

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

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

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



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## EXECUTIVE SUMMARY

NTCA members are eager for the promise the Affordable Connectivity Plan (“ACP”) offers and are hopeful the program now placed on firmer financial footing will help ensure that the broadband adoption gains made possible by the Emergency Broadband Benefit Program (“EBB”) will be sustained, and indeed expanded upon, to the fullest extent possible. To allow the ACP to fulfill this goal, however, the Commission must first minimize the challenges providers and consumers may face in the EBB-to-ACP transition that must take place in a highly compacted timeframe.

First, providers already participating in the EBB who choose to enroll in the ACP should need only submit the details of their Internet service offerings. Even more importantly, the Commission should adopt ACP rules that mirror existing EBB rules and processes to the extent possible, updating those only where truly necessary or where expressly directed by the Infrastructure Act, to provide consumers and providers with as seamless a transition as possible. The Commission should also adopt a “safe harbor” (or otherwise adopt a transition) wherein providers that carry over EBB procedures – during the short period between the program’s effective date and issuance of final rules – will not be held liable for having done so if the ACP rules modify such procedures. The Commission should also “port-over” the EBB’s consumer disclosure and consent provisions that are made to new enrollees, as doing so will ease providers’ burden during the initial weeks of the ACP.

For customers enrolled in the EBB as of December 31, 2021 and transitioning to the ACP after a 60-day period, the Commission should establish an “opt out” consent regime – an “opt-in” consent process would result in EBB consumers that fail to pay heed to the disclosure and

execute consent being de-enrolled and left without a much-needed benefit even as they continue to subscribe to (and thus be liable for) the service in question. Similarly, the Commission should direct USAC to identify the households that qualified for the EBB pursuant to one of the two programs that are not included in the ACP and to work with those households to verify their eligibility for the latter using other qualifying programs.

The Commission should also put a stop to benefit transfers made without consumer consent – requiring the transferring-in provider to obtain affirmative opt-in consent from the beneficiary and retain documentation of this consent will end this pernicious practice. NTCA further recommends the Commission establish a 90-day time limit on providers’ responsibility to continue offering service to EBB/ACP enrollees that accrue past due amounts. Additionally, the availability of an enhanced benefit in high-cost areas should be coordinated with, and ultimately tied to, the Commission’s high-cost universal service support programs.

Finally, the Commission should direct the Universal Service Administrative Company to make identified changes to its processes, as well as those of the National Verifier and the National Lifeline Accountability Database, to simplify ACP enrollment for consumers and providers alike.

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**COMMENTS  
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**I. INTRODUCTION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Public Notice<sup>2</sup> released by the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau (“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”).

NTCA members are eager for the promise the ACP offers, both for enabling broadband connectivity for those Americans who need it and ensuring that adoption gains empowered by the EBB can be sustained. NTCA and its members are hopeful the updates to the EBB that the

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<sup>1</sup> NTCA represents approximately 850 rural local exchange carriers (“RLECs”). All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on 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”).

ACP represents – and the changes that can be made within the ACP based upon lessons learned from the EBB – will help this new program build upon, expand, and sustain the reach of much-needed broadband subsidies for Americans in need. Offered herein are several suggestions meant to promote a seamless ACP-to-EBB transition for the benefit of eligible consumers, current EBB enrollees and providers alike.

**II. THE DECEMBER 31, 2021 LAUNCH OF THE ACP WILL IMPOSE A SUBSTANTIAL IMPLEMENTATION BURDEN ON SMALL, RURAL PROVIDERS; STEPS AS OUTLINED HEREIN CAN MITIGATE THOSE WHILE ALSO PROMOTING A SEAMLESS ENROLLMENT PROCESS FOR EXISTING EBB BENEFICIARIES AND NEW ENROLLEES ALIKE.**

**A. Small, rural providers will face daunting implementation challenges that must be overcome in a highly condensed timeframe.**

NTCA members welcome the ACP as the successor to the EBB. By updating the latter, Congress has provided a path for ensuring that the broadband adoption gains the EBB has made possible over the last year will not be lost, keeping qualifying low-income consumers on the network and able to enjoy the benefits that an Internet connection can provide. Yet, NTCA members recognize the daunting task in front of the Commission and providers alike as the new program becomes effective mere weeks after being enacted into law. The timing and structure of the Infrastructure Act language compel the Commission and providers to welcome new enrollees, as well as begin transitioning existing EBB beneficiaries to the new ACP, on an accelerated basis that risks disruption or confusion if not tailored properly.<sup>4</sup>

In considering the new program, one common theme that NTCA has heard in feedback from its smaller provider members is the need to ensure that billing systems, customer service

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<sup>4</sup> See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, *Affordable Connectivity Program*, WC Docket No. 21-450 *Order*, DA 21-1477 (rel. Nov. 26, 2021) (“*EBB Transition Order*”).

representative (“CSR”) training, website materials and other marketing materials currently tied to the EBB can all be modified in incredibly short order to reflect the broader applicability of the ACP. The statutory directives to apply the ACP benefit to any of a provider’s internet service offerings and to reduce the standard benefit amount from \$50 per month to \$30 per month<sup>5</sup> must be incorporated into billing and other internal processes referenced above – notably, these are not “push button” upgrades. Instead, these changes require time-intensive reprogramming of software-based systems to accommodate the ACP. In many cases, especially for smaller operators, this work is handled by third-party vendors (and often at significant cost). But that 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, and the CSR training and website and marketing work must also be handled by these service providers that may only have a few dozen employees on staff. In addition, the third-party billing system vendors are often small businesses themselves, and they will be working on billing system upgrades for multiple provider clients at the same time.

In short, the task is daunting, and it is complicated by the approach of the holiday season that will limit the availability of staff resources for both providers and outside vendors (and likely staff from the Commission and the Universal Service Administrative Company (“USAC”) from whom guidance may be sought by providers). Even worse, as referenced above and discussed further below, the timing concerns are not borne by industry alone – the Commission is not poised to issue final ACP rules until *after* the effective date of the newly updated mechanism.<sup>6</sup> This places providers of all sizes in a quandary in determining how best to prepare

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<sup>5</sup> Public Notice, ¶ 6.

<sup>6</sup> *EBB Transition Order*, ¶ 4.



to accept new enrollees on December 31, as this is three days after the comment cycle applicable to that notice closes and likely weeks before final rules are in place. While the Commission has little room to alter that timeline, the steps outlined below can help ensure as seamless as possible a transition from the EBB to the ACP for all involved.

**B. Providers already participating in the EBB as of the effective date of the ACP should only be required to update their “Internet service offerings” with USAC.**

The Public Notice seeks comment on whether the Commission should require all providers to file an “election” notice in order to participate in the ACP.<sup>7</sup> The Commission can ease the transition for small providers confronting the tasks discussed above by making this process as simple as possible.<sup>8</sup> Specifically, providers already participating in the EBB should only be required to submit the details of their “Internet service offerings” and nothing more. Additional details in a new election notice would in all likelihood be duplicative of those filed less than a year ago for participation in the EBB. This would also be consistent with the Infrastructure Act leaving in place the Consolidated Appropriations Act language on “participating providers” which, in turn, required the Commission to expedite provider admission into the program, and would enable operators to focus on preparing for the December 31 launch date rather than devoting scarce staff time to filling out redundant forms.

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<sup>7</sup> Public Notice, ¶ 14.

<sup>8</sup> *Id.*, ¶ 9 (“We propose that all existing EBB Program providers, even those that lack ETC designations or are not affiliated with an ETC, would not need to file or resubmit a completely new application to participate in the ACP prior to resubmitting their ACP election notice to USAC.”).

**C. The Commission’s final ACP rules should mirror existing EBB rules/processes to the fullest extent possible; providers should be held harmless if, during the period between the effective date of the ACP and the Commission’s issuance of new rules, their practices deviate slightly from the final provisions as adopted.**

The Commission should adopt ACP rules that mirror existing EBB rules and processes to the greatest extent possible, updating those only where truly necessary or where expressly directed by the Infrastructure Act. While the Infrastructure Act made changes to the statutory language that created the EBB, the ACP is largely an update and enhancement to the former. Of course, the benefit level for non-Tribal beneficiaries,<sup>9</sup> as well as the “Internet service offerings” to which the ACP subsidy can be applied,<sup>10</sup> are amongst the material EBB provisions updated by the Infrastructure Act. Qualifying programs that confer ACP eligibility on consumers differ from the EBB in some minor respects as well, and NTCA addresses those in Section IV., *infra*. That aside, the Commission can and should retain as much of the foundational EBB rules and procedures as possible. This will minimize the implementation steps that providers will need to take and promote existing EBB beneficiaries’ seamless transition to the ACP.

To illustrate a few examples where the Commission can leverage existing EBB rules and alleviate the burden on all involved, application of the benefit to “bundled” services<sup>11</sup> or the eligibility of routers/modems<sup>12</sup> under the definition of “covered services” are instructive.

Providers already have experience applying the EBB benefit to the “non-video” portion of

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<sup>9</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(7).

<sup>10</sup> *Id.*, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i).

<sup>11</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29 (rel. Feb. 26, 2021), ¶¶ 76-77.

<sup>12</sup> *Id.*, ¶ 78.

bundled plans. Requiring them to change the way this is done without some significant need or basis for doing so based upon EBB experience would only add to the burden they face in updating billing systems for the ACP. Modifications to these EBB rules for the purposes of the ACP would only confuse and frustrate beneficiaries during this rapid transition.

The timing of this transition should also dictate sticking as closely as possible to the EBB rules and procedures, so that providers will not be surprised after having taken steps in good faith to implement the ACP. The Bureau recently indicated that December 31, 2021 is the effective date for the ACP mechanism.<sup>13</sup> The Bureau also noted that the Infrastructure Act directs the Commission to adopt final ACP rules within 60 days, meaning that it is anticipated that such will be issued sometime in January – at least several weeks after the effective date of the mechanism those rules will govern.<sup>14</sup> While neither the Commission nor Congress could have intended such a result to come to pass, it is important to avoid enforcement proceedings or assessing penalties against providers simply for undertaking implementation and initial administration of the ACP in good faith before program rules are finalized. This is critical because the timing places providers in an awkward position, having to transition and enroll subscribers into the ACP without program rules and an accompanying Commission order to guide them.

Even as providers are likely to carry over their internal EBB practices and adhere to that program’s rules in the interim, ACP enrollment practices during this time will likely deviate from final rules in at least some respects. Thus, to the extent providers “port over” EBB practices in their entirety and those practices deviate from the ACP rules once effective, NTCA urges the Commission to adopt a “safe harbor” wherein providers that faithfully carry over EBB

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<sup>13</sup> *EBB Transition Order*, ¶ 4.

<sup>14</sup> *Id.*, fn. 25.

procedures will not be held liable for having done so until the completion of a transition period following the effective date of the ACP rules. (Put another way, to facilitate administration, the Commission could 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 changes being required at the end of that transition). To be sure, if any fraud or intentional “coloring outside the lines” is found during this transition period, the Commission should not hesitate to enforce its rules. But adherence to EBB rules as the model for new ACP enrollments and other practices related to the program during a reasonable transition period should be looked upon favorably and treated as a “safe harbor” for purposes of compliance.

### **III. THE DISCLOSURE AND CONSENT REGIME FOR THE ACP SHOULD MINIMIZE CONSUMER DISRUPTION AND THE BURDEN ON PROVIDERS.**

The Public Notice seeks comment on a consumer “disclosure and consent” regime for the ACP. For reasons similar to those discussed in Section II., *supra*, the Commission should ensure these provisions with respect to new enrollments mirror those currently in place for the EBB. Thus, the Commission should adopt the Public Notice proposal to largely “port-over” the EBB’s consumer disclosure and consent provisions utilized for initial enrollment, and providers should be able to utilize the same disclosure process as used for the launch of the EBB, perhaps with minor alterations at most.<sup>15</sup>

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

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<sup>15</sup> Public Notice, ¶ 100. (“We also propose that households be notified that they can apply the ACP benefit to any broadband service offering of the participating provider, at the same terms available to households that are not eligible for ACP-supported service.”).

transitioned into the ACP after 60 days,<sup>16</sup> an “opt-out” approach is needed. NTCA members report that consumers can all too often overlook disclosures/notices of these kinds regardless of the method of delivery (*e.g.*, via bill inserts or email). Even multiple attempts to solicit feedback or response from subscribers are often unsuccessful.

With that in mind, the Commission should account for the likelihood of disclosures and requests for consumer consent being overlooked. Thus, 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). To be sure, consumer consent is critical (as noted below with respect to benefit transfers). Yet, on balance, *it is far more important that subscribers not be de-enrolled and suddenly facing an inability to afford their broadband service due to the complete lapse of any benefit.*<sup>17</sup>

For these reasons, this consent provision should be structured as an “opt-out” mechanism. More specifically, subscribers enrolled in the EBB as of December 31, 2021 should be automatically enrolled into the ACP as of March 2, 2022 absent an “opt-out” request directed to their provider. Of course, providers would still be required to notify consumers that this

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<sup>16</sup> *Id.*, ¶ 123.

<sup>17</sup> *Ex parte* letter, National Lifeline Association (NaLA) WC Docket Nos. 11-42, 20-445 (fil. Nov. 15, 2021) (“*NALA ex parte*”), p. 3 (“Subscribers and households determined to be eligible for the EBB should be automatically transitioned to the ACP with notice subject to opt-out and without requiring reapplication or opt-in. Without a more seamless transition, many EBB subscribers will lose their enhanced broadband benefits in the transition to the ACP”).

enrollment into the ACP will take place absent their request to be de-enrolled, and providers should be able to include such a notice in bill inserts and/or emails.

In addition, the Commission should adopt 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.<sup>18</sup> As noted above, the short implementation timeline, coupled with the expansion of Internet service offerings to which the benefit will apply, will impose a significant compliance burden on small providers – including but not limited to costs to pay billing vendors for updates. 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. On other hand, allowing providers to send these notices during existing billing cycles would ensure EBB beneficiaries transitioning to the ACP would receive, and still have sufficient time to act upon, any disclosures and “opt-out” of ACP enrollment by March 2.

#### **IV. HOUSEHOLD ELIGIBILITY SHOULD BE CONSISTENT WITH THE EBB WHERE PERMITTED BY THE INFRASTRUCTURE ACT AND VERIFIED THROUGH THE NATIONAL VERIFIER.**

As noted above, the ACP will begin accepting enrollments on December 31, 2021, and EBB households will automatically be enrolled in a 60-day transition to the ACP. The Commission further explained in its *EBB Transition Order* that “[t]o ensure compliance with the eligibility criteria for the [ACP], during the 60-day transition period, it will be necessary to reverify the eligibility of EBB ... households that qualified under eligibility criteria that have

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<sup>18</sup> Public Notice, ¶ 124 (“Should the Commission adopt a uniform deadline for these consumer notices, such as 30 days before the end of the transition period, or should the timing of the notices coincide with consumer billing cycles?”).

been removed.....”<sup>19</sup> To effectuate the transition of EBB households to the ACP most effectively and seamlessly, the Commission should direct USAC to identify the households that qualified for the EBB pursuant to one of the two qualifying programs<sup>20</sup> that are *not* included in the ACP rather than placing this responsibility on providers. USAC can readily identify the eligibility criteria each household used to qualify for the EBB and is therefore in the best position to work with affected households to verify their eligibility for other programs that might entitle them to ACP enrollment.

Likewise, based on the Commission’s expectation that the ACP rules will not be issued until a few weeks after the program’s effective date, there is undoubtably a possibility households will enroll in this time period, brief as it is, based upon eligibility criteria or proof of eligibility that might change once the rules are issued. Furthermore, as NTCA has already noted, the documentation needed for customers to demonstrate eligibility through the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) has not yet been established, meaning that the method used by a provider to verify WIC eligibility could be different from the method adopted in the Commission’s rules.<sup>21</sup> Accordingly, once final rules have been issued, NTCA encourages the Commission to direct USAC to verify the eligibility of any households enrolled in the ACP prior to the issuance of rules in this proceeding on the basis of income (to account for the revised level of 200 percent of the Federal Poverty Guidelines) or WIC, for the reasons discussed above. Directing USAC to undertake this verification will best

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<sup>19</sup> *EBB Transition Order*, ¶ 13. These criteria are either (1) a substantial loss of income after February 29, 2020, or (2) participation in a provider’s approved COVID-19 relief program.

<sup>20</sup> *See Id.*

<sup>21</sup> *Ex parte* letter, NTCA–The Rural Broadband Association, WC Docket Nos. 11-42, 20-445 (fil. Dec. 1, 2021), p. 2.

ensure the accuracy of the enrollment criteria and is consistent with the approach taken by the Commission upon modifying how households demonstrate eligibility for the EBB pursuant to the Community Eligibility Provision (“CEP”) criteria.<sup>22</sup> This verification process would also ensure that no beneficiaries are de-enrolled because their eligibility was based on documentation rules not yet issued by the Commission.

The Public Notice also seeks comment on whether any household with a student enrolled in a school that participates either in the CEP or the administrative provision of the National School Lunch Act should qualify for the ACP.<sup>23</sup> As the Commission found with the EBB, allowing eligibility based on these criteria has opened the program to some abuse.<sup>24</sup> Furthermore, using this program as a basis for ACP eligibility would allow some households that lack the requisite need to receive the benefit. For instance, in West Virginia, *every* county except one currently participates in the CEP.<sup>25</sup> By comparison, according to 2019 census data, only 12.3% of West Virginia residents’ income were at the poverty level.<sup>26</sup> Similarly, the West Virginia Department of Education reports only 50% of enrolled students in the 2021-2022 school

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<sup>22</sup> See Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Benefit Program Enrollments Based on the Community Eligibility Provision, *Public Notice*, WC Docket No. 20-445 (Nov. 22, 2021), p. 3 (“*CEP Public Notice*”) (“USAC will conduct the necessary outreach to confirm the eligibility of these EBB Program households, and will notify participating service providers of their respective EBB-Program households that will be asked to confirm their eligibility.”).

<sup>23</sup> Public Notice, ¶ 31.

<sup>24</sup> See *Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision* (FCC OIG Nov. 22, 2021), <https://www.fcc.gov/document/fcc-inspector-general-advisory-regarding-ebb-enrollment-fraud> (last visited Dec. 7, 2021).

<sup>25</sup> See West Virginia Dept. of Education School Lunch Program, available at [National School Lunch Program - West Virginia Department of Education \(wvde.us\)](https://www.wvde.us) (last visited Dec. 7, 2021).

<sup>26</sup> See U.S. Census Bureau Small Area Income and Poverty Estimates, available at [https://www.census.gov/data-tools/demo/saipe/#/?map\\_geoSelector=aa\\_c&s\\_state=54&s\\_year=2019](https://www.census.gov/data-tools/demo/saipe/#/?map_geoSelector=aa_c&s_state=54&s_year=2019) (last visited Dec. 7, 2021).



year are classified as low socioeconomic status.<sup>27</sup> Thus, effectively deeming every household in West Virginia (and likely other states with similar statistics) with a student enrolled in public school as eligible for the ACP is an overreach in terms of Congress' intention in enacting the ACP.

In the event the Commission does choose to allow all households with a student enrolled in a school that participates in the CEP or administrative provision of the National School Lunch Act to be eligible for the ACP, the Commission should adopt the same eligibility qualifications for the ACP as were recently implemented for the EBB.<sup>28</sup> Specifically, the Commission should require any households seeking to qualify for the ACP through either the CEP or the National School Lunch Act to identify both the school name and provide official school documentation demonstrating that the household has a child or dependent (referred to on the application as the benefit qualifying person) enrolled at the identified school. This requirement will provide consistency across all school-wide enrollment eligibilities while also reducing the likelihood of erroneous ACP enrollments. Applying the same proof of eligibility will also minimize confusion while simultaneously simplifying the transition of EBB customers to the ACP. NTCA further recommends the Commission apply the same demonstration of eligibility to households seeking to enroll in the ACP using the National School Lunch Act.

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<sup>27</sup> See West Virginia Dept. of Education Enrollment Trend, Enrollment by Socioeconomic Status, available at [ZoomWV \(k12.wv.us\)](https://k12.wv.us) (last visited Dec. 7, 2021).

<sup>28</sup> *CEP Public Notice*, p. 3.

**V. THE COMMISSION SHOULD PROHIBIT ACP BENEFIT TRANSFERS MADE WITHOUT THE CONSUMER’S AFFIRMATIVE CONSENT; THE COMMISSION’S PARTIAL REIMBURSEMENT RULES SHOULD ALSO BE AMENDED TO LIMIT THE INCENTIVE FOR UNAUTHORIZED TRANSFERS AND TO COMPENSATE PROVIDERS FOR SERVICES RENDERED.**

One area in which improvements to the EBB are particularly warranted comes in the administration of transfers of service among participating providers in the ACP. As NTCA previously noted,<sup>29</sup> some EBB beneficiaries have reported complete surprise that their benefits have been transferred to another provider – indeed in some cases they only learned of this when contacted by the original provider seeking confirmation of the transfer. In other cases, the subscriber has contacted the provider, confused and frustrated to find their benefit no longer is being applied and surprised to discover a different provider is instead now indicated for the EBB benefit. Consumers should at all times have the ability to take their benefit to any provider that meets their needs without delay or hurdle. However, unwanted “surprise” transfers are disruptive to consumers and providers while also undermining existing and potential beneficiaries’ faith in these programs in a way that could undercut future demand.

Thus, the Commission should adopt the Public Notice proposal to require participating providers to disclose clearly to a household that their benefit will be transferred in signing up for new service.<sup>30</sup> That said, it is critical that the Commission take a step further – in particular, affirmative “opt-in” consent should be obtained by the transferring-in provider and that provider should be required to retain documentation of this consent. NTCA members have reported that

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<sup>29</sup> Letter from Brian Ford, Director of Industry Affairs, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 1-2 (fil. Nov. 5, 2021).

<sup>30</sup> Public Notice, ¶ 101. (“We also seek comment on our proposal to require participating providers, before transferring-in a household, to clearly disclose in easily understood language that the household will be transferred and that the ACP benefit will now be applied to the transfer-in provider’s service.”).

EBB subscribers have responded to offers of discounted or no-cost devices from other providers, indicating acceptance without realizing they also inadvertently assented to an EBB benefit transfer in doing so. This pernicious and highly deceptive practice cannot be put to a stop via a simple disclosure regime – documentation of consent must also be retained to evidence the subscriber’s intent. Such a measure would present no burden – as records of service subscription are otherwise kept in the ordinary course of business – and would simply ensure that there is adequate proof of consent regarding both service subscription *and* benefit transfer in the event of a dispute in which a subscriber claims their benefit has been transferred without consent.<sup>31</sup>

In addition, the Commission should reconsider its EBB rules that prohibit partial reimbursements when a subscriber de-enrolls and transfers before the end of the month. Because a provider can transfer in a subscriber near the end of the month and be reimbursed for the entire monthly benefit while the transferring-out provider (that has provided service for most of the month) cannot claim any reimbursement, unscrupulous actors may be incented to initiate unwanted benefit transfers at a time that yields the greatest benefit for that provider. Allowing for partial reimbursement would eliminate the perverse incentive to initiate unwanted/deceptive benefit transfers.

**VI. THE ACP “NON-PAYMENT” PROVISIONS SHOULD ENABLE TERMINATION OF SERVICE FOR ANY PAST DUE BALANCES OF 90 DAYS OR MORE.**

The Public Notice seeks comment on the ACP “non-payment” provisions included in the Infrastructure Act, specifically how this should operate in light of the Consolidated

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<sup>31</sup> In addition, the Commission should direct USAC to include the name of and contact information for the transferring-in provider to National Lifeline Accountability Database (“NLAD”) notifications sent to the transferring-out provider. This information would enable providers to resolve at least some benefit transfer disputes without reliance on the subscriber’s involvement.

Appropriations Act language requiring providers to allow households to participate in the EBB despite “any past or present arrearages with a broadband provider . . .” remaining in place.<sup>32</sup> These two provisions operating together can and should be interpreted as adding a 90-day time-limit on providers’ responsibility to continue offering service to EBB/ACP enrollees that accrue past due amounts.

The Consolidated Appropriations Act provision on “past or present arrearages” with a provider was intended to ensure that these would not stand in the way of households participating in the EBB program. However, the 90-days-of-non-payment as adopted in the Infrastructure Act is – as with other ACP provisions contained in that law – an update to the EBB. This update in effect amends, by adding a 90-day time limit, the requirement that service not be *terminated*<sup>33</sup> due to an arrearage. Thus, while the provision as enacted by the Infrastructure Act may not limit a provider’s ability to refuse enrollment to a new ACP beneficiary because of a “past or present arrearage,” any reading of the language that would prevent a provider from *terminating* service once initiated and falling more than 90 days past due would render the Infrastructure Act language meaningless. That language contains no limit on a provider’s ability to *terminate* service other than the 90-day limit. As Congress is not in the habit of enacting meaningless provisions, the Commission can and should not interpret the 90-day provision in a way that erases this limit.

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<sup>32</sup> As the Public Notice states, this language from the Consolidated Appropriations Act was not removed by the Infrastructure Act.

<sup>33</sup> The non-payment provision in the Infrastructure Act states that “[n]othing in subparagraph (A) shall prevent a participating provider from *terminating* the provision of broadband internet access service to a subscriber after 90 days of nonpayment.”

Moreover, the Infrastructure Act’s 90-day non-payment rule must be interpreted to apply to past due balances carried over from the EBB. The statute adopting the 90-day rule is not specific in applying the provision only to services supported after the December 31, 2021 effective date of the ACP. The Infrastructure Act language makes no reference to this provision taking effect only once the ACP is effective. And because the Infrastructure Act ACP provisions are merely an update to the EBB – the 90-day past due provision being no exception – 90-day past due amounts that began accruing prior to December 31, 2021 are not somehow set aside or reset on that date by this provision. Were this the case, an EBB subscriber that automatically transitions to the ACP already multiple months (more than 90 days in any case) behind on their bill would be able to retain service for 90 days more before being disconnected. Yet because Congress indicated no intent to adopt such a reset, past due amounts that pre-date the December 31, 2021 effective date of the ACP should be eligible for service termination at the point they reach 90 days.

**VII. THE ENHANCED BENEFIT IN HIGH-COST AREAS SHOULD BE COORDINATED WITH HIGH-COST UNIVERSAL SERVICE SUPPORT.**

The Public Notice seeks comment on the Infrastructure Act’s enhanced benefit for households served by providers in high-cost areas. Pursuant to the statute, the National Telecommunications and Information Administration (“NTIA”) is tasked with determining (in consultation with the Commission) what areas of the nation fit the definition of “high-cost area.” The Commission, on the other hand, is directed to establish the showing that an individual provider would need to make to demonstrate they would face a “particularized economic

hardship...such that the provider may not be able to maintain the operation of part or all of its broadband network”<sup>34</sup> if limited to providing an ACP discount of \$30 versus \$75.

With respect to identifying a “high-cost area,” the factors for making such a determination as set forth by the Infrastructure Act point directly at the areas where High-Cost universal service fund (“USF”) support is available. Indeed, the factors referenced in the Infrastructure Act for defining “high-cost areas” such as “(1) the remote location of the area; (2) the lack of population density of the area; (3) the unique topography of the area; and (4) a high rate of poverty in the area;”<sup>35</sup> are defining features of the kinds of areas that are eligible for High-Cost USF support. For the purposes of this discussion, these factors are among those that make serving these areas not only challenging but why, absent support, broadband networks would not even be available in the first instance, much less affordable for any consumer, whether low income or otherwise.

The Commission and NTIA should therefore look to the High-Cost USF program to identify high-cost areas for purposes of ACP and then address the “particularized economic hardship” question. Specifically, where a High-Cost support recipient participating in the ACP can demonstrate that end-user revenues plus the level of high-cost USF support received fail to cover the cost of serving ACP-eligible customers at a rate that is available to low-income consumers in urban areas, this by definition would seem to be a “particularized economic hardship.” Tying the enhanced benefit under ACP to the receipt of high-cost USF support offers the best assurance of effective coordination among programs that operate to make services more

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<sup>34</sup> *Public Notice*, ¶ 71 (citing Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7)(B), amended by Infrastructure Act, div. F, tit. V, § 60502(a)(2)(G)(i).).

<sup>35</sup> Infrastructure Act, div. F, tit. I, § 60102(a)(2)(G)(ii).

affordable in rural areas and targets the enhanced benefit to those places where additional assistance is needed to achieve that objective.

**VIII. THE COMMISSION SHOULD DIRECT USAC TO MAKE CERTAIN CHANGES TO ITS PROCESSES, AS WELL AS THE NATIONAL VERIFIER AND THE NLAD, TO ENSURE THE ACP BETTER SERVES BENEFICIARIES AND PROVIDERS.**

Even as NTCA members view the EBB as successful, NTCA has appreciated the Commission's attention to issues flagged during EBB implementation and the various waivers and improvements to USAC and other processes issued along the way. NTCA offers below a non-exhaustive list of USAC, National Verifier, and NLAD processes that could be modified to improve the enrollment and reimbursement process for all involved. These include, among others that are likely to emerge in response to the Public Notice,<sup>36</sup> the following:

- For ACP benefit transfers, the Commission should direct USAC to send an email to the “transferring-out” provider that includes the company the subscriber is transferring to as well as contact information for the transferring-in provider. This information would enable providers to resolve at least some benefit transfer disputes without disturbing or confusing the customer.
- Members report that the National Verifier often does not recognize Tribally issued addresses. The burden is therefore on the customer to prove they reside on Tribal land, either by providing their coordinates, a physical map of their location, or dropping a pin in the online system. Subscribers residing on Tribal lands are often unable to make the required showing and thus are only approved for the basic discount.
- When a subscriber is approved by the National Verifier, for the EBB or Lifeline programs, an email is sent to the subscriber with their application ID and confirmation of approval. They are also instructed to contact their service provider to inform them so they can start to receive the benefit. If the subscriber forwards the email to the service provider there is no information as to how the subscriber entered the information into their application when interacting with the Verifier. If a subscriber entered their full

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<sup>36</sup> See *NALA Nov 15 ex parte*. In an attachment to their *ex parte* letter, the NALA offers 15 recommendations to Commission rules, but also mostly to National Verifier/NLAD processes “to further improve the experience and benefits available to low-income households.” One recommendation is to “Correct Application Not Found Errors” and this is an issue many NTCA members experience (as noted with the example of “Street” vs “St”). These and any other recommendations made by providers and others in response to the Public Notice should be considered by the Commission as soon as practicable.

middle name but the provider is unaware and uses their middle initial (which may be all that is indicated on their account with the provider), the subscriber can be rejected by the NLAD for enrollment. Similar issues arise with the use of “Street” vs “St.” This information – the exact information entered by the provider when applying to the Verifier – would alleviate confusion and mistaken NLAD rejections.

## **IX. CONCLUSION**

For the reasons discussed above, the Commission should take several steps to ensure a seamless EBB to ACP transition. This should include ACP rules that mirror existing EBB rules as much as possible.

Respectfully Submitted



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