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

In the Matter of	)	
	)	
American Broadband & Telecommunications Company	)	File No.: EB-IHD-17-00023554
	)	NAL/Acct. No.: 201932080001
	)	
Jeffrey S. Ansted	)	
	)	
	)	

ORDER ON RECONSIDERATION

Adopted: April 8, 2020 **Released: April 13, 2020**

By the Commission: Commissioner Starks issuing a statement.

I. INTRODUCTION

1. In this Order, we affirm our decision that most of the details of American Broadband's apparent violations of the Commission's rules governing the federal Lifeline program, which resulted in millions of dollars of improper payments, should be made public.

2. On August 26, 2016, American Broadband & Telecommunications Company (American Broadband), doing business as American Assistance, orally notified the Commission's Wireline Competition Bureau (WCB) that as a result of an internal review, it determined that it had received overpayments from the Universal Service Fund's Lifeline program.[1] In a September 16, 2016, letter to WCB, American Broadband provided further details, including the amount of the overpayments, and sought approval for a repayment plan.[2] Over the next year, it provided yet more details and responded to questions from WCB, USAC and the Commission's Enforcement Bureau, the latter of which had issued a Letter of Inquiry on April 25, 2017.[3] With respect to each of its written responses, American Broadband

[1] *See* Letter from Kelley Drye & Warren LLP, Counsel for American Broadband, to Ryan Palmer, Telecommunications Access Policy Division, FCC (Sept. 16, 2016) (referencing the August 26, 2016 conversation).

[2] *Id.* American Broadband stated that after its owner, Jeffrey Ansted, read letters from then-Commissioner Pai to the Universal Service Administrative Company (USAC), the administrator of the federal universal service programs including the Lifeline program, that detailed what then-Commissioner Pai characterized as fraud and abuse in the Lifeline program, American Broadband began a review of its subscriber lists in early June 2016. Letter of Inquiry Response, from Kelley Drye & Warren LLP, Counsel for American Broadband, to USF Strike Force, FCC, at 18 (May 25, 2017) (May 25 LOI Response).

[3] *See* Letter from Kelley Drye & Warren LLP, Counsel for American Broadband & Telecommunications Company, to Ryan Palmer, Telecommunications Access Policy Division, FCC (Sept. 23, 2016); Letter from John Heitmann, Kelley Drye & Warren LLP, Counsel for American Broadband, to Michelle Garber, Vice President, USAC (Jan. 19, 2017); e-mail from John Heitmann, Kelley Drye & Warren LLP, Counsel for American Broadband, to Michelle Garber, Vice President, Lifeline Division, USAC (Mar. 26, 2017, 7:04 p.m.); May 25 LOI Response. American Broadband made several subsequent submissions or clarifications in response to the Letter of Inquiry. *See American Broadband & Telecommunications Company and Jeffrey S. Ansted*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 10308, 10322, para. 35 n.108 (2018) (*NAL*).

requested, pursuant to section 0.459 of the Commission's rules, that all of the materials it submitted be withheld from routine public inspection.

3. On October 25, 2018, we issued a Notice of Apparent Liability for Forfeiture and Order. We stated that it appeared that American Broadband had violated sections 54.405(e)(1)-(3), 54.407(c)(2), 54.407(c)(2), and 54.410(a) of the Commission's rules, and that it apparently improperly received millions of dollars of Lifeline support from the Universal Service Fund.[4] Our decision relied on materials submitted by American Broadband, many of which were quoted in the *NAL*. Because American Broadband had sought confidential treatment for its responses, however, significant portions of the text of the *NAL* were redacted and not made available to the general public.[5]

4. In the order portion of the *NAL*, we denied the majority of American Broadband's requests that all of its materials be withheld from the public,[6] but because American Broadband had the right to seek reconsideration and then to appeal, we did not make the information public. First, we found that American Broadband failed to meet a procedural requirement in our confidentiality rules by not identifying the particular information for which it was seeking confidential treatment.[7] Second, we found that American Broadband failed to make the substantive showing required under our confidentiality rules, because it did not demonstrate that the information at issue would qualify as "confidential" "commercial or financial information" that would generally exempt it from the disclosure requirements under the Freedom of Information Act (FOIA).[8] Specifically, consistent with the governing standard at the time, we found that American Broadband had not shown that release of the information would cause it substantial competitive harm.[9] Third, we found that even if American Broadband had met the procedural and substantive requirements of the confidentiality rules, we had the authority, after a balancing of the public and private interests at issue, to release information that would otherwise be withheld from the public.[10] Specifically, we found that revealing the details of the allegations against American Broadband set forth in the *NAL* would serve the public interest by furthering transparency in the Lifeline program, and that this public interest in disclosure outweighed American Broadband's private and competitive interests in keeping the information confidential.[11]

5. American Broadband filed a Petition for Reconsideration on November 14, 2018. It again did not identify with particularity the information set forth in the *NAL* for which it sought confidential treatment, arguing that doing so would be too burdensome, but asserted that either all or a "significant portion" of the materials it had submitted during the investigation should be afforded confidential treatment (and it did not identify which materials fell within that category).[12] It then argued

[4] *NAL*, 33 FCC Rcd at 10310, para. 2.

[5] *See* 47 CFR § 0.459(d)(3) (Commission may defer acting on request for confidentiality and will treat the information as confidential until it acts on the request and all subsequent appeal and stay proceedings have been exhausted in accordance with the rules).

[6] *NAL*, 33 FCC Rcd at 10364-66.

[7] *See* 47 CFR § 0.459(b)(1) (providing that confidentiality requests must "identif[y] . . .the specific information for which confidential treatment is sought.").

[8] *See* 47 CFR § 0.459(d)(2) (providing that confidentiality request will be granted if "it demonstrates by a preponderance of evidence that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552").

[9] *NAL*, 33 FCC Rcd at 10365, paras. 181, 183.

[10] *Id.* at para. 184.

[11] *Id.*

[12] Petition for Reconsideration of American Broadband & Telecommunications Company (filed Nov. 14, 2018) (Petition for Reconsideration) at 4 (arguing that the Order placed an undue burden on it), 5 (arguing that all requests should be afforded protection), 6 (arguing that a significant portion of that information contains trade secrets).

that the Commission's balancing test analysis did not appropriately consider the private interests that would be harmed by public disclosure of its proprietary materials.[13] Finally, it argued that the Commission had improperly changed its procedure for deciding confidentiality requests and that imposing new standards required a rulemaking.[14]

II. DISCUSSION

6. Under our rules, a request for confidentiality may be granted only if the submitter has demonstrated by a preponderance of the evidence that withholding the information from the public is consistent with the FOIA.[15] The Commission is generally required by the FOIA and our regulations to make available to the public information in our possession,[16] subject to certain exemptions.[17] Even where an exemption applies, however, the Commission may release exempted information to the public if, after balancing the public and private interests at stake, it finds that it would be in the public interest to do so.[18]

7. At the outset, we note that a recent Supreme Court decision overrules our conclusion in the *NAL* that the information submitted by American Broadband was subject to mandatory disclosure under the FOIA. One of the bases for our decision in the *NAL* to make public the details of the allegations against American Broadband was that American Broadband had not shown that the information it had submitted met the definition of confidential business or financial information that could be withheld from mandatory release under the FOIA—specifically, that it had not shown that it would suffer "substantial competitive harm" if the information were released.[19] However, on June 24, 2019, the Supreme Court in *Food Marketing Institute v. Argus Leader Media*,[20] overturning longstanding lower court precedent, held that the definition of "confidential" under Exemption 4 of the FOIA did not include a requirement that release of the information would result in substantial harm to the competitive position of the entity submitting the information.[21] The Court also held that information qualifies as "confidential" under Exemption 4 "[a]t least where commercial or financial information is both customarily and actually

[13] *Id.* at 9.

[14] *Id.* at 12-14.

[15] *See* 47 CFR § 0.459(d)(2).

[16] *See* 5 U.S.C. § 552(a); 47 CFR §§ 0.453, 0.460; *Chrysler v. Brown*, 441 U.S. 281, 292-93 (1979); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd 12406, 12408, para. 3 (1996) (*Confidential Information Policy Notice*).

[17] 5 U.S.C. §§ 552(b); 47 CFR § 0.457. However, the Commission may not withhold from public inspection any information that is in the public domain. *Davis v. DOJ*, 968 F.2d 1276, 1279 (D.C. Cir. 1992); *Lifeline and Link Up Reform and Modernization*, Second Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7911 (2015) (*Nexus MO&O*).

[18] *See Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Fata Program, Report and Order and Second Further Notice of Proposed Rulemaking*, 34 FCC Rcd 7505, 7522-23 para. 40 & n. 100 (2019) (noting long-established authority to release even otherwise confidential information after a balancing of the public and private interests at stake); 47 U.S.C. § 154(j) ("The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and the ends of justice."); *Schreiber v. FCC*, 381 U.S. 279, 291-92 (1965); *Chrysler v. Brown*, 441 U.S. at 292-94; 47 CFR § 0.461(f)(4); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24818, para. 2 (1998) (*Confidential Information Policy Statement)*; *Confidential Information Policy Notice*, 11 FCC Rcd at 12414-15, 12417-18, paras. 15, 21.

[19] *NAL*, 33 FCC Rcd at 10365, para. 183.

[20] No. 18-481, 139 S. Ct. 2356 (2019).

[21] *Id.* at 2364-65.

treated as private by its owner and provided to the government under an assurance of privacy."[22] Accordingly, we no longer find that the information for which American Broadband seeks confidential treatment is subject to mandatory release under the FOIA.

8. Exemption 4 nonetheless still requires that information be "confidential" to be withheld from public release. Here, we note that some of the information set forth in the *NAL* is publicly available through other means. In particular, the number of Lifeline subscribers a company serves and the number that are de-enrolled each month are publicly filed on FCC Form 555. This information is also readily ascertainable from other public sources.[23] American Broadband states in its Petition for Reconsideration that it did not make, and did not intend to make, any claim for confidentiality for the data contained in its public Form 555 filings.[24] Accordingly, we affirm our earlier decision to deny American Broadband's confidentiality requests with respect to this material.

9. As an independent reason for deciding to release this information and most other details of American Broadband's alleged violations, we also concluded in the *NAL* that making this information public would serve the public interest by furthering transparency in, and thereby increasing public confidence in, the federal Lifeline program.[25] Nothing in the Supreme Court's decision in *Food Marketing Institute* affects our authority to release confidential information when, after balancing the factors favoring disclosure and non-disclosure, we find it in the public interest to do so. We therefore turn to that issue now: whether, with respect to the materials for which American Broadband sought confidential treatment that the Commission concluded should be revealed in the public version of the *NAL*, and taking into account all of the facts, the considerations favoring disclosure outweigh those favoring non-disclosure such that disclosure is in the public interest.

10. We start by examining the considerations favoring disclosure. Here, where regulatees are alleged to have violated our rules, we find there is a public interest in disclosing the details of our decisions so that the public can better follow and understand our reasoning. This is all the more true when the issue involves monies from the public fisc. As the Commission had previously stated, the public has a strong interest in ensuring that Lifeline funds are properly allocated, and the Commission has taken many steps to protect against waste, fraud, and abuse in the Universal Service Fund's Lifeline program.[26] Those steps both bolster public confidence in the Lifeline program and increase accountability in the program.[27] There is therefore a strong public interest in ensuring, and in the public understanding the extent to which, providers of Lifeline services are complying with the Commission's rules.[28] As with making publicly available the detailed reports that the Commission requires Lifeline providers to file, we find that generally making publicly available the factual information underlying our notices and enforcement orders regarding universal service programs is an essential safeguard in protecting those programs from waste, fraud, and abuse.[29] We also find there is a strong public interest in having other Lifeline providers know the details of our decisions—both the evidence and our reasoning—so that they

[22] *Id.* at 2366. It did not reach, however, the issue of whether government assurances of privacy were necessary. *Id.* at 2363.

[23] *Nexus MO&O,* 30 FCC Rcd at 7911-12.

[24] Petition for Reconsideration at 11 n. 47.

[25] *NAL,* 33 FCC Rcd at 10366, para. 184.

[26] *See generally Lifeline and Link Up Reform and Modernization et al*., WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

[27] *Lifeline Second NPRM*, 30 FCC Rcd at 7821, para. 3.

[28] *Nexus MO&O*, 30 FCC Rcd at 7913, para. 283.

[29] *Cf. id.*

will better be able to engage in proper conduct.[30] And the public's confidence in our decisions is significantly enhanced when it can see the facts on which they are based and the Commission's full reasoning.

11. We turn next to the considerations favoring non-disclosure. Here, we find that any harm to American Broadband that might result from making public most of the information originally redacted from the *NAL* is slight.[31] Once a company or person is identified as an alleged wrongdoer—and American Broadband does not argue that its identity or the nature of the allegations against it should be kept confidential—any *additional* reputational harm that would result from publishing the details of the alleged wrongdoing would ordinarily be slight. Based on the circumstances here, we hold that reputational harms that might arise from the public disclosure of allegations of violations of the Commission's rules or other wrongdoing are less significant than competitive harms that might arise from the disclosure to a company's competitors of proprietary information or trade secrets (such as business plans, customer lists, or detailed cost or engineering data).

12. Courts of appeals have reached analogous conclusions, finding allegations of reputational harm insufficient to defeat the public's right of access to court records.[32] Similarly, the federal statute that strongly protects the privacy and confidentiality of taxpayer information nonetheless provides that such information may be released in an administrative or judicial proceeding where the taxpayer's tax liability is at issue and the information is directly related to the resolution of an issue in that proceeding.[33] The facts here present analogous circumstances: American Broadband's compliance with our regulations is at issue and the information originally redacted from the *NAL* is directly related to those alleged violations. We therefore conclude that, based on these circumstances, the public's interest in knowing the details of the Commission's investigation of alleged fraud in a government program outweigh the alleged wrongdoer's interests in maintaining the confidentiality of those details.

13. Applying this reasoning to the details originally redacted from the *NAL*, we find that American Broadband has not shown that the public release of the following information would cause it competitive or any other substantial harm and that release would at most cause a small amount of additional "customer disgruntlement" or reputational harm: the characterization of the enrollment activities at issue made by American Broadband staff (but not the details of that enrollment strategy); the name of the bank where American Broadband has accounts; the names of American Broadband's senior officers; the names of other American Broadband employees who either engaged in allegedly fraudulent activities, supervised those employees, or investigated allegations of fraud; the steps American Broadband took in investigating activities it suspected were fraudulent; discussions about how fraudulent activities might have occurred; the general terms of American Broadband's agreements with the people or

[30] While the underlying order here is a Notice of Apparent Liability and not a forfeiture order, and thus does not finally adjudicate American Broadband's liability, it nonetheless sets forth the Commission's reasoning and application of that reasoning to a set of alleged facts. We believe it is important for other Lifeline providers to understand the actions we believe are permissible and impermissible under our rules. We also note that while American Broadband has filed a response to the *NAL*, the Commission might not issue a forfeiture order in this proceeding, for example, if American Broadband reaches a settlement, and therefore find a strong public interest in releasing the information contained in the underlying *NAL*.

[31] *Food Marketing Institute* does not preclude the Commission from taking into account the severity of different types of potential harms in weighing whether the public interest favors disclosure.

[32] *See Doe v. Public Citizen*, 749 F.3d 246, 269-70 (4th Cir. 2014) (collecting cases) (finding that allegation of reputational harm is not a compelling interest sufficient to defeat public's right to access to court records, previously noting that the public has a presumptive right of access to court decisions).

[33] 26 U.S.C. § 6103(h)(4). We also note that disclosure under section 6103 of the Internal Revenue Code is not limited to final adjudications of liability; rather, the Government may disclose otherwise confidential taxpayer information in the proceedings that determine the liability. Our disclosure of American Broadband's information in this *NAL* is analogous.

companies who sold its service, including the type of compensation (but not including the rate of compensation); the activities American Broadband generally engaged in to ensure the claims it submitted to USAC for Lifeline service were valid, including training; discussions within American Broadband about those activities; and the amounts of funds the president of American Broadband took from the company for personal use and the purposes for which those funds were used. In sum, we hold that any customer disgruntlement or reputational harm that might deter potential customers from doing business with American Broadband, whose agents may have engaged in the activities described in the *NAL*, is far outweighed by the public interest in knowing this information.

14. We also find that while the following information set forth in the *NAL* may be more sensitive than that described in the preceding paragraph, the potential for harm from release of the information is still relatively small, and the public interest in releasing it outweighs the interest American Broadband has in not releasing it: the number of apparently ineligible enrollments and the extent of the allegedly fraudulent activities that occurred at American Broadband; the details of the steps American Broadband took in discovering and attempting to remediate the problems it discovered; and the views of American Broadband's employees regarding these issues. American Broadband broadly argues that its sales, marketing and operational strategies are deserving of protection.[34] While we agree that such information is generally competitively sensitive, American Broadband has not shown, and we fail to see, how knowing the *particular* information revealed in the *NAL* could benefit American Broadband's competitors (beyond allowing them to capitalize on the reputational harm to American Broadband) or how American Broadband otherwise would be substantially harmed by its release.[35] Indeed, given that American Broadband's procedures improperly resulted in enrollment of many ineligible subscriber accounts, which American Broadband admits, we fail to see how American Broadband's competitors could gain by learning these procedures. On the other hand, revealing this information helps make clear the basis for the Commission's decision to issue the NAL. Thus, balancing the public interests in disclosure discussed above against the private interests at stake here, we find that there is a strong public interest in favor of releasing this information that outweighs American Broadband's private interests in not releasing it.[36]

15. Finally, we will continue to redact from the public version of the *NAL* the names of American Broadband's purported customers and the associated addresses. We find that making public the specific names of purported subscribers would add little to the public's understanding of our decision, and that any such interest is outweighed by the purported subscribers' privacy interests. To the extent that these purported subscribers are actual people, none are alleged to have participated in the wrongdoing alleged against American Broadband. We will, however, make public the photographs of houses where multiple subscribers supposedly lived because there is no indication that they are anything but photographs of nondescript houses. There is no information tying the pictures to any individuals and the

[34] Petition for Reconsideration at 7; *id*. at 8 n.32.

[35] The *NAL* does not disclose American Broadband's full customer operations database and records, its contracts and agreements with third-parties, or its non-agent personnel compensation details (except for some details of purchases made by American Broadband's president). *See* Petition for Reconsideration at 7.

[36] *See Nexus MO&O* at paras. 282-84, where the Commission similarly found, after balancing the public and private interests at stake, a strong public interest to support releasing Nexus's Form 555 information used in the Lifeline program. We disagree with American Broadband's contention (Petition for Reconsideration at 10-12) that in performing our balancing we failed to consider appropriately American Broadband's interests and that it was a "material error" to rely on *Nexus* as precedent. Specifically, we reject American Broadband's assertion that its information should not be released because, unlike the information at issue in *Nexus,* American Broadband's information was not "easily discernible from other publicly available information." In *Nexus*, the Commission relied on two reasons to release the information. The first was that the information was already effectively public. But the second—the Commission's balancing of the public and private interests and its determination that the public interest in release outweighed the resulting competitive harm to the companies—was "an independent reason" apart from the first determination. *Id.* at para. 282. American Broadband's argument is therefore unavailing.

photographs are evidence of the apparent absurdity of many of the allegedly fraudulent claims.[37] We will also continue to redact the prices of phones, as well as redacting the specific salaries, commissions, and other compensation paid to sales agents.[38]

16. *Procedural arguments.* We reject American Broadband's various procedural arguments. American Broadband first argues in its Petition for Reconsideration that the *NAL* is unclear as to which information the *NAL* was proposing to release to the public, and that American Broadband therefore could not meaningfully respond.[39] We disagree. Although we found generally that American Broadband did not follow our rules when it requested confidential treatment for the information it submitted, the *NAL* is clear that we proposed to release only information that both fell within the categories of information that we found should not be withheld from the public and was set forth in the *NAL*. That information is a small subset of the information submitted by American Broadband in response to the various investigations and information requests.

17. American Broadband next argues that, contrary to what we held in the order portion of the *NAL*, it was not required to follow the provisions of section 0.459 of our rules for seeking confidential treatment of the materials it submitted because those materials are treated as confidential by section 0.457(d)(iii) (information submitted in connection with audits, investigations and examination of records pursuant to 47 U.S.C. § 220).[40] American Broadband is incorrect. The materials listed in section 0.457(d)(iii) are those submitted in response to a Commission audit of a telecommunications carrier and any associated investigation and examination,[41] not materials submitted in response to a Commission investigation as to whether an entity subject to our jurisdiction violated our rules.[42] But even were American Broadband correct that its information is presumptively confidential pursuant to section 0.457, its argument would be unavailing. Section 0.461 provides the procedures and standards by which the Commission may release to the public otherwise confidential information. It applies equally to information submitted under section 0.457 (presumptively confidential information) and information submitted under section 0.459 (information requested to be kept confidential).[43] With regard to both categories of information, if a request is made to release the information to the public, or the Commission proposes to release it on its own motion, the submitter is required to specify all grounds for withholding the information from the public.[44] American Broadband is therefore required to justify its request now in its petition for reconsideration of the *NAL*.

18. American Broadband finally argues that by requiring it to justify its request for confidential treatment with respect to each individual piece of information at the time of submission, we

[37] Many of the homes with multiple subscriber enrollments, including the examples attached as photographs to the *NAL*, are single-family houses where American Broadband enrolled hundreds of subscribers, far more than could actually live there. *NAL,* 33 FCC Rcd at 10330-32, para. 71, Table 2; *see also* Appendix D. A cursory check of these addresses would have revealed this fact.

[38] Because we originally stated that we would not release the amount of "fines" that American Broadband imposed on sales agents and the number of valid applications an agent needed to submit to remain in "active" status, we will follow that decision here, although, for the reasons expressed in paragraph 14 of the text, the public interest in releasing this information likely outweighs any competitive harm to American Broadband that might result.

[39] Petition for Reconsideration at 2-4.

[40] *Id.* at 4-6.

[41] *See Confidential Information Policy Statement*, 13 FCC Rcd at 24846-49, paras. 52-56.

[42] *See Confidential Information Policy Statement*, 13 FCC Rcd at 24845-50, paras. 49-58 (discussing under separate headings, "Formal Complaints," "Audits," and "Other Proceedings," including under "Other Proceedings" those proceedings involving universal service support).

[43] 47 CFR § 0.461(c), (d)(3).

[44] 47 CFR § 0.461(d)(3).

are undermining the objective of the confidentiality rules to ensure that we receive information in a timely manner.[45] We disagree. When re-affirming those rules in 1998, the Commission rejected the argument that being required to substantiate a confidentiality request at the time it is made is unduly burdensome.[46] Therefore, contrary to American Broadband's claim, the *NAL* did not depart from Commission practice and we are not required to issue a Notice of Proposed Rulemaking before requiring that American Broadband provide us with a justification for each piece of information it wishes to keep confidential. Further, in requesting confidential treatment, American Broadband did not even attempt to describe the information for which it sought confidential treatment by, for example, describing the particular categories of such information pursuant to section 0.459(b) of the Commission's rules.[47] Instead, American Broadband largely parroted the rules and made broad assertions as to all of the information it submitted. In any event, American Broadband has again been given an opportunity to make its showing *now*, in its petition for reconsideration of the *NAL*. With this second opportunity, American Broadband has the added benefit of knowing exactly which information the Commission intends to release—and so the opportunity to tailor its arguments accordingly. It has failed to do so. Its arguments that it could not make the required showings are therefore, again, unavailing.[48]

19. Attached as a confidential Appendix to this Order on Reconsideration is a version of the *NAL* in which the information that the Commission finds should continue to be withheld from the public is highlighted in yellow and the information that the Commission finds should be released to the public is highlighted in blue. Pursuant to section 0.459(g) of our rules, we will not make the Appendix available to the public for ten (10) business days, to allow American Broadband to seek a judicial stay.[49]

[45] Petition for Reconsideration at 12-14.

[46] *Confidential Information Policy Statement*, 13 FCC Rcd at 24827, para. 14.

[47] 47 CFR § 0.459(b).

[48] With regard to American Broadband's argument that "modern" FCC practice allows parties to assert blanket confidentiality requests, Petition for Reconsideration at 13, American Broadband is simply incorrect. There is no informal practice that allows parties to avoid substantiating their confidentiality requests when challenged, nor has American Broadband cited any. In large transaction proceedings, where parties have been required to submit hundreds of thousands of pages of documents, the Commission has often adopted protective orders that allow submitting parties *initially* to designate information as confidential without further explanation, consistent with our rules, which provide that the Commission may use abbreviated means, such as a checkbox, for indicating that a submitter of a record seeks confidential treatment. But those protective orders and our rules specifically require that if there is a request to make the information public or the confidentiality is challenged, the submitter will be requested to justify the confidential treatment of the material. *See* 47 CFR 0.459(a)(4); *see also Connect America Fund Phase II Auction*, Public Notice, 33 FCC Rcd 1428, 1475, para. 126 (2018) (allowing auction applicants to use check box to request confidential treatment of their financial information, but if request is challenged, requiring applicants to submit a request for confidential treatment that conforms with the requirements of section 0.459 within 10 business days after receiving notice of the challenge). No such abbreviated method was adopted by the Commission in this proceeding. But even if it had been, American Broadband would have been excused from making a proper showing only in its initial filings and would not be, and is not, excused from making that showing now.

[49] *See* 47 CFR §§ 0.459(e), (g).

III. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 405, and section 0.459 of the Commission's rules, 47 CFR § 0.459, the Petition for Reconsideration of American Broadband and Telecommunications Company **IS DENIED.**

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF COMMISSIONER GEOFFREY STARKS

Re: *American Broadband & Telecommunications Company, Jeffrey S. Ansted*, File No.: EB-IHD-17-00023554.

For too long, many parties facing investigation by the Commission's Enforcement Bureau have asserted overbroad—and sometimes plainly frivolous—confidentiality claims. These tactics hamstring our ability to vindicate the public interest and deter wrongdoing, and they make it impossible for people outside the Commission to understand the key facts of each case. I am pleased to support this Order on Reconsideration, which makes public important details about American Broadband's apparent violations of our rules governing the Lifeline program.

This is not the first time that I have raised this issue and commended it to the Commission's attention. As I emphasized in my statement on our recent Notices of Apparent Liability regarding apparently improper uses of customer location data by four major wireless carriers, "we must begin resolving such requests [for confidentiality] immediately upon receipt."[1] I will, therefore, continue to encourage the Commission to alert parties to overbroad confidentiality requests as soon as Commission staff review the documents. Resolving these issues efficiently can speed our proceedings and conserve valuable Commission resources. And, for parties that continue to stretch out confidentiality rules, today's Order should be a signal that the Commission will strictly and fairly apply the process for handling confidentiality designations set out in Section 0.459 of our rules.

[1] *See AT&T Inc.*, Notice of Apparent Liability, FCC 20-26, File No.: EB-TCD-18-00027704 (Statement of Commissioner Geoffrey Starks Approving in Part and Dissenting in Part).