

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42

**ORDER ON RECONSIDERATION**

**Adopted: February 3, 2017**

**Released: February 3, 2017**

By the Acting Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) reconsiders the orders designating Spot On Networks LLC (Spot On), Boomerang Wireless LLC (Boomerang), KonaTel Inc. (KonaTel), STS Media, Inc. (FreedomPop), Applied Research Designs, Inc. (AR Designs), Kajeet Inc. (Kajeet), Liberty Cablevision of Puerto Rico, LLC (Liberty), Northland Cable Television, Inc. (Northland Cable), and Wabash Independent Networks, Inc. (WIN) (collectively, Petitioners) as Lifeline Broadband Providers (LBPs).<sup>1</sup> The Bureau sets aside those orders, revokes the LBP designations for those providers, returns those petitions for LBP designation to their status as petitions pending before the Bureau, and removes them from streamlined treatment in light of the considerations discussed below.

**II. BACKGROUND**

2. *2016 Lifeline Modernization Order.* In the *2016 Lifeline Modernization Order*, the Commission established a framework for the Bureau to designate providers as LBPs, eligible to receive Lifeline reimbursement for qualifying broadband Internet access service (BIAS) provided to eligible low-income consumers.<sup>2</sup> A provider seeking designation as an LBP must meet the requirements for designation as established in section 214(e) of the Communications Act (Act) and the accompanying

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<sup>1</sup> *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 17-87 (WCB 2017) (*January LBP Order*); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 16-1325, 31 FCC Rcd 12736 (WCB 2016) (*December LBP Order*). As set forth below, the Bureau also sets aside the *January LBP Order* per its authority under Section 1.113 of the Commission’s rules. See 47 CFR § 1.113.

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4040-68, paras. 217-89 (2016) (*2016 Lifeline Modernization Order*). Unless noted otherwise, all citations to the Lifeline program rules contained in this Order will refer to the rules as amended by the *2016 Lifeline Modernization Order*.

sections of the Commission's rules.<sup>3</sup> Additionally, the Bureau must determine whether designation is in the public interest prior to designating an LBP pursuant to section 214(e)(6).<sup>4</sup>

3. This framework relied on the Commission's authority to designate a common carrier "that is not subject to the jurisdiction of a State commission."<sup>5</sup> The Commission determined that state designations of LBPs would thwart federal universal service goals and broadband competition, and therefore preempted states from designating LBPs.<sup>6</sup>

4. *LBP Designation Orders.* On December 1, 2016, the Bureau conditionally designated Spot On, Boomerang, KonaTel, and FreedomPop as LBPs, eligible to receive Lifeline BIAS support solely in the designated service areas described in each respective petition.<sup>7</sup> On January 18, 2017, the Bureau also conditionally designated AR Designs, Kajeet, Liberty, Northland Cable, and WIN as LBPs, eligible to receive Lifeline BIAS support solely in the designated service areas described in each respective petition.<sup>8</sup>

5. *NTTA Petition for Reconsideration.* On January 3, 2017, the National Tribal Telecommunications Association (NTTA) filed a petition for reconsideration of the *December LBP Order*.<sup>9</sup> NTTA requests the Commission reverse the Bureau's decision to designate the companies in the *December LBP Order*.<sup>10</sup> NTTA argues in part that there is no evidence that the LBPs designated in the December 2016 order complied with their obligation under section 54.202(c) of the Commission's rules to "provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission."<sup>11</sup> Boomerang, KonaTel, and FreedomPop each filed a response to NTTA's petition for reconsideration, arguing that section 54.202(c) of the Commission's rules does not apply to a petition for designation as an LBP.<sup>12</sup>

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<sup>3</sup> See *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4066-67, para. 283-84 (citing 47 U.S.C. § 214(e), 47 CFR §§ 1.2002, 54.201, 54.202); Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards, Public Notice, 31 FCC Rcd 10927 (2016) (*LBP Public Notice*).

<sup>4</sup> See *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4066-67, para. 283-84 (citing 47 U.S.C. § 214, 47 CFR § 54.202).

<sup>5</sup> *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4048, para. 240 (citing 47 U.S.C. § 214(e)(6)).

<sup>6</sup> *Id.* at 4052, para. 249.

<sup>7</sup> See generally *December LBP Order*.

<sup>8</sup> See generally *January LBP Order*.

<sup>9</sup> Petition for Reconsideration of National Tribal Telecommunications Association of the Lifeline Broadband Designation Order, WC Docket No. 09-197, et al. (filed Jan. 3, 2017) (NTTA Reconsideration Petition).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 6-8.

<sup>12</sup> See Response and Opposition of Boomerang Wireless, LLC DBA enTouch Wireless to the Petition for Reconsideration of National Tribal Telecommunications Association, WC Docket No. 09-197, et al. (filed Jan. 19, 2017) (*Boomerang Opposition*); Response and Opposition of KonaTel, Inc. to the Petition for Reconsideration of National Tribal Telecommunications Association, WC Docket No. 09-197, et al. (filed Jan. 19, 2017) (*KonaTel Opposition*); Response and Opposition of STS Media, Inc. DBA FreedomPop to the Petition for Reconsideration of National Tribal Telecommunications Association, WC Docket No. 09-197, et al. (filed Jan. 19, 2017) (*FreedomPop Opposition*).

### III. DISCUSSION

#### A. Reconsideration of the LBP Designation Orders

6. Section 1.106 of the Commission's rules requires a petition for reconsideration to "state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed."<sup>13</sup> Additionally, under section 1.113 of the Commission's rules, "[w]ithin 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion."<sup>14</sup> In considering either a petition for reconsideration or a *sua sponte* reconsideration, the Commission or designated authority may take any action it could take in acting on the original order, including reversing or modifying the original order.<sup>15</sup> For the reasons stated below, we now reconsider and set aside the orders designating AR Designs, Boomerang, FreedomPop, Kajeet, KonaTel, Liberty, Northland Cable, Spot On, and WIN as LBPs, we revoke those providers' LBP designations, and return those providers' petitions for designation as an LBP to their status as petitions pending before the Bureau.

7. *Preventing Waste, Fraud, and Abuse in the Lifeline Program.* We find that reconsidering the above-listed petitions for designation as an LBP would promote program integrity by providing the Bureau with additional time to consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline program. Recent investigations in the Lifeline program raise concerns that substantial waste, fraud, and abuse appears to continue to exist in the program. For example, in December 2016 the Enforcement Bureau entered into a consent decree with Total Call Mobile, in which Total Call Mobile admitted to violating Lifeline program rules to claim reimbursement for duplicate and ineligible consumers and paid a settlement of \$30 million.<sup>16</sup> The Universal Service Administrative Company has also indicated that at least 16 other major Lifeline wireless resellers have used tactics similar to Total Call Mobile's.<sup>17</sup>

8. In light of these indications that significant waste, fraud, and abuse exists in the Lifeline program, the Bureau concludes that reconsidering the *December LBP Order* and *January LBP Order* as part of the actions taken in this order serves the Commission's stated goals of preventing waste, fraud, and abuse by providers receiving Lifeline reimbursements and minimizing the contribution burden on consumers and businesses.<sup>18</sup> The December and January orders erred in finding that expanding the number of designated Lifeline providers to include Lifeline Broadband Providers will combat waste, fraud, and abuse absent further steps or time for the agency to consider measures designed to ensure those providers will comply with the Lifeline program rules.<sup>19</sup> For example, on reconsideration we are persuaded that the Bureau's orders reflect a too-simplistic evaluation of waste, fraud, and abuse concerns.<sup>20</sup> Potential waste, fraud, and abuse through the use of the independent economic household

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<sup>13</sup> 47 CFR § 1.106(d)(1).

<sup>14</sup> 47 CFR § 1.113(a).

<sup>15</sup> 47 CFR §§ 1.106(k)(1), 1.113.

<sup>16</sup> See *Total Call Mobile, Inc.*, Order, 31 FCC Rcd 13204 (EB 2016).

<sup>17</sup> See Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4-5 (July 12, 2016), available at <https://www.fcc.gov/document/commissioner-pai-statement-house-oversight-hearing> (Pai Testimony).

<sup>18</sup> See *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4041, 4111, paras. 223, 405.

<sup>19</sup> See *December LBP Order*, 31 FCC Rcd at 12742, 12743, paras. 21, 23.

<sup>20</sup> Although our experience reveals the potential for an evolving range of conduct that can, intentionally or unintentionally, lead to waste, fraud, and abuse, the Bureau's public interest analysis in that regard focused too narrowly on whether there were "significant enforcement, investigation, or other regulatory finding concerning the

(continued....)

worksheet, identity verification dispute resolution processes, address verification, and discrepancies between reimbursement requests and subscriber listings in the National Lifeline Accountability Database (NLAD) raise concerns that the above-listed petitions fail to resolve.<sup>21</sup> We therefore reconsider the December and January Lifeline orders, return the LBP designation petitions to pending status and decline to designate the providers listed in those orders until the Bureau has additional time to assess measures that might be necessary to prevent further waste, fraud, and abuse in the program.<sup>22</sup>

9. *Section 54.202(c) Obligations for Petitions for LBP Designation.* In addition, we find that the record indicates that certain providers seeking designation as an LBP failed to fulfill their obligations under section 54.202(c) of the Commission's rules. In its petition for reconsideration, NTTA argues that the providers that received designation as LBPs in the *December LBP Order* failed to provide copies of their petitions for designation to the affected Tribal government and Tribal regulatory authority, as required under section 54.202(c) of the Commission's rules.<sup>23</sup> NTTA argues the providers that received LBP designation in the *December LBP Order* did not provide evidence they complied with section 54.202(c) and, as a result, that order should be reversed.<sup>24</sup> NTTA also request clarification that section 54.202(c) applies to LBP applicants.<sup>25</sup>

10. Three of the providers that received LBP designation in the *December LBP Order*, Boomerang, FreedomPop, and KonaTel, oppose NTTA's petition for reconsideration.<sup>26</sup> The providers argue NTTA failed to present evidence of material error or omission that would warrant reconsideration.<sup>27</sup> Additionally, the providers argue that section 54.202(d) of the Commission's rules does not incorporate the requirements of section 54.202(c).<sup>28</sup>

11. Section 54.202(c) states that a carrier seeking designation under section 214(e)(6) of the Act for "any part of Tribal lands shall provide a copy of its petition to the affected tribal government ... at the time it files its petition with the [FCC]."<sup>29</sup> Section 54.202(c) applies to petitions for designation as an LBP because those designations are made by the Commission pursuant to section 214(e)(6) of the Act. The Commission adopted this requirement to ensure that "the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments."<sup>30</sup> The failure of the petitioning providers to comply with this requirement undercut such coordination and analysis thereby

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named Petitioners' compliance with applicable laws, rules, or other regulatory guidance." *December LBP Order*, 31 FCC Rcd at 12743, para. 23; *January LBP Order*, at para. 25.

<sup>21</sup> See Pai Testimony at 4-5.

<sup>22</sup> Upon reconsidering prior action, the Commission can, among other things, "[o]rder such other proceedings as may be necessary or appropriate." 47 CFR § 1.106(k)(1)(iii). Returning the LBP designation petitions to pending status for consideration of additional issues as identified here and below—and removing them from streamlined treatment to provide sufficient time for such analysis—is consistent with that authority.

<sup>23</sup> NTTA Reconsideration Petition, at 6-7.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Boomerang Opposition*, at 2; *KonaTel Opposition*, at 2; *FreedomPop Opposition*, at 2.

<sup>27</sup> *Boomerang Opposition*, at 3; *KonaTel Opposition*, at 3; *FreedomPop Opposition*, at 3.

<sup>28</sup> *Boomerang Opposition*, at 6-7; *KonaTel Opposition*, at 6-7; *FreedomPop Opposition*, at 6-7.

<sup>29</sup> 47 CFR § 54.202(c).

<sup>30</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6399, para. 66 (2005).

undermining the associated public interest findings in the Bureau orders and resulted in the improper grant of LBP designation to those providers in the *December LBP Order*. As a result and in addition to the reasons discussed above, we reconsider our prior order and return the petitions for LBP designation of Boomerang, KonaTel, and FreedomPop to their status as petitions pending before the Bureau.<sup>31</sup>

12. We also find that the *January LBP Order* granted LBP designation to one provider that requested a designated service area that encompassed Tribal lands but did not comply with its obligation to provide a copy of its petition to the affected Tribal government. Kajeet requested LBP designation “in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.”<sup>32</sup> Kajeet made no indication that it had completed the requirements of section 54.202(c) of the Commission’s rules for those areas within its requested designated service area that qualify as Tribal lands.<sup>33</sup> We therefore reconsider our designation of Kajeet as an LBP until it has demonstrated that it has complied with the notification requirements of section 54.202(c) of the Commission’s rules, or clarified that it is not seeking designation in Tribal lands.

13. *LBP Designation Comment Period.* We find that the *December LBP Order*’s grant of LBP designation to FreedomPop and KonaTel prior to the 30-day public comment period deadline represents a clear and obvious error. In its petition for reconsideration, NTTA argues that FreedomPop and KonaTel were improperly granted LBP designation prior to the deadline for filing comments.<sup>34</sup> NTTA states this action denied potential commenters a full opportunity to consider the merits of the applications and raise potential issues for the Bureau to consider.<sup>35</sup> Boomerang, FreedomPop, and KonaTel oppose NTTA’s reconsideration petition and argue the streamlined LBP designation process does not contemplate a formal notice and comment procedure.<sup>36</sup> NTTA correctly asserts the Commission granted these providers designation on December 1, 2016.<sup>37</sup> FreedomPop’s petition had a comment deadline of December 10, 2016, and KonaTel had a deadline of December 21, 2016.<sup>38</sup> As with the grants of LBP designations without the required notification to relevant Tribal authorities describe above, this likewise artificially curtailed the public’s ability to participate in these designation proceedings as well as the Commission’s ability to fully consider all designation criteria with a fulsome record. As a result, and in addition to the reasons discussed above in this Order, we address this clear and obvious error by granting NTTA’s petition for reconsideration and return the petitions of FreedomPop and KonaTel for LBP designation to their status as petitions pending before the Bureau.

14. *Revocation of LBP Designations for the Identified Providers.* We explain above why each of the identified issues independently undercuts the LBP designation analysis to such a degree to warrant setting aside the *December LBP Order* and *January LBP Order* upon reconsideration and

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<sup>31</sup> Since we are granting NTTA’s petition for reconsideration for the reasons discussed above, we need not reach the question of whether the FCC “fail[ed] to follow its own codified process.” See NTTA Reconsideration Petition, at 7-8.

<sup>32</sup> See Kajeet Inc Amended Petition for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197, at 1 (filed Nov. 1, 2016).

<sup>33</sup> We note that the *January LBP Order* erroneously states that Kajeet’s petition for LBP designation excluded Tribal lands. See *January LBP Order*, DA 17-87, para. 5, n.15. We now correct that error, clarify that Kajeet’s petition for designation did not exclude Tribal lands, and accordingly reconsider the grant of LBP designation.

<sup>34</sup> NTTA Reconsideration Petition, at 8.

<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Boomerang Opposition*, at 4-6; *KonaTel Opposition*, at 4-6; *FreedomPop Opposition*, at 4-7.

<sup>37</sup> NTTA Reconsideration Petition, at 8; see generally *December LBP Order*.

<sup>38</sup> NTTA Reconsideration Petition, at 8; Federal Communications Commission, Wireline, *Lifeline Broadband Provider Petitions & Public Comment Periods*, <https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods> (last visited Jan. 30, 2017).

returning the petitions to pending status on a non-streamlined basis to enable an adequate analysis.<sup>39</sup> In conjunction, we revoke the LBP designations of all providers with petitions addressed in the *December LBP Order* and *January LBP Order*. As the Commission has explained previously, we have authority to revoke ETC designations granted by the Commission where the criteria of sections 214 and 254 of the Act and the Commission's implementing rules are not met.<sup>40</sup> In order for an entity to be a Commission-designated LBP (or other ETC), the designation must be in the public interest.<sup>41</sup> Due to the shortcomings in the Bureau's prior orders and the procedural failings identified above, we cannot conclude at this time that LBP designations are in the public interest for any of the entities with petitions addressed in the *December LBP Order* and *January LBP Order*. To the contrary, we find at this time, and pending more complete review and analysis of the issues identified above, that such designations are not in the public interest. "As the Commission has long made clear, Lifeline is intended to benefit eligible low-income consumers, not service providers."<sup>42</sup> Premature designation can result in consumer disruption as a provider obtains low-income subscribers who then must find new service providers if unaddressed problems emerge and the provider's designation subsequently must be revoked or if the provider exits the marketplace as a result of enforcement. This consumer disruption is likely to be greater the longer the amount of time that passes between the premature designation and the ultimate identification and Commission response to problems where the base of low-income consumers served increases the longer the provider is offering Lifeline service.<sup>43</sup> Consequently, against the backdrop of the public interest concerns already identified above, the additional risk for consumer disruption from premature designations persuades us that the LBP designations are not in the public interest for any of the entities with petitions addressed in the *December LBP Order* and *January LBP Order*. We therefore revoke the LBP designations of each of those provider.<sup>44</sup>

#### **B. Transition of Subscribers Currently Being Served by Boomerang Wireless**

15. To minimize disruption in service to Lifeline subscribers currently being served by Boomerang pursuant to an LBP designation, we take the following steps to establish a transition for impacted Boomerang subscribers.<sup>45</sup> First, to prevent service disruption and hardship for the subscribers currently receiving a Lifeline-supported BIAS offering from Boomerang pursuant to Boomerang's LBP designation, we delay the revocation of Boomerang's LBP designation and return of its petition to its prior status as a petition pending before the Bureau until 60 days after the effective date of this Order. We direct Boomerang to notify, in writing, within 30 days of the effective date of this Order any of its customers who will be unable to receive a Lifeline discount on their broadband Internet access service as

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<sup>39</sup> To the extent that more than one issue identified above is present with respect to particular petitions, we find even greater justification for the actions taken in this Order as to those petitions.

<sup>40</sup> See, e.g., *Federal-State Joint Board On Universal Service; Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc. Designations as Eligible Telecommunications Carriers In the Commonwealth of Virginia*, Order on Reconsideration, 27 FCC Rcd 15383, 15389, para. 15 (2012); *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6398, para. 63 (2005).

<sup>41</sup> 47 CFR § 54.202(b). See also, e.g., 47 U.S.C. § 214(e)(6).

<sup>42</sup> *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6821, para. 396 (2012).

<sup>43</sup> This problem was highlighted in the case of Total Call Mobile, *Total Call Mobile, Inc.*, 31 FCC Rcd at 13214-15, para. 27, and is illustrated on a smaller scale even here with our need to provide for a transition for certain low-income consumers already served by Boomerang following its recent ETC designation as discussed below. See *infra* section III.B.

<sup>44</sup> As explained in the next section, in the case of Boomerang this revocation will not be operative until 60 days from the effective date of this order. See *infra* section III.B.

<sup>45</sup> It is the Bureau's understanding that the remaining eight providers discuss in this Order have not begun offering Lifeline-discounted BIAS to customers pursuant to their LBP designations.

a result of this Order. This notice must inform customers that they will not receive the Lifeline discount on their current Lifeline-supported BIAS beginning 60 days after the effective date of this Order, but that they have the option of transferring their Lifeline benefits to another Lifeline provider. Boomerang must also de-enroll those subscribers within 60 days of the effective date of this Order. We expect that any impacted customers who continue to receive the same BIAS offering after Boomerang can no longer seek Lifeline reimbursement as an LBP will see their monthly bills increase by no more than \$9.25.<sup>46</sup>

16. Additionally, we waive the application of section 54.411 of the Commission's rules to those subscribers for good cause.<sup>47</sup> Section 54.411 prevents a Lifeline provider from seeking or receiving support for a subscriber who has enrolled with another Lifeline provider within the previous 12 months for BIAS and the previous 60 days for voice service.<sup>48</sup> While section 54.411(c)(2) would apply to subscribers served by LBPs,<sup>49</sup> good cause exists to waive the port freeze rule to facilitate the transition in service for customers currently receiving a Lifeline-supported service from an LBP. This waiver shall be effective for 12 months after the effective date of this Order.

#### IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 4, 214(e)(6), 254, and 403 of the Communications Act of 1934, 47 U.S.C. §§ 151-154, 214(e)(6), 254, and 403, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22947-48 (1997), and sections 1.106 and 1.113 of the Commission's rules, 47 CFR §§ 1.106 and 1.113, the Petition for Reconsideration filed by NTTA on January 3, 2017 IS GRANTED and this Order on Reconsideration IS ADOPTED.

18. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1 through 4, 214(e)(6), 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 214(e)(6), 254, and 403, section 1.3 and Part 54 of the Commission's rules, 47 CFR § 1.3 and Part 54, that section 54.411 of the Commission's rules, 47 CFR § 54.411, IS WAIVED to the extent provided within this Order.

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

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<sup>46</sup> See 47 CFR § 54.403(a)(1) (requiring ETCs to pass through the full amount of the \$9.25 discount to qualifying low-income consumers).

<sup>47</sup> Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>48</sup> 47 CFR §§ 54.411(a), (b).

<sup>49</sup> 47 CFR § 54.411(c)(2). This exception to the rules described in sections 54.411(a) and (b) provides for reimbursement when "the subscriber's current provider ceases operations or otherwise fails to provide service."

FEDERAL COMMUNICATIONS COMMISSION

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