

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

ORDER

Adopted: June 14, 2022

Released: June 14, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions of NTCA–The Rural Broadband Association (NTCA)¹ and AT&T Services Inc. (AT&T)² for limited waivers of the Commission’s non-usage rules applicable to Affordable Connectivity Program (ACP) subscribers who receive free-to-the-end-user service. Based on the Commission’s established waiver standard, for the reasons explained below, we grant NTCA’s request for (1) an extension until September 15, 2022 for small broadband internet access service providers³ that serve Tribal ACP customers to track usage on a rolling thirty-day basis for ACP subscribers who receive free-to-the-end-user service, including ACP/Lifeline subscribers who receive both benefits on the same service and (2) a retroactive waiver to January 1, 2022 of the Lifeline requirement to track usage on a rolling thirty-day basis to the extent that this subset of providers apply both the Lifeline and ACP benefit to the same service resulting in free-to-the-end-user service.⁴ However, we deny NTCA’s request for an indefinite waiver of this

¹ Petition for Waiver of NTCA–The Rural Broadband Association, WC Docket Nos. 21-450, 20-445, 11-42 (filed May 13, 2022) (NTCA Waiver Petition); see also Wireline Competition Bureau Seeks Comment on Petition Filed by NTCA–the Rural Broadband Association, WC Docket Nos. 21-450, 20-445, 11-42, Public Notice, DA 22-538 (WCB May 18, 2022) (seeking comment on NTCA Waiver Petition).

² Petition for Waiver of AT&T Services Inc., WC Docket No. 21-450 (filed Apr. 22, 2022) (AT&T Waiver Petition); see also Wireline Competition Bureau Seeks Comment on Petition Filed by AT&T Services Inc., WC Docket Nos. 21-450, Public Notice, DA 22-470 (WCB Apr. 28, 2022) (seeking comment on AT&T Waiver Petition).

³ For purposes of granting NTCA’s waiver to the extent described herein, “small broadband Internet access service providers” covered under the waiver means broadband Internet access service providers with 100,000 or fewer broadband connections (inclusive of commercial and residential connections for fixed and mobile services) that serve Tribal ACP subscribers. For purposes of this Order, we refer to these providers as “covered providers.”

⁴ See 47 CFR §§ 54.1808(c) and 54.407(c)(2). While NTCA requests the waiver for small broadband providers that serve Tribal ACP consumers, these providers may also serve non-Tribal customers. We recognize that it would be difficult for the subset of small broadband providers covered under the limited waiver we grant in this Order to maintain multiple usage tracking systems. Accordingly, we make clear that the limited waiver we grant today for the subset of providers at issue would also extend to those providers’ non-Tribal ACP customers. We further note that NTCA explains that to the extent the subset of providers at issue also participate in the Lifeline program, they do not already have mechanisms in place for tracking usage on a rolling thirty-day basis because the Lifeline benefit

(continued...)

requirement for small broadband providers that serve Tribal ACP subscribers. As explained below, to facilitate the administration of the limited duration waiver granted herein, covered providers must notify USAC of their intent to avail themselves of this waiver within 30 days of the release of this Order.

2. Covered providers relying on this waiver must not claim support for their ACP subscribers (or subscribers who apply both the Lifeline and ACP benefit to the same service) receiving free-to-the-end-user service who have not used their service during a given service month.⁵ Covered providers must also comply with the 15-day customer notice and de-enrollment requirements in section 54.1809(c) of the Commission's rules as of the June 14, 2022 effective date for those requirements, and the same requirements under section 54.405(e)(3) of the Lifeline rules for ACP/Lifeline customers.⁶

3. On the Bureau's own motion, we also grant AT&T a temporary sixty-day waiver to August 13, 2022 of the non-usage rules for AT&T's customers who receive free-to-the-end-user ACP service that uses Asymmetric Digital Subscriber Line (ADSL) technology.⁷ However, we deny AT&T's petition requesting an indefinite waiver of these rules for this subset of AT&T's subscribers.

4. Similarly, while we grant AT&T a limited 60-day waiver of the non-usage requirements for its customers who receive free-to-the-end-user ACP service that uses ADSL technology, we make clear that during the waiver period AT&T may only claim ACP support for those subscribers that have used their service during a given service month.⁸

II. BACKGROUND

5. On January 14, 2022, the Commission adopted the *ACP Order*, establishing rules for the Affordable Connectivity Program, the successor program to the Emergency Broadband Benefit Program.⁹ In that order, the Commission adopted the longstanding non-usage requirements used in the Lifeline program for the Affordable Connectivity Program, to harmonize the non-usage approach across both programs and provide stronger safeguards against potential waste, fraud and abuse where subscribers receive free-to-the-end-user service.¹⁰ The non-usage rules for Lifeline and the Affordable Connectivity Program apply when subscribers participating in either or both programs receive free-to-the-end-user service, regardless of whether the service is free as a result of the application of the ACP benefit, or as a

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alone does not usually result in free-to-the-end-user service. *See* NTCA Waiver Petition at 4, n.8. We clarify that to the extent a provider does in fact offer and provide customers free-to-the-end-user Lifeline service without application of the ACP benefit, the limited waiver that we grant the covered providers from the Lifeline requirement to track non-usage on a rolling thirty-day basis would not apply.

⁵ *See* 47 CFR § 54.1608(c).

⁶ NTCA's waiver petition does not seek a waiver of the 15-day subscriber cure notice or de-enrollment requirements under section 54.1809(c) of the ACP rules or section 54.405(e)(3) of the Lifeline non-usage rules. 47 C.F.R. §§ 54.1809(c), 54.405(e)(3). *See NTCA Waiver Petition* at 2; Letter from Brian Ford, Vice President Federal Regulatory, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 21-450 and 20-445, at 2 (filed May 26, 2022). However, on our own motion, consistent with and to fully implement the limited duration waiver that we grant the covered providers, we also waive sections 54.1809(c) and 54.405(e)(3) of the Commission's rules to the extent that they require participating providers to track subscriber usage on a rolling thirty-day basis to determine non-usage. *See* 47 C.F.R. §§, 54.1809(c), 54.405(e)(3).

⁷ *See* 47 CFR §§ 54.1808(c) and 54.1809(c).

⁸ *See* 47 CFR § 54.1608(c).

⁹ *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 14, 2022) (*ACP Order*).

¹⁰ *See ACP Order* at 39-41, paras. 75-80; *see also* 47 CFR §§ 54.1808(c), 54.1809(c).

result of the application of the Lifeline and ACP or other benefits to the same service.¹¹ Usage is defined in section 54.407(c)(2) of the Commission's rules.¹²

6. As explained in the *ACP Order*, the Commission originally adopted the Lifeline non-usage rules as an important safeguard against waste, fraud and abuse—in particular to ensure that limited Universal Service Funds were not being expended where subscribers were not actually using the supported service.¹³ Under the ACP and Lifeline rules, participating providers are required to track on a rolling 30-day basis whether subscribers receiving free-to-the-end-user service have used their service, notify subscribers who have not used their service during that period that they have fifteen days to cure their non-usage, and de-enroll those subscribers who have not timely cured their non-usage.¹⁴ For the limited duration Emergency Broadband Benefit Program (EBB Program), which was the predecessor to the Affordable Connectivity Program, participating providers were required to track usage on a service month basis and for a given service month could only claim support for EBB subscribers that used their EBB service during that service month.¹⁵ For the EBB Program, providers were not required to issue 15-day cure notices to subscribers for non-usage, or de-enroll subscribers for non-usage.¹⁶ In the *ACP Order*, the Commission explained that the Lifeline non-usage requirements provided stronger safeguards against waste, fraud, and abuse and better supported program administration by ensuring that subscribers received a uniform non-usage and cure period, and ensuring that consumers who were not using their supported service were removed from the National Lifeline Accountability Database and, thus, could not be claimed and also would not be subject to the annual recertification requirement.¹⁷ The Commission also explained that harmonizing the non-usage approach across the two programs would better promote provider compliance and also minimize potential consumer confusion given that many households participate in both Lifeline and ACP and apply both benefits to the same service.¹⁸

7. On February 14, 2022, the Bureau released a Public Notice announcing that the ACP non-usage rules would take effect on April 15, 2022.¹⁹ The Bureau had 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.²⁰ On April 15, 2022, the Bureau granted a waiver extending the

¹¹ 47 CFR §§ 54.407(c), 54.405(e)(3), 54.1808(c), and 54.1809(c).

¹² Under this rule, subscribers can demonstrate usage of a supported service through: “(i) Completion of an outbound call or usage of data; (ii) Purchase of minutes or data from the [provider] to add to the subscriber’s service plan; (iii) Answering an incoming call from a party other than the [provider] or the [provider’s] agent or representative; (iv) Responding to direct contact from the [provider] and confirming that he or she wants to continue receiving [their] service; (v) Sending a text message.” 47 C.F.R. § 54.407(c)(2)(i)-(v).

¹³ *ACP Order*, at 39-40, paras. 75, 76, 78-9.

¹⁴ See 47 CFR §§ 54.407(c)(2), 54.405(e)(3), 54.1808(c), 54.1809(c).

¹⁵ See 47 CFR § 54.1608(c).

¹⁶ See 47 CFR § 54.1608(c); *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612, 4680, para. 145 (2021) (declining to require de-enrollment of EBB subscribers for non-usage due “to the unique circumstances provided by the pandemic, the limited duration of the EBB Program, and the participation of non-ETC providers that may not have already designed processes to comport with the specific Lifeline usage requirements.”).

¹⁷ *ACP Order*, at 39-41, paras. 75-76, 78-79.

¹⁸ *Id.* at 40, para. 76.

¹⁹ *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).

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

effective date of the ACP non-usage rules to June 14, 2022 and made clear that during the limited waiver period, where ACP subscribers are subject to the non-usage rules, the participating providers may not claim support for subscribers that have not used their ACP-supported service during that service month.²¹

8. *NTCA Waiver Petition.* On May 13, 2022, NTCA filed a petition seeking a waiver, for “small”²² broadband Internet access service providers that serve Tribal ACP consumers, of the ACP and Lifeline rules in sections 54.1808(c) and 54.407(c) requiring participating providers to track usage on a rolling thirty-day basis for ACP subscribers (including ACP subscribers who receive the Lifeline and ACP benefit on the same service) who receive free-to-the-end-user service.²³ In the alternative, NTCA requests a waiver of this requirement until September 15, 2022.²⁴ For this requirement under the Lifeline rules, NTCA also seeks a waiver retroactive to January 1, 2022.²⁵ In support of its petition, NTCA explains that these providers do not already have systems in place to track non-usage on a rolling thirty-day basis, and that for the small broadband providers at issue, compliance with this requirement presents a challenge because they lack sufficient resources to manually track usage and send the required non-usage cure notices and conduct de-enrollments, necessitating an “automated functionality that many of these entities do not have.”²⁶ NTCA further explains that these small providers “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”²⁷ and that the costs of a vendor solution would be “several thousand dollars per month, a significant burden for small operators....”²⁸ NTCA also states that the automated vendor solutions the providers at issue are exploring will not be available by the June 14, 2022 effective date of the ACP non-usage rules.²⁹ NTCA further states that the burdens these providers would face to track usage on a rolling thirty-day basis “far outweighs the benefit of monitoring usage in such a manner”³⁰ and “will prove particularly burdensome for its approximately 100 member companies that serve Tribal consumers.”³¹

²¹ *Affordable Connectivity Program et al.*, Order, WC Docket Nos. 21-450, 20-445, DA 22-418, paras. 2 and 8 (WCB Apr. 15, 2022).

²² NTCA defines “small” for purposes of its petition as “providers serving fewer than 250,000 broadband subscribers” and explains that this definition would be “consistent with past Commission action to adopt tailored approaches for small entities.” *See NTCA Waiver Petition* at 2, n.5 (citing to *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)).

²³ *See* NTCA Waiver Petition 4. NTCA explains that it is not seeking a waiver of the requirements to provide a 15-day subscriber cure notice to or to de-enroll subscribers who do not timely cure their non-usage. *See id.* at 2, n. 4.

²⁴ *See id.* at 2.

²⁵ *See* Letter from Brian Ford, Vice President Federal Regulatory, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 21-450 and 20-445, at 2 (filed May 26, 2022).

²⁶ NTCA Waiver Petition at 3-4.

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

²⁹ *Id.* at 4 (explaining that one of the potential vendor solutions “is offered only in ‘beta’ form, with significant testing required to ensure its interoperability with existing billing and other systems” and that another vendor solution “may be delayed even beyond the newly established June 14 deadline.”); *See* Letter from Brian Ford, Vice President Federal Regulatory, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 21-450 and 20-445, at 2 (May 26, 2022) (“the 90-day extension the *Petition* seeks as an alternative was based on expected availability as articulated by the vendors.”).

³⁰ NTCA Waiver Petition at 6.

9. National Tribal Telecommunications Association (NTTA) and WTA—Advocates for Rural Broadband (WTA) filed comments supporting NTCA’s waiver request.³² Both commenters explain that the subset of providers for which the waiver is sought do not already have automated mechanisms in place for tracking usage on a rolling thirty-day basis, and further explain that this subset of providers would incur significant expense to obtain and implement these systems for tracking usage on a rolling thirty-day basis.³³ WTA also asserts that “the termination for non-use rules adopted to curb Lifeline voice service abuses are neither relevant nor necessary to address the significantly different circumstances of ACP/Lifeline broadband service” and that termination for non-usage “will disrupt the broadband service of the very customers that the ACP/Lifeline broadband programs were developed to benefit....”³⁴

10. *AT&T Waiver Petition.* On April 22, 2022, AT&T filed a petition seeking an expedited, indefinite waiver of the ACP non-usage rules in sections 54.1808(c) and 54.1809(c) for its ACP subscribers who receive free-to-the-end-user service under AT&T’s grandfathered service plans using ADSL technology.³⁵ Specifically, AT&T requests a waiver of the requirement to “1) send a notification after 30-consecutive days of non-usage informing the household that failure to use the service within the 15-day cure period will result in de-enrollment from ACP; and, 2) de-enroll the household from ACP if there is no service usage during the 15-day cure period.”³⁶ AT&T explains that for this subset of its ACP subscribers, it is unable to track subscriber usage on a rolling thirty-day basis because its grandfathered service plans using ADSL technology “rely on outdated, manufacturer-discontinued equipment that does not always capture usage information.”³⁷ AT&T further explains that “the equipment on which ADSL based plans rely is no longer supported by manufacturers” and that “it is not feasible for AT&T to upgrade the system components to obtain usage information consistently and reliably in all circumstances to comply with the ACP usage requirements for its grandfathered ADSL based plans.”³⁸ AT&T states that under the requested waiver, it would not claim subscribers within this subset for whom it does not have usage data for a given service month but would not send cure notices or de-enroll from the Affordable Connectivity Program households for which it does not have usage data as those households may have used their service but usage information was not captured due to equipment limitations.³⁹ On May 18, 2022, AT&T submitted a letter explaining that the other forms of usage under the Commission’s rules are “either not applicable to its grandfathered wireline broadband internet access service plans using

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³¹ Letter from Brian Ford, Vice President Federal Regulatory, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 21-450 and 20-445, at 1 (filed May 26, 2022).

³² See Comments of WTA, WC Docket Nos. 21-450, 20-445, and 11-42 (filed May 26, 2022); Comments of National Tribal Telecom Association, WC Docket Nos. 21-450, 20-445, and 11-42 (filed May 26, 2022).

³³ See NTTA Comments at 4; WTA Comments at 4. To the extent that NTCA, NTTA, or WTA are actually requesting reconsideration of the ACP non-usage rules in sections 54.1808(c) and 54.1809(c), the deadline for filing petitions for reconsideration of those rules has passed. See 47 CFR §§ 1.106(f) (“The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action”); see also 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission). The *ACP Order* adopting non-usage rules for the ACP was published in the Federal Register on February 14, 2022. See Federal Communications Commission, Affordable Connectivity Program; Emergency Broadband Benefit Program, Final Rule, 87 Fed. Reg. 8346 (Feb. 14, 2022) (to be codified at 47 CFR pt. 54).

³⁴ WTA Comments at 3, 6.

³⁵ AT&T Waiver Petition at 1.

³⁶ *Id.* at 3.

³⁷ *Id.* at 1.

³⁸ *Id.* at 3.

³⁹ *Id.* at 5.

ADSL technology or would be impracticable” because the services at issue are not bundled with voice service, therefore, completion of an outbound call or answering an inbound call could not be used to demonstrate usage of the ACP supported service.⁴⁰ AT&T further states that it would be “impractical” to develop a process to track and collect customer notices and confirmations, and that such a process could result in customers being de-enrolled from the Affordable Connectivity Program.⁴¹ AT&T estimates “that a very small number of its customers” would be covered under the requested waiver.⁴² NTCA filed comments in support of AT&T’s petition but does not request a waiver specifically for ACP customers receiving ACP service that uses ADSL technology.⁴³

III. DISCUSSION

11. As a general matter, “an agency must adhere to its own rules and regulations.”⁴⁴ 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,”⁴⁵ the Commission’s rules may be waived for “good cause shown.”⁴⁶ 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.⁴⁷ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴⁸ The Bureau, under delegated authority, may act on requests for waiver of rules.⁴⁹

12. *NTCA Petition.* For the reasons stated below, we grant NTCA’s request for a waiver for small broadband providers that serve Tribal ACP customers from the requirement under sections 54.1808(c) and 54.407(c) of the Commission’s rules to track subscriber usage on a rolling thirty-day basis until September 15, 2022. We also grant NTCA’s request for a retroactive waiver to January 1, 2022 for this requirement under the Lifeline rules. In all other respects we deny NTCA’s waiver request.

13. Based on the record, we find that good cause exists to grant NTCA’s request for a waiver until September 15, 2022 for small broadband providers participating in the Affordable Connectivity Program that serve Tribal consumers of the requirement under sections 54.407(c) and 54.1808(c) of the Commission’s rules to track usage on a rolling thirty-day basis for their ACP subscribers (or ACP/Lifeline subscribers) who receive free-to-the-end-user service. We also find good cause exists to grant covered providers a retroactive waiver to January 1, 2022 for this requirement under the Lifeline rules. For purposes of this limited duration waiver, we find that the proposed definition of “small” broadband provider in NTCA’s petition is overbroad. Instead, based on our review of the record and Commission precedent, we define “small” broadband provider for purposes of this limited duration

⁴⁰ Letter from Anisa Green, Director Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (May 18, 2022).

⁴¹ *Id.*

⁴² *Id.* AT&T states that in the first month that the ACP benefit was available on its grandfathered wireline plans using ADSL technology, “fewer than one hundred eligible consumers enrolled in ACP.” *Id.* See also Letter from Anisa Green, Director Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (May 6, 2022).

⁴³ NTCA Comments, WC Docket Nos. 21-450 and 20-445 (filed May 6, 2022).

⁴⁴ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁴⁵ *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

⁴⁶ 47 CFR § 1.3.

⁴⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴⁸ *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁴⁹ 47 CFR § 0.291(b).

waiver as broadband providers with 100,000 or fewer broadband connections.⁵⁰ We find that this definition is more narrowly tailored to cover small broadband providers most likely to face challenges in complying with our rolling thirty-day usage tracking requirement for ACP or ACP/Lifeline subscribers who receive free-to-the-end-user service for the reasons described below.

14. We find good cause to waive our rules for the covered providers because the record shows that they largely do not already have systems in place to track subscriber usage on a rolling thirty-day basis, and are unable to use manual methods or develop their own automated solutions for tracking subscriber usage given their resource limitations and the large volume of their customers that now receive free-to-the-end-user service as a result of the ACP benefit level. NTCA has also explained that the automated vendor solutions being explored will not be available by the June 14, 2022 effective date of the ACP non-usage rules.⁵¹ During the waiver period, NTCA states that it would continue to comply with the 15-day subscriber cure notice requirement, and would also de-enroll subscribers who fail to timely cure their non-usage as required under sections 54.405(e)(3) and 54.1809(c) of the Lifeline and ACP rules respectively, which would ensure that appropriate safeguards are in place to prevent waste, fraud, and abuse during the waiver period.⁵² Given these circumstances, we find that it is in the public interest to grant the covered providers additional time until September 15, 2022, as well as a retroactive waiver to January 1, 2022, to implement automated systems for compliance with the requirement to track usage on a rolling thirty-day basis under the Lifeline and ACP non-usage rules. This waiver of the Lifeline rules does not apply to covered providers who prior to the establishment of the Affordable Connectivity Program offered free-to-the-end-user service, as they should have systems in place to adhere to the Lifeline program's non-usage rules. We make clear that this waiver only extends to the requirement to track non-usage on a rolling thirty-day basis, but not to other aspects of the non-usage rules that enable participating providers to only claim support for subscribers who have activated their service, or the cure provisions and de-enrollment requirements of the non-usage rules.⁵³

15. Consistent with and for purposes of fully implementing this waiver, on our own motion we also grant the covered providers a limited waiver from sections 54.1809(c) and 54.405(e)(3) to the extent that these rules require participating providers to track subscriber usage on a rolling thirty-day basis to determine non-usage. These additional waivers are necessary to permit the covered providers to claim support for their subscribers where the non-usage rules apply, provided that the subscriber has used their service during a given service month or timely cured their non-usage, even though the covered providers will not be required to track usage on a rolling thirty-day basis during the waiver period.

16. We make clear that this limited duration waiver only applies to small broadband providers participating in the Affordable Connectivity Program that provide Tribal consumers free-to-the-end-user service as a result of the application of the ACP benefit or application of both the ACP and Lifeline benefit to the same service. We also make clear that covered providers that avail themselves of this waiver relief may only claim support for ACP or ACP/Lifeline subscribers who receive free-to-the-end-user service and have used their service during a given service month, and must also comply with the 15-day subscriber notice requirement, and de-enroll such subscribers who did not timely cure their non-usage.⁵⁴ For ACP-only subscribers, covered providers should begin tracking usage on a rolling thirty-day basis on September 15, 2022. Consistent with the *ACP Order*, at the expiration of the waiver period, to

⁵⁰ See, e.g., *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1881, para. 47 (2020) (defining “small voice service providers” as providers with “100,000 or fewer voice subscriber lines” for purposes of granting a limited implementation extension for the Commission’s Caller-ID authentication requirements).

⁵¹ NTCA Waiver Petition at 4.

⁵² *Id.* at 6.

⁵³ See 47 CFR §§ 54.407(c)(1), 54.1808(c), 54.1809(c).

⁵⁴ These requirements are codified in 47 CFR § 54.1608(c) and 47 CFR § 54.1809(c).

avoid consumer confusion, where consumers receive both the Lifeline and ACP benefit on the same service, 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.⁵⁵ To minimize the potential for waste, fraud and abuse small broadband providers availing themselves of this limited duration waiver relief must send the 15-day cure notice within one business day of the snapshot report for the prior month.⁵⁶

17. For administration purposes, small broadband providers (or their assigns) seeking to avail themselves of this limited duration waiver must notify the Universal Service Administrative Company (USAC) within 30 days of the release of this Order via email sent to ACPprogram@usac.org of that intent, and must include the relevant company name(s) and Service Provider Identification Number(s) in this notice.⁵⁷ We direct USAC to coordinate with the Wireline Competition Bureau to confirm that the providers availing themselves of this limited waiver relief fall within the narrowly tailored subset of providers for which this relief is granted, and also to maintain a list of providers that are availing themselves of this relief to ensure compliance with the ACP rules.

18. While we grant NTCA's request for a limited duration waiver of the requirement to track subscriber usage on a rolling thirty-day basis, we find that NTCA has not demonstrated that good cause exists for an indefinite waiver. As explained in the *ACP Order*, requiring providers to track subscriber usage for free-to-the-end-user services on a rolling thirty-day basis ensures that such subscribers are subject to a uniform non-usage period.⁵⁸ Although NTCA states that small broadband providers serving Tribal ACP customers would incur "substantial costs" to implement solutions to comply with the requirement to track subscriber usage on a rolling thirty-day basis, NTCA does not demonstrate that other similarly situated providers have not or would not incur similar costs to comply with this requirement for the ACP and Lifeline programs.⁵⁹ Accordingly, the costs associated with obtaining or implementing a solution to comply with this requirement do not constitute special circumstances that would justify an indefinite waiver.⁶⁰ We also note that additional time provided under the limited waiver we grant covered

⁵⁵ See *ACP Order*, at 40, para. 76, n.227.

⁵⁶ Letter from Brian Ford, Vice President Federal Regulatory, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 21-450 and 20-445, at 2 (filed May 26, 2022) (stating "Participating providers subject to the relief requested would compare usage reports to their ACP/Lifeline 'snapshot' reports on the 1st of the month and generate 'cure' notices to those subscribers that have not utilized their service during the previous month.").

⁵⁷ NTCA's Waiver Petition does not identify individual small broadband providers serving Tribal ACP customers for which it requests waiver relief. Requiring these small broadband providers to notify USAC of their intent to avail themselves of this relief is, therefore, an important program integrity measure.

⁵⁸ *ACP Order* at para. 75, n.223.

⁵⁹ NTCA Waiver Petition at 4. WTA and NTTA's respective comments also discuss the significant costs that small broadband providers would incur to comply with the requirement to track non-usage on a rolling thirty-day basis where ACP subscribers receive free-to-the-end-user ACP service. See WTA Comments at 4; NTTA Comments at 4.

⁶⁰ See, e.g., *Rural Call Completion*, WC Docket No. 13-39, Order, 30 FCC Rcd. 2843, (WCB 2015) (finding that cost alone did not present good cause under the waiver standard to waive compliance with the Commission's rural call completion requirements). See also, *c.f.*, *Applications of County of Beltrami, Request for Waiver on Assignment and Use of the Frequencies in the 450-470 MHz Band for Fixed Operations*, File No. 0001273917, Order, 19 FCC Rcd 18763, 18765, para. 8 (2004) ("[C]ost alone does not make application of the Commission's Rules inequitable, unduly burdensome, or contrary to the public interest"); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace; Leaco Rural Telephone Cooperative, Inc.*, CC Dockets Nos. 96-149, 96-61, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771, 10801, para. 42 (1999) (declining to grant waiver where petitioner failed to show costs beyond those anticipated by the "normal, contemplated functioning of the rules"); *Rural Call Completion, Petition for Limited Waiver of AT&T Services, Inc., Petition for Waiver of CenturyLink*, WC Docket No. 13-39, Order, DA 15-147, para.19 (WCB 2015) (considering compliance costs alongside additional factors, including "potential value of [rural call completion] data" in deciding waiver petition).

(continued....)

providers will help mitigate these financial concerns by giving these providers more time to secure and pay for potential solutions needed to track usage on a rolling thirty-day basis. WTA's assertions that it is unnecessary to apply the Lifeline non-usage approach to the Affordable Connectivity Program because of the "significantly different circumstances of ACP/Lifeline broadband service" and that termination for non-usage would result in customer de-enrollments also do not demonstrate good cause for an indefinite waiver of these requirements.⁶¹ As explained above, the non-usage rules provide a significant safeguard against waste, fraud, and abuse where subscribers receive free-to-the-end-user service, and the circumstances present here do not demonstrate good cause for indefinitely waiving these requirements for certain providers.

19. *AT&T Petition.* On AT&T's petition, we grant on our own motion a limited 60-day waiver for AT&T to implement a solution for tracking usage on a rolling thirty-day basis for AT&T's ACP customers who receive free-to-the-end-user service using ADSL technology. However, we deny AT&T's request for an indefinite waiver of this requirement for the subset of providers at issue. During this limited waiver period, AT&T may not claim support for households in this subset of AT&T subscribers for which AT&T does not have usage information for a given service month.⁶² This limited duration waiver will end on August 13, 2022, and on that date, AT&T will need to begin tracking usage on a rolling thirty-day basis for the subset of subscribers at issue.⁶³

20. We recognize that AT&T may need additional time to develop and implement a manual solution to comply with the non-usage rules for this limited subset of subscribers because the limitations of the equipment used to provide ADSL technology make it infeasible to reliably track usage for these subscribers on a rolling thirty-day basis. Therefore, good cause exists to grant a sixty-day extension to implement the non-usage requirements for this subset of subscribers is warranted. However, based on our review of the record, we find that AT&T does not demonstrate that good cause exists to grant an indefinite waiver of the ACP non-usage rules for the limited subset of AT&T ACP customers who receive free-to-the-end-user-service that is based on ADSL technology. As explained in the *ACP Order*, the ACP non-usage rules are an important safeguard against waste, fraud, and abuse, and provide stronger program integrity safeguards than the non-usage approach that the Commission used for the EBB Program given the special circumstances and limited duration of the EBB Program.⁶⁴ AT&T has not demonstrated that it would be unable to comply with the ACP non-usage rules for the subset of its ACP subscribers at issue, or that it would face unique or inequitable burdens to comply with the ACP non-usage rules for this subset of its ACP subscribers.

21. We acknowledge that due to the outdated nature of the equipment for services using ADSL technology, AT&T may not be able to implement an automated solution for tracking usage for its ACP subscribers who receive free-to-the-end-user service using ADSL technology.⁶⁵ However, under the ACP rules, actual usage of data is not the only method for demonstrating usage.⁶⁶ We recognize that some methods of demonstrating usage may not be applicable to the subset of AT&T subscribers at issue,⁶⁷

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⁶¹ WTA Waiver Petition at 3, 6.

⁶² See 47 CFR § 54.1608(c).

⁶³ While August 13, 2022 is a Saturday, given that this date simply starts the clock for tracking usage on a rolling 30-day basis, and AT&T would not be required to take affirmative action on this date, we do not find justification for setting the end date of this waiver to the next business day.

⁶⁴ *ACP Order*, at paras. 75, 78-79.

⁶⁵ See AT&T Waiver Petition at 3.

⁶⁶ See 47 CFR § 54.407(c)(i)-(v).

⁶⁷ Letter from Anisa Green, Director Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed May 18, 2022).

but we are not persuaded that AT&T could not demonstrate and track usage for the subset of AT&T customers at issue using direct communication to obtain confirmation of whether the subscriber wants to continue receiving their service. AT&T asserts that this option is not feasible because AT&T may not have an email address or may have an incorrect email address for these subscribers, or that this option may result in de-enrollments because the impacted customers may assume that the communication is spam.⁶⁸ However, AT&T has not offered any reason that it could not obtain updated email addresses or use non-email forms of direct communication to confirm whether these subscribers want to continue to receive their ACP service. We are not persuaded that it would be impractical or unduly burdensome compared to similarly situated providers for AT&T to implement a manual solution to comply with the non-usage requirements under sections 54.1808(c) and 54.1809(c) of the Commission's rules for this subset of subscribers.

22. The potential risk of subscriber de-enrollments due to non-response to direct communication also is not good cause for an indefinite waiver. Other providers use this method to demonstrate usage and face the same risk of customer non-response.⁶⁹ In addition, AT&T also has not offered any reason why it could not mitigate potential subscriber non-response by providing information on and educating the impacted consumers about the non-usage requirement and the need to respond timely to AT&T's direct communication to confirm they want to keep their service or face de-enrollment from the Affordable Connectivity Program. AT&T also has not indicated that resource limitations would impose a significant barrier to AT&T regularly providing direct communications to the "very small" subset of customers at issue for purposes of satisfying the ACP non-usage requirement. For all of the above reasons, we find that AT&T has not demonstrated good cause for indefinitely waiving the non-usage requirements under sections 54.1808(c) and 54.1809(c) of the ACP rules. However, as noted above, good cause exist to grant on our own our motion a 60-day limited duration waiver of sections 54.1808(c) and 54.1809(c) of the ACP rules, to give AT&T additional time to develop and implement a manual solution for complying with the ACP non-usage rules for this subset of AT&T's ACP customers. We make clear that this waiver does not waive the requirement that participating providers may only claim support for subscribers subject to the non-usage rule who have activated their service.⁷⁰

IV. ORDERING CLAUSES

23. ACCORDINGLY, IT IS 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 47 CFR §§ 54.407(c), 54.1808(c), 54.405(e)(3), and 54.1809(c) of the Commission's rules are WAIVED to the limited extent provided herein.

24. 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 NTCA is GRANTED-IN-PART and DENIED-IN-PART.

25. 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

⁶⁸ See *id.*.

⁶⁹ Based on AT&T's assertions that the customers at issue represent a "very small number" of AT&T's ACP subscribers, using a direct communication approach is unlikely to result in massive ACP de-enrollments due to non-response.

⁷⁰ See 47 CFR §§ 54.407(c)(1), 54.1808(c).

sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3 that ATT's request for waiver is DENIED.

26. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3 that AT&T is GRANTED a waiver until August 13, 2022 of the June 14, 2022 deadline for compliance with the non-usage tracking, customer notice, and de-enrollment requirements in sections 54.1808(c) and 54.1809(c) of the Commission's rules, 47 CFR §§ 54.1808(c) and 54.1809(c).

27. 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