

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF PUBLIC KNOWLEDGE, COMMON SENSE MEDIA**

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December 8, 2021

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**I. INTRODUCTION**

Public Knowledge (PK) and Common Sense submit these Comments in response to the Wireline Competition Bureau of the Federal Communications Commission's (FCC or Commission) Public Notice, “The Implementation of the Affordable Connectivity Program” (Public Notice).<sup>1</sup> Congress included the establishment of the Affordable Connectivity Program (ACP) in the Bipartisan Infrastructure Package to extend the existing Emergency Broadband Benefit (EBB) -- which to date has helped more than 7 million low-income households connect to the internet during a time when it has never been more critical.<sup>2</sup> Consumers need the internet to learn, work, connect with loved ones, access government benefits, or even to precision farm. To ensure that this benefit helps even more households connect without overburdening existing EBB subscribers, we urge the Commission to take the following actions:

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<sup>1</sup> See F.C.C., Public Notice: Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, DA 21-1453, WC Docket No. 21-450, (released Nov. 18, 2021), [hereinafter Public Notice].

<sup>2</sup> Universal Service Administrative Company, *Additional EBB Program Data*, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollment-and-claims-tracker/additional-ebb-program-data/> (last accessed Dec 7, 2021); Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. div. F, tit. V (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> [hereinafter Infrastructure Act].

1. **Facilitate a smooth transition from EBB to ACP** by providing consumers with clear and ample notice of any changes and by requiring customers to opt-in to the ACP if they will incur a co-pay and opt-out if they will not.
2. **Expand device ownership** by allowing households that purchased a device under EBB to also purchase a device under ACP, by encouraging providers to participate in the discount program, and by ensuring that providers offer high quality devices that maximize the program's \$100 device benefit.
3. **Expand the definition of “bulk purchasers”** to include schools and libraries and help these institutions transition from ECF to ACP and to promote connectivity.
4. **Establish minimum standards** for internet services and devices purchased via the ACP to ensure that public funds support meaningful connectivity.
5. **Promote the ACP** using participating service providers, the FCC, and outreach partners to ensure widespread and equitable adoption of the ACP.
6. **Minimize barriers to enrollment** by facilitating automatic eligibility verification and by allowing for a variety of identification verification methods.
7. **Protect consumers** from harm by maintaining a flexible definition of inappropriate business practices and requiring providers to offer consumers a full range of offerings.

Through these actions, the Commission can ensure that the ACP helps low-income and vulnerable consumers afford the internet service and devices that are essential to engage with our digital world.

## **II. THE COMMISSION SHOULD FACILITATE A SMOOTH THE TRANSITION FROM EBB TO ACP**

The Commission proposes requiring EBB-enrolled households to opt-in to the ACP and asks when and how providers should notify consumers of the transition between programs.<sup>3</sup> The Commission should create policies that provide consumers with clear and ample notice of the transition and its implications for the customers' internet service and payment obligations. Moreover, when managing the transition from the EBB to the ACP, the Commission must balance the need to maintain enrollment while also preventing customers from taking on unexpected debt due to the decrease in the subsidy amount.

### **A. All Consumers Must Receive Clear and Ample Notice of the Transition**

The transition from the EBB to the ACP is likely to be confusing for current EBB subscribers. The subsidy amount is decreasing by \$20 a month for most consumers, but might actually be increasing for consumers living in high-cost areas.<sup>4</sup> In addition, the ACP comes with new consumer protections -- such as the requirement that providers make all of their plans eligible for the benefit.<sup>5</sup> Importantly, the benefit will also last beyond the pandemic.<sup>6</sup>

To mitigate this confusion, the Commission should require providers to provide notice about the transition multiple times -- perhaps both 30 days and 15 days before the customer's benefit would transition. This will allow consumers time to make any changes to their plan even if they miss the first notification. The notice must clearly state how things will change for the consumer, including notice of the change in their subsidy amount (whether it is increasing or decreasing, and how much the plan will be following the transition), if the consumer will be charged and by how much, a detailed list of other available plans and an option to switch to one

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<sup>3</sup> Public Notice *supra* note 1 at 47-48.

<sup>4</sup> Infrastructure Act § 60502(b)(1)(A)(ii)(II) and 60502(a)(3)(B).

<sup>5</sup> Infrastructure Act § 60502 (7)(A)(i)

<sup>6</sup> Infrastructure Act § 60502(a)(1)

of the offered alternative plans, and a note that the customer can cancel their service before the change takes effect without incurring a fee. Providers should make all notices available in plain language and in multiple languages. Consumers who don't speak English shouldn't be forced to go without this important notification.

**B. The Commission Should Require Consumers with a Co-Pay to Opt-In, and Those Without a Co-Pay to Opt Out**

The Commission asks whether it should allow current EBB subscribers to opt-in or opt-out of continuing their service through the ACP.<sup>7</sup> A key factor in making this determination is that the ACP's reduced subsidy will leave many subscribers with a co-pay. However, many consumers will not respond to requests to opt-in to the program, reducing the ACP's ability to close the digital divide. The Commission will need to delicately balance the benefits of maintaining enrollment numbers against the harms of unexpected debt for low-income consumers.

Every step added to the enrollment process is a potential place for consumers to abandon their applications and decrease enrollment in the ACP. For example, 68% of consumers required to submit documentation showing their eligibility for Lifeline abandon their applications.<sup>8</sup> This was likely because the process of getting documentation to show eligibility is simply too burdensome for consumers who may be simultaneously raising a family, working, and who may lack transportation and internet. In addition, providers report that many consumers do not respond to notices to opt-in.

At the same time, unexpected debt can be crippling for low-income families. 68 percent of Lifeline and EBB subscribers cannot afford a monthly co-pay of any amount.<sup>9</sup> Others are

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<sup>7</sup> Public Notice *supra* note 1 at 48.

<sup>8</sup> Government Accountability Office, "FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience," at 16 (Jan 2021), available at <https://www.gao.gov/assets/gao-21-235.pdf>.

<sup>9</sup> Ex Parte of National Lifeline Association (NaLA), WC Docket Nos. 11-42,20-445 at 34-36 (Oct 6, 2021).

physically unable to pay a co-pay -- nearly 60 percent are unbanked, and almost half do not have a credit or debit card.<sup>10</sup>

To prevent consumers from incurring debts they cannot pay, we recommended that the Commission require providers to give consumers who would be left with a co-pay under their existing plan notice of the change and what it means for their payment, a list of cheaper plans, and the ability to opt-into (and not out of) the ACP. However, in order to maintain enrollment numbers, we suggest that the Commission could require customers who would not be left with a copay under their current plan to opt-out of the ACP. This would help balance concerns about “bill shock” for consumers with the concerns that consumers may not respond to opt-in notices for continuation of service.

### **III. THE COMMISSION SHOULD EXPAND DEVICE OWNERSHIP**

Although devices are necessary to connect, low income, elderly and people of color are unlikely to have one. Just 54.9% of households making under \$25,000 a year have a computer.<sup>11</sup> Black and Latino students are approximately twice as likely as white students to lack a home computer.<sup>12</sup> The inability to afford a device is one of the top reasons that individuals aren’t connected to the internet. Thirty-one percent of non-broadband users cite the cost of a computer as one of the reasons they do not have broadband at home.<sup>13</sup>

Many more households, including 32 percent of Latino families that are home-schooling during the pandemic, do not have enough computers or tablets for everyone, forcing families to

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<sup>10</sup> Ex Parte of National Lifeline Association (NaLA), WC Docket Nos. 11-42,20-445 at 34-36 (Oct 6, 2021).

<sup>11</sup> EveryoneOn, *Affordability and the Digital Divide* at 18 (Dec. 2021).

<sup>12</sup> Rideout, V.J. & Robb, M.B. *The Common Sense Census presents: Research brief. Remote learning and digital equity during the pandemic*. San Francisco, CA: Common Sense.

<sup>13</sup> Pew Research Center, *Mobile Technology and Home Broadband 2019* (June 13, 2019), <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/> (last accessed Dec 7, 2021).

choose which activities to prioritize.<sup>14</sup> For example, one child may have to forgo a remote class so another may use the computer for homework, or an adult may forgo a virtual medical appointment so another may work. The Commission should take steps to ensure that all families have the devices they need to engage in modern life.

#### **A. Families Who Got a Device Through EBB Should be Eligible for a Device Through ACP**

The EBB limited its device discount to one per household, and as the Commission notes, the Infrastructure Act does not alter this for the ACP.<sup>15</sup> However, the Commission should not prohibit households who received a device through the EBB from getting a second device through the ACP. Household connectivity requires multiple devices, yet, as mentioned above, many low income families don't have enough devices for all family members to connect simultaneously. For example, according to an EveryoneOn's survey of households with incomes below \$50,000 a year, households with 2 children average just 1.9 computers.<sup>16</sup> This not only leaves some schoolchildren without a means to connect, but it disregards the need for parents to connect as well. The Commission should do whatever is in its purview to get enough computers into households -- including counting the ACP device discount as a separate benefit from the device discount under the EBB.

#### **B. The Commission Should Encourage Providers to Offer the Device Discount**

The device discount program within the EBB has been underused. As of November 2021, more than 8 million households have enrolled in the EBB and yet just 985,600 devices have been

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<sup>14</sup> Matt Barreto and Gary Segura, *Latino Reactions and Impact of COVID*, <https://latinodecisions.com/wp-content/uploads/2020/04/SOMOS-COVID19-Svy-Exec-Summary.pdf> (last accessed Dec. 7, 2021).

<sup>15</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 26, para. 62 (2021). and H.R. 133, 116th Cong. § 904(b)(5)

<sup>16</sup> EveryoneOn, *Affordability and the Digital Divide* at 19 (Dec. 2021).



distributed.<sup>17</sup> A key reason for this is the lack of participation is that many providers simply do not offer the device discount -- likely because they don't have experience offering devices to their customers.<sup>18</sup> If providers were encouraged to partner with device manufacturers, refurbishers or retail outlets, they may feel more comfortable offering the device discount. The law would appear to provide the Commission with flexibility to allow providers to seek such arrangements, but would still require that the provider be the entity that the Commission engages with for reimbursement. As such, we urge the Commission to explore ways to encourage partnerships between these entities, so that more providers participate in this portion of the program.

### **C. The Commission Should Require Providers to Prove the Retail Value of Devices.**

The Commission should require providers to prove the value of the device for which they are seeking reimbursement so that providers are not reimbursed for more than their product is worth. The ACP should simply make providers whole, not provide them with a windfall. We recommend requiring providers to demonstrate that the retail value or costs of connected devices match or exceed the amount they are claiming from the ACP. This also enables consumers to get a higher quality device since it reduces the incentive for providers to seek a windfall by offering cheap, low-quality devices.

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<sup>17</sup> *Emergency Broadband Benefit Program Enrollments and Claims Tracker*, Universal Service Administrative Company (Dec. 6, 2021), <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/>.

<sup>18</sup> *Emergency Broadband Benefit Providers*, Federal Communications Commission (Dec. 2, 2021), <https://www.fcc.gov/emergency-broadband-benefit-providers> **and find another cite to thhe why they don't participate in the docket**

#### **IV. THE COMMISSION SHOULD ALLOW SCHOOLS AND LIBRARIES TO ACT AS BULK PURCHASERS**

The Commission should expand and/or clarify the definition of “bulk purchasers” so that it encompasses schools and libraries and should provide guidance to help these institutions transition from the ECF to the ACP if the need arises. Currently, it is unclear if schools and libraries will be eligible for this designation in ACP, and the public notice makes no mention of schools and libraries in its section on “bulk purchasers” and multi dwelling units<sup>19</sup>

The Commission’s original EBB order allows “entities such as school districts...who purchase service in bulk” to participate in broadband services, similar to multiple dwelling units.<sup>20</sup> However, schools and libraries have not taken advantage of this provision, presumably because they are instead using the Emergency Connectivity Fund (ECF) which also allows them to act as bulk purchasers. As such, it remains unclear whether schools and libraries will be able to participate in the ACP as “bulk purchasers.”

This creates a problem because the ECF is scheduled to stop reimbursing schools and libraries on June 30, 2022. In the event that this happens, the 10 million+ students and patrons<sup>21</sup> the ECF has helped connect may lose their connectivity. To avoid this, we propose that the Commission create rules to transition ECF schools and libraries onto the ACP as “bulk purchasers.”

It is in the Commission’s interest, as well as in the interest of providers and subscribers, to allow schools and libraries to act as bulk purchasers. Schools and libraries are well positioned to navigate the ACP and provide high quality service. They have established relationships with

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<sup>19</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 24-25, para. 57 (2021).

<sup>20</sup> Emergency Broadband Benefit Program, WC Docket No. 20-445, Order, 36 FCC Rcd at 4612, 4633, para. 45

<sup>21</sup> Federal Communications Commission, *News Release: FCC Commits Over \$169M in Emergency Connectivity Funding* (Nov. 23, 2021) <https://www.fcc.gov/document/fcc-commits-over-169m-emergency-connectivity-funding> (last accessed Dec. 7, 2021)

service providers and subscribers; they can identify eligible households and promote the ACP; they can ensure services and devices meet minimum standards and include consumer protections; and they can leverage their position as bulk purchaser to negotiate better prices and service quality. By allowing schools and libraries to act as bulk purchasers, the Commission will stretch the ACP's funds and maximize its impact.

## **V. THE COMMISSION SHOULD SET MINIMUM STANDARDS FOR DEVICES AND SERVICES**

The Commission seeks comment on whether the ACP should require products meet minimum standards to be eligible for the program.<sup>22</sup> We propose that the ACP should include these standards, and that they should ensure that the services and devices offered through the ACP are sufficient for distance learning, telehealth, remote work, and other modern uses.

Streaming, web browsing, online collaboration, remote monitoring, data processing and analysis, and videoconferencing are increasingly common uses of the internet, and they can require high download and upload speeds, low latency, and stable connectivity. This is especially true for households with school-aged children and working adults, in which multiple users may be online simultaneously. The increasing requirements for robust internet service are documented in a recent analysis by Common Sense.<sup>23</sup>

In addition to robust internet service, households need laptops or tablets capable of meeting modern work and education requirements. Depending on the user's age and occupation, these device requirements will change -- younger students may be able to successfully participate in distance learning with a touch-screen enabled tablet, however, older students and adults will

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<sup>22</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 23, para. 54 (2021).

<sup>23</sup> Chandra, S., Chang, A., Day, L., Fazlullah, A., Liu, J., McBride, L., Mudalige, T., Weiss, D., Closing the K-12 Digital Divide in the Age of Distance Learning. San Francisco, CA: Common Sense Media. Boston, Massachusetts, Boston Consulting Group. (2020).

need a more robust laptop that might include word processing and other productivity software, a keyboard, a camera, and/or device applications in order to engage in online learning and submit assignments electronically.

The Commission should establish minimum standards for internet service and devices to ensure that consumers who participate in ACP can succeed online. We recommend that the Commission work closely with educators, telehealth providers, and remote businesses to design these minimum standards, and that the Commission remain flexible to update these standards as consumer needs change.

## **VI. THE COMMISSION SHOULD INCREASE AWARENESS OF THE ACP**

We suspect that initially low enrollment numbers for the EBB stemmed in part from consumer's lack of knowledge about the program. Of households making below \$50,000 a year, just 23% had heard of the Emergency Broadband Benefit.<sup>24</sup> Moreover, National Digital Inclusion Alliance affiliates have repeatedly reported that the multi-step process is a barrier for enrollment amongst the households they work with. That is why it is critical that all eligible consumers learn about the ACP and receive help enrolling. The Commission can improve outreach to eligible populations in three ways: by enforcing the mandate that providers advertise the program; by leading a variety of targeted outreach campaigns; and by partnering with community based organizations.

### **A. The Commission Should Enforce Provider Advertising Mandates**

The Commission should enforce the ACP's new mandate for participating providers to "carry out public awareness campaigns" that highlight the existence of the program.<sup>25</sup> Providers are especially well positioned to publicize the ACP. Eligible Telecommunications Carriers

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<sup>24</sup> EveryoneOn, *Affordability and the Digital Divide* at 6 (Dec. 2021).

<sup>25</sup> *H.R. 3684* § 60502(a)(8)

(ETC's), in particular, are already required to publicize Lifeline benefits, which target many of the same populations that are eligible for the ACP.<sup>26</sup> Moreover, many providers have access to large advertising budgets and advertising know-how. In 2018, Comcast spent more than any other company in the U.S. on advertising -- \$6.12 billion.<sup>27</sup> Other telecommunications companies also spent billions on advertising: Verizon spent \$2.68 billion; Charter spent \$3.04 billion; and AT&T spent 5.36 billion.<sup>28</sup> Since these providers will ultimately profit from the ACP, they should contribute to advertising its availability to eligible populations.

### **B. The Commission Should Engage in a Variety of Targeted Outreach Campaigns**

Second, the Commission should take advantage of its Congressionally given ability to “conduct outreach efforts to encourage eligible households to enroll in the [ACP].”<sup>29</sup> To ensure that the ACP benefit is distributed equitably to as many of those people as possible, all messaging, marketing, and outreach around the program must prioritize inclusivity. Many who are eligible for the ACP may have trouble learning about, understanding, and applying for the program if information about it is overly complicated, exclusively available online or in English, insensitive to cultural differences, or not tailored to differences in communication ability.

The Commission did not advertise the EBB in a particularly effective or inclusive way. The EBB program did not provide funding for outreach by the Commission and in standing up the EBB in a very short time frame, the Commission did not have time to consider the best way

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<sup>26</sup> 47 CFR § 54.201(d)(2).

<sup>27</sup> Ivan De Luce, *10 companies that spent more than \$1 billion in ads so you'd buy their products*, Business Insider (Oct. 4, 2019), <https://www.businessinsider.com/10-biggest-advertising-spenders-in-the-us-2015-7#1-comcast-corp-612-billion-in-total-spending-10>.

<sup>28</sup> Ivan De Luce, *10 companies that spent more than \$1 billion in ads so you'd buy their products*, Business Insider (Oct. 4, 2019), <https://www.businessinsider.com/10-biggest-advertising-spenders-in-the-us-2015-7#1-comcast-corp-612-billion-in-total-spending-10>

<sup>29</sup> *H.R. 3684* § 60502(a)(10)(c)(i)

to effectively advertise it. Unfortunately that lack of time impacted communities where English is not their first language or that lacked access to the tools the Commission utilized to try to reach low-income families, such as webinars and social media.<sup>30</sup> While most outreach materials were available in English and Spanish, more limited resources were available in Arabic, Amharic, Burmese, Chinese-Traditional, Chinese-Simplified, French, Haitian Creole, Korean, Portuguese, Russian, Somali, Tagalog, and Vietnamese.<sup>31</sup> The Commission can remedy these shortcomings now that it has more resources and a mandate to conduct outreach.

All outreach should be in plain, culturally relevant language, and available in many languages beyond English.<sup>32</sup> To ensure that materials can actually be read and understood by speakers of the language, the Commission should hire translators. Outreach materials should also fulfill the requirements of the Americans with Disabilities Act, and use effective communication that ensures people with vision, hearing, and/or speech disabilities can engage with the program.<sup>33</sup>

Finally, outreach can't just be through webinars and social media -- it needs to be advertised to eligible populations through a variety of channels (including tv, radio, newspaper and billboard advertisements). The Commission should also target its advertising towards areas that have the low rates of broadband adoption.

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<sup>30</sup> *Webinars and Trainings*, Universal Service Administrative Company (last accessed Dec. 8, 2021), <https://www.usac.org/about/emergency-broadband-benefit-program/webinars-and-trainings/>.

<sup>31</sup> Federal Communications Commission, "Emergency Broadband Benefit Outreach Toolkit," updated Wednesday, Sept. 8, 2021, [https://www.fcc.gov/emergency-broadband-benefit-outreach-toolkit?utm\\_medium=email&utm\\_source=govdelivery](https://www.fcc.gov/emergency-broadband-benefit-outreach-toolkit?utm_medium=email&utm_source=govdelivery)

<sup>32</sup> Letter for WC Docket No. 20-445 from Benton Institute for Broadband & Society, American Civil Liberties Union, New America's Open Technology Institute, Common Cause, National Hispanic Media Coalition, Public Knowledge, UnidosUS, Joint Center for Political and Economic Studies, MediaJustice, Free Press, February 16, 2021, [https://ecfsapi.fcc.gov/file/10216230510651/Civil\\_Rights\\_Broadband\\_Working\\_Group\\_Coalition\\_EBB\\_Letter.pdf](https://ecfsapi.fcc.gov/file/10216230510651/Civil_Rights_Broadband_Working_Group_Coalition_EBB_Letter.pdf).

<sup>33</sup> "Effective Communication," U.S. Department of Justice, Civil Rights Division, Disability Rights Section (Sept. 15, 2020) <https://www.ada.gov/effective-comm.htm>.

### **C. The Commission Should Subgrant to Community Partners**

Finally, the Commission should take advantage of the authority it was given in the IIJA to “provide grants to outreach partners.”<sup>34</sup> Outreach partners should include local social services offices, libraries, schools, non-profit organizations operating in the local communities, and other trusted entities. Consumers tend to trust these community partners for reliable information about resources and help enrolling in them because these entities know the people in their communities, the barriers they face to connectivity, and the best ways to reach those in need. In its study, EveryoneOn noted that low-income consumers are nearly 4 times more likely to trust a library “a lot” than their internet service provider, and that consumers with relationships with community organizations are more likely to have heard of the EBB.<sup>35</sup> Thus, these partners are well positioned to work on outreach and to offer assistance enrolling in the program.

## **VII. THE FCC SHOULD ENCOURAGE PARTICIPATION BY MINIMIZING ENROLLMENT BURDENS**

Many low income consumers simultaneously work, learn, and raise families. Thus, every additional step makes it more difficult for these consumers to enroll in the ACP. The Commission should minimize these burdens by making it easy for consumers to verify their eligibility and by allowing consumers to use various forms of identification.

### **D. The Commission Should Facilitate Easy Verification of Eligibility**

The National Verifier is used to guard against waste, fraud and abuse by verifying that a consumer is eligible for the ACP subsidy. If the Verifier worked properly, consumers would simply enter their identifying information and the assistance program that qualifies them to be eligible into the Verifier’s website and be automatically approved to participate in the ACP.

However, because the Verifier does not have information about all qualifying programs, some

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<sup>34</sup> H.R. 3684, 117th Cong. § 60502(a)(10)(c)(ii)(IV)

<sup>35</sup> EveryoneOn, *Affordability and the Digital Divide* at 17 (Dec. 2021).

consumers will have to submit documentation proving that they participate in a qualifying program, and have that information manually reviewed by the Universal Service Administrative Company (USAC). Unfortunately, 68% of customers who had to undergo a manual review for the Lifeline program abandon their applications.<sup>36</sup> It is not always easy to get and submit documentation about your enrollment in a qualifying program -- particularly if you don't have the internet, transportation, or the luxury of free time. In order to facilitate enrollment and prevent drop-off, consumers should be able to have their eligibility automatically verified without the need to track down and upload documentation.

### *1. The Commission Should Facilitate Data Matching*

There are two ways the Commission can streamline eligibility verification. First, it can facilitate data matching between relevant agencies to enable automatic verification. As part of the IJJA, the Congress acknowledged the need for data matching to occur and included provisions that direct certain federal agencies to enter into memoranda of understanding with the Universal Service Administration to facilitate the sharing of data through the National Verifier.<sup>37</sup> However, more remains to be done and the Commission can facilitate better data sharing to promote consumer access to the ACP.

Many relevant agencies, many others won't share data because they don't have the capacity, believe that privacy laws preclude sharing, or are concerned about sharing data with a hybrid entity like USAC.<sup>38</sup> Even when agencies agree to share, it can take months or years to get the data sharing agreement signed, and then many additional months or even years to start

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<sup>36</sup>Government Accountability Office, "FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience," at 16 (Jan 2021), available at <https://www.gao.gov/assets/gao-21-235.pdf>.

<sup>37</sup>H.R. 3684 § 60502(e) (*directing* the Secretaries of Agriculture, Education, and Health and Human Services to enter into such memoranda of understanding).

<sup>38</sup> Jenna Leventoff, *The Major Obstacle Preventing Americans from Getting the Emergency Broadband Benefit*, Public Knowledge (Aug. 24, 2021), <https://publicknowledge.org/the-major-obstacle-preventing-americans-from-getting-the-emergency-broadband-benefit/>.



sharing the data. While Congress is better positioned to fix this problem by enacting legislation to require that *any* agencies that have data share it with USAC in a timely manner, and to clarify that data sharing for verification purposes is legal, the Commission can nevertheless continue to proactively reach out to relevant agencies to encourage data sharing. As a part of this, it should share information about the ACP and data matching process, detail what information is needed and why, and hire the staff needed to quickly implement the data sharing agreements once relevant agencies agree to share information for verification of eligibility.

*2. The Commission Should Allow Consumers to Submit Notices of Eligibility for Verification*

Until the National Verifier has data about all qualifying programs, we urge the Commission to work with relevant state, federal and tribal agencies to recreate the process used for Pell recipients applying for the EBB. Those students were sent an email making them aware of the program, and were able to use that email as proof of their eligibility.<sup>39</sup> For those without the internet, the Commission should also allow the use of written notification of eligibility to serve as the verifying document. This will improve enrollment because it will streamline the process for finding documentation of eligibility.

**E. The Commission Should Use a Variety of Methods for Verifying Identity**

The Commission has proposed “allowing households seeking to enroll in the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation,” including Tribal identification numbers, drivers licenses and other government issued ID, or individual taxpayer identification numbers.<sup>40</sup>

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<sup>39</sup> Hugh T. Ferguson, *Panel Highlights Emergency Broadband Benefits Available for Higher Ed Students*, National Association of Student Financial Aid Administrators (July 2, 2021), [https://www.nasfaa.org/news-item/25807/Panel\\_Highlights\\_Emergency\\_Broadband\\_Benefits\\_Available\\_for\\_Higher\\_Ed\\_Students](https://www.nasfaa.org/news-item/25807/Panel_Highlights_Emergency_Broadband_Benefits_Available_for_Higher_Ed_Students).

<sup>40</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 19, para. 41 (2021). at paragraph 41 and *Show You Qualify*, USAC

We agree that the Commission should continue to allow a variety of methods for consumers to verify their identity. This more flexible approach ensures that all eligible consumers can participate, including non-citizens, those with temporary status, mixed-immigration status families, those wary of sharing social security numbers, or those who are differently documented.

## **VIII. THE COMMISSION SHOULD ADOPT CONSUMER FRIENDLY POLICIES**

The Commission seeks comment on the consumer protection provisions that will be added by the Infrastructure Act.<sup>41</sup> These provisions are intended to give consumers protection from discriminatory credit checks and exclusion as a result of past non-payment, create a channel for consumer complaints, ensure consumer choice and consent, and prevent manipulative and anti-consumer business practices. These protections are a key component of the program, and the Commission should ensure that they are comprehensively applied and clearly communicated to both consumers and providers.

### **F. The Commission Allow for New Consumer Protections as the Need Arises**

The bipartisan infrastructure package requires the Commission to promulgate rules against "inappropriate" behavior, including anything that "undermine[s] the purpose, intent, or integrity of the Affordable Connectivity Program."<sup>42</sup> During the Emergency Broadband Benefit, ISPs engaged in some practices, like upselling, that are clearly anti-consumer.<sup>43</sup> However, ISPs

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Emergency Broadband Benefit (last accessed Dec. 8, 2021).

<https://getemergencybroadband.org/how-to-apply/show-you-qualify/>

<sup>41</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 33-34, para. 80 (2021).

<sup>42</sup> H.R. 3584 §60502 (a)(11)(A)(iii)(v)

<sup>43</sup> Geoffrey A. Fowler, *The government has a program to cut your Internet bill. Verizon was using it to force you onto a new data plan*, Washington Post (May 21, 2021),

<https://www.washingtonpost.com/technology/2021/05/17/verizon-emergency-broadband-benefit/> and Karl Bode, *Some ISPs Exploited Covid Broadband Relief Program to Make an Extra Buck*, Vice (June 2, 2021) <https://www.vice.com/en/article/y3dw5b/some-isps-exploited-covid-broadband-relief-program-to-make-an-extra-buck>.

can always come up with new ways to take advantage of consumers -- the full extent to which is not currently known. Given the vulnerable population the ACP will serve, it is critical that the program adapt to these challenges as they arise. Congress recognized this by creating a catchall enforcement mechanism for anti-consumer practices. Thus, the Commission should not enumerate an exclusive list of consumer harms when regulating against inappropriate behavior. Instead, it should leave itself free to regulate and enforce its regulations against a wide variety of harms that could occur.

### **G. Congress Requires Participating Providers to Offer all Plans to ACP Beneficiaries**

The IIJA requires that providers "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering... at the same terms available to households that are not eligible households."<sup>44</sup> The Commission asks whether "'any internet offering' should include legacy or grandfathered plans."<sup>45</sup> The clear answer to this is yes. When the legislation specified that all plans available to other consumers must be included, it meant that all plans must be included. This provision was likely created in response to reports of ISPs upselling consumers during their enrollment in the EBB, by claiming that only some plans were eligible for the benefit.<sup>46</sup> Creating a loophole by exempting legacy offerings from the ACP will allow providers to once again upsell consumers, or create subpar plans for these low-income individuals. It is therefore imperative that the Commission enforce Congress's mandate that *all* plans be eligible for the ACP.

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<sup>44</sup> H.R. 3584 §60502 (a)(7)(A)(i)

<sup>45</sup> Wireline Competition Bureau Seeks Comment on The Implementation of the Affordable Connectivity Program, WC Docket No. 21-450, Public Notice, at 22-23, para. 52 (2021).

<sup>46</sup> Geoffrey A. Fowler, *The government has a program to cut your Internet bill. Verizon was using it to force you onto a new data plan*, Washington Post (May 21, 2021), <https://www.washingtonpost.com/technology/2021/05/17/verizon-emergency-broadband-benefit/> and Karl Bode, *Some ISPs Exploited Covid Broadband Relief Program to Make an Extra Buck*, Vice (June 2, 2021) <https://www.vice.com/en/article/y3dw5b/some-isps-exploited-covid-broadband-relief-program-to-make-an-extra-buck>.

## **IX. CONCLUSION**

Congress created the ACP to address the barriers low-income families often face in subscribing to broadband and to further the Commission's obligation to ensure that all people, regardless of their income, have access to the internet services and computer technology that are essential in our modern, digital world. As the Commission considers how to implement the ACP, PK and Common Sense urge the Commission to keep this purpose in mind and adopt policies that will provide the maximum public benefit. To achieve that objective, the Commission should adopt policies to: facilitate a smooth transition from EBB to ACP; expand opportunities for device ownership; utilize schools and libraries as bulk purchasers; adopt minimum service and device standards; advertise the program through inclusive campaigns; minimize barriers to enrollment; and robustly enforce consumer protections. We urge the Commission to implement these policies as they create rules for the ACP.