IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In re: National Lifeline Association and Assist Wireless, LLC, Petitioners.	No. 20-1460

OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION TO EMERGENCY MOTION FOR STAY

The Federal Communications Commission ("FCC") opposes the Emergency Motion for Stay of the decision by the FCC's Wireline Competition Bureau to permit a modest increase in the Lifeline program's minimum service standard for mobile broadband usage from 3 gigabytes to 4.5 gigabytes per month.

The Bureau reasonably balanced the statutory goals of ensuring that robust broadband service remains available and affordable to Lifeline subscribers against the backdrop of increased need for broadband data to support pandemic-related remote teleworking and schooling. Movants, the National Lifeline Association ("National Lifeline") and Assist Wireless, LLC, offer only conclusory and unsupported allegations that Lifeline providers will be irreparably harmed, or that they will be forced to impose a prohibitive co-pay on subscribers if the increase goes into effect; the Bureau reasonably refused to credit those allegations. Conversely, a stay of the increase would harm Lifeline subscribers by freezing the

minimum data allowance at a time when broadband services have become more essential than ever. Because none of the relevant factors support Movants' request for a stay, it should be denied.

I. BACKGROUND

A. The Lifeline Program

The Lifeline program provides a $9.25 monthly subsidy to providers that offer discounted communications services to low-income customers. The Commission administers the Lifeline program in line with "evolving" universal service principles, 47 U.S.C. § 254(c)(1). These include making such services "available at just, reasonable, and affordable rates," 47 U.S.C. § 254(b)(1), and ensuring low-income consumers have "access to telecommunications and information services," including "advanced telecommunications and information services," that are "reasonably comparable" to "those services provided in urban areas." *See* 47 U.S.C. § 254(b)(3). In considering what services should be supported by the universal service programs, the Commission must also consider the extent to which such services "have . . . been subscribed to by a substantial majority of residential customers." 47 U.S.C. § 254(c)(1)(B).

B. The Minimum Service Standards

In 2016, in light of increasing concerns that a "digital divide" was leaving low-income Americans behind, the Commission adopted "minimum service

standards" for Lifeline service offerings. *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd. 3962, 3988-4002 ¶¶ 69-113 (2016) ("*2016 Order*"). These standards required Lifeline providers to offer a minimum mobile broadband data allowance on a stairstep schedule of gradually increasing amounts: 500 megabytes (MB) per month beginning on December 1, 2016, 1 gigabyte (GB) per month on December 1, 2017, and 2 GB per month on December 1, 2018. *2016 Order* ¶ 93. Thereafter, the Commission provided that the minimum mobile broadband data standard would be set at an amount equal to 70 percent of the national average mobile data usage per household. *2016 Order* ¶ 94.

The Commission explained that its minimum service standards were "rooted in the statutory directives" to ensure that "quality services are available at 'just, reasonable, and affordable rates,'" and that "advanced telecommunications services . . . 'subscribed to by a substantial majority of residential customers' are available throughout the nation." *2016 Order* ¶ 70 (citing 47 U.S.C. § 254(b)(1), § 254(c)(1)(B)). The Commission found that the standards "strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet's offerings, but not mandating the purchase of prohibitively expensive offerings." *2016 Order* ¶ 71; *see also id*. at ¶ 70 (the standards, as updated, "will give Lifeline subscribers confidence that their supported service will remain robust as

technology improves"). Moreover, the Commission concluded, "allowing the Lifeline benefit to be used on services that do not meet [the] standards would lead to the type of 'second class' service that the minimum service standards are meant to eliminate," and would lead providers "to continue to offer low-quality services." *2016 Order* ¶ 104.

C. The 2019 Waiver Order

The Commission first had occasion in 2019 to apply the formula adopted in 2016 to calculate the minimum service standard for Lifeline mobile broadband data. Because average broadband data usage for households nationwide had increased dramatically, application of the formula would have resulted in an increase in the minimum data allowance from 2 GB to 8.75 GB. *See Wireline Competition Bureau Announces Updated Lifeline Minimum Services Standards and Indexed Budget Amount*, Public Notice, 34 FCC Rcd. 6363, 6364, 2019 WL 3386384 (2019). In light of the size of the scheduled increase, Lifeline providers petitioned the Commission to waive it and retain the existing 2 GB standard. *See Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, 11021 ¶ 6 (2019) ("*2019 Waiver Order*").

The Commission granted the petition in part, but permitted an increase in the minimum data allowance from 2 GB to 3 GB. *2019 Waiver Order* ¶ 13. The Commission found that the increase that would have resulted from application of

the formula "risks upsetting the careful balance the Commission struck when establishing the Lifeline minimum service standards in the *2016 Order*," *id*. ¶ 8, and would "yield[] a far larger year-over-year change" in the mobile broadband usage minimum standard "than we believe the Commission anticipated," *id*. ¶ 9. Although the record contained "no clear evidence on the extent of additional costs" to Lifeline providers that would result from such an increase in the minimum service standard, the agency found it reasonable to anticipate that "a more than four-fold increase" in the standard "would require substantially greater network resources," with associated costs that "would be passed along to resellers and/or end-users." *Id*. ¶ 10. The Commission concluded that, "[a]bsent a more substantial transition period," such a large increase "could unduly disrupt service to existing Lifeline subscribers." *Id*. It also found that such an increase was inconsistent with the Commission's "stair-step approach" to annual increases in the standards for prior years, which had "established the precedent of no more than doubling usage from one year to the next." *Id*. ¶ 11.

On the other hand, the Commission denied the waiver petition insofar as it sought to freeze the standard at 2 GB per month. It concluded that a freeze would be inconsistent with the Commission's statutory duty to ensure that the Lifeline program supports "an evolving level of service," particularly taking into account that the wireless market has "continued to evolve in the direction of larger data

allowances." *2019 Waiver Order* ¶ 12 (citing 47 U.S.C. § 254(c)(1)). Noting that the average smartphone subscriber used 5.1 GB of data per month in 2017, *id*. ¶ 12, the Commission found that "limiting Lifeline subscribers to a usage allowance of less than half of what other smartphone subscribers actually use today" would result in providing them an "unacceptable" "second-class service." *Id*. ¶ 14. In the end, the Commission determined that an increase in the minimum standard to 3 GB per month in 2019 was "feasible for Lifeline providers and would 'best meet the Commission's objectives' for the Lifeline program." *Id*. ¶ 13.

No party sought administrative or judicial review of the *2019 Waiver Order*.

D. The 2020 Waiver Order

Average national household broadband data use has continued to climb since the Commission adopted the *2019 Waiver Order*. As a result, in July 2020 the Bureau announced that application of the *2016 Order*'s formula would result in an increase in the minimum broadband data standard from 3 GB per month to 11.75 GB per month. *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 20-

820 (July 31, 2020).[1] On August 27, 2020, National Lifeline filed a petition for waiver of the scheduled increase to 11.75 GB per month, and on November 9, along with Lifeline provider Assist Wireless, LLC, sought a stay.

On November 16, 2020, the Bureau, acting on delegated authority from the Commission, granted the requested waiver in part "to the extent it would establish a minimum service standard greater than 4.5 GB/month, beginning on December 1, 2020." *Lifeline and Link Up Reform and Modernization et. al.*, Order, DA-20-1358, ¶ 2 (WCB Nov. 16, 2020) (*2020 Waiver Order*). In light of the waiver it had granted, the Bureau on the same day denied the stay request. *Lifeline and Link Up Reform and Modernization et. al.*, Order, DA-20-1359 (WCB Nov. 16, 2020) (*Stay Denial Order*).

Following the "roadmap" the Commission had laid down in the *2019 Waiver Order*, the Bureau found that a one-year "moderate 50% increase" in the minimum broadband data service standard appropriately "balances" the Lifeline program's "goals of accessibility and affordability." *2020 Waiver Order* ¶ 2. By contrast, the

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[1] Movants state that a draft Commission order addressing the minimum service standards was withdrawn from circulation "after it failed to draw any support, as it would impose an unaffordable co-pay on mobile broadband Lifeline services." Motion at 5. Movants offer no evidence that any Commissioner believed 4.5 GB would "impose an unaffordable co-pay," and cite instead to an ex parte letter stating National Lifeline's belief to that effect. *Id.* (citing Att. I).

Bureau found that the "nearly four-fold increase" in the standard—from 3 GB per month to 11.75 GB per month—that would have resulted from application of the *2016 Order*'s formula would "potentially threaten[] the affordability of Lifeline services," and "risks making Lifeline service prohibitively expensive for some Lifeline subscribers." *2020 Waiver Order* ¶ 10.

On the other hand, the Bureau found that a freeze of the minimum service standard would be "unreasonable and counter to our statutory obligations and the Commission's goals," to ensure that Lifeline "supports an evolving level of service," and that Lifeline subscribers are not "left behind" with "second-class service," particularly during the current pandemic. *Id*. at ¶¶ 13-15. Instead, the Commission explained, the "moderate increase" from 3 GB per month to 4.5 GB per month "balances the core objectives of bringing the mobile broadband usage available to our nation's most vulnerable consumers more in line with what Americans expect and receive from their service while maintaining a service that is affordable for low-income consumers." *2020 Waiver Order* ¶ 15.

The Bureau also explained that the record contained no "substantial evidence" that the increase would make Lifeline service "unaffordable" or "prevent free-to-the-end-user service." *2020 Waiver Order* ¶ 16. As the Commission had in 2019, the Bureau declined (¶ 19) to rely on retail pricing data for the proposition that the increase would require the imposition of a co-pay on subscribers because,

as the Commission then explained, retail pricing data does not "directly translate[] into costs." *2019 Waiver Order* ¶ 10 & n. 24. The Bureau also noted that National Lifeline had contended in 2019 that an increase in the minimum standard from 2 GB to 3 GB per month would require providers to impose a co-pay on Lifeline subscribers, but those arguments had "proven to be false." *2020 Waiver Order* ¶ 18. Finally, the Bureau observed, at least one provider (T-Mobile) had publicly committed to offer a zero-copay 4.5 GB Lifeline plan. *Id*. at ¶ 16. In the absence of "clear data" that increasing the standard from 3 GB per month to 4.5 GB per month would prevent the provision of affordable service, the Bureau "decline[d] to fill that gap with speculation." *Id.* at ¶ 20.

National Lifeline did not seek Commission review of the Bureau's decision. Nor did Movants seek a stay of the *2020 Waiver Order* from the agency, as Rule 18 of the Federal Rules of Appellate Procedure would ordinarily require. *See* Motion at 1 & n.2. Instead, on November 19, Movants filed a petition for mandamus and an emergency motion for stay of the *2020 Waiver Order* with this Court.

ARGUMENT

Movants are not entitled to the extraordinary remedy of a stay unless they demonstrate that (1) they will likely prevail on the merits, (2) they or their members will suffer irreparable harm without a stay, (3) a stay will not harm other

parties, and (4) a stay will serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *see also Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985) (requirements for a stay pending appeal apply to motions for emergency relief under the All Writs Act, 28 U.S.C. § 1651). The final two factors "merge" where, as here, "the Government is the opposing party." *Nken*, 556 U.S. at 435. Movants fail to satisfy this demanding standard.

I. MOVANTS HAVE NOT SHOWN THEY ARE LIKELY TO SUCCEED ON THE MERITS

Movants are unlikely to succeed on the merits of their claim that the increase of the Lifeline minimum broadband data standard from 3 GB per month to 4.5 GB per month was unjustified. As the Bureau explained, the increase struck a reasonable balance between the goals of ensuring that robust Lifeline services remain accessible, and that they remain affordable to subscribers. The moderate increase, far less than the 2016 Order's formula would have imposed, ensures that Lifeline subscribers are not left behind with a second-class service at a time when broadband data use is increasing, while at the same time protecting against the potential disruption of Lifeline services presented by the more dramatic scheduled increase. Movants' claims that increasing the minimum standard to 4.5 GB per month would render Lifeline service unaffordable, or require the imposition of a co-pay on subscribers, are based on speculation and conclusory statements that did

not pan out in 2019. They are further belied by one large Lifeline provider's commitment to provide just such a service for the next year.

As this Court has recognized, the FCC has "broad discretion" when balancing statutory goals, including those underlying the universal service programs. *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009). "A regulatory decision in which the Commission must balance competing goals is therefore valid if the agency can show that its resolution 'reasonably advances at least one of those objectives and [that] its decisionmaking process was regular.'" *US Airwaves, Inc. v. FCC*, 232 F.3d 227, 234 (D.C. Cir. 2000) (quoting *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999)). Contrary to Movants' contention, the *2020 Waiver Order* expressly balanced the Lifeline program's goals of "access and affordability." Motion at 7.[2]

In permitting a limited increase in the Lifeline broadband data minimum service standard from 3 GB per month to 4.5 GB per month, the Bureau explained that it sought to ensure that Lifeline subscribers "obtain the type of robust service which is essential to participate in today's society." *2020 Waiver Order* ¶ 12

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[2] At various places in its Motion, Movants criticize the Commission's *2016 Order* and the formula for calculating minimum service standards adopted in that order. *See* Motion at 7, 10-12. But the *2016 Order*'s formula is irrelevant to the 4.5 GB standard they seek to stay here, since the Bureau waived application of the formula in the *2020 Waiver Order*.

(quoting *2016 Waiver Order* ¶ 69). This is in line with the statute's definition of universal service as "an evolving level of service," *2020 Waiver Order* ¶ 13 (citing 47 U.S.C. § 254(c)(1)), as well as its concern with ensuring "quality services" are available, 47 U.S.C. § 254(b)(1), and that Lifeline subscribers "have access" to "reasonably comparable" communications services, "including advanced telecommunications and information services," 47 U.S.C. § 254(b)(3). *See 2020 Waiver Order* ¶ 13 ("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").

Indeed, the Bureau explained, the need for robust Lifeline service is "[i]f anything" "even greater today as the ongoing COVID-19 health and economic crisis impacts the needs of low-income Americans for quality communications services." *2020 Waiver Order* ¶ 12. "The pandemic," the Bureau observed, "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, and social events taking place largely online." *Id.*[3]

To be sure, the Bureau (as the Commission had in 2019) recognized that the "dramatic increase" in the minimum service standard that would result from the *2016 Order*'s formula could threaten the "affordability of Lifeline services." *2020 Waiver Order* ¶ 10. Balancing the relevant considerations, the Bureau found 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." *Id.* ¶ 12. The Bureau found that an increase to 4.5 GB per month "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

[3] Movants contend that the Bureau's decision to not freeze the minimum service standard is inconsistent with actions the Commission has taken to waive other Lifeline rules during the pandemic. Motion at 14-16. But unlike the requirements for recertification, reverification, or de-enrollment, the importance of access to robust broadband service during the pandemic weighed decidedly in favor of a modest increase in minimum service standards, as the Bureau explained. *2020 Waiver Order* ¶ 12.

service while maintaining a service that is affordable for low-income consumers." *Id*. ¶ 15.

Movants contend that "the FCC ignores record evidence demonstrating that no other carrier can profitably provide more than 3 GB per month for a price covered by Lifeline's $9.25 reimbursement," and "that Lifeline providers would be forced to impose co-pays on low-income consumers in response to any [minimum service standard] increase." Motion at 9. That is incorrect. The Bureau expressly considered and rejected the claims by National Lifeline and other commenters "that an increase to 4.5 GB/month would risk making Lifeline service unaffordable for providers or many current subscribers," finding no "substantial evidence" to support those contentions. *2020 Waiver Order* ¶ 16.[4]

Movants point to evidence that 4-5 GB mobile data plans today retail for $25-$40 per month. Motion at 9. But as the Bureau noted (¶ 16), the Commission in 2019 rejected reliance on "retail pricing data" to support provider claims that increasing the minimum service standard would render Lifeline service

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[4] Movants contend that the Bureau failed to acknowledge or explain a "fundamental policy reversal" in requiring Lifeline providers to impose co-pays on subscribers. Motion at 12-14. But in doing so, it misdescribes the *2020 Waiver Order*. The fact is the Bureau determined that there was no clear evidence that the limited increase in the broadband minimum service standard would result in the imposition of co-pays; there was accordingly no need to justify a requirement that it had not imposed.

unaffordable or require the imposition of a co-pay on subscribers. At that time, Lifeline providers offered zero-copay plans that met the then-minimum standard of 2 GB, even though the retail price of 2 GB plans was about $20 – double the $9.25 subsidy. *See 2019 Waiver Order* ¶ 10 n. 24. As the Commission observed, "if [retail] prices directly translated into costs, the free offerings of wireless resellers would already not be free, and yet they are." *Id*. In light of this experience, it was reasonable for the Bureau to refuse to credit claims of infeasibility on the basis of retail rates alone. This Court has similarly rejected providers' claims that changes to universal support programs will undermine service absent "*cost* data showing [providers] would, in fact, have to leave customers without service as a result of the" change. *Rural Cellular Ass'n*, 588 F.3d at 1104 (emphasis added). And the fact that the Lifeline program was "designed as a discount off of retail services" (Motion at 9) does not mandate the use of retail pricing data, because it is the costs of satisfying the minimum service standard that determine its affordability.

Movants claim that Lifeline providers submitted "record evidence on costs," which showed "that their network costs alone to provide 4.5 GB would be significantly more than the $9.25 reimbursement and that the actual costs of providing a bundle of voice, text and 4.5 GB would exceed $9.25." Motion at 10. But in support, they cite a letter containing those bare conclusions, devoid of financial or other supporting detail. *See id.* (citing Att. T at 3). In any event, as the

Bureau pointed out, one large Lifeline provider, T-Mobile, had informed the Commission that "it was willing to offer a Lifeline service plan at 4.5 GB/month with no end user recurring charge" until the end of November 2021. *2020 Waiver Order* ¶ 16. Whether or not T-Mobile's commitment "cover[s] its wireless reseller wholesale partners—such as [National Lifeline's] members," Motion at 8, it provides record evidence that it is possible for a Lifeline provider to offer a service plan without a co-pay that complies with the 4.5 GB per month standard.

Moreover, the Bureau had good reason to be skeptical of arguments that a modest increase in the minimum service standard would render service unaffordable or require providers to impose a co-pay. As it explained, those arguments "parallel" those the Commission rejected in the *2019 Waiver Order* and which later proved "false." *2020 Waiver Order* ¶ 18. In the wake of the 2019 increase, commenters pointed to no instance "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)." *Id*. National Lifeline claims (Motion at 22) that it offered an example of a provider in Oklahoma that began charging a co-pay as a result of minimum service standards, but that provider began charging a co-pay after it lost an enhanced Tribal subsidy of $25 not at issue here. *See* Att. Z at 4.

In the end, in the absence of "clear data" to the contrary, the Bureau reasonably remained "unconvinced that the Lifeline marketplace does not follow the broader telecommunications marketplace trend of decreasing consumer prices over time," which would itself "indicate the [Lifeline providers] could support a moderate increase in minimum usage allowance for Lifeline consumers." *2020 Waiver Order* ¶ 17. As this Court has recognized, it has only a "limited" role in overseeing such reasonable "predictive judgments" about the effect of changes in the universal service program. *See, e.g.*, *Rural Cellular Ass'n*, 588 F.3d at 1105.[5]

II. MOVANTS HAVE NOT SHOWN IRREPARABLE HARM

Apart from failing to demonstrate that they are likely to succeed on the merits of their challenge to the 2020 Waiver Order, Movants have not met the "high standard" to show irreparable injury if that order is not stayed. Specifically, movants have not shown that any injury would be "certain and great," or "of such imminence that there is a clear and present need" for relief. *Mexichem Specialty*

[5] Movants also complain that the Commission erred in "setting the [*2016 Order*'s minimum service standards] in motion" before it issued its report on the state of the Lifeline marketplace, scheduled for June 30, 2021. Motion at 16-17. But that criticism of the *2016 Order* is beside the point in these stay proceedings, which concern the Bureau's action on National Lifeline's petition to waive the minimum service standards on the current record before the Commission.

Resins, Inc. v. EPA, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)).

Movants first argue that National Lifeline's members and Assist will suffer reduced revenue and increased customer service costs responding to Lifeline subscribers whose plans they will be forced to change. Motion at 19-20. But these "ordinary compliance costs" do not establish irreparable harm. *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005); *see Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir.1980) (costs including administrative and staffing costs and lost revenue do not constitute irreparable injury because "injury resulting from attempted compliance with government regulation ordinarily is not irreparable harm"). Even if customer service costs could constitute irreparable harm, Movants do not establish that these costs are so "great" as to justify the extraordinary relief of a stay. *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *cf. Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough").

Movants also contend that the increase in the minimum service standard to 4.5 GB per month "will impose irreversible and non-recoverable revenue and customers losses for [National Lifeline] members and force them to cease providing federal Lifeline services within one year." Motion at 18. But as we

have explained, the Bureau reasonably found that that there was no clear evidence that such injury would result from the modest increase it adopted, and considerable reason to doubt Lifeline providers' claims. *2020 Waiver Order* ¶¶ 16-18; *see Stay Denial Order* ¶¶ 15-18. Movants' renewed contentions, which are bereft of cost data, are of "no value" without "proof." *Wisconsin Gas Co.*, 758 F.2d at 674; *see Rural Cellular Ass'n*, 588 F.3d at 1104 (rejecting similar allegations absent cost data). Such speculation cannot satisfy the "high standard for irreparable injury." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

III. A STAY WOULD HARM LIFELINE CUSTOMERS AND THE PUBLIC INTEREST

A stay of the *2020 Waiver Order*'s increase in the broadband minimum service standard would also harm Lifeline customers and the public interest. As the Commission has recognized, providing low-income consumers with access to broadband services "has positive effects on the nation's job base, economic growth, and standard of living" by making it easier for them to find jobs, obtain access to cheaper goods, and communicate with government at all levels. *2016 Order* ¶ 21. In addition, "broadband is an essential tool for completing homework . . . and interacting with healthcare providers." *Id.* ¶ 22. As the Bureau explained, the need for Lifeline customers to have access to robust and evolving level of communications services is particularly high today, as COVID-19 has "increased reliance on broadband nationwide," and as "health care, education, work,

disabilities access, public safety, and social events" have largely moved online. *2020 Waiver Order* ¶ 12. A stay of the 4.5 GB minimum data allowance would limit low-income customers' access to data "during a time when they need that service more than ever," *id*., and "risk leaving low-income Americans behind with second-class service at a time when broadband usage is growing more essential by the day," *Stay Denial Order* ¶ 25.

Movants' argument to the contrary again rests on the unsupported claim that the increase in the standard will require Lifeline providers to impose co-pays that would deter low-income consumers from subscribing to Lifeline services. Motion at 21. Crediting that claim would simply serve to stagnate Lifeline offerings and thereby undermine Congress's goal of providing a level of evolving services to Lifeline subscribers comparable to those available to non-Lifeline households. *See* 47 U.S.C. § 254(c)(1)(B). It would likewise disserve the interests of Lifeline subscribers and the public.

CONCLUSION

The motion for a stay should be denied.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I, Rachel Proctor May, hereby certify that on November 24, 2020, I filed the foregoing Opposition of Federal Communications Commission to Emergency Motion for Stay with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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