



May 3, 2022

Ex Parte Notice

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C., 20554

**RE: Affordable Connectivity Program,
WC Docket No. 21-450
Emergency Broadband Benefit Program,
WC Docket No. 20-445**

Dear Ms. Dortch:

On Monday May 2, 2022, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”)¹ spoke with Diane Holland, Deputy Chief of the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau (“WCB”), Rashann Duvall, Assistant Chief of the WCB’s Telecommunications Access Policy Division, and Jessica Campbell with the WCB. The parties discussed the Affordable Connectivity Program’s (“ACP”) “non-usage” provisions that require providers to 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.²

NTCA first expressed its appreciation for the recently issued 60-day extension of the ACP non-usage provisions.³ As NTCA previously stated, the association’s small provider members seeking to comply with this provision are highly dependent on outside third-party vendors for compliance with many of the regulatory requirements with which these operators must comply – the vendor equipment and software necessary to track individual subscriber usage on a uniform rolling 30-day basis are no different.

¹ NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities.

² *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.

³ *Affordable Connectivity Program*, WC Docket No. 21-450, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 22-418 (rel. Apr. 15, 2022) (“*ACP Waiver Order*”).

In the meeting, NTCA noted that even with the 60-day waiver having been issued, a number of the association's small company members will have substantial difficulty with (and will incur significant compliance costs in connection with) complying with the rule at issue. In particular, the non-usage provision presents an acute challenge for companies serving Tribal lands – the ACP's \$75 per month benefit for those residing on Tribal lands translates to a much larger subset of subscribers with no "co-pay" and thus subject to the non-usage rule. As an example, NTCA pointed to a member serving Tribal lands that has approximately two-thirds of its total subscribers enrolled in the ACP and being assessed no co-pay due to the \$75 subsidy. For providers like this member, a "manual" process for tracking usage for two-thirds of subscribers would be nearly impossible, making a more "automated" process for tracking each individual subscriber's usage over a rolling, 30-day basis the only realistic method of compliance with this rule.

Unfortunately, smaller operators 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. At least one vendor has indicated that solutions 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 vendor solution that has emerged is still being offered only in "beta" form, with significant testing required to ensure its interoperability with existing billing and other systems. Even when these vendor services do 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.

NTCA emphasized support for the integrity interest advanced by non-usage rules – limited ACP resources are wasted on the subsidization of broadband services that go unused, and the Commission should ensure that these funds are dispersed where they are truly needed. Yet, accountability must be balanced with operational realities, and placing substantial compliance burdens on the offering of service in Tribal lands will make it even harder for those that seek to do so. Tribal areas pose unique challenges as the Commission well knows, and it is important to reconcile reasonably the prospect of a new program intended to increase broadband adoption in these areas and a non-usage provision that applied too strictly could undermine the success of these efforts. NTCA asserted that a non-usage rule similar to that in effect for the Emergency Broadband Benefit program would advance the important program integrity goal of dispersing ACP support only where truly needed but with compliance possible with operators' existing systems.

NTCA therefore urged reconsideration and recrafting of the ACP non-usage rules, as strict application of a uniform non-usage period will undermine efforts to serve Tribal consumers. At the very least, additional time beyond that granted in the April 15 *ACP Waiver Order* should be granted to those operators serving Tribal consumers so that the systems necessary for compliance can be brought into the marketplace and implemented.

Marlene H. Dortch

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Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Brian Ford

Brian Ford

Vice President – Federal Regulatory

NTCA-The Rural Broadband Association

cc: Diane Holland
Rashann Duvall
Jessica Campbell