

M E M O R A N D U M

Date : December 14, 2021

To : The Commission
(Meeting of December 16, 2021)

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Subject: Filing of Reply Comments in Response to the FCC’s Public Notice
Regarding the Affordable Connectivity Program

RECOMMENDATION: The California Public Utilities Commission (CPUC) should file Reply Comments in response to the November 18, 2021 Public Notice (Notice) issued by the Federal Communications Commission’s (FCC) Wireline Bureau. The Notice seeks comment on the implementation of the Affordable Connectivity Program.¹ Reply Comments are due December 28, 2021.

BACKGROUND: On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act² (Infrastructure Act) and established the Affordable

¹ “Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program,” WC Docket No. 21-450, Public Notice (PN), DA-21-1453, available at: [FCC Seeks Comment on the New Affordable Connectivity Program | Federal Communications Commission.](#)

² Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (Infrastructure Act).

Connectivity Program (ACP). The ACP is a new, long-term program that will replace the Emergency Broadband Benefit (EBB) Program. The EBB was launched in May, 2021 to provide access to affordable broadband services to low-income households during the COVID-19 pandemic. The EBB provides a monthly support of \$50 on broadband services to eligible low-income households. The ACP will replace the EBB and reduce the monthly support to \$30. The ACP will become effective on December 31, 2021 and the EBB customers will have 60 days to transition to the ACP.

DISCUSSION AND RECOMMENDATIONS: The CPUC should file Reply Comments in response to the FCC’s Notice seeking comment on the following issues:

- What broadband service offerings should be eligible for the ACP benefit?
- Does the FCC have authority to require states to apply their state Lifeline subsidies before the ACP support for eligible broadband services?
- Should the FCC set minimum service standards for broadband services?
- Should the ACP include associated equipment?
- Should the FCC set minimum device standards?
- Should the FCC require the EBB service providers to resubmit their election notices for the ACP?
- What steps should the FCC take with service providers to provide additional subsidy for high-cost and tribal locations?
- What steps should the FCC take regarding reimbursements to service providers?
- Should customer notices for the ACP be required in multiple languages or language of sale?

1. Eligible Services – The ACP should not be bundled with wireless Lifeline support

Paragraph 54 of the Notice states, “We next seek comment on whether the Commission should provide clarity on the internet service offerings that are eligible for reimbursement in the Affordable Connectivity Program.”³ The California LifeLine Program recommends not allowing wireless broadband companies to combine support from federal Lifeline and the ACP onto the same wireless broadband plan. If mobile companies are allowed to apply both Lifeline and ACP discounts to the same wireless plans, consumers will not receive good value for the amount of public money being spent on broadband and may unintentionally block themselves from applying a discount to their

³ PN at para. 54.

more expensive fixed broadband connection. We recommend that ACP be applicable to mobile broadband plans, but that it only be combinable with federal Lifeline on fixed broadband plans.

As California and the FCC have stated in the past, mobile broadband is at best an imperfect substitute for fixed broadband. As more public and private services have moved online, the importance of having access to both mobile data and a high-capacity, high-speed, low-latency fixed broadband connection has only increased.

Based on our observations of the California LifeLine market, most consumers would be better off applying either their federal Lifeline discount or their ACP discount towards a fixed broadband connection rather than applying both to mobile broadband. For example, in California, up to \$24.10 of state and federal Lifeline support is available for standard Lifeline plans. This amount of support is sufficient for wireless providers to serve over one million consumers with unlimited calling, unlimited texting, and at least 6 GB of data, typically with no copays to customers.⁴ Generally, providers offer competitive plans that exceed the minimum service standards, by providing additional data, free devices, or international calling.

Based on the plans that California LifeLine providers implemented during EBB, we expect that providers receiving \$39.25 (\$30 of ACP support and \$9.25 of federal support) to \$54.10 (\$39.25 and \$14.85 in California LifeLine support) will offer additional features, such as more data, hotspot functionality, more international calling, or better devices. However, we are concerned about whether the average consumer will take sufficient advantage of the additional features that the service providers are offering to justify the cost, based on the usage data that we have collected during the pandemic. For example, based on responses to data requests, most California LifeLine subscribers use less than 2 GB of data per month, even among customers who have opted into plans that provide 8-12 GBs of data.⁵ When the California LifeLine iFoster Pilot Program paid for all participants in the pilot to receive up to 47 GBs of mobile data, average monthly usage only rose to 4.1 GBs.⁶ Measured differently, 92% of participants with 47 GBs of data available would have had their data needs met by a 6 GB plan. If very few consumers will take advantage of the marginal improvement in the quality of their wireless plan, it would be a better use of scarce public resources to discount consumers' fixed broadband

⁴ California LifeLine Program, "Third Party Administrator LifeLine Customer Counts," 2021, accessed 12/13/2021, available at: [California LifeLine Related Forms and Notices For Carriers](#).

⁵ CPUC Decision 21-09-023, "Decision Revising General Order 153, Authorizing Eligibility Verifications Through Database Access, and Establishing Specific Support Amounts," Rulemaking 20-02-008, Issued 9/24/2021, Accessed 12/13/2021. Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M410/K139/410139953.docx>.

⁶ California LifeLine Program iFoster Pilot Evaluation Report (Issued May 6, 2021).

connections than to provide marginally more mobile data. Our recommendation for an easy method to avoid overspending on mobile broadband and encourage consumers to discount their fixed broadband connections would be to prevent the bundling of Lifeline and ACP discounts on mobile plans.

2. Order of Payments – The FCC does not have the authority to require state Lifeline programs to apply Lifeline supports before the ACP support

Paragraph 75 of the Notice states, “We also seek comment on clarifying that the ‘full Lifeline discount’ includes both federal and any state support. We seek comment on this idea and whether the Commission would have the authority to require that any benefit provided by a state low-income broadband program be applied before a provider calculates the amount to claim from the Affordable Connectivity Program.”⁷

As with the EBB, California reiterates that the states have the sovereign right to decide whether and how they will spend their own ratepayer funds, and how it supplements, or not, federal spending. Under the federal Telecommunications Act, the FCC has authority over interstate communications and is prohibited from exercising authority over intrastate matters.⁸ How a state applies its ratepayer subsidy to the offering of Lifeline service is an intrastate matter. Furthermore, if California’s LifeLine support is subtracted from the amount that the ACP provides, it could create inequitable situations in which Californian households would be eligible for less federal support than households in other states receive for the same services. In addition, applying state LifeLine support before the ACP would incentivize every state to reserve its ratepayer dollars for programs that do not displace federal spending in their states. To avoid confusion among stakeholders, the FCC should make clear that all federal programs will pay before state programs.

When the EBB launched in May 2021, the FCC stated that EBB would be applied after Lifeline payments. The CPUC’s position was and remains that the FCC lacks the authority to require states to apply their own Lifeline supports before the federal government. In an April 19 administrative letter to California LifeLine stakeholders, the California LifeLine Program stated that General Order 153 requires the California LifeLine Program to only reimburse claims exceeding what can be collected from federal programs. Since then, the California LifeLine Program has implemented a combined LifeLine/EBB program in which California only pays for costs that exceed the \$59.25 provided by federal Lifeline and the EBB.

⁷ PN at para. 75.

⁸ 47 USC §§ 151, 152.

California's LifeLine support comes from over \$300 million/year in California ratepayer funds and contributes to California's LifeLine participation rate, which exceeds the national average. The California LifeLine Program is obligated to protect the interests of both California consumers and California ratepayers.

3. Minimum Service Standards

Paragraph 54 of the Notice states, "In the *EBB Program Order*, the Commission declined to apply minimum service standards to the internet service offerings eligible for EBB discounts. The FCC now seeks comment on whether the Commission should reconsider this approach for the ACP."²

We recommend that the FCC exercise its authority to set minimum service standards for ACP offerings. The FCC has historically set minimum standards for voice and broadband bundled services in the federal Lifeline program and should set similar standards for the ACP.

In the EBB program, the Commission limited EBB discounts to plans that were already available as of December 1, 2020, to have a baseline for acceptable service offerings "as a method of avoiding arbitrage opportunities and waste in the [EBB Program] by allowing unscrupulous providers to take advantage of the increased subsidy available."¹⁰ Because the ACP is permanent, unlike the EBB, the program needs to allow new, progressively better plans into the program as broadband technology and the market continue to develop.

The CPUC recommends the FCC adopt minimum service standards similar to those of Lifeline. However, given the greater funding available for ACP subsidies, the ACP should increase the MSS speeds for fixed broadband from the 25/3 requirement of Lifeline to a 100/20 Mbps download and upload speed requirement, where those speeds are available in the market. This speed increase would justify the increase of subsidy that the ACP provides and push the low-income marketplace to catch up to current telecommunication requirements of telework, telehealth and remote school and training opportunities. Additionally, this speed is essential for persons with disabilities who rely on accessible technology requiring 100/20 Mbps bandwidth speeds. This is especially true for persons with disabilities who rely on IP enabled communications devices.

In the alternative, the ACP should establish MSS speeds for participants with disabilities who rely on accessible technology or IP enabled communication devices for basic communication. Many persons with disabilities utilize video relay services, or other IP

² PN at para.54.

¹⁰ *EBB Program Order*, 36 FCC Rcd at 4647, para. 72.

enabled communication devices as their primary communication method. This is especially true for those who rely on visual cues, or lip reading in communication, where calls with latency and blurred images can greatly hinder their ability to communicate.

For wireless broadband, the CPUC reiterates its concern, expressed above, that current data show that California LifeLine participants are under-utilizing their data allotments, even with increases in subsidy and allotments. Combining ACP subsidies for wireless broadband with state and federal Lifeline subsidies will increase the subsidy provided by the public without providing proportional benefit to the consumers, most of whom will not use the extra data provided to them. For now, for a total subsidy amount of \$30, we recommend adopting the same MSS as the California LifeLine Program – unlimited calling, unlimited texting, and 6 GB of data. These MSS can be reevaluated periodically.

Although California LifeLine participants have been under-utilizing their data allotments, the same cannot be said for many persons with disabilities, especially those who rely on video relay calls to communicate in a way that is functionally equivalent to nondisabled persons. For these individuals, wireless and fixed broadband connections should be free of any data caps as this would impede persons with disabilities who utilize video relay services (or other IP-enabled communication device) as their primary communication method.

4. Minimum Device Standards

a. Connected Equipment

For the ACP, providers may be reimbursed up to \$100 for a connected device delivered to the household, as part of providing ACP-supported broadband service and that the charge to the household is more than \$10 but less than \$50 for such a connected device.¹¹ A connected device is defined in the statute as a laptop, desktop computer, or a tablet.¹²

The FCC now seeks to adopt the same approach in the ACP but seeks comment on the proposal. The FCC has authority and should exercise its authority to set standards for ACP broadband “connected equipment” devices, or at minimum for connected devices for persons with disabilities.

Universally, the FCC should set standards on internet connectivity and software. All equipment should be free of what is commonly known as adware or “spamware” and should not include pre-installed or pre-kitted software that sells or monitors a participant’s usage or identification information. Further, the connected equipment

¹¹ PN at para. 60.

¹² *Id.*

should have minimum standards of connectivity speeds, to fully utilize the service being provided.

Connected devices by themselves lack accessibility features to enable persons with disabilities to use such devices in a way that is functionally equivalent to individuals without disabilities. Supplemental Telecommunication Equipment (STE), accessories, and Assistive Technology (AT) are required to make connected devices accessible, with costs that vary depending on the tools necessary, from text-to-speech software or sip-and-puff systems for those with additional mobility tools.

Many of these AT devices have been developed in the telecommunications industry to be functionally equivalent to modern tablets, or work in conjunction with modern operating systems.¹³ The FCC has the authority to interpret these devices, that act in the same purpose as a tablet, with similar shape, design and software, as a connected device and should be included in ACP subsidy pricing.

b. Associated Equipment

The Infrastructure Act removed a reference to “associated equipment” that was included in EBB previously. Associated equipment in EBB included “equipment necessary for the transmission functions of Internet service offerings supported.”¹⁴ This included equipment such as modems, routers, hotspots and antennas.¹⁵

Associated equipment should be broadened to allow for Supplemental Telecommunication Equipment (STE) and Assistive Technology (AT). Accessibility of associated equipment, as it is presently defined is often not adaptive or capable of being integrated in a way to facilitate installation, configuration, and maintenance for persons with disabilities. This could include the ACP subsidy for the installation of equipment, or the FCC requiring devices that have alternative installation and transmission function options, e.g., instructions available in higher fonts or braille, available for persons with disabilities. Nonetheless, minimal performance standards for associated equipment need to be set to enable accessibility, consumer choice, and functional equivalence for disabled persons.

In the alternative, if the FCC does not consider STE and AT as part of connected devices, the FCC should consider these options as part of associated equipment. The purpose of broadband transmission equipment is to receive broadband inputs and send user outputs.

¹³ See [An example of a braille tablet](#).

¹⁴ PN at para.59.

¹⁵ *Id.*

Persons with disabilities are not able to receive and transmit data inputs and outputs without additional associated equipment necessary for that transmission.

c. Wireless Broadband Equipment

In the *EBB Program Order*, the FCC found that a connected device could not include “devices that can independently make cellular calls such as large phones or phablets.”¹⁶ The FCC seeks comment on adopting this same approach for ACP.

The CPUC would strongly support the FCC setting standards for wireless broadband equipment. As previously described, most California LifeLine subscribers are under-utilizing their current wireless California LifeLine service being provided to them at no cost.¹⁷ If the FCC determines that the ACP should allow the bundling of wireless broadband with wireless federal Lifeline services, our data shows both programs will be overpaying for under-utilized data.

The CPUC recently conducted a consumer survey on how to improve the California LifeLine program, in an effort to understand the under-utilization phenomenon. The majority of survey participants suggested providing better wireless cellphone would be their top way to improve the program.¹⁸ California LifeLine has 15 wireless mobile virtual network operator (MVNO) providers competing in our marketplace, yet wireless cellphones that are provided are commonly refurbished and viewed as second-hand devices by the participants.¹⁹ The FCC should set standards to guide the participating ACP wireless broadband marketplace for mutual benefit.

The CPUC recommends that if the FCC applies the ACP discount to wireless broadband, the FCC should consider those devices as meeting the definitions of connected or associated equipment, involved in the transmission and access of broadband service. The FCC should further seek comments from stakeholders on conditions and definitions on how the FCC should provide standards for wireless broadband devices that are balanced against cost to the service providers and the ACP subsidy.

¹⁶ *EBB Program Order*, 36 FCC Rcd at 4651, para. 79.

¹⁷ CPUC Decision 21-09-023, “Decision Revising General Order 153, Authorizing Eligibility Verifications Through Database Access, and Establishing Specific Support Amounts,” Rulemaking 20-02-008, Issued 9/24/2021, Accessed 12/13/2021. Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M410/K139/410139953.docx>.

¹⁸ Preliminary Wireless Survey Results are available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/lifeline/preliminary_wireless_survey_results.xlsx.

¹⁹ *Id.*

5. Election Notice

In Paragraph 12, the Notice states, “We seek comment generally on using the application and review processes from the EBB Program in the Affordable Connectivity Program, and any modifications the Commission should consider for the implementation of the Affordable Connectivity Program.

In the EBB program, the FCC required all participating providers to file an election notice with the Universal Service Administrative Company (USAC), the federal administrator of public purpose programs, to participate. These notices include: (1) the states in which the provider plans to participate in the EBB Program; (2) a statement that, in each such state, the provider was a “broadband provider” as of December 1, 2020; (3) a list of states where the provider is an existing ETC, if any; (4) a list of states where the provider received FCC approval, whether automatic or expedited, to participate, if any; (5) whether the provider intends to distribute connected devices under the EBB Program; (6) a description of the internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state; (7) documentation demonstrating the standard rates for those services; and (8) any other administrative information necessary for USAC to establish participating providers in the EBB Program.²⁰

The CPUC recommends requiring all providers to submit a new election notice, while expediting access to those providers that had already participated in EBB. We agree a refresh of the election notice reaffirms a provider’s commitment to the ACP.

The CPUC appreciates the FCC’s historic and continued cooperation with the CPUC on audits and sharing of information of EBB service providers and plans. In this vein, we recommend the FCC establish a process to automatically provide ACP election notices to state commissions, specifically where service providers have described to the FCC state plans and offerings, to reduce delays in state auditing and waste, fraud and abuse measures.

The CPUC supports election notices including information about the retail rate of connected devices, with any device specifications that the FCC deems necessary to make sufficient determinations on quality of service, or any value determination of costs. We strongly recommend that if the FCC provides ACP subsidy for a connected device, it should not only know what it is paying for, but have made a determination as to whether that device meets minimum FCC standards.

²⁰ *EBB Program Order*, 36 FCC Rcd at 4618-24, paras. 14-24.

The CPUC supports election notices including the lists of ZIP codes that providers will offer supported services. The FCC should share this information with state commissions can describe ACP services for state websites.

The CPUC strongly supports the FCC providing USAC the authority to take into account past complaints, enforcement actions, fraud convictions, or audit findings as a bases for rejecting or approving conditionally, service provider’s election notices. The FCC’s obligation to protect taxpayer’s money must be balanced against the purposes of the success of ACP. USAC should be able to take all relevant considerations in finding that balance.

6. High-Cost Determinations & Federal – State Cooperation

As reflected in the Notice, the Infrastructure Act requires the FCC to establish a mechanism by which an ACP participating provider in high-cost and Tribal areas may receive an enhanced benefit of up to \$75 for broadband service.²¹ The reimbursement to providers for broadband services in high-cost areas cannot be provided until the National Telecommunications and Information Administration (NTIA) identifies such high-cost areas. Further and importantly for Native American communities, which are eligible for this enhanced benefit, although the Notice states the FCC will use an existing definition of Tribal lands, the CPUC urges all federal agencies to refocus attention on the continuing challenges of broadband data and mapping relating to Tribal areas.²²

California has an abundance of geographically diverse Tribal Lands and high-cost areas, and a relatively high number of federally eligible locations under the Broadband Equity Access and Deployment Program of the of the Infrastructure, Investment, and Jobs Act.

The FCC and NTIA should cooperate on the definitions of high-cost and Tribal areas of the nation, and additionally partner with the states and Tribal nations to provide a specific ACP dataset and establish procedures for provider appeals, public and state input, hardship tests and other associated considerations.

7. Reimbursements and Claims

Paragraph 129 of the Notice “seek[s] comment on the audit requirements and procedures to be used to test provider compliance with Affordable Connectivity Program rules.”²³ In

²¹ PN at paras. 70-73.

²² J. Perkins, Native Americans Need Control of Mapping Data, Conferenced Hears, Broadband Breakfast, Rel. 10/18/21, See: <https://broadbandbreakfast.com/2021/10/native-american-broadband-advocates-need-control-over-mapping-data-conference-hears/>.

²³ PN at para. 129.

the California LifeLine Program, claims are auditable for up to five years, and claims that should not have been paid out due to waste, fraud, and abuse can be reclaimed through appropriate due process proceedings. The CPUC recommends that, in addition to auditing past claims and reclaiming improper payments, USAC should have the ability to impose penalties or fines that exceed the claims improperly paid out. Companies with a pattern of bad behavior should be ineligible for future ACP funds.

Similarly, Paragraph 74 describes the snapshot-based reporting for federal Lifeline and EBB, and asks, “Are there other alternatives to the snapshot paradigm that the Commission should consider for the Affordable Connectivity Program?”²⁴ In the California LifeLine Program, our Third-Party Administrator compiles a “Weighted Average Report” every month that totals the number of days of service each company provided to LifeLine customers, including partial months of service. This provides a more exact method of calculating companies’ claims than a “first of the month snapshot.”

8. Language and Accessibility

Paragraph 106 asks, “Should the notification about the existence of the Affordable Connectivity Program be provided in the consumer’s preferred language?”²⁵ We recommend that the FCC require that all required notifications and forms be available in at least the 14 languages in which the FCC conducted outreach for EBB: Arabic, Amharic, Burmese, Traditional Chinese, Simplified Chinese, French, Haitian Creole, Korean, Portuguese, Russian, Somali, Spanish, Tagalog, and Vietnamese. Likewise, Deaf persons and persons with disabilities should be able to request their communications and notifications in a form that will be accessible to them. Making these investments in accessibility once, nationally, will both enable more eligible households to benefit from the program and save resources that would otherwise be wasted on duplicative translation efforts by various stakeholders.

CONCLUSION: The CPUC should file Reply Comments in response the FCC’s Notice seeking comment on the implementation of the Affordable Connectivity Program.

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²⁴ PN at para. 74.

²⁵ PN at. para. 106.