

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Affordable Connectivity Program) WC Docket No. 21-450

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) comments in response to the Public Notice (*Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*), WC Docket No. 21-450, DA 21-1453, released November 18, 2021.

WTA is a national trade association that represents more than 360 rural telecommunications carriers (“Rural LECs”) that either directly or via Internet service provider (“ISP”) subsidiaries furnish broadband services to areas containing households that have been enrolled or are eligible to participate in the Commission’s Lifeline and/or Emergency Broadband Benefit (“EBB”) programs, and that are likely to be eligible to participate in the Affordable Connectivity Program (“ACP”). All WTA members are eligible telecommunications carriers (“ETC”) that participate in the Commission’s Lifeline program, and many are voluntarily participating in the EBB program. All have staffs and/or consultants that are familiar with the Universal Service Administrative Company’s (“USAC’s”) National Verifier, National Lifeline Accountability Database (“NLAD”) and Representative Accountability Database (“RAD”) systems, as well as with other federal Lifeline and/or EBB mechanisms, regulations and compliance procedures.

WTA and its members support the goal of the ACP to continue to provide lower-income households with discounts to better enable them to afford and obtain the broadband services that are increasingly being used by a growing majority of Americans to engage in a variety of economic, educational, health and social activities.

Primary WTA Request:
Maximum Possible Conformity of ACP with EBB and Lifeline

Given that the ACP will extend and supplant the EBB program on an expedited basis during the December 31, 2021 to March 1, 2022 transition period, the primary concern of WTA members is that the ACP mechanisms, regulations and compliance procedures correspond as closely as possible to the current features of the EBB and Lifeline programs with which existing ETCs and other providers and their customers are familiar. WTA recognizes that the ACP legislation contains some changes from the present EBB and Lifeline programs that will need to be implemented. However, to the maximum extent possible, the features and procedures of the EBB and Lifeline programs should be adopted for the ACP in order to minimize the regulatory changes, USAC system modifications, paperwork, learning curves, errors and disruptions likely to impact administrators, service providers and customers during the brief transition to the ACP.

WTA urges the Commission to simplify this transition by recognizing that most service providers and beneficiaries will prefer to continue their present EBB arrangements as much as possible, and to therefore reduce service disruptions and minimize additional administrative oversight and filings for existing EBB service providers and for existing EBB customers by allowing those few EBB participants not willing to continue from EBB to the ACP to opt out rather than requiring all current EBB participants to file additional materials to opt into ACP.

Allowing all ETCs and other service providers that have been deemed eligible or approved for the EBB program to participate in ACP automatically without filing a new election notice -- unless the provider affirmatively chooses not to participate by filing a specific opt-out notice -- will reduce unnecessary and repetitive filings by the numerous service providers that filed substantially similar EBB election notices within the last year or so. More important, it will allow USAC personnel to focus upon the software and actual provider and eligibility changes necessary to implement ACP within the coming months rather than reviewing piles of largely extraneous election notices that entail no significant changes. WTA believes that its members and other

providers that have worked through the issues and details of EBB implementation during 2021 are committed to participation in the ACP and that relatively few will need to refresh the information that they provided in their EBB election notices during the past year (with the understanding that most state and connected device information remains the same, while much EBB service and rate information has been superseded by the broader service and term features of the ACP). Rather than flooding the ACP system with hundreds or thousands of “re-election notices” containing little or no useful new information, it is much more efficient to allow USAC to concentrate upon opt-out notices from the few EBB providers that may elect not to participate in the ACP, first-time election notices from providers that did not participate in the EBB program, and the various program and database changes that need to be implemented on an accelerated basis before the end of the scheduled three-month transition to the ACP.

Even more important, it is critical for the Commission to allow existing EBB customers to continue automatically into the ACP unless they affirmatively opt out rather than requiring all EBB customers to expressly opt into ACP if they are to continue receiving discounted broadband service after March 1, 2022. WTA is aware that, on non-Tribal lands, the ACP benefit is twenty dollars (\$20) per month less than the EBB benefit and that some eligible customers will not want to pay the resulting higher monthly fee. However, WTA members are very familiar with their customers and can reliably predict that a significant portion of their current EBB customers will not pay sufficient attention to letters, bill inserts, emails, website messages and other communications regarding the need to opt into ACP and therefore will not receive either the \$50 or \$30 discount after March 1, 2022 because they have not opted into ACP. WTA believes that the number of EBB customers wanting to participate in ACP but losing their benefit because they failed to opt into ACP in timely fashion will be much larger than the number of EBB customers that receive unwanted ACP service for a brief time after March 1, 2022 because they failed to opt-out in timely fashion. Moreover, on a customer-by-customer basis, the potential adverse

consequences of opt-in failure are much greater than those for opt-out failure. An EBB customer reliant upon broadband service may find that his or her service has become much more expensive – perhaps unaffordable – due to complete loss of the EBB/ACP benefit, and that significant additional time and effort is required by the customer and its service provider to obtain and implement the new ACP benefit (during which interim period the customer is likely to be responsible for paying the full cost of the service). In comparison, a failure to opt-out by an EBB customer that does not want to continue in the ACP can be readily corrected via termination and a potential billing adjustment once the initial bill for ACP-supported service is received and the price difference noted. Similarly, EBB customers that wish to move to a different broadband service tier but overlook the transition period notices can change their ACP service at a later date without significant paperwork or disruptions. In fact, service tier changes by ACP beneficiaries are irrelevant to customer election notices because the \$30 ACP discount benefit remains the same regardless of the service tier that the beneficiary chooses.

Put another way, although the \$30 monthly ACP benefit is less than the \$50 monthly EBB benefit, it is still substantially greater than the \$9.25 monthly Lifeline benefit and should prove successful in convincing most EBB beneficiaries to continue subscribing to their increasingly essential broadband services. Under such circumstances, it will be much less disruptive and burdensome to allow existing eligible EBB customers (other than those that qualified pursuant to the no longer applicable “substantial loss of income” and “provider’s COVID-19 program” criteria) to receive automatically the new ACP benefit at the end of the transition period unless they affirmatively opt-out of the EBB/ACP program.

WTA recognizes that service providers will be required and will need to make reasonable efforts to inform their existing EBB customers of the benefit, eligibility and other changes affecting their service as a result of the transition from the EBB to the ACP. All that WTA is saying is that WTA member knowledge of their customers indicates that the transition can be accomplished

more efficiently and less disruptively via a selective opt-out process than a universal opt-in requirement. WTA also recognizes that service providers will need to obtain signed customer consents for various aspects of their ACP service – for example, acknowledgement that the rate for the customer’s ACP service plan will increase to its full price once the ACP program ends and that the customer will be responsible for paying such full price if the customer continues to accept service after that time. However, given that the ACP program is designed to last for several years, such consents can be obtained after the more urgent transitional tasks are completed and without interrupting the customer’s eligibility and discount if such period extends past March 1, 2022.

Comments on Specific ACP Program Changes

WTA urges the Commission to make the ACP program as similar as possible to the existing EBB and Lifeline mechanisms, but understands that the Infrastructure Act requires some changes. Those of particular concern to WTA include elimination of two of the EBB criteria, the requirement to offer all broadband service tiers on the same terms available to non-ACP customers, recertification and reimbursement procedures, terminations and transfers of ACP benefits, and termination of voluntary ACP participation by service providers.

Elimination of “Substantial Loss of Income” and “Provider’s COVID-19 Program” Eligibility Criteria. WTA recognizes that customer households that qualified for EBB under the “substantial loss of income since February 29, 2020” and “participation in provider’s COVID-19 plan” will not be eligible to participate in ACP unless they qualify under one of the other existing EBB criteria or the new “Special Supplemental Nutrition Program for Women, Infants and Children (“WIC”)” criterion. Given that the basis of each EBB customer’s eligibility is detailed in the NLAD, WTA recommends that USAC be ordered to contact EBB customers currently qualified under the “substantial loss of income” or “COVID-19 program” criteria (and their service providers to avoid duplication and confusion) to notify them that these criteria will no longer be effective as of March 1, 2022. USAC should provide detailed instructions in such

notices as to how affected customers can qualify under alternative ACP eligibility criteria, if applicable, and as to what the customer needs to do if the household wishes to terminate its broadband service or continue it on a full-price basis.

Service Offerings and Terms. WTA understands that the Infrastructure Act requires ACP providers to allow an eligible household to apply the ACP benefit to “any internet service offering of the participating provider, at the same terms available to households that are not eligible households.” WTA agrees that ACP customers should have the same service options that they would have if they were non-ACP customers, but believes that this principle needs some clarification.

First, the principle should apply only to current and future service plans offered to new non-ACP customers, and should not include legacy and grandfathered service plans that are no longer being offered to potential new or additional customers whether or not they are eligible for ACP benefits. The latter services have been discontinued, or are being phased out once the current grandfathered customers change or terminate their service. Failure to offer or provide these legacy or grandfathered services to ACP customers does not entail any discriminatory or other different treatment due to their ACP status.

Second, the Commission needs to remember that many Rural LECs and other service providers are in the process of extending and upgrading portions of their broadband networks, and may have no option but to offer different service plans in different exchanges or portions of exchanges. The “any service offering” principle should be limited to the actual service plans currently being offered by the provider to ACP and non-ACP customers in the same physical area where the ACP household is located, and should not require expedited network upgrades to enable the service provider to offer higher-speed service plans that are not yet available in the area.

Third, because Internet access service is currently an information service that is not subject to rate and other telecommunications service regulation (and whereas even under the previous Net

Neutrality regime, rate regulation was forborne), Commission implementation and oversight of the “same terms” provision must be very flexible. Whereas all Internet service providers are required to post their transparency policies on their website, only some have elected voluntarily to post detailed website information regarding their Internet service plans, rates and other terms. Where service providers have exercised their right not to publicly display their rates and/or other service terms for competitive or other legitimate business reasons, the Commission can and should implement the “same terms” requirement in a manner that recognizes that their non-Title II status does not entail tariff requirements or other public disclosure of their non-regulated rates and terms. For example, the Commission could instead: (1) require certifications by corporate officers under penalty of perjury that their ACP-eligible customers are receiving their selected service plans subject to the same rates and terms as non-ACP customers receiving the same service plan in the same area; and/or (2) require service providers to demonstrate in confidential Section 208 complaint proceedings that their subject ACP customer(s) are subject to the same rates and terms as their non-ACP customers for the same service plan in the same area.

Finally, the Commission should extend to the ACP its policy of not applying minimum service standards to the service offerings eligible for discounts. There is no need for such standards as service providers are required to offer the same service plans to all ACP and non-ACP customers in the same area at the same rates and terms. Imposing minimum service standards upon the services provided to ACP customers would undermine or destroy the equivalent treatment of similarly situated ACP and non-ACP customers, as well as undercutting the benefits and incentives of light regulation of Internet access services. In fact, minimum service standards make little sense and have even less staying power in an industry where technical changes in equipment, transmission speeds, applications and a host of other elements continue to accelerate much faster than is predictable.

Minimum Usage Standards. WTA does not oppose the imposition of minimum usage standards like those applicable in the EBB and Lifeline programs. However, it urges the Commission to refrain from requiring a standardized approach because usage verification methodologies and records vary significantly from company to company due to different technologies and operating systems.

Recertification. WTA supports annual ACP subscriber recertifications to ensure that enrolled ACP subscribers continue to meet the ACP eligibility criteria from year to year. Income, school attendance and other relevant conditions change over time in a manner that can affect ACP eligibility. WTA members generally have the eligibility of their Lifeline customers verified and recertified by USAC through the National Verifier. WTA recommends that USAC conduct both Lifeline and ACP recertifications at the same time for service providers using the National Verifier, and that March 1, 2022 be deemed to be the ACP enrollment date for continuing EBB customers for annual ACP recertification purposes.

Reimbursement. WTA members have become familiar with the EBB and Lifeline claims and reimbursement mechanisms and procedures, and have found them to be reasonable, accurate and predictable after the initial learning curve and design issues were resolved. Whereas the Commission could provide some additional flexibility regarding the time for uploading and certifying ACP claims due to the significantly longer time horizon of the ACP vis-à-vis the EBB, the EBB reimbursement process should otherwise be retained predominately as is. In particular, the current uniform snapshot date should be retained and the option of partial monthly support should be rejected. If ACP is to remain an efficient and economic program, its reimbursement mechanism should not be complicated by features such as partial month support that can require expensive and potentially disruptive modifications of USAC software and service provider billing and collection systems.

Termination for Nonpayment. The Commission needs to resolve the potential conflict between the statutory prohibition regarding denial of ACP service due to past or present arrearages (*Notice*, par. 80) and the statutory right of service providers to terminate ACP service after 90 days of non-payment (*Notice*, par. 83). WTA recommends that these provisions be reconciled by prohibiting denial of ACP services due to arrearages applicable to the period prior to the time that the customer first receives ACP service – either for its very first participation in the EBB-ACP discounts or at the end of the EBB-ACP transition period. However, once a customer begins receiving ACP service and then runs up 90-day arrearages for ACP-supported service, the customer’s ACP service should be able to be terminated for non-payment after arrearages reach 90 days, and should not be required to be restored unless and until the customer has paid all such ACP-related arrearages. Whereas the use of credit checks is limited, service providers should be allowed to employ them to minimize the number of uncollectible 90-day delinquent accounts they accumulate and to prevent a few unscrupulous customers from gaming the ACP system by obtaining multiple periods of “free” service by jumping from provider to provider without paying.

Transfer of Benefits. WTA members have had EBB customers transfer their EBB benefit to another carrier without notice to the WTA member during virtually every month of the EBB program. This situation requires WTA members and other service providers to obtain and review carefully an EBB transfer report every month before they can prepare and send their monthly bills. A Commission requirement for USAC to notify the affected service provider immediately when an ACP customer transfers its benefit to another provider would constitute a significant saving of time and money for participating ACP service providers.

WTA opposes the imposition of a set time frame for benefit transfers. WTA members have experienced significant EBB benefit transfer delays that were completely out of their control – for example, because the transferring customer has provided inaccurate or inconsistent data for the NLAD or has filed conflicting benefit applications with other providers.

Termination of Voluntary Service Provider Status. ACP is a voluntary program with a primary \$30 monthly service discount benefit that is unlikely to generate substantial profits in excess of the associated service, middle mile, installation, maintenance, customer service, billing, collection, reporting, recordkeeping, audit and other costs. Whereas a substantial portion of WTA members wants to participate in the ACP, it is possible that some may find that participation entails losses that cannot be justified and that cannot be borne by their relatively small non-ACP subscriber bases. Under such circumstances, a service provider should be able to terminate its participation in ACP with a notice that is no more elaborate than its notice electing to participate, plus thirty (30) days' notice to existing ACP customers. If the Commission requires a more formal and substantive process – for example, something similar to Section 214 discontinuation applications with showings that alternative service providers are available in the area – it is likely to discourage voluntary ACP participation by service providers in those remote and unserved/underserved areas that need ACP service the most urgently.

Conclusion

With the limited exceptions required by the Infrastructure Act, WTA urges the Commission to adopt mechanisms, regulations and compliance procedures for ACP that are as similar as possible to the current features of the EBB and Lifeline programs with which most participating service providers and their eligible customers are familiar.

Respectfully submitted,
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