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

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
Emergency Broadband Benefit Program	)	WC Docket No. 20-445

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Further Notice of Proposed Rulemaking ("*Further Notice*") issued by the Federal Communications Commission ("Commission") in the above-captioned proceedings.[2] The *Further Notice* seeks comment on a provision created by the Infrastructure Act under which an "enhanced" Affordable Connectivity Program ("ACP") benefit[3] of up to $75 per month would be available to households served by providers in "high-cost areas."[4] Pursuant to the statute, the National Telecommunications and Information Administration ("NTIA") is tasked with determining (in consultation with the Commission) what areas of the nation fit the definition of

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1 NTCA represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

2 *Affordable Connectivity Program*, WC Docket No. 21-450, *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (rel. Jan. 21, 2022) ("*Further Notice*"), ¶¶ 270-293.

3 *Id*., ¶ 287 (noting that the "enhanced benefit" is "up to $75 per month for broadband service 'upon a showing that the applicability of the lower limit under subparagraph A [the $30 rate] to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.'"). Internal citations omitted.

4 Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), § 60102(a)(2)(G).

"high-cost area."[5] The Commission, on the other hand, is directed to establish the process by which an individual provider can demonstrate that they would face a "particularized economic hardship…such that the provider may not be able to maintain the operation of part or all of its broadband network"[6] if limited to providing an ACP discount of $30 versus $75.

To ensure the most effective possible coordination between programs, and to direct the enhanced level of ACP subsidy in an administratively efficient way to those areas where the greatest degree of economic hardship is likely to persist in providing services at affordable rates that are reasonably comparable to those in urban areas, the Commission should look to a provider's receipt of High-Cost Universal Service Fund ("USF") support for purposes of determining where "particularized economic hardship" exists. More specifically, low-income subscribers enrolled in the ACP should receive the enhanced $75 per month subsidy where their service is being provided in a high-cost area from a provider that needs USF support to enable and sustain operations and deliver services at affordable rates in the first instance.

As an initial matter, High-Cost USF support offers an effective means of identifying where a provider will face "economic hardship" in delivering services at affordable rates. (It also conveniently is targeted by definition to "high-cost areas," which makes it more likely to correspond to NTIA's effort to identify such areas.) High-Cost USF support is only made available in those areas where the Commission has previously determined that conditions are uneconomic such that a provider could not justify investment or carry on operations in the absence of such support. The distribution of such support to a provider therefore should be seen

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5 *Id*.

6 *Id*. at § 60502(A)(3)(B).

as a *prima facie* indication of the challenges of serving the area in question, necessitating additional support to ensure rates are affordable for low-income consumers specifically. Absent such support, these operators even in areas where they provide service today "may not be able to maintain the operation of part or all of [their] broadband network[s]"[7] for any consumer, low-income or otherwise.

Moreover, it is important to take stock for purposes of this discussion of the critical but often-overlooked "baseline" role that the High-Cost USF program plays in terms of enabling "affordable" broadband services for *all* rural consumers, regardless of income level. As background, and as NTCA has often noted, the High-Cost USF program is not focused on the mere availability of services in high-cost rural areas – indeed, the statute calls for "reasonable comparability"[8] with respect to the rates for rural consumers' access to services once available. The High-Cost USF program thus provides a "baseline" that helps to ensure the rates paid by rural consumers *of all kinds* are at least somewhat closer to those charged to urban consumers. The rates in urban and rural areas are not identical, however, because as the Commission well knows, "reasonable comparability" is measured for the purposes of the High-Cost USF program by a benchmark that effectively pegs rural broadband rates "two standard deviations above the average urban rates for a specific set of service characteristics."[9] In other words, "reasonably

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7 *Id.*

8 47 U.S.C. § 254(b)(3).

9 *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 14-190 (rel. Dec. 14, 2014), ¶ 118. *See also*, Urban Rate Survey methodology, 2022 Urban Rate Survey – Fixed Broadband Service Methodology, p. 8. https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources.

comparable" rates in rural areas for all consumers are by the specific operation of the Commission's own rules slated to be *higher* than in urban areas.

This, then, is where the ACP can play an important role – and why tying the enhanced ACP subsidy to the receipt of High-Cost USF support makes significant sense. Without "enhanced" ACP support, the rate paid by rural low-income consumers in areas where High-Cost USF support is necessary and available will, by definition and operation of the Commission's own formulas, be higher than those paid by urban low-income consumers. There could be no more obvious and straightforward indication of economic hardship for a provider than this in trying to drive rates down to a more affordable level, and it therefore makes sense to tie the availability of the enhanced ACP subsidy to a provider's receipt of High-Cost USF. In the end, the "enhanced" ACP subsidy can make up for this "gap" between "reasonable comparability" and "affordability" that the High-Cost USF program does not close on its own due to the operation of the latter program's rules.

As a further point of clarification, the Commission should not limit the availability of this "enhanced" ACP benefit to "unserved" areas as discussed in the *Further Notice*[10] – by definition, the ACP benefit is intended to help low-income consumers everywhere obtain broadband they otherwise would find out of financial reach. Limiting the ACP benefit to unserved areas only would leave this benefit off the table to eligible consumers in high-cost areas with high-quality but perhaps still unaffordable-to-ACP-eligible-consumers broadband service that is available to the community at large. Furthermore, as unserved areas come online as "served," there is no indication that the services will become magically affordable of their own accord absent

[10] *Further Notice*, ¶ 288.

enhanced subsidy such that providers will not need an additional "tool in the toolkit" to tackle the affordability hurdle that the ACP exists to address.

Finally, to be clear, there may be other instances in which providers *other than* those receiving High-Cost USF support can make specific evidentiary showings of their own, based upon detailed indications of anticipated costs and revenues, that would justify extension of the enhanced ACP subsidy to them as well in other areas. In the first instance, however, the Commission should target the enhanced ACP subsidy to those providers that its own high-cost USF programs identify as facing economic hardship in serving high-cost areas, with specific standards then being set for the kinds of detailed evidence and cost and revenue showings that other providers, in other areas, would need to produce to qualify for such a subsidy as well in those areas.

Respectfully Submitted

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