

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**Reply Comments of the National Consumer Law Center and
the United Church of Christ Media Justice Ministry**

Introduction and Summary

We are grateful for the FCC staff working over the holidays to roll out this program for low-income consumers across the nation. As the country faces a new resurgence of COVID via the omicron variant, and some schools and cities are once again sending people to shelter in their homes, the need for broadband continues.

In summary, we suggest the following:

- It is appropriate for the FCC to adopt a soft launch period for the ACP where the providers have time to address the necessary IT system changes. This period should be brief and ideally before, but not later than March 1, 2022 (the hard launch). During this time, the transition rules set forth in the December 8, 2022 Order would remain in effect until the effective date of the ACP rules or March 1, 2022, whichever is sooner.
- For the hard launch of the ACP to be successful, all providers, government, public interest and other organizations must be ready; notices and campaigns about consumer rights and responsibilities, protections and complaint processes as well as comparison shopping tools and resources must be developed and deployed during the soft launch. This will not succeed without rapid Commission funding.
- Under the law, including during the soft launch, providers may not use credit checks to keep customers out of the ACP.
- The record supports the NCLC/UCC MJ proposal that the Commission collect, by zip+4, whether a product is wired or wireless, and whether the providers offer a product at less than \$30/month, less than \$75/month or over \$75/month as part of a carrier's election to participate in ACP.
- The Commission should require the Section (10)(A) notification when any consumer first falls behind on a bill and in communications regarding overdue bills.
- The FCC should adopt model disclosure terms that comply with these rules; companies using these model disclosures could rest assured they are in compliance.

- NCLC and UCC MJ do not believe minimum service standards are required in the initial phase of the ACP, but the Commission clearly has authority and should exercise it when warranted.

Start of the ACP, Offerings Available, Preparation for a Successful Launch

Many providers seek a delay in the start of the ACP program under the rules that will be adopted in this proceeding. They seek everything from 60 days from the adoption of the ACP Order to six months.¹ Providers seeking delay cite the challenge of re-coding all their product offerings to accept a \$30 discount. Many propose a six month “safe harbor” which would enable carriers to may participate in the ACP for up to six months after December 31, 2021, so long as they apply the ACP benefit to at least one of their service offerings.² Providers also strongly oppose inclusion of any grandfathered service plans in the ACP—they argue that the statute is clear that products which are generally available must be included in ACP and grandfathered products are not generally available.³ In some cases they argue that including grandfathered plans will extend the implementation period for many months or longer.⁴

NCLC and UCC MJ believe it is appropriate for the FCC to adopt a soft launch period for the ACP where the providers have time to address necessary IT system changes. This period should be brief and end ideally before, but not later than March 1, 2022. During this time, the transition rules set forth in the December 8, 2022 Order would remain in effect until the effective date of the ACP rules or March 1, 2022, whichever is sooner.

We are concerned that every week of delay means another week when a consumer will experience frustration in signing up for a discounted product as Congress directed. Congress required the ACP to be available for “any internet service offering” that non-eligible households can buy.⁵ Providers are indicating that they cannot comply with this core requirement of the law for many months. Although we recognize the large corporate entities have many complex

¹ Verizon at 6; AT&T at 7-9; US Telecom at 6; CTIA at 13; Smith Bagley at 6.

² See, e.g., Competitive Carrier Ass’n Comments at 6.

³ E.g., Verizon at 9; NCTA at 3; AT&T at 7, 10-11; US Telecom at iv; WTA at 6 (all citing IJJA, div F, tit. V, sec. 60502(a)(3)(B)(ii), §904(b)(7)(A)(i) which states, “A participating provider shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households.”).

⁴ E.g., Frontier at 3-4.

⁵ IJJA, div F, tit. V, sec. 60502(a)(3)(B)(ii), §904(b)(7)(A)(i).

systems to upgrade and customer service personnel to train, the legislation underlying the IIA has been unchanged since August 2021. Particularly the largest companies with the most complex system have known for four months how the program was likely to operate. Nonetheless, we recognize consumers will have a poor experience with the program if providers are not able to accommodate them. We believe a soft launch is a reasonable compromise.

ACP's goals will be better served if more than a minimum number of products are available. We have concerns about proposals that companies only offer the bare minimum of products that were in EBB for an extended period. Companies should offer quality products that are under the \$30 ACP benefit amount: those that can't risk losing customers to providers that have better service options. The Commission should require companies to inform customers that all products and services are eligible for the ACP discount and provide customers with a time estimate for when those products will become available. Companies should transition customers easily to the delayed products they prefer during the soft launch, and certainly by hard launch (the effective date of the ACP rules or March 1, 2022, whichever is sooner).

Allowing this brief transition with a firm hard launch date will make it easier to message program expectations for consumers. During the soft launch consumer-facing materials should indicate that not all services may be immediately available, but will be shortly and consumers are free to change services or providers at any time.

For the soft launch of the ACP to provide a successful transition, the providers and public interest community-based organizations and Tribal, state and local governments must be prepared for the hard launch of the ACP (e.g., all services will be available for ACP consumers to choose from). The time provided by the soft launch (between the adoption of the rules and the effective date) should be used to develop notices and campaigns about the full range of services available, the rights and responsibilities of parties which include consumer protections and the complaint process, as information on how to shop for products in the ACP. It is imperative that the Commission get funding out to community organizations before the hard launch to improve consumer outreach and digital inclusion and tweak the application process during the extra time. A short delay via a soft launch would permit providers, consumers and—most important—digital navigator and inclusion advocates, to prepare so that consumers may sign up for and receive discounted connectivity under ACP.

NCLC and UCC MJ support proposals for companies to offer plans that are on better terms for consumers only to ACP consumers.⁶ This would not be prohibited by the statute, and as Google Fiber stated, would encourage companies to develop a \$30 product that is fully covered by the ACP benefit which might not be available to the general public.⁷ NCLC and UCC MJ agree with many commenters that a service plan should be available to a consumer in ACP if the consumer could otherwise receive the plan—for example of the product is available to any consumer in their geographic location.⁸ Grandfathered plans should be available if the customer is currently receiving a grandfathered plan. Verizon supported inclusion of a legacy service’s existing customers if grandfathered services are included in ACP.⁹

Provider Election to Participate, Shopping Tools

Providers strongly oppose the Commission’s suggestion that providers submit lists of their products to the Commission in a manner similar to the EBB program, because providers will be developing new products and offers and it would be unduly burdensome for providers to submit and update product offerings with USAC and for USAC to review them.¹⁰ At the same time many non-profits and digital inclusion organizations, and local governments request the Commission to develop a database or shopping tool to assist consumers and digital navigators in shopping among a variety of competing plans with different prices, speeds, etc.¹¹

⁶ E.g., ACA at 10-11; CTIA at 14-15; T-Mobile at 13.

⁷ Google Fiber at 8.

⁸ E.g., WTA at 6; ACA at 10; CTIA at 14

⁹ Verizon at 9.

¹⁰ NCTA at 4; Verizon at 4, 22;

¹¹ National League of Cities at 2 (Providers election notice information should include sufficient information for the Companies Near Me tool; City of Detroit at 2 (Election notices should include the following device information: make, model, specifications, cost and warranty information, tech support information and need more accurate Companies Near Me information (2); Los Angeles County at 2 (Election notices should be required and include info on service offerings and rates at zip code level); Next Century Cities at 22-23 (Provide price transparency); City of Seattle at 5-7 (provide list of plans that will incur co-pay to FCC broken out by zip-code and shopping tool information should include: company name, eligible services offered, download/upload speeds of service options, service cost without ACP subsidy, if the ISP offers a direct ACP enrollment process, and ISP email, web site and phone number for ACP related information and questions); NDIA at 16 (clear posting of speeds, costs w/o subsidy, direct enrollment processes available), and OTI at 13 (pricing transparency).

In our opening comments, we suggested that the Commission collect, by zip+4, whether a product is wired or wireless, and whether the providers offer a product at less than \$30/month, less than \$75/month or over \$75/month.¹² This is a reasonable compromise that will provide a streamlined check-box mechanism for providers to submit information that will be easily updated and will provide a basic set of information for consumers and digital navigators to start comparison shopping. It is important to keep in mind that the benefits of competition will not prevail if consumers—particularly consumers with low digital literacy—cannot shop around and compare products. This proposal is consistent with comments of US Telecom, which supports submission of service via zip codes for the shop near me tool,¹³ and ACA which supported a check-the-box election notice if the FCC requires an election notice.¹⁴

In addition, the IJJA requires the Commission to adopt rules to collect broadband transparency data by the end of 2022 and update that data collection regularly.¹⁵ It would be wise for the Commission to use the same categories in broadband transparency as it moves ahead to improve and adjust the ACP data rules to make all categories consistent and improve consumer shopping tools even further. Both now and down the road, the Commission should strive to release the data in a way that third-party providers may easily utilize it to make more customized shopping tools. The Commission should also use its funding for local community groups to fund organizations that will make customized shopping tools for particular geographic areas or particular needs. The Commission might also out-source production of a shopping tool built on ACP data.

Notification, EBB to ACP transition, Preventing Bill Shock

NCLC and UCC MJ continue to support our proposal for a carefully crafted opt-out process to transition from EBB to ACP.¹⁶ NCLC and UCC MJ propose that the Commission implement the consumer notification requirement in Section (10)(A) by requiring notification of the ACP program as soon as they fail to pay a bill.

¹² NCLC and UCC MJ Comments at 9-10.

¹³ US Telecom at 14-15.

¹⁴ ACA at 23.

¹⁵ IJJA, div F, tit. V, sec. 60502(c).

¹⁶ NCLC and UCC MJ comments at 35-36.

Most commenters recognize some basic realities of consumer behavior, but do not always recommend consistent policies based on those behaviors. NCLC and UCC MJ recommend that, in all circumstances, the Commission follow our proposed goals of maintaining connectivity, avoiding bill shock and maintaining consumer choice. These goals apply whether it is the EBB to ACP transition, or disconnection for non-payment or another reason a customer should take action but does not. The Commission’s rules should prioritize maintaining connectivity and avoiding bill shock across all policy decisions in this docket as well as NCLC’s and UCC MJ’s other priorities.¹⁷

All providers recognize that consumers are unlikely to respond to notices from their provider—whether that is to opt-in to the ACP program, or to respond to an overdue notice, or to opt-out of a product they no longer need.¹⁸ Thus, virtually all providers seek to automatically enroll consumers into the new ACP, and in most cases are willing to transition those customers to a lower-cost option covered by the ACP benefit in order to do so. At the same time, many providers insist that one or two notices are sufficient during the EBB to ACP transition period.¹⁹ Conversely, virtually all wish to cut off customers that do not pay for service.²⁰

Of course, customers should pay for the products they purchase. At the same time, particularly in a low-income population, signing up for a service that a household deems essential for daily life often later becomes difficult or impossible to afford when other household expenses crop up.²¹ Data from the Consumer Financial Protection Bureau indicates “43 percent of all consumers reported that covering expenses and bills in a typical month is somewhat or very difficult” and “over one third—34 percent—of all consumers reported experiencing material hardships in the past year, such as running out of food, not being able to afford a place

¹⁷ NCLC and UCC MJ comments at 35.

¹⁸ This is one reason that negative-option products are often considered abusive, it takes advantage of consumers who are not likely to understand or be able to opt-out of a product.

¹⁹ E.g., USTelecom at 9; CTIA at 5.

²⁰ E.g., Verizon at 14-15; ACA at 23.

²¹ Federal Reserve, Economic Well-Being of U.S. Households in 2020 (May 2021) at 34 (“More than one-fourth of adults had one or more bills that they were unable to pay in full that month or were one \$400 financial setback away from being unable to pay them.”), <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-executive-summary.htm>.

to live, or lacking the money to seek medical treatment.”²² Thirty-five percent of consumers cannot absorb unexpected expenses like a \$400 cost to repair a car.²³ “Almost 80 percent of consumers report living paycheck to paycheck. One in four consumers do not pay all of their bills on time. One-fifth of adults expect to leave some regular monthly bills at least partially unpaid.”²⁴ The consequences of unpaid debt often cause consumers a downward spiral, resulting in reports to credit agencies that damage a person’s credit rating, which is then used to deny consumers housing, employment, access to financial products and services and more.²⁵ There is a good reason why Congress adopted the prohibition on denying broadband access because of a credit check.

Thus, the time for a customer to receive information about a low-income subsidy is as soon as they fail to pay a bill. There is no reason that a company could not work with a customer to transition them to a lower-cost offering that is covered by the ACP benefit if the customer is not able to pay their bill. This would avoid arrearages, avoid negative impacts on the customer’s credit history and keep providers whole. If companies can automatically transition EBB customers to keep them enrolled in ACP, they can conduct outreach for customers facing difficult economic circumstances that fail to pay their bills whether they are on ACP or not. The first moment a customer may be facing an economic constraint is the time to notify them of the ACP program. If they are eligible, they could find a new reason to apply for the benefit because they are at risk of losing service. Thus, the Commission should require the Section (10)(A) notification when a consumer first falls behind on a bill and in communications regarding overdue bills.

We continue to believe that the NCLC/UCC MJ proposal for the EBB to ACP transition strikes a reasonable balance in the record among the goals of preserving service and avoiding bill shock and confusion. We are concerned with respect to some proposals for limited notice and request that the Commission rules regarding automatic transition from ACP to EBB require at

²² Consumer Financial Protection Bureau, Consumer Insights on Paying Bills, Research Brief at 2 (November 2018), https://files.consumerfinance.gov/f/documents/bcftp_consumer-insights-paying-bills_report.pdf

²³ Federal Reserve, Report on Economic Well-Being, *supra*.

²⁴ CFPB, *supra*, at 5.

²⁵ See, e.g., Aspen Institute’s Expanding Prosperity Impact Collaborative, Consumer Debt: A Primer at 6-7 (2018).

least four consumer notifications over the 60-day period, preferably using multiple channels of communication.

Consumer Protection

Credit checks. Many providers seek to continue using credit checks for the purpose of verifying identity to guard against fraud and comply with the FTC's red flag rule, because they are embedded in existing computer systems and processes, and because companies want to sell bundled products or other products alongside ACP products that are not eligible for the ACP discount or exceed the benefit amount.²⁶ For example, ACA suggests credit checks should be permissible if the household can receive the broadband component of a bundle on a standalone basis without submitting to a credit check.²⁷ The statute states, a provider "may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider."²⁸ Providers may not use credit checks to keep customers out of the ACP. The ACP is a discount off the service price, if applying a discount to a product that is more expensive than the discount were permitted, as a practical matter it could deny many consumers of the opportunity to apply the discount to any internet product as required by law.

Terms inconsistent with ACP. CTIA suggests that if a current generally available plan requires a customer to accept terms inconsistent with the ACP law or rules, a provider may exclude it from ACP, citing as an example, products that require extended contracts.²⁹ This is not consistent with the spirit of the law. Under EBB, consumers are permitted to break long-term contracts without early termination fees; this is equally true for ACP.

Disconnection for Non-payment. Providers also seek clarification about the relationship between the requirement that arrearages cannot prohibit entry into the program and the 90-day non-payment protection. Several suggest that arrearages should not prohibit initially participating in the program but that a customer who does not pay after 90 days may be disconnected and not

²⁶ NCTA at 3; Verizon at 11-13; AT&T at 14; ACP Providers at 6; Smith Bagley at 8; Competitive Carrier Ass'n at 11 (credit checks that are not targeted toward some customers should be permissible).

²⁷ ACA at 27.

²⁸ IIA, div F, tit. V, sec. 60502(a)(3)(B)(ii), §904(b)(7)(A)(i).

²⁹ CITA at 15.

readmitted into the program.³⁰ Providers ask that USAC inform other providers if a customer has been de-enrolled for 90 day of non-payment.³¹ The Commission should prohibit blackballing consumers who have been disconnected for non-payment. Providers have other means of collections, indeed, the CFPB reports that telecom debt is second only to medical debt in terms of third party debt collections activity.³² Again we note that Congress sought to remove the barriers to broadband service encountered by low-income consumers. The industry proposals to ban these customers is absolutely not in the spirit of the IJJA. Instead, providers should mitigate the harm to their business and to consumer's credit reports and from third-party debt collection activities by working with their customers to move consumers to a plan at a cost fully covered by the ACP benefit during the period of non-payment as soon as they have reason to suspect the customer is struggling financially.³³ We need providers to be good partners in the ACP to ensure consumers are on plans they can afford and that meet their broadband needs.

Consumer Notice

Most providers wish maximum flexibility to notify their customers. In order to provide flexibility for companies with regard to consumer notice but also ensure that all consumers are receiving adequate information, the FCC should adopt topics that must be provided to consumers in accordance with our opening comments.³⁴ The FCC should adopt model disclosure terms that comply with these rules; companies using these model disclosure could rest assured they are in compliance.³⁵ Similarly, for consumer awareness campaigns, the Commission should develop templates and techniques for consumer education that could be used by smaller companies in particular, but permit companies to craft their own awareness campaigns. If a concern was raised, companies would be expected to demonstrate that their notification and awareness campaigns were consistent with the FCC's guidelines.

³⁰ E.g., Verizon at 14-15; ACA at 23.

³¹ AT&T at 13.

³² CFPB, Fair Debt Collection Practices Act: Annual Report, 2021 at 14 available at, https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2021.pdf.

³³ E.g. ACA at 27.

³⁴ NCLC and UCC MJ Comments at 33.

³⁵ National Rural Electric Cooperatives at 9-10.

Minimum Service Standards

NCLC and UCC MJ do not believe minimum service standards are required in the initial phase of the ACP, but the Commission clearly has authority and should exercise it when warranted. It is possible the Commission's early analysis of the marketplace will identify abusive or substandard products which are unjustifiably receiving ACP dollars because low-income consumers do not have the skills and information they need to compare and select among connectivity products. The benefit of ACP, however, is that all marketplace plans are available, so robust competition will be more likely to deliver consumers what they need than in other programs. It is disappointing that the early stages of the program will not benefit from the entire marketplace of products until the soft launch period ends. Companies that seek few minimum standards should take care that the benefits of competition and information available to consumers enables them to purchase the best, highest value products meeting their needs.

Tablet Standards

Many commenters discuss the Commission's interpretation of the statutory device benefit. We support commenters who note that tablets must be required to work with any Wi-Fi hotspot, not tied to particular services or plans in order to enable customers to use their device anywhere.³⁶ A proposal for a six-inch screen does not seem to be consistent with a definition that excludes smartphones.³⁷

Some point out that the Commission's rules mean that companies offering tablets via the device benefit require the tablet's calling and texting functionalities to be disabled to prevent them from functioning as smartphones.³⁸ While we agree that disabling features on technology is not the most effective way to assist low-income consumers, it is important to note that the difference for digital literacy between tablets and smartphones is not whether it uses 4G technology. The goal here is to permit consumers to select products that meet their needs while pushing them toward products that maximize their agency and digital skills. A laptop or any

³⁶ E.g., United Way of California at 21, 23.

³⁷ For example, the New York Times Wirecutter consumer review site's top 4 android phones across the board all have screens of 6 inches or more. Ryan Whitwam, "The Best Android Phones," (December 15, 2021), <https://www.nytimes.com/wirecutter/reviews/best-android-phone/>; CTIA at 17-18.

³⁸ CTIA at 17-18; National Lifeline Ass'n at 20-21; Competitive Carrier Ass'n at 11;

device with a keyboard is readily distinguishable from a smartphone or a tablet and is better for digital literacy because it is more versatile, permits the user to accomplish more tasks and is better suited to any kind of complex writing than a tablet.³⁹ Individuals perform more complex tasks on a laptop or desktop computer and studies show they engage with different content.⁴⁰ A study in Australia connected use of tablets and smartphones to a reduction of information and communications technology skills.⁴¹ Tablets encourage consuming technology or entertainment, they permit less control over the technology and are overall declining in popularity.⁴² Tablets lag both laptops/desktops and smartphones in page views by a dramatic margin.⁴³ Tablets certainly have their place as they are smaller, easier for children to use, more portable than laptops and sometimes easier to learn for people with fewer digital skills. Nonetheless, just like families that can afford both mobile and fixed broadband technology, many choose both a laptop and a tablet or smartphone or all three because they meet different needs. Where possible, providers should offer wireless keyboards for tablets offered to ACP enrollees because that would maximize their use.

The ACP should therefore enable and empower consumers to choose the technology that works for them, and at the same time adopt policies that will coax consumers to higher levels of digital literacy and competence as they gain knowledge and skill.

³⁹ See Digitunity at 2.

⁴⁰ <https://www.perficient.com/insights/research-hub/mobile-vs-desktop-usage>

⁴¹ BBC, “Tablets 'eroding' children's digital skills,” (Nov. 2015),
<https://www.bbc.com/news/technology-34866251>

⁴² “Year-over-year tablet sales in the U.S. fell more than 18% in the first quarter of 2020, according to the International Data Corporation.” Tablet Computers and 8 Other Pieces of Tech That Date You, *Wall Street Journal* (Oct. 21, 2021), <https://www.wsj.com/articles/tablet-computers-wired-earphones-tech-that-dates-you-11634917994>

⁴³ <https://gs.statcounter.com/platform-market-share/desktop-mobile-tablet/united-states-of-america>

Conclusion

We respectfully submit these reply comments for your review and look forward to working with the Commission and stakeholders in the successful launch and implementation of this critical low-income broadband affordability program.

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