

Nov. 16, 2020

Bureau Limits Increase in Lifeline Mobile Broadband Usage MSS

The FCC's Wireline Competition Bureau today waived the increase in minimum monthly usage allotments for mobile broadband Lifeline subscribers that was scheduled to take effect Dec. 1 in accordance with the minimum service standard (MSS) formula established by the FCC in its 2016 Lifeline and Link Up reform and modernization order. Instead of the scheduled increase from 3 gigabytes per month to 11.75 GB per month, it limited the increase to 4.5 GB per month.

The bureau had announced last summer that application of the 2016 MSS formula would cause the minimum monthly usage allotment for Lifeline mobile broadband to increase to 11.75 GB as of Dec. 1 (*TR Daily*, July 30). About the same time, FCC Chairman Ajit Pai announced he had circulated a draft order to his fellow Commissioners that would revise the agency's methodology for calculating annual revisions to the MSS for mobile broadband Lifeline service, which would result in a December adjustment of the minimum monthly mobile broadband data allowance from 3 GB to 4.5 GB, instead of 11.75 GB (*TR Daily*, July 30).

However, the Commission has not yet adopted that order. The bureau's action today only waives the application of the formula for this coming year; it does not change the formula.

The bureau's action comes in response to a petition from the National Lifeline Association (NLA) seeking a waiver of the increase in the Lifeline mobile broadband MSS and decrease in the Lifeline support amount for voice service scheduled to take effect Dec. 1. Specifically, NaLA asked the FCC to retain the mobile broadband MSS at 3 GB and to retain Lifeline voice support at \$7.25 per month rather than decreasing it to \$5.25 as planned (*TR Daily*, Aug. 28).

In an order adopted today in WC dockets 11-42, 09-197, and 10-90, the bureau noted that the full Commission provided a "roadmap" in response to "an almost identical request for waiver" last year.

Specifically, the Commission acted last year to prevent an increase in the minimum data allowance from 2 GB to 8.75 GB per month, as the formula would have dictated. That action was taken—in response to a petition from CTIA, the National Hispanic Media Coalition, the National Consumer Law Center on behalf of its low-income clients, the United Church of Christ Office of Communications, Inc., and OCA – Asian Pacific American Advocates—over the dissents of Democratic Commissioners Jessica Rosenworcel and Geoffrey Starks (*TR Daily*, Nov. 19, 2019).

Today, the bureau said, "[W]e find that, given the large increase to the mobile broadband minimum service standard that would result from the formula the Commission adopted in 2016, the Commission's stated intent to regularly and predictably increase the minimum service standard for mobile broadband

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

The bureau added, “[W]e are not persuaded that any increase at all in the mobile broadband minimum service standard would result in unaffordable service options, we find it reasonable to anticipate that a nearly four-fold increase in the minimum usage allowance would require significantly greater network resources and, in turn, the associated costs would ultimately be passed on to consumers.”

It also noted the increased need for robust mobile broadband Lifeline service “as the ongoing COVID-19 health and economic crisis impacts the needs of low-income Americans for quality communications services. The pandemic has created an increased reliance on broadband nationwide as significant aspects of today’s society move to a virtual environment, with health care, education, work, disabilities access, public safety, and social events taking place largely online. Consideration of these unique factors leads us to find that providing no increase to the mobile broadband usage minimum service standards would risk leaving low-income Americans behind during a pandemic that has disproportionately affected them, while permitting a dramatic and sudden increase in the standard could result in unaffordable service for low-income consumers during a time when they need that service more than ever.”

With respect to the phase-down in support for stand-alone voice service, the bureau noted that the full Commission rejected a similar request last year.

Meanwhile, the bureau today also denied a Nov. 9 petition from NaLA and Assist Wireless LLC for an administrative stay of the Commission’s rule requiring the updating of the mobile broadband MSS on Dec. 1. The petitioners had asked for a ruling within seven days to allow time to seek judicial relief if necessary. The bureau said they are unlikely to prevail on the merits, noting that the separate MSS waiver order today addressed the stay petitioners’ concerns about the effect of an increase in the monthly usage allowance to 11.75 GB on affordability.

The bureau also said the petitioners have failed to show that they would suffer irreparable harm absent the stay and that today’s waiver order “prevents any certain and great harm to Petitioners by waiving most of the scheduled increase and establishing a moderate increase to 4.5 GB/month.”

Responding to the bureau’s action on the mobile broadband MSS monthly usage allowance, Free State Foundation President Randolph May said, “I’m glad to see the Commission take this action to prevent the scheduled minimum service standard increase all the way up 11.75 GB. Such an increase would have imperiled some Lifeline providers at a particularly inopportune time. Gradualism was called for, and I’m pleased that the sizable scheduled increase was deferred.” —Lynn Stanton, lynn.stanton@wolterskluwer.com