

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

In the Matter of)	
)	
Affordable Connectivity Program)	WC Docket No. 21-450
)	
Emergency Broadband Benefit Program)	WC Docket No. 20-445

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the *Public Notice*² released by the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau on March 23, 2022 in the above-captioned proceedings. The Public Notice seeks comment on two petitions filed in the Commission’s Affordable Connectivity Program (“ACP”) and Emergency Broadband Benefit Program (“EBB”) dockets; NTCA exclusively discusses herein the *Petition* filed by USTelecom seeking an additional 60 days to comply with Sections 54.1808(c) and 54.1809(c) of the Commission’s rules.³ These “non-usage” provisions require that providers track the broadband usage of ACP-enrolled subscribers that are not assessed any monthly charges after the application of the program subsidy to their bill. Pursuant to these rules, said subscribers failing to “cure” their non-usage after notification by their provider that their ACP-supported service has not been utilized

¹ NTCA represents approximately 850 rural local exchange carriers (“RLECs”). All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

² *Wireline Competition Bureau Seeks Comment on Petitions Filed by USTelecom – The Broadband Association and Verizon*, WC Docket Nos. 21-450 and 20-445, Public Notice, DA 22-308 (rel. Mar. 23, 2022).

³ USTelecom – The Broadband Association Request for Waiver, WC Docket Nos. 21-450, 20-445, (fil. Mar. 21, 2022) (“*Petition*”).

during the previous 30 days must be de-enrolled from the program. At present, many NTCA members' ability to comply with these provisions by April 15, 2022 depends on the availability of vendor solutions that will not be available on that date, an unfortunate scenario not anticipated by these small operators that also have no additional options to turn to for compliance. As discussed further below, grant of the *Petition* is in the public interest. NTCA further requests that the Commission's grant of the requested waiver include a provision extending the deadline for smaller providers for *at least* 60 days – those unable to obtain vendor solutions within the time period as requested by the *Petition* should be granted additional time to comply

I. ADDITIONAL TIME TO COMPLY WITH THE ACP NON-USAGE RULE IS IN THE PUBLIC INTEREST, AS VENDOR EQUIPMENT/SOFTWARE NECESSARY TO COMPLY WITH THIS PROVISION HAS NOT COME ON LINE AS ANTICIPATED.

NTCA urges the Commission to grant the *Petition* seeking additional time for provider compliance with the ACP non-usage tracking rules. As discussed further below, grant of a waiver is in the public interest, as NTCA's small provider members seeking to comply with this provision are faced with unanticipated delays in obtaining access to the vendor equipment and software necessary to track individual subscriber usage on a uniform rolling 30-day basis.

As NTCA has noted in the past (and the Commission has recognized), its small company members are highly dependent on outside third-party vendors for compliance with many of the regulatory requirements with which these operators must comply.⁴ These providers typically

⁴ See *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, FCC 20-136 (rel. Oct. 15, 2020) (“*Second Call Authentication Order*”), ¶ 42 (granting small providers an additional two years to adopt STIR/SHAKEN call authentication technology and stating that this was done, in part, because “[a]ccording to NTCA, its members are typically at the mercy of vendors that respond to the larger operator community muc[h] faster, likely based on the latter’s market share and buying power. As a result, timing and availability of these vendor solutions may be out of the control and reach of small voice service providers.”). Internal citations and quotations omitted.

have 25 to 30 total staff, but lack the ability to design and implement, “in-house,” the software and hardware necessary to comply with rules like the non-usage provisions at issue herein. In short, to comply with these rules, the typical NTCA member must turn to their billing and/or other broadband network equipment/software vendors to comply. Unfortunately, at least one widely used vendor that today supports the ability to track individual subscriber usage (and on a “uniform rolling 30-day basis” as required by the ACP rules) does so only on “end of life” equipment and software now being phased out – updated equipment/software will not come online by the April 15, 2022 deadline. Similarly, members have reported that other vendors will be unable to support the usage tracking as required by the ACP rule by April 15. It should be noted as well that technical solutions made available to small operators by their vendors (for the functionality at issue here and for most others) are typically part of a “suite” or “package” of solutions that support multiple other functions on an integrated basis. Thus, an operator using “Vendor A” (that is unable to support compliance with the ACP usage rule by April 15) cannot simply call up “Vendor B” and find a way to comply with this rule. This further places smaller providers at the mercy of their previously chosen vendor.

As the *Petition* indicates, the *ACP Order* that requires usage measurement on a “uniform rolling 30-day” basis (rather than a “service month” basis as was in place for the EBB) is not the only significant departure from the latter program’s rules that has introduced new complications for providers. The *ACP Order*⁵ also requires that enrollees entering a 30-day period of non-usage receive a notice from their provider, and if they fail to “cure” their non-usage within a 15-

⁵ *Affordable Connectivity Program*, WC Docket No. 21-450, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (rel. Jan. 21, 2022) (“*ACP Order*”), ¶¶ 73-89.

day cure period, they must be immediately de-enrolled from the program by their service provider. As the *Petition* indicates, this requires a “significant modification to a participating providers’ systems.”⁶ Unfortunately, as noted above, NTCA members have reported that many of the vendors to which many small rural companies are beholden to comply with this requirement will be unable to deliver products that enable compliance by April 15, 2022. Moreover, even when vendor equipment and software does come online to support compliance with the ACP non-usage tracking rule, additional integration with existing internal practices and billing systems will be required, as will staff training on the newly supported tracking ability. In other words, vendors typically do not deliver “turn key” solutions ready on day one, and small rural providers will need additional time to ensure their internal processes are integrated with, and that staff can become familiar with, the newly acquired functionality.

In addition, even as the Commission adopted this provision based on the belief that “a number of commenters who oppose applying the Lifeline subscriber usage rules to the [ACP] already participate in the Lifeline program and have already developed and use systems and processes to track usage and notify consumers of nonusage in compliance with the Lifeline rules,”⁷ this is simply not the case for most NTCA members. The \$9.25 Lifeline subsidy is most often not enough to ensure a “free to the customer” broadband service in rural areas. Thus, the typical NTCA member is not familiar with monitoring usage in the manner required by the new ACP rules.

⁶ *Petition*, p. 2.

⁷ *ACP Order*, fn. 223.

Additionally, the Commission should consider that the need for additional time to comply with this rule is one faced by providers of all sizes – as Petitioner’s membership includes some of the nation’s largest broadband providers, that much is clear. Put another way, if the nation’s largest providers are struggling to comply with this provision, it is hardly surprising that many of the nation’s smaller operators (that do not drive the vendor market like nationwide operators can, *see* fn 4, *infra*) are unable to meet this requirement and need 60 days (or in some cases even more as noted below) beyond the timeframe the Commission allotted.

Finally, while the *Petition* seeks a 60-day extension of the effective date of the ACP usage rule, there is real concern that even this amount of additional time will be insufficient for some vendors to have solutions in place. As noted above, smaller providers are typically at the mercy of their vendors, and some of the latter may be unable to deliver on technical solutions necessary to comply with the ACP usage rule by even June 15, much less April 15. Thus, the Commission should adopt an extension of *at least* 60 days, with those unable to obtain vendor solutions permitted additional time if solutions do not emerge within the time period requested by the *Petition*. As noted in the *Petition*, all providers granted additional time to comply with the ACP usage rule will continue to monitor the usage of subscribers at issue herein but pursuant to the less complicated EBB rule with which they can comply today. Thus, additional time beyond the April 15 deadline or even the delayed by 60 days deadline as requested in the *Petition* will not frustrate the overall policy of ensuring that ACP enrollees use their supported service.

Grant of the *Petition* is therefore in the public interest. Despite good faith efforts to come into compliance by April 15, 2022, vendor solutions have not materialized, and in some cases may not even by the June 15 deadline as requested by the *Petition* – strict adherence to the ACP

rule would therefore not be in the public interest,⁸ as many smaller companies will be unable to track individual subscriber usage on a rolling thirty-day basis until their vendor offers a new equipment/software solution. As noted above, additional time to comply with the ACP usage rule will not frustrate the policy objective behind the usage rule, as these providers can comply with the usage-monitoring rule in place for EBB during the additional timeframe necessary to come into compliance with the ACP rule.

Finally, NTCA encourages the Commission to modify the scope of the rule at issue herein as it is being implemented and applied to smaller providers specifically. NTCA supports promoting program integrity through a usage requirement for the ACP enrollees at issue, but the burden of ensuring that the non-usage period is uniform for every single program beneficiary far outweighs the benefit. Indeed, smaller carriers may face costs to comply with the ACP usage rules that outstrip the amount of total program reimbursements they obtain on a monthly basis. This fact will certainly be something that providers all across the nation not participating in the ACP today will have to consider as they contemplate offering this subsidy to existing/potential subscribers in the future. Thus, NTCA encourages the Commission to consider some measure of flexibility, perhaps by applying the EBB non-usage rule to smaller providers instead or allowing periodic manual review of usage. Either of these approaches to policy implementation would strike an appropriate balance in promoting program integrity while avoiding unreasonable burdens in doing so.

⁸ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Respectfully Submitted



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Vice President – Federal Regulatory
bford@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203

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