

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

In the Matter of

Affordable Connectivity Program

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WC Docket No. 21-450



**REPLY COMMENTS**

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program for consumers.<sup>2</sup> We expanded upon and refined these proposals in a December 23, 2021 *ex parte* filing.<sup>3</sup>

In these reply comments, we address comments filed by other parties in this proceeding. As discussed below, we find that there is strong record support for ACA Connects' proposals set forth in its earlier filings; accordingly, we once again urge the Commission to incorporate these proposals into its rules for ACP. In addition, we provide targeted responses to comments filed by other parties. We address, in particular, minimum requirements for connected devices; application of the benefit to "taxes or other governmental fees"; usage certification requirements; and the provision of ACP in multiple tenant environments.

## **II. THE RECORD SUPPORTS ADOPTION OF ACA CONNECTS' PROPOSALS FOR ACP**

In its comments and *ex parte* filings, ACA Connects has urged the Commission to draw lessons from its successful implementation of the EBB program, while seeking to improve on that program, as it stands up ACP. In particular, the Commission should aim to maximize consumer choice by encouraging participation in ACP from even more providers than participated in the EBB program, particularly among small wireline providers.<sup>4</sup> In addition, for the benefit of consumers, the Commission should prioritize a

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

<sup>3</sup> See Letter from ACA Connects to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450 (filed Dec. 23, 2021) ("ACA Connects *Ex Parte*").

<sup>4</sup> Slightly more than half of the approximately 600 small and medium-sized providers ACA Connects represents elected to participate in the EBB program from day one. The remaining ACA Connects Members that chose not to participate include many who perceived the EBB program rules to be too burdensome. These numbers suggest that the Commission was successful in creating a program for which the benefits exceeded its burdens for many mid-sized and smaller providers, but that adjustments to the program could further increase participation among others.

smooth transition between the EBB program and ACP. Finally, the Commission should aim for policies that minimize the potential for waste, fraud and abuse in this \$14.2 Billion program.

With these principles in mind, ACA Connects has presented concrete recommendations for the Commission's implementation of ACP. The record provides ample support for these recommendations, as explained below.

*Election Notices.* ACA Connects has urged the Commission not to duplicate for ACP the EBB program requirement that providers submit detailed information to USAC about their service offerings.<sup>5</sup> As many other commenters concur, there is no need for such an obligation in ACP.<sup>6</sup> Moreover, such an obligation 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. In offering an alternative approach, the National Consumer Law Center and United Church of Christ ("NCLC/UCC") acknowledge the burdens that such an obligation would impose on providers.<sup>7</sup> The Commission should thus decline to require ACP providers to submit detailed information to USAC about each of their offerings.

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<sup>5</sup> See ACA Connects Comments at 13-15.

<sup>6</sup> See USTelecom Comments at 12; CTIA Comments at 12; NCTA Comments at 31-32; Altice Comments at 6-7.

<sup>7</sup> See NCLC/UCC Comments at 9 (acknowledging "the complexity and time involved in requiring the detailed reporting of all the services offered by a provider").

Additionally, the Commission should not require providers to compile and report the specific ZIP codes where they provide ACP. As we explained in our comments, such an obligation would impose burdens on providers that would outweigh the benefits.<sup>8</sup> The better approach is to continue to encourage, but not require, reporting of ZIP code-level information. Evidence suggests this policy is working: for example, a search for EBB program providers in ZIP code 20007 – the ZIP code of ACA Connects’ Washington, DC office – returns 41 results. To encourage more extensive reporting, as well as reporting on a more granular level, the Commission and USAC should allow providers to report their service availability by census block – as they do today in Form 477 – and rely on USAC to either convert the census blocks to zip codes or enable its address lookup tool to function based on a provider’s submitted census blocks. Allowing the submission of census blocks would provide consumers with more accurate results because census blocks provide more granularity than ZIP codes.<sup>9</sup>

If the Commission does mandate reporting of ZIP codes, it should give providers at least 180 days to provide such information. Moreover, it should permit providers to report areas where they provide ACP in other ways, such as by census blocks, in lieu of ZIP codes. Also, to avoid creating any unnecessary impediments to broadband deployment and expansion of service availability, the Commission should affirm that providers may expand service into new ZIP codes or census blocks, if such reporting is permitted, without first notifying USAC. Providers could be directed (or encouraged) to

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<sup>8</sup> See ACA Connects Comments at 24.

<sup>9</sup> The Commission could also encourage more granular reporting by allowing providers to report ZIP codes “+4” where they provide service, though, as we explain, the Commission should not require reporting at this level.

update their list of ZIP codes (or census blocks) around the same time they update their Form 477 Filings, with the option of supplying updates more frequently.

The Commission should eschew the more extreme idea of requiring reporting at the “ZIP+4” level, particularly for smaller providers.<sup>10</sup> Such a requirement would obligate providers to identify and report unique codes for individual city blocks and other granular geographic units that are distinct from census blocks. It would be a massive and extremely burdensome undertaking, especially for smaller providers who do not track such information in the normal course of business. Moreover, for many broadband providers, the reporting of ZIP+4 data to USAC would essentially become a third broadband mapping obligation for 2022, as it would be distinct from the current obligation to report by census blocks and from the pending Digital Opportunity Data Collection (“DODC”) obligation to report service availability on a more granular basis, which many providers will satisfy by submitting shapefiles.<sup>11</sup> With Congress wanting more granular and accurate maps produced as soon as possible, the Commission should avoid imposing any new obligations on providers that would risk diverting time and resources away from meeting the pending DODC requirements.

*March 1, 2022 Transition.* ACA Connects has urged the Commission to ensure a seamless transition for EBB-enrolled households that will move from a \$50 to a \$30 maximum monthly benefit on March 1, 2022. To avoid sudden loss of the benefit or loss of service altogether, ACA Connects has urged the Commission to implement an

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<sup>10</sup> See NCLC/UCC Comments at 9 (suggesting that providers “ideally” would report at the ZIP+4 level).

<sup>11</sup> See *Establishing the Digital Opportunity Data Collection* et al., WC Docket No. 19-195 et al., Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 20-94 (2020).

“opt-out” approval mechanism for these households rather than require affirmative “opt-in” to continue receiving the benefit.<sup>12</sup> Many other commenters agree. For instance, the Multicultural Media Telecom and Internet Council (“MMTC”) explained that “Congress intended for the ACP to be a continuation of the EBB Program” and that “requiring households to affirmatively opt-in to the ACP would likely lead to confusion and result in many households unknowingly and unwillingly dropping out of the ACP.”<sup>13</sup> Such households could face the prospect of being charged full price for service beginning March 1, notwithstanding the fact they remain entitled to a subsidy up to \$30.<sup>14</sup>

Nevertheless, some commenters suggest that an opt-out process would not be appropriate for *all* EBB-enrolled households given the potential for some households to experience “bill shock.”<sup>15</sup> These commenters do not necessarily call for an “opt-in” process to be implemented for *all* households instead; on the contrary, one coalition of consumer advocacy and civil rights organizations explained that “[r]equiring universal, proactive opt-in” is not the answer and that “a more sophisticated approach is needed.”<sup>16</sup>

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<sup>12</sup> See ACA Connects *Ex Parte* at 2-3.

<sup>13</sup> See MMTC Comments at 15; see also Joint Letter of Hispanic Heritage Foundation and League of United Latin American Citizens, WC Docket No. 21-450 at 2-3 (filed Dec. 17, 2021); NTCA Comments at 7-9; NCTA Comments at 6-9; CCA Comments at 8-9; USTelecom Comments at 9.

<sup>14</sup> See MMTC Comments at 15-16 (“[T]he difference in monthly payment of EBB Program-enrolled households currently on a plan that provides greater than a \$30 benefit would be less than what it would be if they were required to opt-in and failed to do so. For example, a household that was enrolled in a \$40 plan that had its benefit reduced from \$50 to \$30 would see only a \$10 increase in its bill if it chose not to opt-out as opposed to a \$40 increase if it failed to opt-in.”).

<sup>15</sup> See, e.g., Public Knowledge and Common Sense Media Joint Comments at 4-5.

<sup>16</sup> See Letter from Asian Americans Advancing Justice et al., WC Docket No. 21-450 at 1 (filed Dec. 22, 2021).

In its filings, ACA Connects has outlined a path forward for a “hybrid” opt-in/opt-out approach.<sup>17</sup> As we have explained, if the Commission declines to implement an opt-out process for all households, it should at least do so for households that have demonstrated their willingness to pay for broadband service absent any discount or that would experience only a minimal increase or no increase to their monthly bill.<sup>18</sup> Households in these categories are particularly unlikely to experience bill shock and are therefore particularly likely to benefit from a transition process that insulates them from risk of losing the benefit unexpectedly on March 1.

In addition, the Commission should adopt ACA Connects’ proposal to 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.<sup>19</sup> 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 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

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<sup>17</sup> See ACA Connects Ex *Parte* at 2-3.

<sup>18</sup> See *id.* at 3, n.5 (“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>19</sup> *Id.* at 3.

in ACP the same way they enrolled other EBB households on March 1, i.e., by performing an “updateACP” transaction in NLAD.

*Low-Income Offerings.* In its comments, ACA Connects urged the Commission to give providers flexibility to tailor their service offerings to ACP households.<sup>20</sup> As NCLC/UCC points out, the option to provide specialized offerings through ACP (or to provide extra discounts on generally available offerings) can enable providers to make fully subsidized offerings available, to the benefit of consumers.<sup>21</sup> Moreover, as T-Mobile observes, there is strong evidence that Congress intended for low-income offerings to be included in ACP.<sup>22</sup> Given the long-term nature of ACP, providers should have flexibility to introduce new low-income offerings, and to refine existing ones, throughout the duration of the program.

*Benefit Transfers and Reimbursements.* Since bringing the problem to the Commission’s attention in September, ACA Connects has urged the Commission to clamp down on the unauthorized benefit transfers that have plagued the EBB program.<sup>23</sup> The record makes clear that ACA Connects Members are not alone in encountering this troubling practice.<sup>24</sup> As explained in our comments, the Commission

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<sup>20</sup> See ACA Connects Comments at 11-13.

<sup>21</sup> NCLC/UCC Reply Comments at 4 (“NCLC and UCC MJ support proposals for companies to offer plans that are on better terms for consumers only to ACP consumers. This would not be prohibited by the statute, and as Google Fiber stated, would encourage companies to develop a \$30 product that is fully covered by the ACP benefit which might not be available to the general public.”); see also Hispanic Technology & Telecommunications Partnership Comments at 2 (urging the Commission to “encourage[] participating providers to ensure that they offer at least one internet only plan with an associated cost of \$29.99 or less”).

<sup>22</sup> See T-Mobile Comments at 13.

<sup>23</sup> See ACA Connects Comments at 5-8.

<sup>24</sup> See, e.g., National Digital Inclusion Alliance Comments at 16-17.

should take serious measures to ensure that the practice does not carry over from the EBB program to ACP. We have urged 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>25</sup> Most importantly, the Commission should remove the financial incentive for providers to transfer households without their apparent knowledge or intent. Providers caught engaging in such transfers should face monetary penalties and, in severe cases, suspension or expulsion from ACP.

In addition, the Commission should adopt ACA Connects' proposal that it modify the reimbursement process to allow partial-month support claims when households disenroll before the end of a calendar month. The inability to file such claims leads to particularly unfair outcomes when unauthorized benefit transfers occur in the final days of the month. As NTCA observes, "allowing for partial reimbursement would eliminate the perverse incentive to initiate unwanted/deceptive benefit transfers."<sup>26</sup> If ACA Connects' proposed modification to the reimbursement process cannot feasibly be implemented in the near term, that should not be an impediment to adopting the proposal altogether. On the contrary, the Commission could decide in its forthcoming

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<sup>25</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.

<sup>26</sup> See NTCA Comments at 14.

Order that ACP will support partial-month reimbursements and establish a timetable for USAC to complete the necessary development work.

*Credit Checks and Non-Payment.* Commenters offer differing interpretations of the Infrastructure Act provisions regarding the use of credit checks and the disconnection of ACP households after 90 days of nonpayment. In its comments, ACA Connects advanced interpretations that would give full effect to both provisions without imposing restrictions that are broader than the statute requires.<sup>27</sup> In particular, credit checks should be deemed permissible for purposes other than those proscribed by statute, and households disconnected after 90 days for non-payment should not be entitled to re-enroll in ACP with the same provider without clearing their debt. The Commission should adopt these interpretations. In addition, it should further clarify, as USTelecom proposes, that disconnected households may not enroll with *any* provider while their debt remains outstanding.<sup>28</sup> By further reducing exposure to uncollectable debt, this proposed measure would encourage broader participation in ACP from smaller providers that operate under tight financial constraints.

*Implementation Timeline.* Commenters representing broadband providers of all sizes urge the Commission to provide ample time for ACP providers to update billing systems, train customer service personnel, and complete other steps necessary to implement requirements adopted in the forthcoming Report and Order.<sup>29</sup> At minimum, the Commission should provide at least 90 days from the date that the Commission

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<sup>27</sup> See ACA Connects Comments at 26-27.

<sup>28</sup> See USTelecom Comments at 17-18.

<sup>29</sup> See, e.g., Verizon Comments at 7-8; CCA Comments at 4-5.

releases its Report and Order to achieve compliance with any requirements not directly related to the March 1, 2022 transition, as ACA Connects has advocated.<sup>30</sup> That amount of time is consistent with precedent and would allow providers—especially smaller ones—to focus on making a smooth transition for EBB-enrolled households before completing other implementation tasks.

### **III. RESPONSES TO OTHER PROPOSALS**

Below, we respond to proposals raised by other parties regarding matters that ACA Connects did not address in its initial comments.

*Minimum Device Standards.* The Public Notice seeks comment on minimum requirements for “connected devices” offered through ACP.<sup>31</sup> Several commenters urge the Commission to ensure that such devices are sufficient for households to make full use of their broadband service. For instance, the National Digital Inclusion Alliance advocates that connected devices be capable of supporting “distance learning, telehealth, remote work, and other modern uses.”<sup>32</sup> One practical proposal to address such concerns, supported by NCLC/UCC, is “to require a connected device to be able to connect to all Wi-Fi devices, not just certain hot-spots.”<sup>33</sup> This approach is consistent with the policy—which ACA Connects fully supports—that households participating in ACP have the option to transfer their benefit from one provider to another at any time.

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<sup>30</sup> See ACA Connects Comments at 22-23.

<sup>31</sup> See Public Notice, ¶¶ 67-68.

<sup>32</sup> See National Digital Inclusion Alliance Comments at 12; see *also* Public Knowledge and Common Sense Media Comments at 9-10.

<sup>33</sup> See NCLC/UCC Comments at 23.

Households that exercise this option should not be unreasonably prevented from using a previously obtained “connected device” with their new service provider as a result.<sup>34</sup>

*Taxes and Fees.* There is no statutory prohibition under ACP – as there was under the EBB program – on the benefit covering “taxes or other governmental fees.” We therefore agree with NCTA and Altice that providers should be expressly permitted to seek reimbursement for such taxes and fees that are within the “actual amount charged” for an offering.<sup>35</sup> Such an approach is consistent with the statute and would simplify billing, and the modest dollar amounts involved would not place undue strain on ACP funds.

*Usage.* The Public Notice proposes to establish a usage certification requirement for ACP similar to that of the EBB program.<sup>36</sup> As an initial matter, we agree with USTelecom that this requirement is an unnecessary burden for wireline broadband providers, who, by necessity, incur costs to supply and maintain “dedicated facilities” for each customer.<sup>37</sup> But if the Commission maintains a usage certification requirement for wireline providers in ACP, it should adopt NCTA’s suggestion that it “[c]larify that an activated modem constitutes ‘usage.’”<sup>38</sup> That method of demonstrating usage would be more appropriate for fixed wireline providers than many of the mobile-wireless-centric

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<sup>34</sup> We recognize that not all connected devices may be fully interoperable with all mobile broadband services, but the inclusion of Wi-Fi capability would increase the likelihood of a device being compatible with broadband service offerings of another provider.

<sup>35</sup> See NCTA Comments at 18; Altice Comments at 14-15.

<sup>36</sup> See Public Notice, ¶ 45.

<sup>37</sup> See USTelecom Comments at 19-20.

<sup>38</sup> See NCTA Comments at 4.

methods set forth in the Lifeline rules that were incorporated by reference into the EBB program.<sup>39</sup>

*Multiple Tenant Environments.* Some commenters raise concerns about the ability of eligible households residing in apartment buildings and other multiple tenant environments (“MTEs”) to take advantage of ACP.<sup>40</sup> We certainly agree with commenters who suggest that such households should have full access to the benefit. To that end, the Commission should provide the same flexibility in ACP as in the EBB program for eligible households that receive broadband service under bulk billing arrangements to obtain the benefit.<sup>41</sup> As we have explained recently in a separate Commission proceeding, ACA Connects Members provide broadband service in MTEs on highly attractive terms, often under bulk billing arrangements that allow residents to receive steeply discounted service.<sup>42</sup> Such arrangements are promising vehicles for households to receive high-speed, reliable service through ACP at affordable rates.<sup>43</sup>

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<sup>39</sup> See 47 CFR § 54.407(c)(2) (enumerating subscriber activities that constitute “usage” of service within the Lifeline program, which include, among other activities, “complet[ing] an outbound call” and “sending a text message”).

<sup>40</sup> See, e.g., Open Technology Institute Comments at 11-13.

<sup>41</sup> See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29 at ¶ 45 (2020) (confirming that the EBB program would be available “in multiple dwelling units at a single address, such as senior and student living, mobile home parks, apartment buildings, and federal housing units, that receive service as part of a bulk billing arrangement where the households are not directly billed for services by their internet service provider, but instead pay a monthly fee for broadband services to their landlord.”) (internal citations omitted).

<sup>42</sup> See Comments of ACA Connects, GN Docket No. 17-142 (filed Oct. 20, 2021) (“ACA Connects MTE Comments”); see also Reply Comments of ACA Connects, GN Docket No. 17-142 (filed Nov. 19, 2021) (“ACA Connects MTE Reply Comments”).

<sup>43</sup> For reasons explained in detail in ACA Connects’ recent filings in the Commission’s proceeding on broadband competition in MTEs, the Commission should not impose overly broad and counterproductive restrictions on business arrangements, such as bulk billing, under which broadband providers serve MTEs in today’s competitive marketplace. See *generally* ACA Connects MTE Comments; ACA Connects MTE Reply Comments.

#### IV. CONCLUSION

ACA Connects appreciates the opportunity to participate in this proceeding and encourages the Commission to take its reply comments into consideration.

Respectfully submitted,



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