



January 11, 2022

***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**

Dear Ms. Dortch:

On Tuesday January 11, 2022, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> spoke, via separate phone calls, with the following staff from the Federal Communications Commission (“Commission”): (1) Trent Harkrader, Deputy Wireline Competition Bureau Chief and Acting Special Advisor to Chairwoman Jessica Rosenworcel; (2) Greg Watson, Policy Advisor to Commissioner Brendan Carr; (3) Austin Bonner, Legal Advisor for Wireline and Public Safety to Commissioner Geoffrey Starks; and (4) Marco Peraza, Wireline Advisor to Commissioner Nathan Simington. The parties discussed the Draft Affordable Connectivity Program (“ACP”)<sup>2</sup> order released by the Commission on January 7, 2022.

NTCA first expressed its appreciation for the Commission’s attention to unwanted benefit transfers. This practice was disruptive for Emergency Broadband Benefit Program (“EBB”) subscribers, as well as participating providers, and if allowed to continue could undermine existing and potential beneficiaries’ faith in the new ACP program in a way that could undercut demand. The informed consent process applicable to “transferring-in” providers, which requires they document consumers’ assent to have the ACP benefit transferred to a new provider,<sup>3</sup> is a critical step to ending this pernicious practice.

NTCA then proposed two amendments to the *Draft ACP Order* to ensure that ACP beneficiaries victimized by unwanted transfers notwithstanding these consent provisions are not overly burdened in addressing them. First, “transferring-out” providers should receive an immediate email notification from the National Lifeline Accountability Database alerting them to the transfer. As NTCA has noted, its members have reported the occurrence of unwanted

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<sup>1</sup> 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.

<sup>2</sup> *Affordable Connectivity Program*, WC Docket No. 21-450, *Emergency Broadband Benefit Program*, WC Docket No. 21-450, Draft Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC22-450-010722 (rel. Jan. 7, 2022) (“*Draft ACP Order*” or “*Order*”).

<sup>3</sup> *Id.*, ¶¶ 181-183.

transfers, with the subscriber contacting the transferring-out provider confused and dismayed as to why the benefit no longer is being applied to their bill and surprised to discover a different provider is instead now indicated for the EBB benefit. An email notification would permit the transferring-out provider to contact the consumer to confirm the legitimacy of the transfer and assist them in the process of reversing it immediately should it be found to be unwanted. As such an email notification is already part of the Universal Service Fund Lifeline program, this should not be a heavy lift.

Second, and more importantly, the Commission should adopt a simple, online process by which a subscriber can dispute the legitimacy of a benefit transfer and thus transfer their benefit back to their original provider.<sup>4</sup> NTCA members report that the process in place now typically involves the ACP beneficiary – a consumer – being required to contact directly the Universal Service Administrative Company (“USAC”) to dispute and ultimately reverse a benefit transfer. (In some cases, the provider is able to join the subscriber in such a call.) Rather than put consumers through a burdensome and confusing process to contact an unknown entity directly about an unauthorized and unintended change initiated by a new provider, the Commission should establish a process by which the dispute can be filed online and processed via an online USAC portal.

NTCA also suggested minor amendments to the non-payment provisions included in the *Order*.<sup>5</sup> NTCA specifically noted that the provisions allowing a provider to disconnect a customer after 90 days of past due amounts, but also prohibiting that provider from declining to re-enroll the subscriber despite any past or present arrearages,<sup>6</sup> are problematic. In short, ACP subscribers with past due amounts and therefore disconnected pursuant to the new statutory provision would be free to re-enroll *immediately* and incur even more past due amounts – this provision would appear to set up a seemingly unending cycle of disconnects and service restarts even as past due balances pile up. NTCA members are loathe to disconnect any subscribers, yet they are also small businesses operating on thin margins in high-cost rural areas, and thus past due amounts are difficult to absorb. At the very least, providers should be granted the flexibility to re-enroll such subscribers with past due amounts outstanding in only Internet service offerings that come with no consumer co-pay (i.e., service tiers where the application of the \$30 ACP subsidy would result in complete satisfaction of the subscriber’s bill such that the subscriber has no payment obligations of their own). This would keep such consumers connected while preventing them from incurring additional debt to the service provider.

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<sup>4</sup> *Id.*, ¶¶ 186-188. Per the *Draft ACP Order*, ACP beneficiaries are limited to one benefit transfer per month, the exception being in cases where “a household may want to reverse an improper transfer.” *Id.*, ¶ 188. “Improper transfer” is defined as occurring when “the transfer-in provider does not make the required disclosures or obtain the required consent from the household to proceed with the transfer transaction.” *Id.* However, the *Draft ACP Order* does not define the process by which the beneficiary can make that showing.

<sup>5</sup> *Id.*, ¶¶ 140-146.

<sup>6</sup> *Id.*, ¶ 142 (stating that “although a provider may terminate a household’s broadband service after 90 days of non-payment, the provider cannot deny a household’s re-enrollment based on past or present arrearages.”).

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Finally, NTCA expressed concern with the data collection provision found in the *Draft ACP Order*.<sup>7</sup> NTCA members are small businesses with, on average, 25 to 30 employees. These employees “wear multiple hats,” and the staffer complying with an ACP data request not only fulfills such requests for multiple USAC, National Exchange Carrier Association, or other Commission requests, but often administers universal service support and other regulatory oversight and compliance obligations within the company. Thus, while the data at issue may perhaps be “useful,”<sup>8</sup> undefined potential for utility should not be the benchmark by which reporting burdens are judged and justified. Instead, NTCA encourages the Commission to further consider the exact scope of such a data request and the specific need (perhaps in a further notice of proposed rulemaking to gather a more complete record on this issue) before moving forward. This will ensure such a data collection does not unnecessarily burden small providers and/or yield little gain for the ACP and its beneficiaries, and that such data will in fact deliver insight into the effectiveness of this program.

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: Trent Harkrader  
Greg Watson  
Austin Bonner  
Marco Peraza

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<sup>7</sup> *Id.*, ¶ 100.

<sup>8</sup> *Id.* (stating that the “Bureau sought comment on whether the Commission should collect the service plan characteristics—such as upload and download speeds, data allowances, and co-payment—associated with a subscriber’s service plan to gauge whether the Affordable Connectivity Program is providing value to households beyond what the Lifeline program offers” and furthering noting that “[c]ertain commenters agreed that this data would be *useful* to help evaluate the types of services the Affordable Connectivity Program is funding and progress towards the program’s goals.”) (emphasis added).