



December 20, 2021

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C., 20554

**RE: Affordable Connectivity Program
WC Docket No. 21-450**

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

Dear Ms. Dortch:

On Friday December 17, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”)¹ met with Jessica Campbell, Christian Hoefly, Rashann Duvall, Eric Wu, Travis Hahn, Sherry Ross, Negheen Sanjar, and Allison Baker of the Wireline Competition Bureau, and Joanna Fister of the Office of Economics and Analytics, to discuss the Affordable Connectivity Program (“ACP”). The parties specifically discussed issues surrounding the transition of consumers from the Emergency Broadband Benefit (“EBB”) program to the ACP, and how that can be done with a minimum of disruption to consumers.

The discussion centered on the Public Notice proposal to require existing EBB beneficiaries to give prior, affirmative “opt-in” consent to be enrolled in the ACP at the conclusion of the 60-day EBB-to-ACP transition period that will commence on December 31, 2021.² NTCA noted that the record in response to the Public Notice cautions against such an approach based upon how disruptive it will be to low-income consumers already receiving EBB support.³ Specifically, as providers of all sizes serving rural and urban communities alike attest,⁴ consumers often overlook notices of these kinds (whether delivered as bill inserts, via email, or any other communications method). While understandable, the consequence in this context is profound, and indeed risks undermining the early success of the ACP. Subscribers overlooking these notices, and thus failing

¹ NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities.

² *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, Public Notice, WC Docket No. 21-450, DA 21-1453 (rel. Nov. 18, 2021) (“Public Notice”), ¶ 100.

³ Comments of CTIA, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 4; Comments of AT&T, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 4; Comments of Verizon, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 5; Comments of T-Mobile, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 5; Comments of USTelecom, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 9; Comments of WISPA, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 6; Comments of CCA, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 8; Comments of ACA Connects, WC Docket No. 21-450 (fil. Dec. 8, 2021), p. 17.

⁴ *See Id.*

to give affirmative opt-in consent to enrollment in the ACP at the end of the 60-day transition period, will unfortunately be de-enrolled from the program. As a result, they will experience the total loss of any subsidy they may need and likely anticipated even as they otherwise continue to subscribe to the service.

Such a result cannot be what Congress intended in attempting to provide for some transition. As CTIA has correctly noted, the Infrastructure Act provisions adopting the 60-day transition (which includes the retention of the EBB subsidy level for that time period), along with language stating that those “eligible for the ACP ‘shall continue to have access to an affordable service offering’”⁵ taken together, indicate the intent to minimize disruption and preserve affordability for consumers moving from EBB to ACP. And while “rate shock” is indeed an important consideration and one that should be avoided if possible, Congress cared for that via the 60-day transition that avoids a “flash-cut” to the subsidy amount.

While the shock of losing \$20 of monthly subsidy may be significant, a more troubling “rate shock” concern arises in the event that a subsidy of \$50 drops to \$0. Thus, even as it is critical that these subscribers are made aware that their benefit can change when the transition to the ACP concludes, it is far more important that they are not de-enrolled and suddenly facing an inability to afford broadband service due to the complete lapse of any subsidy. Faced with two imperfect options – either de-enrollment and a loss of support or continued enrollment but with a reduction in support – *NTCA proposed that the Commission choose the path of least disruption for consumers and one that has a better likelihood of keeping services affordable for consumers.*

More specifically, NTCA proposed that consent to be enrolled in the ACP at the conclusion of the 60-day transition be structured as an “opt-out” mechanism, under which subscribers enrolled in the EBB as of December 31, 2021 will be enrolled into the ACP as of March 1, 2022 absent a request otherwise directed to their provider. Of course, providers would still be required to notify consumers that this enrollment into the ACP will take place absent their request to be de-enrolled and that their subsidy will be decreased pursuant to statute, with such disclosures contained in providers’ bill inserts and/or emails.

With respect to timing of these notices, NTCA stated that 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. As NTCA stated in initial comments, the short implementation timeline for the ACP, coupled with the expansion of Internet service offerings to which the benefit will apply, will impose a significant compliance burden on small providers.⁶ 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. NTCA further noted that Commission guidance on this prior to the issuance of final rules would be helpful, as it would enable providers to transmit the necessary disclosures to consumers in multiple billing inserts/emails transmitting bills and thus increase the chance of them being acted upon.

⁵ CTIA, pp. 3-4. Internal citations omitted.

⁶ Comments of NTCA–The Rural Broadband Association, WC Docket No. 21-450 (fil. Dec. 8, 2021), pp. 2-7.

NTCA stated that should the Commission nevertheless adopt an “opt-in” mechanism, it should not apply for consumers that have already given consent to an increased monthly service rate taking effect upon the conclusion of the EBB. As the record indicates, and as NTCA members report, a large number of consumers were made aware of and consented to the fact that the end of the EBB would result in an increased rate for their service.⁷ Thus, the rate shock is not a concern here – these consumers have already opted in, albeit weeks or months ago. NTCA also supports carving out those customers that already received a subsidy of \$30 or less under the EBB from an “opt-in” regime if adopted. Subscribers falling into either of these categories, and enrolled in the EBB as of December 31, 2021, should be automatically enrolled into the ACP as of March 1, 2022 absent an “opt-out” request directed to their provider.

Finally, NTCA expressed concern with the notion of unilaterally “downgrading” a subscriber to a less expensive service should they fail to respond to any “opt-in” notice. While intended to avoid frustration that comes with suddenly finding a subsidy reduction at the end of the 60-day EBB-to-ACP transition, it could create a different kind of frustration as consumers find themselves with a slower speed than they initially ordered. Such an approach should at best be optional for providers, and NTCA submits that the “opt out” approach discussed above would better serve the interests of those consumers.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Brian Ford

Brian Ford

Director of Industry Affairs

NTCA-The Rural Broadband Association

cc: Jessica Campbell
Christian Hoefly
Rashann Duvall
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⁷ ACA, p. 18.