

**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

**REPLY COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**



Michael R. Romano  
Brian Ford  
Tamber Ray  
Roxanna Barboza

4121 Wilson Boulevard, Suite 1000  
Arlington, VA 22203

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**I. INTRODUCTION & SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these reply comments in response to those addressing the Public Notice<sup>2</sup> released by the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau (“Bureau”) on November 18, 2021 in the above-captioned proceedings. The Public Notice seeks comment on the Affordable Connectivity Program (“ACP”), created by the Infrastructure Investment and Jobs Act (“Infrastructure Act”),<sup>3</sup> as an intended update to and enhancement of the Emergency Broadband Benefit Program (“EBB”).

The record in this proceeding supports Commission steps to ease the EBB-to-ACP transition for consumers and providers alike. Parties responding to the Public Notice urge the Commission to allow providers to operate under existing EBB rules/practices during the brief period after ACP launch but before issuance of final rules.<sup>4</sup> The failure to do so would

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Implementation of the Affordable Connectivity Program*, Public Notice, WC Docket No. 21-450, DA 21-1453 (rel. Nov. 18, 2021) (“Public Notice”).

<sup>3</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“Infrastructure Act”).

<sup>4</sup> *See Emergency Broadband Benefit Program*, WC Docket No. 20-445, *Affordable Connectivity Program*,

exacerbate providers' implementation burdens, raise concerns about compliance with rules not even yet adopted, and direct their focus away from the new ACP enrollees. Commenters also stress that an "opt-in" mechanism for those enrolled in the EBB and transitioning to the ACP in March 2022 would unnecessarily cause mass consumer confusion and disruption.

The record in this proceeding also supports steps to ease the verification of consumer eligibility in the EBB-to-ACP transition. First, commenters agreed with NTCA that the Universal Service Administrative Company ("USAC") should identify the households that qualified for the EBB pursuant to one of the two qualifying programs that are not included in the ACP, rather than placing this responsibility on providers. As commenters point out, USAC is in the best position to do this and to work with affected households to verify their eligibility for other programs that qualify them for the ACP. In addition, parties encouraged the Commission to consider allowing municipal government officials and tribal authorities access to the National Verifier in order to assist consumers with enrollment. Finally, as one party suggests, until the Verifier is able to link directly with the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC") enrollment database, eligibility for ACP pursuant to participation in this program could be demonstrated by using the Verifier to confirm participation in SNAP or Medicaid.

Finally, commenters suggest the Commission look to community partnerships in the first instance when advertising the ACP.

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WC Docket No. 21-450, Order, DA 21-1477 (rel. Nov. 26, 2021) ("*EBB Transition Order*"), ¶ 6 (stating that the Commission is not poised to issue final ACP rules until after the effective date of the newly updated mechanism).

**II. THE RECORD IN THIS PROCEEDING SUPPORTS ACP RULES THAT LEVERAGE THOSE IN PLACE FOR THE EBB TO THE GREATEST EXTENT POSSIBLE; THOSE RESPONDING TO THE PUBLIC NOTICE ALSO RECOGNIZE THE NEED TO ALLOW PROVIDERS TO FOLLOW EBB RULES AND PRACTICES DURING THE INITIAL WEEKS AFTER ACP LAUNCH.**

The response to the Public Notice from providers was consistent in pointing to the challenges faced in preparing for the launch of the ACP under a tightly constrained timeframe.<sup>5</sup> Thus, to minimize the disruption that consumers could face as providers get their ACP processes up and running in a rapid manner, the record indicates that the Commission would be well served by leveraging EBB rules and processes already in place as much as possible given widespread familiarity with them. To the extent providers “port over” EBB practices in their entirety, and those practices deviate from the ACP rules once effective, NTCA reiterates its support for a “safe harbor” wherein providers that faithfully carry over EBB procedures will not be held liable for having done so during a transition period following the effective date of the ACP rules.

In initial comments, a number of parties echoed NTCA in pointing to the need to ensure that billing systems, customer service representative (“CSR”) training, website materials and other marketing materials currently tied to the EBB are modified, and in incredibly short order, to reflect the broader applicability of the ACP.<sup>6</sup> Providers of all sizes will confront this challenge, one that is exacerbated by the fact that the Commission is not likely to issue final ACP rules until *after* the effective date of the updated mechanism.<sup>7</sup> Thus, providers of all sizes must

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<sup>5</sup> Comments of AT&T Services, Inc., (“AT&T”), WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 7-8; Comments of Verizon, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 3; Comments of T-Mobile USA, Inc (“T-Mobile”), WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 2; Comments of USTelecom—The Broadband Association (“USTelecom”), WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 5-6; Comments of the Competitive Carriers Association (“CCA”), WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 2.

<sup>6</sup> CCA, pp. 3-4 (“Creating new policies and procedures and then coding those changes into providers’ existing systems in a compressed timeframe, at the end of a calendar year, is a significant undertaking for large and small carriers alike, particularly as they cannot even begin addressing several open issues on which the Commission has sought comment in the Public Notice until the Commission resolves those issues in implementing regulations.”)

<sup>7</sup> *EBB Transition Order*, ¶ 4.

prepare for the ACP and determine how best to accept new enrollees in a matter of days. This will take place during the holiday season when staff and outside vendors (and likely Commission and USAC staff from whom guidance may be sought) may have limited availability. In addition, like NTCA members, many small companies must rely on third party vendors to update billing systems<sup>8</sup> – as NTCA noted in initial comments, this does not alleviate the work company staffs must undertake to calculate ACP discount amounts for each service tier prior to handing off programming work to the vendor. Furthermore, the vendors in this space are often small businesses themselves, working on billing system upgrades for multiple provider clients at the same time.

In addition, several parties urge the Commission to leverage the EBB rules and processes already in place.<sup>9</sup> While the Infrastructure Act made changes to the statutory language that created the EBB, the ACP is by and large an “update” and enhancement to the former. As such, commenters propose that the Commission leave in place rules governing “bundled” service offerings and connected devices, among other things.<sup>10</sup> This would lessen the chance that providers’ enrollment practices during the ACP’s early weeks differ from final rules, and also enable providers to focus on new enrollments and EBB-to-ACP transitioning consumers rather than adapt their internal practices to EBB rules amended for the ACP. In addition, commenters propose that the agency avoid adopting a new “election” process for existing EBB providers.<sup>11</sup>

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<sup>8</sup> CCA, p. 4.

<sup>9</sup> Verizon, p. 3 (stating that other than minor changes, the Commission’s ACP rules should “mirror the EBB rules to the greatest extent possible, declining to adopt new requirements unless those requirements are absolutely necessary to implement the ACP”); CCA p. 5; USTelecom, pp. 11-15.

<sup>10</sup> USTelecom, p. 23; AT&T, pp. 20-21.

<sup>11</sup> CTIA, p 11; AT&T, p. 23.

This will allow providers to better focus on new enrollees and setting up ACP practices rather than preparing redundant election paperwork.

In light of the many implementation challenges that providers face, and with the Commission forced to stand up the ACP in such a compacted timeframe that necessitates the issuance of final rules *after program launch*, commenters recognize the need for a carefully crafted approach in these initial weeks. NTCA, for its part, proposes that the Commission effectively “re-adopt” the EBB rules for a reasonable period – such as 60 days – after effectiveness of the ACP, with the transition to any new ACP rules being required at the end of that transition. AT&T makes a similar proposal,<sup>12</sup> while T-Mobile proposes that the Commission “establish a limited safe harbor for providers acting in good faith to implement ACP while complying with the Commission’s EBB rules for the six-month period following the effective date of ACP.”<sup>13</sup> T-Mobile further asks the Commission to “give providers acting in good faith the opportunity to cure any errors in their implementation of ACP during this period without penalty (including through amended reimbursement claims).”<sup>14</sup> In short, to the extent a provider relies on its EBB practices, it should not be penalized with a loss of reimbursement for benefits extended to subscribers in the period of uncertainty that will exist as the ACP launches. This kind of “claims forgiveness,” and a measure of flexibility extended to providers to act in

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<sup>12</sup> AT&T, p. 7 (“So that there is not a significant gap between the cessation of enrollment in the EBB Program on the one hand, and full implementation of the new ACP rules on the other, the Commission should allow participating providers to enroll eligible households in ACP pursuant to the existing EBB rules (except that the benefit amount for non-Tribal areas would be reduced to up to \$30 and the ACP eligibility criteria would apply) beginning December 31, 2021, until 60 days after the new ACP rules are issued.”). *See also*, Comments of NCTA – The Internet & Television Association, (“NCTA”), WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 35 (stating that “the Commission should state that, to the extent consistent with the ACP statute, providers that follow the EBB Program rules throughout the entire transition period should be deemed to be in compliance with the Program”).

<sup>13</sup> T-Mobile, pp. 3-4. *See also*, Comments of NTCA–The Rural Broadband Association, (“NTCA”), WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 7.

<sup>14</sup> T-Mobile, p. 4.

good faith and rely on EBB practices/rules, will ease their transition, enabling them to better focus on the low-income consumers that are the intended beneficiaries here.

Finally, the Commission should not require providers to offer ACP subscribers internet service offerings no longer available to new subscribers (so-called “legacy” or “grandfathered”) plans.<sup>15</sup> For one, this would only exacerbate the burden that small providers are facing to make their current service plans available to ACP subscribers – adding “legacy” plans will require them to determine which plans fall under this category (and it could be the case that only a handful of existing subscribers actually continue to take these). Moreover, AT&T notes that this would require “system upgrades...to enable the ACP benefit to be applied to these antiquated plans [that] would be burdensome and outweigh the benefit to this declining group of consumers.”<sup>16</sup> NTCA members report similar concerns in this regard. In addition, as other parties correctly note, these grandfathered plans are no longer available to any new customers or households, and thus would not fall under the Infrastructure Act language requiring that ACP beneficiaries have access to “Internet service offerings” on “the terms available to households that are not eligible households.”<sup>17</sup> Of course, the Commission could allow providers to offer these plans to ACP beneficiaries on a voluntary basis, but such should not be a requirement for all ACP participating providers.

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<sup>15</sup> ACA p. 10; USTelecom, p. 7.

<sup>16</sup> AT&T, p. 10.

<sup>17</sup> AT&T, p. 11; USTelecom, p. 24.



### **III. THE RECORD IN THIS PROCEEDING CAUTIONS AGAINST AN “OPT-IN” CONSENT MECHANISM FOR EBB-TO-ACP TRANSFERS THAT TAKE EFFECT IN MARCH 2022, AS SUCH A PROCESS WOULD BE HIGHLY DISRUPTIVE TO CONSUMERS.**

As NTCA stated in initial comments, for those consumer disclosure and consent provisions applicable to existing EBB beneficiaries (i.e., those enrolled in the EBB as of December 31, 2021) who are being transitioned into the ACP after 60 days, an “opt-in” mechanism to indicate interest in continuing under the ACP would be highly disruptive. Like NTCA, providers of all sizes serving rural and urban communities attest that consumers often overlook notices of these kinds (whether delivered as bill inserts, via email, or any other communications method).<sup>18</sup> Unfortunately, any EBB subscriber eligible to transition to the ACP who fails to respond to a request for affirmative “opt-in” to transition to the latter at the end of this 60-day period could be “de-enrolled” from the program. This would result in these subscribers suffering the total loss of any benefit they may need (and likely anticipated) even as they otherwise continue to subscribe to their broadband service (since they have not taken any action to cancel their service).

As CTIA correctly states, such a result appears to run counter to what Congress intended – indeed it would seem that Congress cared for the EBB-to-ACP transition in the way it allowed for the benefit reduction to be phased-in at the end of 60 days. More specifically, as CTIA notes, the Infrastructure Act provisions adopting the 60-day transition (which includes the retention of the EBB subsidy level for that time period), taken together with language stating that those “eligible for the ACP ‘shall continue to have access to an affordable service offering,’” indicate

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<sup>18</sup> CTIA, p. 4; AT&T, p. 4; Verizon, p. 5; T-Mobile, p. 5; USTelecom, p. 9; WISPA, p. 6; CCA, p. 8; ACA, p. 17; NCTA, p. 7.

the intent to minimize disruption and preserve affordability for consumers moving from EBB to ACP. In other words, Congress anticipated that the \$20 per month reduction in subsidy could result in “rate shock,” yet policymakers cared for that via the 60-day transition. An opt-in mechanism would therefore only introduce the potential for “rate shock” despite the clear intent of Congress to avoid such outcomes, as de-enrolled subscribers would experience a total loss of support if they fail to execute consent, a result that providers’ experience tells them perhaps millions of consumers will do.

Thus, the record in this proceeding supports a process under which consent to be enrolled in the ACP at the conclusion of the 60-day transition is structured as an “opt-out” mechanism, under which subscribers enrolled in the EBB as of December 31, 2021 will be enrolled into the ACP as of March 1, 2022 absent a request otherwise directed to their provider. Pursuant to this approach, providers would still be required to notify consumers that this enrollment into the ACP will take place absent their request to be de-enrolled and that their subsidy will be decreased pursuant to statute, with such disclosures contained in providers’ bill inserts and/or emails.

Should the Commission nevertheless adopt an “opt-in” mechanism, it should not apply for consumers that have already given consent to an increased monthly service rate taking effect upon the conclusion of the EBB. A large number of consumers were made aware of, and consented to, the fact that the end of the EBB would result in an increased rate for their service. Thus, rate shock is not a concern here – these consumers already opted in to such a transition, albeit weeks or months ago. NTCA also supports carving out those customers that already received a subsidy of \$30 or less under the EBB from an “opt-in” regime if adopted. Subscribers falling into either of these categories, and enrolled in the EBB as of December 31, 2021, should

be automatically enrolled into the ACP as of March 1, 2022 absent an “opt-out” request directed to their provider.

By contrast, the Commission should not follow suggestions that would enable providers to unilaterally “downgrade” a subscriber to a less expensive service should they fail to respond to any “opt-in” notice. While intended to avoid the frustration that comes with suddenly finding a subsidy reduction at the end of the 60-day EBB-to-ACP transition, it could create a different kind of frustration as consumers find themselves with a slower speed than they initially ordered. Such an approach should at best be optional for providers, and NTCA submits that the “opt out” approach discussed above would better serve the interests of those consumers.

Finally, it is important that the Commission grant providers some measure of flexibility with respect to the timing of these notices. The Commission can do so via an “existing billing cycle” approach to any disclosure and consent rules (the enrollment “opt-out” included) applicable to subscribers transitioning from the EBB to the ACP in March 2022. As NTCA stated in initial comments, the short implementation timeline for the ACP, coupled with the expansion of Internet service offerings to which the benefit will apply, will impose a significant compliance burden on small providers. A firm 15-day or 30-day disclosure/consent rule that does not recognize that different providers work on different billing cycles would only exacerbate this burden by requiring the processing and transmittal of special notices.

#### **IV. THE RECORD IN THIS PROCEEDING SUPPORTS SIMPLIFYING THE PROCESS BY WHICH HOUSEHOLDS CAN OBTAIN VERIFICATION OF THEIR ELIGIBILITY FOR THE ACP.**

NTCA is joined by several parties in proposing methods by which the Commission can simplify the ACP eligibility verification process, thereby easing the transition to this program for all parties involved. As an initial matter, like NTCA, other parties recognize that USAC is in the

best position to identify the households that qualified for the EBB pursuant to one of the two qualifying programs that are not included in the ACP rather than placing this responsibility on providers.<sup>19</sup> USAC should, in turn, work with affected households to verify their eligibility for other programs that might entitle them to ACP enrollment.

In initial comments, NTCA also encouraged the Commission to simplify low-income consumers' ability to obtain the ACP benefit while also guarding against improper enrollments. One method the Commission could adopt to accomplish these objectives is to allow municipal government officials and tribal authorities access to the Verifier in order to assist consumers with enrollment, as recommended by the City of Detroit.<sup>20</sup> Similarly, EducationSuperHighway recommends the Commission allow a trusted third party, unaffiliated with any provider, to assist consumers with enrollment through the National Verifier.<sup>21</sup> Allowing municipal government officials and tribal authorities to assist consumers seeking to enroll in the ACP would benefit consumers by providing access to individuals knowledgeable about the eligibility criteria. This process would also likely reduce the number of incorrect applications, thereby reducing the amount of time USAC and providers need to devote to assisting consumers with "incorrect"<sup>22</sup> applications and allowing consumers to begin receiving the valuable ACP discount sooner.

NTCA also supports T-Mobile's recommendation that "[u]ntil USAC systems are updated to verify WIC eligibility, a household should [] be deemed eligible under the WIC

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<sup>19</sup> See CTIA, p. 6.

<sup>20</sup> See City of Detroit Comment Submission to the Wireline Competition Bureau on the Implementation of the Affordable Connectivity Program, WC Docket No. 21-450 (Dec. 8. 2021), p. 3.

<sup>21</sup> Comments of EducationSuperHighway ("ESH"), WC Docket No. 21-450 (Dec. 8. 2021), p. 15.

<sup>22</sup> As NTCA noted in its Comments, applications for enrollment in Lifeline are rejected even if "St." is entered for the consumer's address on the application, while the provider – who does not have access to the application - enters "Street" for the address.

criterion if it is found in the SNAP or Medicaid databases.”<sup>23</sup> As T-Mobile noted, individuals are eligible for WIC if they are enrolled in SNAP or Medicaid, which are already incorporated into the National Verifier.<sup>24</sup> Accordingly, until the Verifier is able to link directly with the WIC enrollment database, eligibility for ACP pursuant to participation in WIC could be demonstrated by using the Verifier to demonstrate participation in SNAP or Medicaid – which are linked with the Verifier – thereby eliminating any confusion by consumers or providers (or other entities the Commission may approve to assist with ACP enrollment) regarding the type of proof necessary to demonstrate WIC enrollment.

#### **V. THE RECORD IN THIS PROCEEDING SUPPORTS THE COMMISSION LOOKING TO COMMUNITY PARTNERSHIPS TO PROMOTE THE ACP.**

The Public Notice seeks comment on advertising the ACP, as well as the community outreach provisions contained in the Infrastructure Act. As an initial matter, NTCA joins numerous parties in urging the Commission to recognize the importance of relying on more than providers to advertise the ACP.<sup>25</sup> This is necessary to ensure the information gets out to as many qualifying families as possible. Small providers often have limited workforces that require their staff to “wear many hats,” and such this limits the time and resources they can dedicate to advertising the ACP. As the United Way of California notes, “[f]or small providers, it is

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<sup>23</sup> T-Mobile, p. 9.

<sup>24</sup> See USDA Food and Nutrition Service, WIC Eligibility Criteria, available at <https://www.fns.usda.gov/wic/wic-eligibility-requirements> (last visited Dec. 16, 2021).

<sup>25</sup> ESH, p. 2; Comments of National Digital Inclusion Alliance, (“NDIA”), WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 17-18; Comments of National Hispanic Media Coalition, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 3; Comments of Next Century Cities, WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 9-10; Comments of Public Knowledge and Common Sense Media, (“PK”), WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 13; Comments of the United Church of Christ Media Justice Ministry, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 33; Comments of the Schools, Health & Libraries Broadband Coalition and E-Rate Central, WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 6-7.

advantageous to have them participate but overly burdensome regulation, data tracking, and record retention may discourage participation.”<sup>26</sup>

With this in mind, NTCA proposes that the Commission look in the first instance to community partnerships when advertising ACP. In response to the Public Notice, Public Knowledge/Common Sense Media state that, “[o]utreach partners should include local social services offices, libraries, schools, non-profit organizations operating in the local communities, and other trusted entities.”<sup>27</sup> Most importantly, as PK states, “[c]onsumers tend to trust these community partners for reliable information about resources and help enrolling in them because these entities know the people in their communities, the barriers they face to connectivity, and the best ways to reach those in need.”<sup>28</sup>

Indeed, as NTCA found in its recent report on digital inclusion, these kinds of community partnerships have been critical to executing successful digital inclusion programming.<sup>29</sup> Of course, providers are an important part of this effort – NTCA members have a strong presence in and knowledge of their communities’ needs, and have experience in working effectively with local partners. In Shallotte, North Carolina, for example, Atlantic Telephone Membership Corporation partnered with local county public libraries to create a digital inclusion plan. Measures included surveying residents about their internet usage, service tiers used, and provider information. Similar efforts could be used to advertise the availability of the ACP to eligible beneficiaries and direct them to the National Verifier for eligibility confirmation. Encouraging

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<sup>26</sup> Comments of United Way of California, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 10.

<sup>27</sup> PK, p. 13.

<sup>28</sup> *Id.*

<sup>29</sup> Joshua Seidemann, Roxanna Barboza, Rural Imperatives in Broadband Adoption and Digital Inclusion, Smart Rural Community, (Arlington, VA) (2021) (<https://www.ntca.org/sites/default/files/documents/2021-09/09.01.21%20SRC%20Adoption%20Inclusion%20Web%20Final.pdf>) (visited Dec. 19, 2021).

these community partnerships, rather than prescriptive rules and relying only on providers, would leverage community-based providers' knowledge and dedication to the areas they serve while also ensuring that the types of entities to which Public Knowledge refers<sup>30</sup> are the driving force. This would reduce the burden on NTCA's small members and ensure that those experts in the community drive the advertising, enrollment assistance, and other digital inclusion efforts.

To encourage these partnership efforts, the Commission should look to the proposal made by the National Digital Inclusion Alliance. NDIA proposes that the Commission first conduct focus groups, with community-based organizations that have successfully enrolled participants into the EBB, for "lessons learned" with respect to which advertising and other digital inclusion initiatives were most effective. NTCA agrees with NDIA that, "[d]ata gathered from this process would provide the FCC with a better understanding of this aspect of the program's gaps and how it can be improved."<sup>31</sup>

With respect to providers' more direct role in advertising the ACP, NTCA joins CCA and USTelecom in recommending that the Commission adopt rules that mirror in all respects those in place for the Lifeline mechanism, rules that are already flexible and non-prescriptive.<sup>32</sup> As CCA correctly notes, "[m]any providers already have systems in place tailored to the Lifeline requirement, and providers should have the flexibility to rely on those existing systems for this Program rather than having to design new processes."<sup>33</sup> To the extent the ACP advertising rules are prescriptive, they could impose a burden on small providers due to their size and limited staff

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<sup>30</sup> *See Id.*, fn. 27.

<sup>31</sup> NDIA, p. 17.

<sup>32</sup> CCA, p. 6; USTelecom, p. 9-10.

<sup>33</sup> CCA, p. 11.

resources if they are forced to amend existing practices even as they confront the ACP implementation challenges discussed in Section II, *supra*.

## VI. CONCLUSION

The record in this proceeding supports NTCA's proposals for certain steps to ensure a seamless EBB-to-ACP transition. This includes ACP rules that mirror existing EBB rules as much as possible, an opt-out process for EBB-to-ACP transitioning consumers, and a safe harbor for early ACP practices that mirror those used for the EBB, USAC assistance with certain consumer verifications.

Respectfully Submitted



By: /s/ Michael R. Romano

Michael R. Romano

Brian Ford

Tamber Ray

Roxanna Barboza

4121 Wilson Boulevard, Suite 1000  
Arlington, VA 22203

December 28, 2021