



November 29, 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, November 28, 2022, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”) spoke with Jessica Campbell, Deputy Chief of the Telecommunications Access Policy Division (“TAPD”), and William Layton, TAPD Assistant Division Chief. The parties discussed the establishment of an “enhanced” Affordable Connectivity Program (“ACP”) benefit of up to \$75 per month that would be available in “high-cost areas” under certain circumstances.¹

Consistent with prior advocacy,² NTCA discussed the process for determining where “particularized economic hardship” as required by the Infrastructure Act is deemed to exist in high-cost areas such that an enhanced ACP subsidy would be available. NTCA recommended that the Federal Communications Commission (the “Commission”) look in the first instance to a provider’s receipt of High-Cost Universal Service Fund (“USF”) support for purposes of determining such eligibility. Section 254 of the Communications Act of 1934, as amended, mandates “reasonable comparability”³ with respect to the rates to be paid by rural and urban consumers. Yet, while the High-Cost USF program provides a “baseline” of support to drive rates paid by rural consumers somewhat closer to those in urban areas, the program’s rules do not in fact aim to have rural rates match urban rates. Instead, to achieve “reasonable comparability,” the High-Cost USF program benchmarks rural rates two standard deviations above average urban rates. Thus, even as High-Cost USF support helps to offset what otherwise would be extremely high and unaffordable rates and to make a business case that would otherwise not exist for the delivery of services, this support nonetheless leaves rural rates materially *higher* than in urban areas – meaning that, even with a \$30 subsidy, low-income consumers in rural areas pay more than low-income consumers in urban areas. Fortunately, the enhanced ACP subsidy can help to close this remaining “affordability “gap.” More specifically, consistent with prior advocacy, NTCA suggests that in areas deemed “high-cost” under the Infrastructure Act, the Commission should consider an entity’s receipt of High-Cost USF support as a *prima facie* indication of economic hardship and thereby enable High-Cost USF recipients to obtain the enhanced ACP subsidy.

¹Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), § 60102(a)(2)(G).

² See, e.g. Comments of NTCA, WC Docket Nos. 21-450, 20-445 (fil. Mar. 16, 2022).

³ 47 U.S.C. § 254(b)(3).

Marlene H. Dortch
Page 2 of 2
November 29, 2022

NTCA then discussed how providers other than those receiving High-Cost USF support could make specific evidentiary showings of their own to demonstrate economic hardship in serving areas defined as high-cost by the Infrastructure Act. As an example, NTCA stated that detailed indications of actual costs and revenues associated with investment and operations in any portions of such areas could be used to examine claims of economic hardship and ultimately justify potential extension of the enhanced ACP subsidy to other kinds of operators as well.

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/ Michael Romano
Michael Romano
Executive Vice President
NTCA–The Rural Broadband Association

cc: Jessica Campbell
William Layton