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

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

REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these reply comments addressing the record compiled in response to the Notice of Proposed Rulemaking[2] released by the Federal Communications Commission ("Commission") on June 8, 2022, in the above-captioned proceeding. The NPRM seeks comment on the Infrastructure Investment and Jobs Act ("Infrastructure Act")[3] provision establishing an Affordable Connectivity Program ("ACP") data collection[4] (hereinafter "ACP Data Collection").

As discussed herein, the record in this proceeding supports an ACP Data Collection that is narrowly tailored to fulfill the direction as set forth by Section 60502(c) of the Infrastructure Act. That provision calls for an "annual collection" of "price and subscription rates" of ACP participating providers' Internet service offerings. As commenters point out, the inclusion of data points beyond these would: (a) go beyond the explicit direction of, and authorization from,

[1] NTCA represents approximately 850 small rural network operators. All of NTCA's members are voice and broadband service providers, and many of its members provide wireless, video, and other competitive services to their communities.

[2] *Affordable Connectivity Program*, WC Docket No. 21-450, Notice of Proposed Rulemaking, FCC 22-44 (rel. Jun. 8, 2022) ("NPRM").

[3] Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) ("Infrastructure Act").

[4] *Id*., § 60502(c).

Congress; (b) fail to provide insight into the average cost of Internet service offerings available to ACP-eligible consumers; (c) raise privacy concerns and would be perceived as intrusive by consumers; and/or (d) impose unnecessary burdens on ACP participating providers. The record also does not support the use of the National Lifeline Accountability Database ("NLAD") for a "point-of-enrollment" data collection as the NPRM proposes. As commenters discuss, this approach would override the statutory directive for an "annual collection" and replace it with a continuous reporting requirement that would be burdensome to providers. Commenters also point out that the Paperwork Reduction Act ("PRA") does indeed apply to this collection – thus the Commission should take a step back and estimate the burden of this collection before going forward.

II. THE RECORD SUPPORTS AN ACP DATA COLLECTION THAT IS FAITHFUL TO THE STATUTORY DIRECTION AND SCOPE SET FORTH BY CONGRESS.

Like NTCA, a number of commenters[5] representing a broad cross-section of ACP participating providers, of all sizes, support an ACP Data Collection limited to the specific data points enumerated by Congress in the Infrastructure Act. Data extraneous to that referenced in Section 60502(c) or that would provide an inaccurate picture of whether the ACP has been effective in bolstering broadband adoption across the United States should be excluded from this collection.

[5] Comments of USTelecom – The Broadband Association, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("USTelecom"), p. 6; Comments of T-Mobile USA, Inc., WC Docket No. 21-450 (fil. Jul. 25, 2022) ("T-Mobile"), p. 2; Comments of WISPA – Broadband Without Boundaries, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("WISPA"), pp. 2-3; Comments of ACA Connects, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("ACA"), p. 3; Comments of Altice USA, Inc., WC Docket No. 21-450 (fil. Jul. 25, 2022), ("Altice"), p. 1; Comments of CTIA, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("CTIA"), p. 3.

A. Commenters agree that the collection of promotional/introductory rates will provide policymakers little insight into the effectiveness of the ACP, and that taxes and other fees can be found on the Broadband Consumer Labels.

The record does not support including within the ACP Data Collection taxes and fees or promotional or introductory rates that are temporary and vary by carrier and across the nation. These data points would lend little, if any, insight into whether the ACP as currently structured is helping to close the affordability gap. As USTelecom notes, in developing the ACP Data Collection, "[t]he Commission's objective in collecting these data is to track enrollment in the ACP and to observe consumer service choices and trends."[6] NTCA, in its comments, noted that the ACP Data Collection should be tailored to provide insight into how much of a discount off the average rate the ACP subsidy provides for eligible consumers and whether subscription rates among that population are in fact increasing.[7] With that in mind, the Commission should recognize that the collection of temporary promotional or introductory rates that vary from carrier-to-carrier and region-to-region would only skew the analysis of *average* rates available to ACP-eligible subscribers. In fact, because of these many variables, any attempt at a reasonable analysis of *average rates across the country* would necessarily set aside this data if it was included.

With respect to taxes and fees (such as modem rental charges), collection of this data via the ACP Data Collection is unnecessary and would run counter to the statute. More specifically, as commenters note,[8] Section 60504(b)(2) of the Infrastructure Act directs the Commission to look

[6] USTelecom, p. 3.

[7] Comments of NTCA–The Rural Broadband Association, WC Docket No. 21-450 (fil. Jul. 25, 2022), p. 3.

[8] Comments of John Staurulakis, LLC, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("JSI"), p. 5; Comments of NCTA – The Internet & Television Association, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("NCTA"), p. 20; T-Mobile, p. 2.

to the Broadband Consumer Labels ("Labels") for pricing information.[9] Because data on estimated applicable taxes and fees will be included in the Labels, it should not be collected, again, via the ACP Data Collection. Indeed, the Commission should look to ACP participating providers' Labels for all pricing data collected for the purposes of the ACP Data Collection.[10] Any provider completing the latter should be simply required to report, annually, on subscription rates to each Internet service offering with a link to its most recent Label included in its data submission.

B. The record does not support the collection of data points extraneous to those Congress enumerated.

The Commission should reject the proposal to include "demographic" data within the ACP Data Collection.[11] In addition to being plainly outside the specific data points that Section 60502(c) authorizes the Commission to collect, NTCA understands that providers do not, in the normal course of business, collect information on their subscribers' race, income, and "language spoken."[12] Indeed, any such requests are likely to be seen as highly intrusive and off-putting to customers and potential new subscribers. Privacy concerns exist as well, not only in the form of the intrusive nature of asking for this data in the first instance, but given the potential for data breaches once such individual subscriber information is in the hands of the Universal Service Administrative Company ("USAC") or the Commission. The proposal to allow "subscribers to opt out of sharing demographic information"[13] does not make this idea any better – providers

[9] Infrastructure Act § 60504(b)(2).

[10] WISPA, pp. 3-4.

[11] Comments of Common Sense Media and Public Knowledge, WC Docket No. 21-450 (fil. Jul. 25, 2022) ("Common Sense/PK"), p. 6.

[12] *Id*., p. 6.

[13] *Id*., p. 6.

would still need to ask the intrusive questions of customers and then will be required to create a process to obtain the "opt-out" from the consumer and retain proof that such was obtained. More importantly, as NCTA notes in its comments, "to address privacy concerns, providers may need to obtain additional, expanded consent from consumers to collect the proposed information."[14] While NCTA was not referring to the "demographic" data that Common Sense/PK seeks, its point is nevertheless correct – the consent obtained from current ACP enrollees (required by the ACP Order prior to enrollment[15]) did not contemplate the collection and reporting of demographic data to the Commission and USAC. Thus, to the extent the Commission will seek data on consumers enrolled in the ACP prior to the adoption of the ACP Data Collection as the NPRM contemplates,[16] providers will need to obtain consent from hundreds (perhaps tens of thousands for larger carriers) of consumers already enrolled in the ACP.

The Commission should also reject the suggestion that it collect information on "connection reliability."[17] Common Sense/PK fail to establish the relevance of this information as it relates to the effectiveness of the ACP, and specifically fail to demonstrate how it relates to "price and subscription rate" data the statute authorizes. They fail as well to propose *any* metric by which reliability can be measured or to indicate whether they contemplate collecting data on overall network reliability or seek measurements for each and every connection individually.

[14] NCTA, p. 15.

[15] *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) ("ACP Order"), ¶¶ 174-178.

[16] NPRM, ¶ 16.

[17] Common Sense/PK, p. 6.

In addition, when considering the scope of the ACP Data Collection, particularly when reviewing proposals for a highly expansive collection as Common Sense/PK seek, the Commission should recognize that had Congress sought additional data beyond "pricing" and "subscription rates," it could and would have said so. In fact, the absence of the word "including" in the statutory text indicates that "*price" and "subscription rates" were meant to be an exhaustive list of data points to be collected, not illustrative examples of a panoply of data points the Commission may choose to collect* (the statute does not say "*including* price and subscription rates"). Moreover, further examination of the text of Sections 60502(c) and 60504(b) indicates that Congress specifically sought a very limited collection and one that restricted the burden on providers to the furthest extent possible – the statute specifically includes two additional provisions that show a congressional preference for a limited collection. The combination of the "non-duplication" provision directing the Commission to avoid collecting that data which can be found elsewhere,[18] as well as the provision instructing the agency to look to the broadband consumer labels to gather pricing data,[19] demonstrate that Congress sought targeted information for a specific purpose here.

In addition, as several parties note, the Commission is in fact bound by the Paperwork Reduction Act ("PRA").[20] As ACA demonstrates, the Consolidated Appropriations Act language exempting the Emergency Broadband Benefit Program from the PRA was exclusively applicable to Commission rules adopted to effectuate that program.[21] Thus, the Commission is required to

[18] Infrastructure Act, § 60502(c)(3).

[19] *Id*., § 60504(b)(2).

[20] ACA, p. 21; T-Mobile, pp. 2-3. The NPRM seeks comment on this issue in paragraph 47.

[21] ACA, p. 21 ("While it is true that the Consolidated Appropriations Act carved out PRA and Administrative Procedure Act exemptions for the initial 60-day rulemaking that launched the EBB program, these exemptions, which are now codified at Section 1752(h) of Title 47, apply only to regulations adopted under Section 1752(c) of that title. See 47 USC § 1752(h). Thus, the PRA exemption would not extend to rules that are not adopted under that provision,

justify the need for the data collection. In doing so, the Commission is required to, among other things, certify that the data it seeks "is necessary for the proper performance of the functions of the agency, including that the information has practical utility."[22] Pursuant to the PRA, practical utility "means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account … the agency's ability to process the information it collects … in a useful and timely fashion."[23] The agency is further required to demonstrate that the data it seeks "is not unnecessarily duplicative of information otherwise reasonably accessible to the agency."[24] The Commission should engage in this analysis prior to moving forward and, as T-Mobile notes, the agency must *also* create "an estimate of the burdens of the proposed collection."[25] T-Mobile goes on state that when the Commission does so, a "cost-benefit analysis would not justify any onerous data collection that ignores data that are already available to the Commission, or one that is not well tailored to implementing the IIJA's requirements or the Commission's stated goal of evaluating the effectiveness of ACP."[26]

including any rules adopted in this proceeding to implement Section 60502(c). The Commission appears to recognize as much: Appended to the NPRM is an Initial Regulatory Flexibility Analysis, which would not be required if the Section 1752(h) exemptions extended to rules adopted in this proceeding. Notably, the Commission Orders adopted under now-codified Section 1752(c) adopting final rules for the EBB program and ACP both lack Final Regulatory Flexibility Analyses.").

[22] 44 U.S.C. § 3506(c)(3).

[23] 5 C.F.R. § 1320.3(l)

[24] *Id*.

[25] T-Mobile, pp. 2-3.

[26] *Id*.

C. Commenters agree that Congress was unambiguous in its call for an *annual* data collection – leveraging the NLAD for a point-of-enrollment collection of data runs counter to that direction and would overly burden providers.

Like NTCA, nearly every commenter supports an annual data collection that collects data on an aggregated basis and does not utilize the NLAD for a "point-of-enrollment" collection.[27] These parties recognize that such a collection using the NLAD is outside the scope of the Commission's statutory authorization, as it would turn the "annual" collection Congress sought into an ongoing process. As NTCA noted in initial comments, the NPRM specifically states that leveraging the NLAD would require providers "to input additional data in NLAD at enrollment."[28] As NLAD enrollment occurs perhaps hundreds of times per day for the nation's largest providers, and perhaps multiple times per week or even per day for smaller operators, any attempt to call this "annual" is simply disingenuous. Moreover, as CTIA correctly notes, the Commission cannot look to other terms in Section 60502(c) to justify this approach: as CTIA states, "[t]here is no basis to infer that 'subscription rate' includes a temporal component that requires the continuous collection of data about changes in subscription, rather than evaluating year-over-year changes in program data."[29] As CTIA goes on to state, "the Commission conducts other 'annual' data collections based on a snapshot date, and Congress could have used different language if it expected the Commission to conduct this one differently."[30] NCTA hits the mark in stating that, [r]equiring providers to compile substantial subscriber-specific price and plan information for uploading to the NLAD as part of the ACP enrollment process can take a significant amount of

[27] CTIA, p. 7; NCTA, p. 7; USTelecom, pp. 2-3; Altice, p. 6; ACA, p. 3.

[28] NPRM, ¶ 21.

[29] CTIA, p. 4, citing ¶ 6.

[30] *Id*.

time, particularly if the relevant data is sourced from different databases or business units of each provider."[31] Delays in subscriber enrollment would, as NCTA notes, "run counter to the Commission's goal of ensuring efficient and effective administration of the ACP program."[32]

D. The record does not support a subscriber-level ACP Data Collection.

Nearly every commenting party opposes a subscriber-level ACP Data Collection.[33] Commenters point to privacy concerns[34] as well as the requirement to obtain consumer consent for such subscriber-specific data.[35] Moreover, CTIA correctly points out how the NPRM's attempt to justify a subscriber-level collection misses the mark:

> In an attempt to justify collecting subscriber-level information, the NPRM suggests that "Congress necessarily contemplated that the Commission might collect subscriber-specific information" because it required the Commission, in making the data publicly available, to avoid risking the disclosure of personally identifiable information (PII). This is incorrect, however; the statutory provision cited in the NPRM is a restriction on the Commission's authority, not a grant of authority to collect subscriber-level information (or anything else). And the most effective step the Commission can take to protect against the disclosure of PII—per the cited statutory provision—is to avoid the collection of subscriber-level information in the first place.[36]

Finally, a subscriber-level collection would be burdensome to providers notwithstanding the need to obtain consumer consent – as ACA correctly points out, providers would need to amend their APIs with the NLAD and enter a number of new data fields should the Commission utilize

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[31] NCTA, p. 15.

[32] *Id*.

[33] CTIA, p. 5; NCTA, pp. 24-25; USTelecom, p. 4; ACA, pp. 10-19.

[34] ACA, p. 13; CTIA, p. 2; USTelecom, p. 2.

[35] Altice, p. 7 (stating that a subscriber-level data collection would require providers to "obtain specific, additional consent from the subscriber in order to provide such data to the Commission.")

[36] CTIA, pp. 5-6 (internal citations omitted).

that database despite the fact that this would turn the collection into an ongoing process.[37] And, should the Commission heed the Section 60502(c) call for an "annual collection," and thereby scrap its proposal to collect this information via the NLAD, providers would nevertheless be "burdened with having to pull and report each subscriber's personal information."[38]

III. CONCLUSION

For the reasons set forth above, the Commission should heed the record compiled in response to the NPRM and create an ACP Data Collection that is narrowly tailored to fulfill the direction as set forth by Section 60502(c) of the Infrastructure Act.

Respectfully Submitted

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[37] ACA, p. 16.

[38] Altice, p. 7.