

**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
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42

**PETITION FOR WAIVER
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits, pursuant to Section 1.3 of the rules² of the Federal Communications Commission (“Commission”), this Petition for Waiver in the Affordable Connectivity Program (“ACP”), Emergency Broadband Benefit Program (“EBB”) and Lifeline Universal Service Fund dockets. NTCA specifically seeks a waiver of Sections 54.1808(c) and 54.407(c) of the Commission’s rules, the provisions setting forth a “uniform, rolling 30-day” non-usage period for certain ACP/Lifeline enrolled consumers, as described below, that are not assessed any out-of-pocket payment due to the application of the program subsidy. NTCA’s request seeks modification (or, in the alternative, an effective date of September 15, 2022³) with respect only to the “uniform rolling 30-day”

¹ NTCA represents approximately 850 small rural voice and broadband providers, many of which also provide mobile wireless, video, and other competitive services to their communities.

² 47 C.F.R. § 1.3.

³ Sections 54.1808(c) and 54.1809(c) of the Commission’s rules are set to become effective on June 14, 2022. *WCB Addresses Service Providers’ Petitions for Waiver of ACP Rules*, WC Docket Nos. 21-450, 20-445, Order, DA 22-418 (rel. Apr. 15, 2022) (“*April 15 ACP Waiver Order*”), ¶ 9.

portion of the rule and not the 15-day cure or de-enrollment provisions.⁴ This waiver is sought more specifically for “small”⁵ broadband Internet access service providers that apply a \$75 per month ACP benefit to the bills of qualifying Tribal consumers and thus resulting in no out-of-pocket payment from such consumers. This waiver is also sought for the Lifeline non-usage rules to the extent that an eligible Tribal consumer also applies that program’s subsidy to the same broadband service discounted by the ACP. As discussed further below, the request made herein meets the Commission’s standard for waiver and will not undermine the overall program integrity goals it is intended to advance.

The Commission may grant waivers of its rules either on its own motion or if good cause is shown. The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance

⁴ Pursuant to the relief requested herein, participating providers would continue to operate in accordance with the 15-day “cure” and de-enrollment provisions found in Section 54.1809(c) of the Commission’s rules and applicable to the category of ACP-enrolled subscribers at issue. If the relief requested is granted, providers subject to it would comply with the “30 consecutive days” portion Section 54.1808(c) by tracking usage on a “service month” basis as was applicable for the EBB program rather than on a “uniform rolling 30-day” basis as required by the ACP Order. This process would also apply for monitoring usage in keeping with the Lifeline program, to the extent the Tribal consumer applies that program’s discount to the same broadband service that is discounted by the ACP. Not allowing providers granted relief as requested herein to abide by the EBB’s service month rule for ACP and Lifeline subscribers would only cause “consumer confusion and complicate provider compliance given that many households will participate in both Lifeline and the Affordable Connectivity Program and certain households may use both benefits on the same service.” *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*”), ¶ 76 & fn. 223.

⁵ “Small” for the purposes of the instant waiver should be defined as providers serving fewer than 250,000 broadband subscribers. This would be consistent with past Commission action to adopt tailored approaches for small entities. See *Small Business Exemption From Open Internet Enhanced Transparency Requirements*, GN Docket No. 14-28, Order, FCC 17-17 (rel. Mar. 2, 2017) (adopting a waiver, from the enhanced reporting requirements adopted in a 2015 Open Internet Order, to “small” broadband Internet access providers, defined as those with 250,000 or fewer broadband connections).

would not be in the public interest.⁶ Generally, waiver of the Commission's rules is granted when both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest.⁷

Good cause exists to grant the waiver as requested. For any small entity, compliance with the “uniform rolling 30-day” portion of the ACP non-usage rule presents a difficult challenge – this specific portion of the rule requires an automated functionality that many of these entities do not have. Even as a “manual” process may be possible *if a provider has a mere handful of subscribers* subject to this rule, for those small operators serving Tribal consumers, the challenge of complying with this rule on a manual (or even an automated basis as noted below) is acute given that the ACP’s \$75 per month benefit for those eligible for the program’s Tribal benefit translates to a much larger subset of subscribers who would have no “co-pay” and thus be subject to the non-usage rule. As just one example, one NTCA member serving Tribal consumers reports that two-thirds of its total subscribers are subject to the rule, and yet it would be nearly impossible for this small entity to monitor such a large group of subscribers’ usage on a nearly daily basis, to generate “cure” notices for those reaching 30 days of non-usage, and then to process de-enrollment where the individual subscriber failed to use the service within that ensuing 15-day window. The kinds of small entities serving Tribal consumers and attempting to comply with this rule on a manual basis typically operate with, on average, fewer than 30 total staff – and the staffer responsible for compliance with rules like this typically will “wear multiple hats” in performing such functions. For smaller operators serving Tribal customers in

⁶ Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁷ NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

particular, the burden of monitoring usage in this way while maintaining compliance with the many other Commission rules and internal administrative processes applicable to communications providers would be a tremendous, if not impossible, task.

Given these substantial barriers to manual compliance, entities serving Tribal consumers must necessarily resort to “automating” this process – and unfortunately, this is not a functionality they have in place today as it is something not heretofore necessary for any other reason (regulatory or otherwise).⁸ These providers, like many small entities, lack the ability to design and implement, “in-house,” the software and hardware necessary to automate the process of compliance with the ACP’s non-usage provisions and therefore must look to outside vendor solutions. Unfortunately, at least one vendor has indicated that a solution it anticipated being available in advance of the original April 15 effective date may be delayed even beyond the newly established June 14 deadline. Another potential vendor solution is offered only in “beta” form, with significant testing required to ensure its interoperability with existing billing and other systems.

Beyond the “current availability” challenge they presently face, these operators confront as well substantial costs for implementing these solutions – and just as importantly, *this is to obtain functionality they otherwise do not need and never anticipated being required to obtain.*

⁸ It must be noted that the companies for which NTCA seeks relief here do not have in place the functionality needed as a result of participation in the Lifeline Universal Service Fund program. Even as the Commission adopted the provision at issue herein 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,” this is simply not the case for most NTCA members including those serving Tribal areas. The \$9.25 Lifeline subsidy (or even the \$34.25 available for consumers residing on Tribal lands) 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 and does not have in place systems for monitoring usage in the manner required by the new ACP rules.

These operators report vendor costs of several thousand dollars per month, a significant burden for small operators confronting the many challenges of delivering high-quality, affordable communications services to historically underserved Tribal consumers. Small operators serving Tribal consumers confront low population densities and high poverty rates, and compliance costs for functionality that serves one purpose only exacerbates the difficulty they face on a daily basis to serve consumers very much in need.

To be clear, NTCA supports a non-usage rule for ACP enrollees to promote program integrity – limited support that could have gone to those in need is wasted if it subsidizes services that sits idle. That said, the balanced approach that NTCA proposes herein can fulfill the Commission’s interest while avoiding the imposition of significant costs upon small entities committed to serving Tribal consumers. Indeed, the broader complexity and implications of the new rule are perhaps best captured in the recently filed AT&T waiver petition, as one of the largest providers in the country needed relief and *actually expressed a willingness to forgo reimbursement for services rendered just to sidestep strict compliance with the rule.*⁹ That petition, the facts set forth here, and the USTelecom petition¹⁰ that was granted,¹¹ when taken together, all demonstrate the complexities that arise from the ACP non-usage rule and the need for tailored solutions as strict compliance with the rule across the board is not feasible.

⁹ AT&T Petition for Limited Waiver, WC Docket No. 21-450 (fil. Apr. 22, 2022) (“*AT&T Petition*”), p. 4 (“For those households that AT&T does not have usage information to support a claim, AT&T will subsidize the benefit amount and not seek reimbursement from the ACP.”).

¹⁰ USTelecom – The Broadband Association Request for Waiver, WC Docket Nos. 21-450, 20-445, (fil. Mar. 21, 2022) (“*Petition*”).

¹¹ *April 15 ACP Waiver Order*.

Rather than seeking elimination of the non-usage rule, NTCA seeks here a tailored revision to avoid excessive burdens on small operators serving Tribal consumers while furthering the Commission’s important program integrity interest here. More specifically, NTCA merely asks that the Commission allow small entities serving Tribal consumers to monitor usage via the rule in effect for the EBB program. Pursuant to that rule, which operators can comply with now, usage reports can be pulled with hardware and software in existence and in use today. Moreover, participating providers subject to the relief requested would continue to operate in accordance with the 15-day “cure” and de-enrollment provisions found in Section 54.1809(c) of the Commission’s rules and applicable to the category of ACP-enrolled subscribers at issue. Providers would simply comply with the “30 consecutive days” portion of Section 54.1808(c) by tracking usage on a “service month” basis as was applicable for EBB program rather than on a “uniform rolling 30-day” basis as required by the ACP Order.

Grant of the relief would be in the public interest. Special circumstances justify a targeted deviation from the strict application of the rule, as the combined effect of the \$75 per month Tribal subsidy and the non-usage rule as strictly applied will necessitate that smaller providers acquire and implement expensive automated functionality that remains unavailable as of today to comply with the rule. The expense and administration of the new rule once such functionality is available will divert resources that could otherwise be used to focus on the delivery of services to communities most in need. Moreover, the burden faced by those operators serving Tribal consumers in ensuring that the non-usage period is uniform for each and every program beneficiary far outweighs the benefit of monitoring usage in such a manner, particularly if usage can still be captured in accordance with the EBB non-usage rule. In the end,

this minor deviation from strict application of the rule would still ensure that no ACP enrolled subscriber subject to the rule has more than one month of subsidized service that goes unused.

In the alternative and at a minimum, an additional 90 days beyond that granted in the *April 15 ACP Waiver Order* should be afforded to those small operators serving Tribal consumers, so that the systems necessary for compliance can be brought into the marketplace and implemented. Unfortunately, this would not address the substantial costs of compliance with a rule where the benefits of a uniform, rolling 30-day measure remain unclear, but it would at least provide time for systems to comply to be developed, tested, and implemented. As noted above, vendor solutions necessary to comply with the “uniform rolling 30-day” portion of the ACP usage rule are not yet available and many operators simply have no other options. Thus, if the Commission will not grant a targeted waiver to adopt an alternative non-usage monitoring rule like that used in the EBB program, it should at the very least set an effective date of September 15, 2022 with leave to grant additional time if vendor solutions fail to emerge.

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