that has disproportionately affected them.<sup>32</sup>

14. In light of our disposition of the NaLA petition for waiver, we need not address the Petitioners' arguments with respect to this element because their concerns about the effects of an increase in the mobile broadband usage minimum service standard to 11.75 GB/month do not apply to a more moderate increase to 4.5 GB/month. In any event, because the formula contemplated by the *2016 Order*

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<sup>23</sup> See *2019 Waiver Order* at paras. 2, 13.

<sup>24</sup> Petition for Stay at 32-33.

<sup>25</sup> See *2020 Waiver Order* at para. 16 (citing Letter from Michele K. Thomas, Vice President, Regulatory, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Nov. 16, 2020) (“T-Mobile expressed its willingness to offer an Assurance Wireless Lifeline service plan at 4.5 GB per month with no end user recurring charge. Absent a change in circumstances, this offer would remain available through November 30, 2021”)).

<sup>26</sup> *2016 Order*, 31 FCC Rcd. at 3962, para 62.

<sup>27</sup> See Petition for Stay at 34-36.

<sup>28</sup> See 47 U.S.C. § 254(b)(3), (c).

<sup>29</sup> *2020 Waiver Order* at para. 10.

<sup>30</sup> *Id.* at para. 9, 13-15.

<sup>31</sup> *Id.* at 15, 20.

<sup>32</sup> *Id.*

was appropriately partially waived and because the mobile broadband minimum service standard will not increase to 11.75 GB/month on December 1, 2020, we find that the Petitioners are unlikely to succeed on the merits of their argument that any increase in the current minimum service standard is arbitrary and capricious.

**B. Petitioners Have Not Shown That They Will Suffer Irreparable Harm**

15. Petitioners' argument that they will suffer irreparable harm is also unpersuasive in light of the *2020 Waiver Order*. In the irreparable injury inquiry, "the injury must be both certain and great; it must be actual and not theoretical."<sup>33</sup> A petitioner must also "substantiate the claim that the irreparable injury is 'likely' to occur. . . . Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur."<sup>34</sup> Petitioners' claims fail to meet this standard.

16. Although Petitioners argue that they would be irreparably harmed by an increase in the mobile broadband minimum service standard to 11.75 GB/month, the *2020 Waiver Order* prevents any certain and great harm to Petitioners by waiving most of the scheduled increase and establishing a moderate increase to 4.5 GB/month. Petitioners argue that a nearly four-fold increase in the mobile broadband minimum service standard would cause significant harm to providers because Lifeline-eligible consumers cannot afford plans that provide a minimum of 11.75 GB/month, which would thereby erode Petitioners' subscriber base. We need not determine whether such an increase in the mobile broadband usage minimum service standard would have caused irreparable harm to the Petitioners because the *2020 Waiver Order* prevents such an increase.

17. Furthermore, as detailed in the *2020 Waiver Order*, we do not find that a moderate increase to 4.5 GB/month would cause harm, much less irreparable harm, to Petitioners.<sup>35</sup> Indeed, NaLA's affordability argument is based on its 10-15 GB/month mobile data plans today, which retail for \$35-50.<sup>36</sup> We find this reliance on retail pricing data unpersuasive, even in the context of 4.5 GB/month, because the Commission had previously rejected it as a sufficient basis to demonstrate the impact of usage allowance on the cost of providing Lifeline service.<sup>37</sup>

18. What is more, Petitioners also provide no direct cost data that refutes the broader communications marketplace trend of decreasing consumer prices over time, which would indicate that providers could support a moderate increase in service for Lifeline consumers.<sup>38</sup> Of note, providers recited similar arguments last year to the Commission that an increase from 2 GB to 3 GB would be detrimental to the program, which were rejected and proven to be false.<sup>39</sup> For example, NaLA and Q Link

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<sup>33</sup> *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*Wisconsin Gas Co.*).

<sup>34</sup> *Id.*

<sup>35</sup> *2020 Waiver Order* at paras. 16-19.

<sup>36</sup> Petition at 29.

<sup>37</sup> See *2019 Waiver Order* at para. 10, n.24.

<sup>38</sup> See *2018 Communications Marketplace Report*, 33 FCC Rcd at 12570-77, paras. 14-22.

<sup>39</sup> See generally 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); *2019 Waiver Order*. This claim was one example in a succession of filings over the course of several years of certain wireless ETCs predicting that they would need to begin charging Lifeline customers a co-pay in the near future and then being proven wrong with the passage of time. See also Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket No. 11-42 et al., at 5-6 (filed June 23, 2016) (claiming that the 1 GB minimum standard in 2017 "would require a significant co-pay"); Comments of the National Lifeline Association, WC Docket No. 11-42 et al., at (filed Feb. 21, 2018) ("As the applicable minimum service standards continue to rise without any corresponding increase in the monthly benefit, subscribers for wireless Lifeline services similarly will be forced to purchase voice and broadband plans that may be more than they can afford or need.").

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.”<sup>40</sup> And, one-year later, Petitioner cannot point to a single situation in which a Lifeline provider ended its zero-cost offering and forced a co-pay on subscribers. As we determined in the *2020 Waiver Order*, the record before the Commission lacks compelling evidence that an increase in the mobile broadband minimum service standard to 4.5 GB/month would preclude Lifeline providers from offering affordable (let alone zero-cost) service to low-income consumers.<sup>41</sup> Without more, we find that the Petitioners have not shown that they will suffer irreparable harm as a result of the scheduled increase in the mobile broadband usage minimum service standard to 4.5 GB/month.

### C. Petitioners Have Not Shown That the Equities Favor a Stay

19. Finally, Petitioners have not met their burden of showing that other parties would not be harmed by a stay and the public interest militates in favor of a stay.<sup>42</sup>

20. *Injury to Other Parties.* Petitioners argue that a stay would not harm other parties because it will maintain the status quo and prevent Lifeline subscribers from facing a dramatic increase in the price of Lifeline service.<sup>43</sup> However, Petitioners fail to acknowledge that freezing the minimum service standard for another year would harm Lifeline consumers by failing to support an evolving level of modern communications services.

21. The Commission’s *2016 Order* makes clear that it did not intend to keep the mobile broadband minimum service standard flat year-over-year but expected it to grow to better meet the needs of Lifeline subscribers and to ensure that low-income consumers are not left with stagnant affordable options while other consumers subscribe to increasingly robust services.<sup>44</sup> The *2016 Order* also noted that the need to ensure that Lifeline subscribers do not languish in second-class service offerings is particularly acute for mobile broadband, in light of low-income households disproportionate reliance on mobile service.<sup>45</sup> We therefore find that providing a complete freeze to the mobile broadband minimum service standard would harm Lifeline subscribers by failing to promote access to an evolving level of service offerings.

22. In the *2016 Order*, the Commission emphasized the need to ensure that Lifeline subscribers receive the type of “robust service which is essential to participate in today’s society,”<sup>46</sup> and to allow them to subscribe to the services which have “been subscribed to by a substantial majority of residential customers.”<sup>47</sup> The *2016 Order* and *2019 Waiver Order* accomplished this important goal with a gradual, stair-stepped increase for the mobile broadband standard. The *2020 Waiver Order* continued this approach, finding that failing to increase the minimum service standards would fail to meet the needs of low-income Americans facing an increased reliance on broadband created as a result of the pandemic.<sup>48</sup> The *2020 Waiver Order* also highlighted the current increased need for robust service as the ongoing

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<sup>40</sup> 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).

<sup>41</sup> *2020 Waiver Order* at paras. 16-19.

<sup>42</sup> See Petition for Stay at 49-53.

<sup>43</sup> See *id.* at 49-51.

<sup>44</sup> See *2016 Order*, 31 FCC Rcd at 3990-91, para. 77.

<sup>45</sup> See *id.* at 3994, para. 91.

<sup>46</sup> *Id.* at 3988, para. 69.

<sup>47</sup> *Id.* at 3988, para. 70 (quoting 47 U.S.C. § 254(c)(1)(B)).

<sup>48</sup> *2020 Waiver Order* at para. 20.

COVID-19 health and economic crisis that requires even more educational, occupational, and other activities be conducted online.<sup>49</sup>

23. Additionally, Petitioners' arguments that Lifeline subscribers will be harmed by an increase in the mobile broadband minimum service standard to 11.75 GB/month because such an increase would render service unaffordable are mitigated by the Bureau's partial grant of NaLA's petition for waiver, which permitted a modest increase in the standard to 4.5 GB/month. In that waiver order, the Bureau in part concluded that submissions in the record arguing that any increase to the minimum service standard above 3 GB/month would render service unaffordable or decrease the availability of Lifeline service offerings were unpersuasive and that similar predictions by commenters in previous years had proven to be wrong.<sup>50</sup> In addition, those claims were contradicted by another Lifeline provider, which stated that it was in fact willing to offer Lifeline broadband service at 4.5 GB/month without charging a recurring end-user fee.<sup>51</sup> In light of this record, the Bureau declined to speculate that the Lifeline marketplace would not follow the broader telecommunications marketplace trend of decreasing consumer prices over time, which would indicate that ETCs could support an incremental increase in the level of service provided to Lifeline customers.<sup>52</sup>

24. *Public Interest.* We also find that the stay requested by Petitioners would be contrary to the public interest, and Petitioners have failed to show otherwise. Failing to provide an increase in the mobile broadband minimum service standard would be counter to the Commission's statutory obligation to provide an evolving level of service and to the universal service principles outlined by Congress as the guiding principles for the Commission's universal service programs.<sup>53</sup> As in the *2020 Waiver Order*, we carefully consider the balance required in 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. We support this consideration with reliance on the Commission's updates to data in the *2018 Communications Marketplace Report*, which shows that the average smartphone subscriber used 6.6 GB/month in 2018, an increase of 385% from the average usage of 1.361 GB/month in 2014 that the Commission took notice of in the 2016 Lifeline Order,<sup>54</sup> and an increase of 1.5 GB from the average usage of 5.1 GB/month in 2017.<sup>55</sup> And, in light of the general trend of decreasing consumer prices over time and Petitioners' failure to provide substantial data that the moderate increase established by the *2020 Waiver Order* would prevent providers from providing affordable service, we cannot conclude that a moderate increase will prove unaffordable.

25. We find that the Petitioners have failed to meet their burden of showing that a freeze in the mobile broadband minimum service standard meets the standard required to justify a stay of the Commission's rules. Indeed, granting the requested stay would risk leaving low-income Americans behind with second-class service at a time when broadband usage is growing more essential by the day.<sup>56</sup>

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<sup>49</sup> *Id.* at 12.

<sup>50</sup> *See id.* at para. 16-19

<sup>51</sup> *See 2020 Waiver Order* at para. 16 (citing Letter from Michele K. Thomas, Vice President, Regulatory, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Nov. 16, 2020).

<sup>52</sup> *See id.* at para. 17 (citing *2018 Communications Marketplace Report*, 33 FCC Rcd at 12570-77, paras. 14-22).

<sup>53</sup> *See* 47 U.S.C. § 254(b), (c)(1).

<sup>54</sup> *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).

<sup>55</sup> *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/k8xxnlzw9qjttui3maik3pxzr1vv16of>.

<sup>56</sup> *See 2016 Order*, 31 FCC Rcd at 4000, para. 104.

For the foregoing reasons we conclude that the requested stay is not warranted. Petitioners have failed to demonstrate that they are likely to succeed on the merits, they have not demonstrated any irreparable harm, and the balance of harms, including the harm to the public interest, does not weigh in favor of staying the update in the mobile broadband usage minimum service standard.

#### **IV. ORDERING CLAUSES**

26. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201, 205, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201, 205, and 254 and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, this Order Denying Stay Petition in WC Docket Nos. 11-42, 09-197, and 10-90 IS ADOPTED.

27. IT IS FURTHER ORDERED that the petition for partial stay of the National Lifeline Association and Assist Wireless, LLC, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau