

**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

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) comments in response to the Public Notice (*Wireline Competition Bureau Seeks Comment on Petition Filed by NTCA – The Rural Broadband Association*), WC Docket Nos. 21-450, 20-445 and 11-42, DA 22-538, released May 18, 2022.

WTA is a national trade association that represents more than 360 rural telecommunications carriers (“Rural LECs”) that either directly or via Internet service provider (“ISP”) subsidiaries furnish broadband services to areas containing households that are eligible to participate in the Lifeline program and the Affordable Connectivity Program (“ACP”).

WTA supports NTCA’s request for waiver of the provisions of Sections 54.1808(c) and 54.407(c) of the Commission’s Rules with respect to “small” broadband Internet access service providers (less than 250,000 subscribers) insofar as such small providers may be required to terminate broadband service to certain ACP/Lifeline customers (specifically, those customers that are not assessed any out-of-pocket payment due to the application of ACP/Lifeline benefits) because such customers have not used their broadband service during a rolling 30-day period. At the present time, these “termination for non-use” provisions predominately impact subscribers on Tribal lands that are able to receive broadband service for no out-of-pocket payment due to the application of available \$75 ACP and \$34.25 Lifeline benefits. However, with the advent of “low-

cost broadband service plans” that are encouraged or required by various federal and state broadband infrastructure programs, the numbers and locations of broadband subscribers able to use their ACP/Lifeline benefits to avoid out-of-pocket payments may expand significantly beyond the class of subscribers residing on Tribal lands.

**Waiver of the Termination for Non-Use Provisions for
Small Broadband Service Providers Will Serve the Public Interest**

Section 1.3 of the Rules permits regulations to be waived for good cause shown. The Commission may exercise its discretion to waive its rules where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Good cause exists for the proposed waiver of Sections 54.1808(c) and 54.407(c) with respect to small broadband service providers because: (1) the termination for non-use provisions are not as necessary or effective for fixed broadband services as they were for the low-cost cellular voice service abuses which they were devised to address; (2) the provisions require expensive monitoring equipment or personnel resources that are unduly burdensome for small service providers and that penalize and/or discourage them for participating in the ACP and Lifeline programs; and (3) the provisions are much more likely to harm the very low-income subscribers that the ACP and Lifeline programs are intended to help rather than to reduce waste, fraud and abuse.

**The Incentives and Profits for Enrolling Non-User “Phantom” Customers
Are Far Less for Broadband Services Than Low-Cost Cellular Voice Services**

It is WTA’s understanding that the Lifeline “termination for non-use for 30 days” provisions were adopted primarily because some unscrupulous entities were signing up Lifeline

voice customers for low-cost “burner” cellphones that had relatively short service lives (due to limited battery life or minutes of use), and then claiming the Lifeline benefits for such customers long after their cellphones stopped working. In stark contrast, broadband service providers cannot sign up ACP/Lifeline customers simply by handing out cheap cellphones at a kiosk, parking lot or community event. Rather, often a fixed wireline or wireless broadband service provider has to invest significant time and expense to send a technician and truck to a new ACP/Lifeline broadband customer’s home to install at least a network interconnection device (“NID”) and to hook it up with modems, WiFi routers and other equipment that the service provider or customer needs to acquire and use.¹ And the ACP/Lifeline customers themselves must purchase, maintain and replace their own desktop computers, laptops, tablets and other devices, or in the alternative pay at least \$10-to-\$50 dollars out of their own pockets if they purchase certain connecting devices from a service provider.

The point here is that both broadband service providers and their ACP/Lifeline customers must make substantial time and equipment investments in order to establish the supported broadband services. These investments are far greater than those of the low-cost cellular voice service entities whose gaming strategies the “termination for non-use” rules were intended to deter. In light of these much larger broadband investments, there is virtually no incentive on the part of the service provider or the ACP/Lifeline customer to generate “phantom customers” that are carried on the service provider’s books as “customers” for ACP/Lifeline reimbursement purposes but no longer actually use the broadband service. Hence, 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.

¹ In some cases, a fixed wireline provider will need to install a new line from its trunk network to the customer location.

The Costs of Monitoring ACP/Lifeline Non-Use Are Unduly Burdensome For Small Service Providers and Discourage Participation in the Programs

Small broadband service providers typically do not have automated systems that can monitor the usage of individual customers. Rather, most require their employees to manually check and verify usage. However, whatever technology or methodology is used, the monitoring of ACP/Lifeline customer usage on a rolling 30-day basis is expensive for small service providers on a per-customer basis, and discourages small provider participation in the programs.

Automated systems may be available, or may soon become available, that would permit the monitoring of individual ACP/Lifeline broadband customer usage on a daily basis in order to determine whether and when continuous days of non-usage require warnings or termination. However, such automated systems are generally very expensive – on both an overall per-customer basis and especially on a per-ACP/Lifeline customer basis – for WTA members and other small broadband service providers to acquire, maintain and operate. In most current circumstances, the affected small broadband service providers are already struggling to meet the substantial costs and other burdens that are necessary to extend and upgrade their broadband networks on Tribal lands, and do not have the resources necessary to invest in expensive automated broadband usage monitoring systems.

It is WTA's understanding that most of its affected members will monitor ACP/Lifeline broadband usage on a largely manual basis if and when the subject "termination for non-use" rules become fully applicable. In at least some cases, service providers will need to purchase compatible modems (such as the ADTRAN Smart R6 modem) and send their technicians and trucks to ACP/Lifeline customer homes to install them. Then, on an ongoing basis, the service provider will need: (a) to have its customer service staff maintain a current list of ACP/Lifeline broadband customers; (b) to have its technical staff monitor each ACP/Lifeline customer on a daily basis (including Saturdays and Sundays on an overtime basis) to determine whether or not there was usage during a day and to keep a running count of consecutive non-usage days for each customer;

and (c) where necessary, to have its customer service staff prepare and send warning notices and to have its technical staff make service terminations. Customer service staffs will also have the burdens of dealing with ACP/Lifeline customers surprised and angered by service terminations, and of assisting terminated customers to re-apply for ACP/Lifeline broadband service and benefits.

At this time, participation in the ACP/Lifeline broadband program is essentially a public service. WTA members and other small service providers do not expect, and are not likely to generate, significant profits from it. Imposition of substantial and expensive usage monitoring burdens penalizes small providers that are participating in the ACP/Lifeline broadband programs for their efforts to increase broadband adoption among their lower-income neighbors, and discourages other small entities from agreeing to voluntarily participate in the ACP/Lifeline program.

**The Termination for Non-Use Rules Harm the Very Customers
That the ACP/Lifeline Broadband Programs Are Intended to Assist**

Whereas the cellphone voice services originally targeted by the “termination for non-use” rules can be taken and used anywhere, fixed wireline and wireless broadband services are predominately used on a much more stationary basis in ACP/Lifeline customer homes. Hence, the extension of the “termination for non-use” rules from mobile voice to fixed broadband services creates significant dangers that ACP/Lifeline customers will unexpectedly lose broadband service that they need and rely upon because they were away from their homes for extended periods.

For example, customers can be hospitalized or treated in extended health care facilities for weeks or months and then return home to find that the broadband services that they need to stay in touch with their healthcare providers and others have been terminated for non-use while they were away and unable to respond to service provider notices. Likewise, customers can be away from home for extended periods to help sick relatives or friends or to assist with newborn babies, and come home to find that the ACP/Lifeline broadband services needed to maintain continuing contact with these relatives and friends have been terminated for non-use while they were gone.

Another likely situation is where problems arise with respect to home computer systems of elderly or technically-challenged ACP/Lifeline customers, and the services are not used for a month or more until more technically savvy relatives or friends can come to the homes to locate and fix the problems. It is not uncommon for grandparents to wait for grandsons or granddaughters to visit to fix their computer systems rather than paying for computer repair services.

Given the substantial investment of time and money for service providers and customers to qualify and establish ACP/Lifeline broadband service arrangements, it appears to WTA to be far more likely for rolling 30-day periods of non-use to result from innocent and legitimate causes rather than attempts to game the system by collecting reimbursement for planned “phantom customers.” Termination in the former circumstances will disrupt the broadband service of the very customers that the ACP/Lifeline broadband programs were developed to benefit, and will place further time and expense burdens upon terminated customers and their service providers to re-apply, re-qualify and re-establish their interrupted broadband connections.

Conclusion

For the foregoing reasons and those advanced by NTCA, the Commission is urged to waive Sections 54.1808(c) and 54.407(c) of the Rules with respect to small broadband Internet access service providers insofar as such entities may be required to terminate broadband service to ACP/Lifeline customers not assessed any out-of-pocket payments because such customers have not used their broadband service during a rolling 30-day period.

Respectfully submitted,
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