

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

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

ORDER

Adopted: April 15, 2022

Released: April 15, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions of USTelecom – The Broadband Association, Verizon, AT&T Services, Inc. (AT&T), and Competitive Carriers Association (CCA). Based on the Commission’s established waiver standard, we grant limited waivers of the Affordable Connectivity Program (ACP) rules concerning the requirement that a participating provider allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household (the “all plans requirement”) and non-usage of ACP supported services for which the subscriber does not pay a fee. Specifically, we grant a limited 60-day waiver of the all plans requirement to Verizon and AT&T, and we grant a limited 60-day waiver of the non-usage tracking and non-usage de-enrollment rules. We deny AT&T’s petition of the all plans requirement except as otherwise granted, and we deny CCA’s petition of the all plans requirement. These limited waivers will give Verizon and AT&T additional time to comply with the all plans requirement,

1 USTelecom – The Broadband Association Request for Waiver, WC Docket Nos. 21-450, 20-445 (filed Mar. 21, 2022), https://www.fcc.gov/ecfs/file/download/DOC-5feb68e35cc00000-A.pdf (USTelecom Waiver Petition) see also Wireline Competition Bureau Seeks Comment on Petitions Filed By USTelecom – The Broadband Association and Verizon, WC Docket Nos. 20-445, 21-450, Public Notice, DA-22-308, at 1 (WCB Mar. 23, 2022) (US Telecom/Verizon Public Notice) (seeking comment on USTelecom Waiver Petition).

2 Verizon Petition for Limited Waiver, WC Docket No 21-450, at 2-3 (filed Mar. 21, 2022), https://www.fcc.gov/ecfs/file/download/DOC-5feb8c2c01400000-A.pdf (Verizon Waiver Petition); see also US Telecom/Verizon Public Notice at 1 (seeking comment on Verizon Waiver Petition).

3 AT&T Petition for Limited Waiver, WC Docket No 21-450, at 1, 3 (filed Mar. 25, 2022), https://ecfsapi.fcc.gov/file/10325073086695/AT%26T%20Waiver%20Request.pdf (AT&T Waiver Petition); see also Wireline Competition Bureau Seeks Comment On Petition Filed By AT&T Services, Inc., WC Docket No. 21-450, Public Notice, DA 22-330, at 1 (WCB Mar. 28, 2022) (AT&T Public Notice) (seeking comment on AT&T Waiver Petition).

4 Petition of Competitive Carriers Association for Limited Partial Waiver, WC Docket No 21-450, at 1, 3 (filed Mar. 31, 2022), https://ecfsapi.fcc.gov/file/10331110025128/2022.03.31%20CCA%20Waiver%20ACP%20Final.pdf (CCA Waiver Petition); see also Wireline Competition Bureau Seeks Comment on Petition Filed by Competitive Carriers Association, WC Docket No. 21-450, Public Notice, DA 22-349, at 1 (WCB Apr. 1, 2022) (CCA Public Notice) (seeking comment on CCA Waiver Petition).

and will give all providers additional time to implement the necessary systems to comply with the ACP non-usage rules that were originally scheduled to take effect on April 15, 2022.

2. While we grant a 60-day waiver of the ACP non-usage rules, we remind participating providers that during the waiver period they must continue to comply with the non-usage rules that were in place for the Emergency Broadband Benefit (EBB) Program.<sup>5</sup> Specifically, where the non-usage rules apply, for a given service month, service providers may not claim support for households that have not used their ACP-supported service during that service month.

## II. BACKGROUND

3. On January 14, 2022, the Commission adopted the Affordable Connectivity Program Order (Order), establishing rules for the Affordable Connectivity Program, the successor program to the EBB Program.<sup>6</sup> Pursuant to the Infrastructure Act signed into law on November 15, 2021, the Commission adopted the requirement that participating providers “shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.”<sup>7</sup> The Order found that the any internet service offering requirement means that providers must allow customers to have the affordable connectivity benefit applied to any broadband internet plan in which the customer is currently enrolled (including legacy or grandfathered plans), as well as any broadband internet plan that a provider currently offers to new customers.<sup>8</sup> In addition, the Commission also adopted rules to bring the non-usage tracking and non-usage de-enrollment rules for the Affordable Connectivity Program into alignment with the approach in the Commission’s long-standing Lifeline program.<sup>9</sup> On February 14, 2022, the Bureau released a Public Notice announcing the effective dates for the ACP rules announcing that the all plans requirement and the ACP non-usage rules would take effect on April 15, 2022.<sup>10</sup> The Bureau previously explained that where consistent with the changes under the Infrastructure and Jobs Act, the EBB Program rules would continue to apply until the ACP rules took effect.<sup>11</sup>

4. On March 21, 2022, USTelecom filed a petition seeking a 60-day waiver of the ACP non-usage rules in sections 54.1808(c) and 54.1809(c) of the ACP rules.<sup>12</sup> USTelecom’s waiver request explains that compliance with the non-usage rules “requires significant modification to a participating providers’ systems,” where the provider does not historically participate in Lifeline or offers Lifeline service that is not free-to-the-end-user, or where an existing Lifeline provider needs to scale its tracking system to cover additional services to which the ACP benefit applies.<sup>13</sup> USTelecom’s waiver request further states that “[t]he system development work that must occur for service providers to implement this requirement is technologically difficult and time consuming to accomplish, making the April 15, 2022

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<sup>5</sup> See 47 CFR § 54.1608(c).

<sup>6</sup> *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 14, 2022) (*ACP Order*).

<sup>7</sup> *ACP Order* at 47, para. 94; see also 47 CFR § 54.1802(b).

<sup>8</sup> *ACP Order* at 47, para. 94.

<sup>9</sup> See *id.* at 39-41, paras. 75-80; see also 47 CFR §§ 54.1808(c), 1809(c).

<sup>10</sup> *Wireline Competition Bureau Announces Effective Dates of Affordable Connectivity Program Rules and Comment and Reply Comment Deadlines for Related Further Notice*, WC Docket No. 21-450, Public Notice, DA 22-152, at 2 (WCB Feb. 14, 2022).

<sup>11</sup> *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket Nos. 20-445 and 21-450, Order, DA 21-1524 (WCB Dec. 8, 2021).

<sup>12</sup> USTelecom Waiver Petition.

<sup>13</sup> *Id.* at 2-3.

deadline for compliance unworkable for some service providers.”<sup>14</sup> USTelecom further explains that a short-term waiver “would serve the public interest without undermining the policy that the rule is intended to promote.”<sup>15</sup>

5. On March 21, 2022, Verizon filed a petition seeking a 60-day waiver of the all plans requirement in section 54.1802(b) of the ACP rules.<sup>16</sup> Verizon’s waiver request explains that Verizon’s TracFone subsidiary offers prepaid mobile broadband services, and by April 15, 2022, “TracFone will be offering at least one ACP-supported plan . . . that will be fully covered by the ACP \$30 benefit.”<sup>17</sup> Verizon noted that based on TracFone’s experience in the Lifeline, EBB Program, and Affordable Connectivity Program, most consumers would prefer to enroll in a plan that is fully covered by the ACP benefit, such as the \$30 plan that TracFone will be offering by April 15, 2022. However, while TracFone is working diligently to provide the ACP benefit on prepaid mobile broadband plans priced below \$30 and above \$30, TracFone would not be able to meet the April 15, 2022 deadline to make system changes allowing for the affordable connectivity benefit to be applied to these plans.<sup>18</sup> Verizon therefore sought a waiver of 60 days (until June 14, 2022), so that it could have the additional time to implement system development and changes but only for Tracfone’s prepaid mobile broadband plans that are below \$30 and above \$30.<sup>19</sup>

6. On March 25, 2022, AT&T filed a petition seeking a 120-day waiver of the all plans requirement in section 54.1802(b) of the ACP rules for AT&T’s postpaid mobile broadband plans of its subsidiaries AT&T Mobility LLC and New Cingular Wireless PCS, LLC.<sup>20</sup> AT&T’s waiver request explains that AT&T did not include postpaid mobile broadband plans in the EBB Program, and that it is working diligently to have the ACP benefit applied to postpaid mobile broadband plans.<sup>21</sup> AT&T explains that until the system work is complete, AT&T would have to “manually calculate and then monthly enter the ACP benefit on possibly thousands of customer’s legacy/grandfathered bills.”<sup>22</sup> AT&T cautions that such a manual process of this scope and complexity “substantially increases the risk of errors.”<sup>23</sup> AT&T further states that it is taking a significant amount of time to perform the development work and test such work, and a 120-day waiver would help ensure that AT&T could do so.<sup>24</sup>

7. On March 31, 2022, CCA filed a petition seeking a 60-day waiver of the all plans requirement in section 54.1802(b) of the ACP rules. CCA argues that there was not a clear understanding of the all plans requirement until the Commission adopted the Order on January 21, 2022, which left providers 12 weeks until the April 15 deadline to implement changes to accommodate all plans.<sup>25</sup> CCA explains that many providers “rely on outside billing vendors that typically take months to make changes to providers’ billing systems,” and that “despite best efforts, not all providers’ systems will be ready by

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<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

<sup>16</sup> Verizon Waiver Petition.

<sup>17</sup> Verizon Waiver Petition at 1-2.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> AT&T Waiver Petition at 1

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 4-5.

<sup>25</sup> CCA Waiver Petition at 4-5.

April 15.”<sup>26</sup> CCA further says that a brief extension of 60 days for all ACP providers to implement the all plans requirement will serve the public interest, as households that enrolled in the EBB Program “represents a substantial number and variety of internet plans that are unaffected by this request for extension of time.”<sup>27</sup>

### III. DISCUSSION

8. As a general matter, “an agency must adhere to its own rules and regulations.”<sup>28</sup> Although strict application of a rule may be justified “to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,”<sup>29</sup> the Commission’s rules may be waived for “good cause shown.”<sup>30</sup> The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>31</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>32</sup> The Bureau, under delegated authority, may act on requests for waiver of rules.<sup>33</sup>

9. Based on the record before us, the Bureau finds that good cause exists for a limited waiver of the ACP non-usage rules in sections 54.1808(c) and 54.1809(c), to give participating providers additional time to implement systems necessary to track usage in compliance with the ACP rules, and the Bureau grants USTelecom’s request for a 60-day waiver of the ACP non-usage rules in sections 54.1808(c) and 54.1809(c) of the Commission’s rules until June 14, 2022. During the limited waiver period, participating providers must still comply with the EBB Program non-usage rules. Specifically, for ACP subscribers who receive free-to-the-end user service, participating providers may not claim ACP subscribers who have not used their ACP-supported service during that service month. Commenters universally supported granting a temporary waiver on the non-usage rules.<sup>34</sup> At the expiration of the waiver period on June 14, 2022, where a household receives free-to-the-end-user ACP-only service, participating providers must start tracking non-usage on the new effective date. Consistent with the *ACP Order*, where the non-usage rules apply and a household uses a Lifeline benefit and an affordable connectivity benefit for the same service from the same provider, at the expiration of the waiver period, to avoid consumer confusion, the provider should track each subscriber’s non-usage using the same rolling 30-day period that it is using to track the subscriber’s usage for Lifeline.<sup>35</sup>

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<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>29</sup> *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

<sup>30</sup> 47 CFR § 1.3.

<sup>31</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>32</sup> *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>33</sup> 47 CFR § 0.291(b).

<sup>34</sup> *See, e.g.*, CTIA Comments at 2-3; ACA Connects Comments; NTCA-The Rural Broadband Association Comments; T-Mobile USA, Inc. Comments; Lumen Comments; National Tribal Telecommunications Association Comments (NTTA); NCTA – the Internet & Television Association Apr. 1, 2022 Comments; National Lifeline Association Comments at 1-2 (NaLA); AT&T Services Inc. Comments. Some commenters raised that more than the limited 60-day waiver may be necessary. *See, e.g.*, NTTA Comments at 4-5, NTCA Comments at 5-6. We do not act on any of these requests from the comments, and any requests for a waiver should be specifically requested with facts supporting a request.

<sup>35</sup> *ACP Order* at 40, para 76 n.227.

10. Based on the record before us, the Bureau also finds good cause exists for a limited 60-day waiver of the all plans requirement in section 54.1802(c) for Verizon and AT&T, and the Bureau grants Verizon's petition and grants-in-part and denies-in-part AT&T's petition. Verizon's request for a limited 60-day waiver is narrowly tailored to TracFone's prepaid mobile broadband plans that are above or below \$30 that TracFone still needs time for system development.<sup>36</sup> Subscribers that have been transitioned from the EBB Program will not be affected, and new subscribers for TracFone will still be able to enroll in TracFone's prepaid mobile broadband plans that are \$30 and fully covered by the ACP benefit.<sup>37</sup> We therefore find it is in the public interest to allow Verizon additional time to perform systems work to incorporate TracFone's prepaid mobile broadband plans that are above or below \$30.<sup>38</sup> NaLA agrees that a waiver for Verizon is appropriate, particularly where it is still offering an "ACP-supported plan on all TracFone brands that will be fully covered by the \$30 benefit," and such a plan are most popular in the Affordable Connectivity Program.<sup>39</sup>

11. In addition, AT&T's request for a temporary waiver is narrowly tailored to AT&T's postpaid mobile broadband plans that have been difficult to incorporate into billing systems and development.<sup>40</sup> AT&T will comply with the all plans requirement for its fixed and prepaid mobile broadband plans.<sup>41</sup> As with Verizon, we find it is in the public interest to allow AT&T additional time to complete system work for its postpaid mobile broadband plans. CTIA similarly supports provider-specific requests for waivers to implement new ACP requirements.<sup>42</sup> However, we find that AT&T's request for a 120-day waiver is overly broad. While we understand that AT&T is experiencing system development issues, granting an extension of 120 days would not serve the public interest and is too much time for them to implement the all plans requirement. Consistent with the extension of time we grant to Verizon, we will permit AT&T to have an additional 60 days to implement the all plans requirement for their postpaid mobile broadband plans.

12. We further find that CCA has not demonstrated that good cause exists for a limited waiver of the all plans requirement for all providers, and we deny their petition. Unlike Verizon and AT&T, CCA's petition is not narrowly tailored to specific providers or to specific plans. Instead, CCA asserts generally that although work has been done by providers to implement changes, "not all system changes will be completed by April 15."<sup>43</sup> NCTA filed comments supporting CCA's petition asserting that system changes for providers could take months.<sup>44</sup> The requirement that participating ACP providers would have to apply the benefit to all plans was established in the Infrastructure Act and was signed into law on November 15, 2021, and the Commission adopted this requirement in the Order released on January 21, 2022. Providers were aware of this requirement for months.<sup>45</sup> We also agree with NCLC that CCA is seeking an extension of one of the more important improvements to the ACP<sup>46</sup> and therefore a blanket, program-wide waiver, even for a limited 60-day period, is not justified. We therefore find that

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<sup>36</sup> Verizon Waiver Petition at 3-4.

<sup>37</sup> *Id.* at 5-6.

<sup>38</sup> *Id.* at 5-6.

<sup>39</sup> NaLA Comments at 2-3.

<sup>40</sup> AT&T Waiver Petition at 3.

<sup>41</sup> *Id.*

<sup>42</sup> CTIA Comments at 4.

<sup>43</sup> CCA Waiver Petition at 5.

<sup>44</sup> NCTA Apr. 8, 2022 Comments at 2.

<sup>45</sup> National Consumer Law Center et al. Comments at 3.

<sup>46</sup> *Id.*

CCA's request for a temporary waiver of the all plans requirement for all providers is overbroad and fails to demonstrate good cause.

#### IV. ORDERING CLAUSE

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182 as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that 47 CFR §§ 54.1802(c), 54.1808(c), and 54.1809(c) of the Commission's rules are WAIVED to the limited extent provided herein.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by USTelecom – The Broadband Association is GRANTED.

15. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Verizon is GRANTED.

16. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by AT&T Services, Inc. is GRANTED-IN-PART AND DENIED-IN-PART.

17. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Competitive Carriers Association is DENIED.

18. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau