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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; Emergency Broadband Benefit Program, WC Docket No. 20-445**

Dear Ms. Dortch:

On January 10, 2022, Ross Lieberman and I of ACA Connects—America's Communications Association ("ACA Connects") had separate meetings by teleconference with Trent Harkrader of the Office of Chairwoman Jessica Rosenworcel; Greg Watson of the Office of Commissioner Brendan Carr; and Marco Peraza of the Office of Commissioner Nathan Simington. On January 11, 2022, we met by teleconference with Austin Bonner of the Office of Commissioner Geoffrey Starks. All meetings were in reference to the public draft Report and Order ("Draft Order") regarding the Affordable Connectivity Program ("ACP") that was issued in the above-captioned proceeding.<sup>1</sup>

To begin, ACA Connects applauds Chairwoman Rosenworcel for releasing the Draft Order for public review and comment. Taking this step adds transparency to the process and enables all stakeholders to provide more focused and informed feedback on the specific rules and proposals that have been circulated for the Commission's consideration.

We also commend the Chairwoman and the Commission staff for their hard work in producing such a thoughtful and comprehensive Draft Order on such a rapid timeline. As we discussed in our meetings, we are largely supportive of the Draft Order and are especially

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<sup>1</sup> See *Affordable Connectivity Program*, Public Draft Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC22-450-010722 (rel. Jan. 7, 2022).

pleased that it incorporates many of the proposals raised by ACA Connects in the proceeding to address the concerns of its Members and the interests of consumers participating in ACP.<sup>2</sup>

In the meetings, we focused on relatively limited aspects of the Draft Order where ACA Connects finds the approach taken to lack adequate justification or record support, and where a modified approach would better serve the Commission's objectives and the needs of the program—including the need to encourage greater participation in ACP from smaller broadband providers. In particular, we made the following recommendations.<sup>3</sup>

#### 1. Mitigating Debt Burdens for ACP Households

First, ACA Connects recommended that the final Order give providers more flexibility to help ACP-enrolled households avoid the accumulation of debt within the program and avoid the loss of service. We are concerned that the draft Order's approach gives providers only one, drastic option – terminating service after 90 days – to prevent the provider's continued accrual of lost revenue.<sup>4</sup> To avoid a significant number of households in non-payment status being unenrolled from the ACP program, the final Order should retain the guidance that applied under the EBB program that permitted operators to downgrade the service of non-paying customers without the customer's consent,<sup>5</sup> or, at least, the Commission should give providers permission to take such action after 90 days of non-payment in addition to the option to terminate. ACA Connects has no objection to the Commission requiring operators to provide customers with reasonable notice before changing their service offering. For similar reasons, the final Order

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<sup>2</sup> For instance, the Draft Order (1) declines to require providers to submit service plans to USAC; (2) declines to direct USAC to collect granular data not collected today, such as Zip Codes "+4"; (3) adopts a reasonable process, largely based on "opt-out" approval, for transitioning legacy EBB households to a lower benefit amount on March 1; (4) adopts measures to tamp down on unauthorized benefit transfers; (5) permits use of credit checks for purposes not prohibited by the statute; (6) allows providers to introduce service plans tailored to ACP households; and (7) requires that connected devices be capable of connecting to all Wi-Fi access points and not limited to use with a specific provider. In addition, we clarify that ACA Connects has no objection to the Draft Order's reasonable approach on applying the benefit to grandfathered plans.

<sup>3</sup> Proposed revisions to the draft Final Rules are set forth in the appendix to this letter.

<sup>4</sup> While the rules would allow a provider to move a household in non-payment status to a less expensive service tier, doing so would require a provider to obtain the consent of the customer, *see* Draft Order, para. 144, for which the difficulty and cost to obtain such consent, especially for customers subscribing to high priced services, is less attractive than just terminating the customer's service.

<sup>5</sup> *See* USAC, EBB Program, Frequently Asked Questions, <https://www.usac.org/about/emergency-broadband-benefit-program/webinars-and-trainings/ebb-program-frequently-asked-questions/> (last visited Jan. 12, 2022) ("EBB Program rules do not prohibit a provider from downgrading a subscriber's broadband service if the subscriber falls behind on their portion of the bill for the EBB-supported service. Providers downgrading a customer's EBB-supported service due to non-payment are urged not to downgrade the EBB-supported service without the subscriber's knowledge.").

should affirm that a provider re-enrolling a household that has an outstanding ACP balance may limit the household to one or more lower-priced plans.

These proposed modifications to the Draft Order reflect the fact that there is no evidence that any consumer harm was caused during the EBB Program by providers who followed EBB program guidance for treating customers in non-payment status. These modifications also strike a more careful balance between two compelling interests: (1) allowing ACP households to stay connected when they fall behind on their bill; and (2) avoiding the creation of financial risk for providers that could dampen participation in ACP, especially among smaller providers that operate under tight budgetary constraints. The latter concern is made substantially worse if, as set forth in the Draft Order, participating providers are required to accept re-enrollment in ACP from households that have been terminated for non-payment and have not yet paid the outstanding balance. ACA Connects disagrees that the statute supports such a requirement, which could allow individual households to amass debt indefinitely<sup>6</sup> without the provider having any meaningful recourse – other than, perhaps, exiting the program. At minimum, providers should have flexibility to move non-paying households into service tiers that allow them to limit the creation further debt until they are able to pay their balance.

## 2. Streamlining the Reversal of Improper Benefit Transfers

ACA Connects is pleased that the Draft Order includes substantial measures to tamp down on unauthorized benefit transfers,<sup>7</sup> including enhanced disclosure and consent requirements. As part of these measures, the Draft Order limits households to one benefit transfer per month, with an exception for cases where there has been an “improper transfer.”<sup>8</sup> The final Order should clarify that a provider may claim this exemption if it is performing a second transfer within a thirty-day period that reverses a prior transfer and the provider has a reasonable basis to believe the first transfer was improper, i.e., an indication from the household that it did not intend or was unaware of the transfer. This clarification is necessary to make the exemption workable in practice, because it is not feasible for USAC to adjudicate the “propriety” of large volumes of transfers in real-time. Notably, the most likely reason a household would seek reversal of a prior transfer within the same month is that the first transfer occurred without its knowledge or intent. Hence, providing the clarification ACA Connects seeks would uphold the purpose of the exemption.

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<sup>6</sup> Given the requirement that service providers make all of their service offerings available, customers wishing to abuse the system could repeat this cycle indefinitely: sign up for the provider’s highest priced service tier, receive such service without paying until terminated by the provider after 90 days, and then re-enroll at the same service tier.

<sup>7</sup> See ACA Connects *Ex Parte* Letter, WC Docket No. 20-445 (filed Sept. 27, 2021).

<sup>8</sup> See Draft Order, para. 188.

### 3. Tracking Non-Usage

ACA Connects does not object to the Draft Order's policy not to allow providers to seek reimbursement for households receiving a fully subsidized service that have not used their service for an entire month and have not cured the non-usage within 15 days. However, the Commission should permit providers to follow the approach of the EBB program in tracking usage for such households. The Draft Order's approach is more burdensome because it requires providers to track usage for each such household on a daily basis rather than allowing providers to determine once a month, prior to submitting a claim report, whether any enrolled household had not used its service during the claim report's month. In affirming that ACP providers may follow the EBB program's approach, the Commission should further affirm that providers are required to send 15-day non-usage notices only after a household is enrolled with the provider for an entire calendar month and has not used its service for the entirety of a month. For instance, if a household enrolls with a provider on the March 29<sup>th</sup>, the earliest date a provider should possibly be required to send a non-usage notice is May 1 (based on non-usage for all of April (i.e., April 1-30)), and the earliest date the household could be de-enrolled for non-usage would be May 16.

### 4. Cost Allocation for Bundles

ACA Connects appreciates that the Draft Order permits ACP households to apply their benefit to the non-video portion of broadband-video bundles. However, we are concerned that the methodology proposed in the Draft Order for allocating the total costs of a bundle among video and other component services is overly complicated and prescriptive, as well as lacking in record support.<sup>9</sup> Under the EBB program, providers have been applying the benefit successfully to the non-video portion of bundles based on reasonable cost allocation and in the absence of a prescribed methodology. Moreover, there is no evidence in the record or otherwise that there has been any waste, fraud, or abuse in applying the benefit to bundles under the EBB program that would necessitate a new approach for ACP. We thus urge the Commission to adopt an approach similar to that of the EBB program in ACP, rather than adopt the methodology set forth in the Draft Order.<sup>10</sup>

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<sup>9</sup> *See id.*, n.320.

<sup>10</sup> If the final Order addresses specific cost-allocation methodologies, it should affirm that the reimbursable portion of a broadband-video bundle may be the amount equal to the cost of the broadband component when offered on a standalone basis. Similarly, it should affirm that the reimbursable portion of a "triple-play" bundle may be the amount equal to the cost of a bundle that includes only the broadband and voice components.

#### 5. Timeline to Enroll a Household in ACP

The Draft Order sets forth a requirement that providers enroll households in ACP within five business days of receiving consent from the household.<sup>11</sup> ACA Connects cannot discern the rationale for this requirement, as the Draft Order does not supply one.<sup>12</sup> At any rate, we are concerned that the five-day timeline is overly prescriptive and fails to account for legitimate factors for providers that could make it take longer to enroll a household. We recommend the final Order dispense with this requirement, but if it is preserved, the Order should at least affirm that enrollment may be performed within five business days of service activation, which for wireline providers is generally the customer's installation date. ACA Connects Members report that it is not unusual for a customer that has ordered service to cancel the order prior to or during the installation process, which makes it reasonable to permit providers to postpone ACP enrollment until after the customer actually begins receiving the service.

#### 6. Recordkeeping with Respect to Non-ACP Households.

The Draft Order requires providers to notify *all* consumers who either subscribe to or renew a subscription to an internet service offering about ACP and how to enroll.<sup>13</sup> This requirement greatly expands the universe of customers that are within the scope of ACP requirements and the associated recordkeeping obligations. ACA Connects finds it overly burdensome to require providers to keep records for six-or-more years with respect to households that subscribed to or renewed broadband service, but did not enroll in ACP. The Commission should permit providers to dispose of such records in the normal course of business, e.g., within 3-6 months. Under this approach, providers would still need to be capable of documenting the practices they follow in providing the required notices and, in the course of an audit, producing records with respect to customer renewals or enrollments that occurred within recent months.

#### 7. National Verifier Pilot Program

The Draft Order directs the Wireline Competition Bureau ("Bureau") to create a pilot program that would allow "a limited number of neutral, trusted third party entities such as schools and school districts, or other local or state government entities to gain access to the National Verifier for purposes of assisting consumers with completing and submitting an

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<sup>11</sup> See Draft Order, para. 171.

<sup>12</sup> Indeed, the Draft Order already deems the failure "to timely provide service, equipment, or devices that are advertised, promoted, or marketed as part of the Affordable Connectivity Program," to be an unjust and unreasonable act or practice, and providers have strong financial incentives to enroll a household in NLAD as soon as possible to receive support for the household.

<sup>13</sup> See *id.*, para. 199.

application for ACP.”<sup>14</sup> We support this pilot program. However, entities that participate should be expressly prohibited from encouraging households to enroll with a particular provider and should, in fact, be required to make clear to households they assist that the household may enroll with the ACP provider of their choice. This guidance is especially pertinent because, under the Draft Order, schools and libraries are eligible to serve as bulk purchasers of broadband service through ACP, and these entities (as well as state and local governments) may have existing arrangements with specific broadband providers. The Bureau should be directed to incorporate the neutrality principles outlined above into its design of the pilot program.

#### 8. Data Gathering

The Draft Order directs the Bureau “to determine whether data should be collected” from providers about their service plans, and “the appropriate avenues to collect this data.”<sup>15</sup> We are concerned this language could be read as an expansive delegation of authority to the Bureau to implement new reporting mandates that would not be subject to input from the public. We recommend recasting this paragraph as a directive the Bureau to make recommendations to the Commission about data reporting, which would avoid any suggestion that the Bureau is being charged with determining on its own whether and what data should be collected.

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: Trent Harkrader  
Greg Watson  
Marco Peraza  
Austin Bonner

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<sup>14</sup> *See id.*, para. 70.

<sup>15</sup> *See id.*, para. 100.

## Appendix

### Proposed Revisions to the Final Rules Adopted in the Draft Order

#### **54.1802 – Affordable connectivity benefit.**

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(b) A participating provider shall allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household that includes broadband internet access service or a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both, **except that, if a household has an outstanding balance with the participating provider associated with prior provision of the affordable connectivity benefit, the provider may limit the service offerings available to that household to one or more specific offerings until such time as the household has paid the outstanding balance in full.**

#### **54.1805 – Household qualifications for Affordable Connectivity Program**

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(c) The following factors are not relevant to, and may not be considered in, the determination of whether a household qualifies as an eligible household:

- (1) Whether the household or any member of the household receives Lifeline support under subpart E of this Part; and
- (2) Whether the household or any member of the household has any past or present arrearages with a broadband provider, **except that, a provider may deny provision of the affordable connectivity benefit to a household, or limit the service offerings available to that household to one or more specific offerings, if the provider previously terminated service to that household for nonpayment in accordance with Section 54.1810(d)(2) and the household has yet to pay the outstanding balance in full.**

#### **54.1808 - Reimbursement for providing monthly affordable connectivity benefit.**

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(c) A participating provider offering a service subject to the affordable connectivity benefit that does not require the participating provider to assess and collect a monthly fee from its subscribers shall not receive support for a subscriber to such service until the subscriber activates the service by whatever means specified by the provider; and

- (1) After service activation, shall only continue to receive reimbursement for the affordable connectivity benefit on such service provided to subscribers who have used the service within the ~~last 30 days~~ **service month for which the provider is seeking reimbursement**, or who have cured their non-usage as provided for in § 54.1809(c); and
- (2) Must certify that every **such** subscriber claimed has used their service subject to the affordable connectivity benefit, as “usage” is defined by 47 CFR § 54.407(c)(2), at least once ~~in the last 30 consecutive days within the service month for which the provider is seeking reimbursement~~ or has cured their non-usage **as provided in § 54.1809(c)**, in order to claim that subscriber for reimbursement for a given service month.

**54.1809 - De-enrollment from the Affordable Connectivity Program.**

\* \* \* \* \*

(c) *De-enrollment for non-usage.* Notwithstanding paragraph (a) of this section, if an Affordable Connectivity Program subscriber fails to use, as “usage” is defined in § 54.407(c)(2), ~~for 30 consecutive days an entire calendar month~~, an Affordable Connectivity Program service that does not require the participating provider to assess and collect a monthly fee from its subscribers, the participating provider must provide the subscriber 15 days’ notice, using clear, easily understood language, that the subscriber’s failure to use the Affordable Connectivity Program service within the 15-day notice period will result in service termination for non-usage under this paragraph.

**54.1810 – Consumer protection requirements.**

\* \* \* \* \*

(d) **Non-payment** \* \* \*

**(3) A participating provider may downgrade a subscriber’s broadband service if the subscriber falls behind on their portion of the bill for the ACP-supported service. A provider downgrading a customer’s ACP-supported service due to non-payment is urged not to downgrade the ACP-supported service without the subscriber’s knowledge.**

\* \* \* \* \*

(g) *Restrictions on switching service offerings.*

- (1) A participating provider shall not impose any restrictions on a household’s ability to switch Internet service offerings, **unless except that**, once the consumer enters a delinquent status after the bill due date, the provider **may limit the available** service plans **available to the household** to **one or more lower-priced offerings, which may**

include only offerings that are covered by the full benefit amount, ~~and the household consents to switch service plans.~~ Upon exiting a delinquent status, the household shall be eligible for any service offering of the provider.

(i) *Unjust and unreasonable acts or practices* \* \* \*

(2) Such unjust and unreasonable acts or practices include, but are not limited to:

- (A) Advertising or holding itself out as a participating provider if it is not authorized to participate in the Affordable Connectivity Program;
- (B) Engaging in false or misleading advertising of the Affordable Connectivity Program;
- (C) Failing to timely provide service, equipment, or devices that are advertised, promoted, or marketed as part of the Affordable Connectivity Program;
- ~~(D) Failing to enroll an eligible household within 5 business days of the date the provider receives the household's affirmative consent to enroll with that provider;~~
- ~~(E)~~ Failing to apply the affordable connectivity benefit to such household on or before the start of the household's next billing cycle;
- ~~(F)~~ Failing to deliver a supported connected device within 30 days of obtaining the household's affirmative consent to receive such device; and
- ~~(G)~~ Violating any Program rule.