

**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”)<sup>1</sup> hereby submits these comments in response to the *Public Notice*<sup>2</sup> released by the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau on April 28, 2022 in the Affordable Connectivity Program (“ACP”) docket. The Public Notice seeks comment on a petition filed by AT&T<sup>3</sup> seeking a waiver of the ACP non-usage rule.<sup>4</sup>

As an initial matter, NTCA urges the Commission to recognize the *AT&T Petition* as one more example of the substantial complexity arising out of the ACP program’s non-usage rule.

As the *AT&T Petition*, a recent NTCA *ex parte*,<sup>5</sup> and a USTelecom petition<sup>6</sup> that was granted<sup>7</sup> all demonstrate, the ACP non-usage rule poses technical and other cost challenges for providers

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<sup>1</sup> 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.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Petitions Filed by AT&T Service Inc.*, WC Docket No. 21-450, Public Notice, DA 22-470 (rel. Apr. 28, 2022).

<sup>3</sup> AT&T Petition for Limited Waiver, WC Docket No. 21-450 (fil. Apr. 22, 2022) (“*AT&T Petition*”).

<sup>4</sup> *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.

<sup>5</sup> *Ex parte* letter, NTCA–The Rural Broadband Association, WC Dockets No. 21-450, 20-445 (fil. May 3, 2022) (“*NTCA May 3 ex parte*”).

<sup>6</sup> USTelecom – The Broadband Association Request for Waiver, WC Docket Nos. 21-450, 20-445, (fil. Mar. 21, 2022) (“*Petition*”).

<sup>7</sup> *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).

of all sizes, as existing operator systems are not in every case capable of compliance with the rule absent substantial and costly modification (or even capable at all). Given the significant concerns raised from a variety of corners to date about this rule and the negative implications it has for program participation by providers and consumers alike, the Commission should consider charting a new course that recognizes strict application of the rule across the board is not in the public interest.

With respect to specifics of the *AT&T Petition*, a number of NTCA members have reported that they face the same problem for a subset of their ACP-enrolled subscribers – in some cases they may be unable to capture usage using ADSL technology. To be clear, *NTCA does not support Commission relief here that would result in its members forgoing reimbursement for a discount extended to a subscriber*. The association’s members are small businesses that operate in challenging-to-serve, sparsely-populated areas, and they cannot voluntarily eschew much-needed reimbursement for services rendered. Nor should they be in any way expected to do so simply for desiring to help advance the laudable objectives of the ACP program.

That AT&T would commit to forgoing the reimbursement at issue is telling – it highlights that strict compliance with the rule, across the board for every service plan, technology, class of subscriber, etc., is neither feasible nor reasonable (and in fact in this specific instance could produce the absurd result of forcing a provider to eschew reimbursement). A better approach would be *tailored* relief that addresses specific, challenging scenarios – for example, as it relates to the *AT&T Petition*, the Commission should revert to the Emergency Broadband Benefit (“EBB”) program rule where usage data can be captured for ADSL-based services with a technical infeasibility exemption where such measurement is not possible. In the

alternative, the Commission could amend the ACP provisions requiring providers to offer the benefit on “any Internet service offering” in cases where ADSL technology is used and capturing usage data is not technically feasible.

Moving forward, the scenario set forth by AT&T is not the only place where the Commission may likely need tailored rules to address unique challenges and to strike a better balance between advancing program integrity and avoiding excessive burdens on providers seeking nothing more than to participate voluntarily in the program. As NTCA recently noted, the non-usage provision presents an acute challenge for companies serving Tribal lands<sup>8</sup> – 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 paying nothing out-of-pocket for service due to the \$75 subsidy. Lacking 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, this provider (and many similarly situated smaller operators) must look to outside vendor solutions that are not yet ready<sup>9</sup> and will come at substantial expense once available. Here, the Commission could adopt tailored and balanced relief for Tribal areas through a non-usage rule similar to that in effect for the EBB program. This would advance the important program integrity goal of dispersing ACP support only where truly needed but, again, via a tailored

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<sup>8</sup> *NTCA May 3 ex parte at 2.*

<sup>9</sup> 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 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.

approach that accounts for the many complexities of monitoring subscriber usage via operators' existing systems.

Finally, NTCA re-emphasizes its support for promoting program integrity through a usage requirement for the ACP enrollees at issue. That said, the burden of ensuring that the non-usage period is uniform for every single program beneficiary far outweighs the benefit – and to reiterate, even as AT&T may be willing to forego reimbursement as a “solution” for the challenge it faces, NTCA does not endorse such an outcome as this likely would deter participation by smaller and rural providers in the program. Thus, NTCA encourages the Commission to consider more tailored approaches such as that proposed above, seeking to make it easier, rather than harder, for operators to advance the goals of the ACP in serving consumers.

Respectfully Submitted



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