October 19, 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 Monday, October 17, 2022, NTCA–The Rural Broadband Association ("NTCA"), represented by the undersigned, USTelecom – the Broadband Association ("USTelecom"), represented by Diana Eisner and Morgan Reeds, CTIA, represented by Amy Bender, NCTA – The Internet & Television Association ("NCTA"), represented by Steve Morris and ACA Connects – America's Communications Association ("ACA Connects"), represented by Brian Hurley (together, the "Associations") met via videoconference with Trent Harkrader, Diane Holland, Jessica Campbell, Allison Baker, Joel Graham, Travis Hahn and Eric Wu of the Wireline Competition Bureau, as well as Joanna Fister of the Office of Economics and Analytics. The parties discussed the Affordable Connectivity Program ("ACP" or "Program") Transparency proceeding,[1] and the Associations offered proposals to maximize the effectiveness of the proposed data collection while keeping it streamlined and efficient for the benefit of consumers and providers alike.

As an initial matter, the Associations noted that the Infrastructure Investment and Jobs Act ("IIJA") provision creating the data collection specifically calls for "final rules regarding the *annual* collection by the Commission."[2] Thus, the NPRM's proposal for a subscriber-level collection – which the NPRM states would require providers "to input additional data in National Lifeline Accountability Database ("NLAD") at enrollment in addition to the information already required to enroll a household,"[3] – would run afoul of the IIJA. More specifically, it would be difficult, if not impossible, to define a requirement that providers enter multiple, additional data points for each individual new ACP subscriber, *at the time of enrollment in the NLAD* (something that happens as frequently as every day, or at least several times per week, for smaller providers) as the kind of "annual" collection that the statute unambiguously requires.

The Associations then noted that the congressional intent for a streamlined data collection, one that minimizes the burden on providers, is also found outside of Section 60502(c)(1). For one, Section 60504(b)(2) of the IIJA directs the Commission to look to pricing information gathered from the

[1] *Affordable Connectivity Program*, WC Docket No. 20-450, Notice of Proposed Rulemaking, FCC 22-44 (rel. Jun. 8, 2022) ("NPRM").

[2] Infrastructure Investment and Jobs Act ("IIJA"), § 60502(c)(1) (emphasis added).

[3] NPRM, ¶ 21.

"Broadband Labels"[4] – that Congress directed the Commission to get one of the two data points for the ACP data collection from another source indicates an interest in limiting the burden on reporting entities. In addition, the "redundancy avoidance" provision in Section 60502(c)(3) similarly indicates a congressional recognition of the potential burden on providers.[5] Overall, the direction for an annual collection that looks to other sources or avoid unnecessary duplication indicates a clear congressional intent for an ACP data collection that is as simple as possible, and the Associations urged the Commission to remain faithful to this directive.[6]

In addition to running afoul of the statute, the Associations noted that an individual subscriber-level collection would negatively impact the consumer enrollment experience. Low-income consumers already face barriers to broadband adoption, and their hesitancy to enroll in government programs could be exacerbated by a request to share information with a government entity, thereby hindering the Commission's adoption goals. It could also impact the effectiveness of the NLAD as a tool for the rapid and accurate enrollment of consumers for the ACP and Lifeline programs.

The Associations noted that the need to obtain consumer consent to submit subscriber-level data to the Commission would not only have a chilling effect among subscribers who do not wish to turn over their personal data, it would be highly burdensome to providers. Even if the Commission only seeks subscriber-level data for "new" enrollees, the burden on providers will be substantial. Providers would be required to create new processes for customer service representatives ("CSRs"), including "scripts" that each CSR would follow for every enrollee as they solicit this information. Extensive training would be required as well. Moreover, the burden of obtaining consent for the millions of subscribers already enrolled as of the date rules are adopted would be a massively complicated and burdensome undertaking. And to the extent new or existing enrollees ignore entreaties from providers or refuse to grant consent, the utility of the data ultimately captured by the collection will be severely undermined.

With all of this in mind, the Associations asserted that a collection aggregated at the state level is entirely consistent with the statute, which calls for "price and subscription rates of each Internet service offering of a participating provider."[7] Capturing, on an annual basis and aggregated at the state level and for each provider's Internet service offering within that state, (1) the non-discounted month-to-month price (2) upload/download speeds and (3) the number of consumers subscribed to each offering tells the Commission what a non-low income consumer can get in a particular state and how much $30 off (or $75 in a Tribal area) gets an ACP-eligible low-income consumer. In other words, the Commission (and Congress) can utilize this data to determine if the ACP, including the subsidy level, is effective in making broadband more affordable amongst the eligible population. It would also provide insight into how eligible consumers are using their benefit as well as their

[4] IIJA, § 60504(b)(2).

[5] *Id*., § 60502(c)(3).

[6] The Associations also stated that the Commission is bound by the Paperwork Reduction Act ("PRA"). 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. Thus, the Commission is required to justify the need for each data point it includes in this data collection.

[7] IIJA, § 60502(c)(1).

enrollment preferences without being unnecessarily burdensome and implicating consumer privacy concerns.

Finally, turning to Section 60502(c)(2) of the IIJA, the Associations urged the Commission to reject a reading of that provision that would require an initial data collection followed by the completion of a rulemaking in response to that data collection within 180 days. A better reading of that section indicated that the Commission's task is to "revise its rules" with the purpose of such revisions being a verification of the accuracy of submitted data. The Commission can fulfill this requirement by adopting a requirement that providers certify the accuracy of their data submissions.

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
Vice President – Federal Regulatory
NTCA-The Rural Broadband Association

cc: Trent Harkrader
Diane Holland
Jessica Campbell
Allison Baker
Joel Graham
Travis Hahn
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