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VIA ECFS

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**Re: *Ex Parte* Presentation of ACA Connects—America's Communications Association;  
Affordable Connectivity Program, WC Docket No. 21-450**

Dear Ms. Dortch:

On December 16, 2021, Ross Lieberman and I of ACA Connects—America's Communications Association ("ACA Connects") met by videoconference with the Wireline Competition Bureau ("Bureau") and Office of Economics and Analytics staff copied on this letter. The meeting was in reference to the Bureau's Public Notice issued in the above-captioned proceeding<sup>1</sup>, in which ACA Connects filed comments.<sup>2</sup>

In the meeting, we reiterated the support and enthusiasm of ACA Connects Members for the Commission's implementation of the Affordable Connectivity Program ("ACP"). More than 300 of the small and medium-sized providers represented by ACA Connects elected to participate in the Emergency Broadband Benefit ("EBB") Program, and they are eager to make the transition to the more permanent ACP. We also discussed the opportunities that exist to bring ACA Connects' remaining Members into the program in the future.

As ACA Connects explained in its comments, the Commission should draw lessons from its successful implementation of the EBB program as it stands up ACP. In particular, the Commission should once again aim for rules that limit regulatory burdens for providers where possible. This approach enabled the Commission to attract broad participation from providers in the EBB program, affording eligible households a diverse mix of broadband options for their benefit. By avoiding the imposition of new burdens to the greatest possible extent, and by

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453 (2021).

<sup>2</sup> See Comments of ACA Connects – America's Communications Association, WC Docket No. 21-450 (filed Dec. 8, 2021) ("ACA Connects Comments").

finding ways to reduce existing burdens, the Commission can generate an even higher level of participation in ACP, especially from smaller providers. In addition, for the benefit of consumers, the Commission should prioritize a smooth transition between the two programs. Finally, it should look for ways to improve upon the EBB program in implementing ACP, particularly to root out any ongoing or future waste, fraud, and abuse.

In the meeting, we focused in particular on the following specific proposals set forth in ACA Connects' comments:

*First*, the Commission should ensure that any “election notice” process for ACP is appropriately streamlined. Given the statutory mandate in ACP that providers extend the benefit to all of their offerings, there is no need for ACP to duplicate the burdensome process of the EBB program that had providers submit detailed information on their service offerings to USAC.<sup>3</sup> The adoption of such a requirement for ACP is not only unnecessary but would dampen participation in the program by new operators, especially from smaller providers with limited personnel and resources. These effects would be especially pronounced were providers held to an ongoing obligation to inform USAC of any subsequent changes to their offerings, including promotional offerings and discounts.

*Second*, the Commission should minimize disruption for EBB-enrolled households that will see a reduced benefit amount on March 1, 2022. ACA Connects Members are committed to ensuring a smooth transition for their EBB-enrolled customers, and they have nothing to gain from a process that leaves customers frustrated or confused. From their perspective, an informed “opt-out” approach is the best option to ensure that households are fully notified of the transition and do not unexpectedly lose access to the benefit or lose service.<sup>4</sup> That said, if the Commission determines that an “opt-in” rather than informed “opt-out” approach is appropriate for some households, it should define that class of households narrowly. Given the number of households involved, the short duration of the transition period, and the general difficulties involved in securing opt-in consent from customers, even when granting such consent is aligned with their preference, any steps the Commission can take to reduce the number of households that must complete an opt-in approval process to continue receiving a benefit on March 1 will contribute to a smoother transition.

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<sup>3</sup> See ACA Connects Comments at 14 (“[ACP] allows eligible households to apply their benefit to any offering on the same terms that are available to non-eligible households at the time a household seeks to enroll. Hence, households will be able to determine the pricing and terms of service offerings they are entitled to receive through ACP simply by visiting a provider’s website. Requiring providers to submit offerings to USAC would simply add an unnecessary, cumbersome step to the process.”).

<sup>4</sup> ACA Connects notes that the loss of broadband service for EBB-enrolled households would be particularly disruptive for consumers on March 1, 2022, given the day falls on a Tuesday when the service is more likely to be used for work or school than compared to a Saturday or Sunday.

In the meeting, ACA Connects identified classes of households that are particularly likely to benefit from an “opt-out” approach. These are households that ACA Connects members predict, based on their experience interacting with such customers, would prefer to continue receiving service notwithstanding the lower benefit amount. At minimum, households that have demonstrated their willingness to pay for broadband service or that would incur a modest rate increase or no increase on March 1 should continue to receive a benefit unless they affirmatively choose otherwise.<sup>5</sup>

In addition, ACA Connects recommended that the Commission institute a “grace period” for any households subject to opt-in that fail to respond prior to March 1, 2022, and lose their benefit as a result. It is reasonable to expect that many such households would seek to restore their benefit shortly after learning it has been lost, and the Commission should make it as simple for such households, and their providers, to do so. In particular, households should have a reasonable amount of time (e.g., 21 days) after March 1 to seek re-enrollment in ACP without having to re-apply through the National Verifier. During this period, providers should be able to enroll such households in ACP the same way they enrolled other EBB households on March 1, i.e., by performing an “updateACP” transaction in NLAD.

*Third*, the Commission should affirm that providers may tailor their service offerings to ACP-eligible households. Providers should have the same flexibility in ACP as in the EBB program to improve upon their generally available offerings, e.g., by providing extra discounts on top of the subsidy. The Commission should also affirm that providers may provide existing low-income offerings through ACP, as well as introduce new offerings tailored to ACP-eligible households.<sup>6</sup> For instance, a provider that lacks a service tier at or below \$30 could introduce an offering at this price that is only available to customers that qualify for the ACP, allowing ACP-eligible households to receive a free service. Such flexibility is sound as a matter of policy and

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<sup>5</sup> In particular, an informed “opt-out” approach would be especially appropriate for households that had been paying for broadband service from their current EBB provider when they enrolled in the EBB program; for households that consented to pay for broadband service at the undiscounted price at the conclusion of the EBB program; for households receiving an offering through the EBB program that requires the household to make a monthly payment; for households that would incur only a modest bill increase as a result of the benefit reduction; and for households that would not incur any bill increase, because the household is currently receiving a service offering that costs less than the benefit amount they are eligible to receive under the ACP, the provider will cover the difference between the two benefit amounts, or the provider will transition the household to another service tier that provides at least 25/3 Mbps service and does not require the household to make a monthly payment.

<sup>6</sup> In the EBB program, providers were allowed to make available to EBBP-enrolled households their low-income offerings that were in place as of December 1, 2020. Because the ACP is a longer-term program with no benchmark date for service offerings or rates, it follows that the providers should not only have the right to offer their existing low-income offerings to ACP-enrolled households, but to modify them, and introduce new ones, throughout the duration of the program.

also consistent with the statute, which requires the benefit to be applied to all generally available offerings but does not limit the program to such offerings.

*Fourth*, the Commission should adopt serious measures to clamp down on the unauthorized benefit transfers that have plagued the EBB program. ACA Connects is pleased that, after we brought this problem to the Bureau's attention in September, the Bureau sought extensive comment in the Public Notice on how to resolve it. We urge the Commission to impose heightened obligations on providers to obtain informed consent when performing these transfers, along with enhanced certification and recordkeeping requirements. However, we strongly discourage the Commission addressing this problem by adopting rules that would restrict a household from exercising its right to transfer its benefit from one provider to another.<sup>7</sup> Ultimately, the most effective way to solve this problem is to remove the financial incentive of providers to engage in unauthorized transfers through strict enforcement of the rules. Providers caught engaging in such transfers should return the benefits they received for such transferred-in customers, incur financial penalties, and, in extreme cases, get suspended or removed from the program.

Relatedly, the Commission should modify the reimbursement process to allow partial-month reimbursements for months of service where a household de-enrolled before the end of the month. The inability to claim any support in such cases leads to unfair outcomes, especially when unauthorized benefit transfers take place in the concluding days of the month. If USAC is unable to update its systems to implement such a change in the near term, the Commission should rule that partial-month reimbursements shall be made available at a future date upon USAC completing the necessary changes.

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<sup>7</sup> For instance, the Commission should avoid adopting rules that would prevent a provider from transferring more than a certain number of households in a month, or that would prevent a household from transferring more than once in a certain amount of time.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,



Brian Hurley

Cc: Rashann Duvall (WCB)  
Jessica Campbell (WCB)  
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