

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

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

REPLY COMMENTS OF COMMON SENSE MEDIA, PUBLIC KNOWLEDGE

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I. INTRODUCTION

Common Sense and Public Knowledge (PK) submit these Reply 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).¹ 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 8 million low-income households connect to the internet during a time when it has never been more critical.² Consumers need the internet to learn, work, connect with loved ones, access government benefits, or even to precision farm.

In summary, after reviewing the docket, we encourage the Commission to:

- Use a hybrid approach when asking existing EBB participants to opt-in to or opt-out of continued internet service using the reduced ACP benefit. Subscribers who will not experience bill shock should opt-out; those who will should opt-in;
- Ensure ISPs inform consumers about the transition and service offerings;
- Allow the ACP benefit to be applied to existing grandfathered plans;
- Increase eligible uses of the device benefit;
- Allow schools and libraries to act as bulk purchasers;
- Establish minimum service standards;
- Create avenues for promoting and sharing information about the ACP.

¹ 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].

² 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].

Through these actions, the Commission can ensure that the ACP fulfills its intended purpose of helping low-income consumers afford internet service and devices that support critical online activities, such as distance learning, telehealth, and remote work.

II. THE COMMISSION SHOULD USE A HYBRID OPT-IN/OPT-OUT APPROACH FOR THE TRANSITION

The Commission asks whether it should require current EBB subscribers to opt in or opt out of continued internet service using the reduced ACP benefit. This is an important question because both options have trade offs — opt-in requirements will allow for unintentional disconnections but protect participants from bill shock; opt-out requirements will expose EBB participants to bill shock but maintain connectivity. In either case, some subscribers will inevitably fail to respond to the opt-in or opt-out prompt, and they will suffer negative consequences as a result. The Commission’s goal should be to employ opt-in and opt-out requirements in a way that minimizes the likelihood and severity of these consequences. In our initial comments,³ we recommended a hybrid approach: EBB subscribers whose bill will increase as a result of the decreased benefit should be required to opt-in to continue their internet service; subscribers whose bill will not increase should automatically continue their internet service but be given the opportunity to opt-out.

A. When to Use an Opt-In or Opt-Out Requirement

NTCA and other ISP commenters argue for a blanket opt-out approach. They suggest that all EBB subscribers should automatically continue their existing service with the reduced ACP

³ Public Knowledge and Common Sense Media, Comments on the Affordable Broadband Program, WC Docket No. 21-450, (December, 2021) <https://ecfsapi.fcc.gov/file/120880594883/PK%20COMMON%20SENSE%20ACP%20Comments.pdf> [hereinafter PKCS Comments]

benefit unless they affirmatively opt-out.⁴ We agree that, in the following situations, this opt-out approach is preferable:

- When the subscriber’s benefit amount will not decrease, as is the case for subscribers living in tribal and high-cost areas;⁵
- When the subscriber’s existing service plan will be fully paid for by the reduced ACP benefit;
- If the subscriber was a customer of the ISP prior to enrolling in the EBB program and, when signing up for the EBB, expressed (through an opt-in selection) a willingness to continue paying for service should the EBB program end.

In these situations, there is no potential for subscribers to incur unexpected financial harm as a result of continuing service with the decreased ACP benefit. Thus, an opt-out approach is preferable because it is both easier for ISPs to implement and will not lead to subscribers unintentionally losing service if they fail to respond to an opt-in request.⁶

⁴ The Internet and Television Association (NCTA), comments on the Affordable Broadband Program, WC Docket No. 21-450, at 7 (December, 2021) <https://ecfsapi.fcc.gov/file/1208104160860/NCTA%20ACP%20Comments%202021.12.08.pdf> (“NCTA therefore urges the Commission to determine that notice of the transition from EBB to ACP and an opportunity to opt-out of the Program—rather than an opt-in requirement—is sufficient to continue to offer ACP to EBB-enrolled households.”) [hereinafter NCTA Comments]; Wireless Internet Service Providers Association (WISPA), Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 6 (December, 2021) <https://ecfsapi.fcc.gov/file/1208601517578/WISPA%20Comments%20on%20ACP%20-%20Docket%2021-450.pdf> (“After the provider has notified a subscriber of the transition from the EBB Program to the ACP and that the reimbursement may decrease from \$50 to \$30 per month, the subscriber should only be required to notify the provider if it does not wish to continue in the program or if the basis for the household eligibility has changed.”)

⁵ Alaska Communications, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 3 (December, 2021) [https://ecfsapi.fcc.gov/file/1208156949218/Alaska%20Communications%20Affordable%20Connectivity%20Program%20Comments%20\(SIGNED%20FINAL%202021-12-08\).pdf](https://ecfsapi.fcc.gov/file/1208156949218/Alaska%20Communications%20Affordable%20Connectivity%20Program%20Comments%20(SIGNED%20FINAL%202021-12-08).pdf) (“Unlike in other areas of the nation, EBB-enrolled households on Tribal lands will see no change in their service, monthly obligation, or support level as a result of the transition. Therefore, a burdensome opt-in requirement is unnecessary to protect the customer. Indeed, such a requirement carries a far greater risk of harm, if the service provider is forced to de-enroll a customer who inadvertently fails to respond.”)

⁶ AT&T, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 7 (December, 2021) <https://ecfsapi.fcc.gov/file/120873065909/ATT%20ACP%20Comments%20120821.pdf> (“An affirmative opt-in requirement would also place enormous administrative burden on participating providers which is inconsistent with the Act. The more than 8 million households participating in the EBB Program enrolled over a period spread out over seven months, not all at once. Providers have spent extensive time and resources to establish systems and train staff to handle EBB enrollments based on the current rate of enrollment.”) [hereinafter AT&T Comments]

However, in situations outside of those outlined above and where the reduced benefit will lead to an increase in the subscriber's bill, the subscriber should be required to opt-in to both continued service and the ACP. We take this position because low-income subscribers should give consent before being subjected to additional charges. Automatically transferring subscribers to services that now cost them up to \$20 more per month could either subject them to an unexpected monthly bill or leave them with debt, if they have the ability to pay at all. Approximately 50% of Lifeline and EBB subscribers lack bank accounts and credit/debit cards, and so even if these subscribers can afford an unexpected bill, they may not have a method for payment.⁷ Unexpected debt should not be the result of a benefit program targeted at such vulnerable populations.

Our position — a hybrid opt-out/opt-in approach — is supported by comments from a broad range of organizations, including the National Consumer Law Center (NCLC), the United Church of Christ Media Justice Ministry (UCC MJ), the Stewards of Affordable Housing for the Future (SAHF), the National League of Cities (NLC), and numerous local governments.⁸ We

⁷ Ex Parte of National Lifeline Association (NaLA), WC Docket Nos. 11-42,20-445 at 34-36 (Oct 6, 2021)

⁸ National Consumer Law Center (NCLC) and the United Church of Christ Media Justice Ministry (UCC MJ), Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 36 (December, 2021), <https://ecfsapi.fcc.gov/file/1209719123225/Final%20NCLC%20UCC%20MJ%20ACP%20Opening%20Comments%2012-8-21.pdf> (“If a provider’s post March 1, 2022 service will require the household paying more than they paid pre March 1, 2022, the consumer must opt-in to continuing service under those terms.”) [hereinafter NCLC Comments]; Stewards of Affordable Housing for the Future (SAHF), Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 5 (December, 2021) <https://ecfsapi.fcc.gov/file/1208007778434/SAHF%20ACP%20Comment%20Letter%2012-8.pdf> (“A potential proposal the FCC could adopt that maintains this delicate balance would be to automatically enroll households that have no-cost plans into the ACP and offer an opt-out during the transition. For households that contribute to an internet service plan, the FCC should maintain the opt-in requirement at the end of the transition period.”) [hereinafter SAHF Comments]; National League of Cities (NLC), Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 8 (December, 2021), <https://ecfsapi.fcc.gov/file/120814914262/Affordable%20Connectivity%20Program%20Comments%20National%20League%20of%20Cities%2012-8-21.pdf> (“While a discontinuation in services would be disruptive, NLC believes the Commission should prioritize protecting households from surprise bill increases and require an opt-in by current EBB households to participate in ACP.”) [hereinafter NLC Comments]; City of Boston, Massachusetts, Montgomery County, Maryland, Washington DC, Texas Coalition of Cities For Utility Issues, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 7 (December, 2021) <https://ecfsapi.fcc.gov/file/1209252602165/COMMENTS-Boston-MontgomeryCounty-DC-TCCFUI.pdf> (“Local Governments are concerned that not only will many consumers be confused by the transition from a \$50 benefit to a

agree with these commenters that ISPs should get a subscriber's consent before charging them more than the amount they have been paying under EBB. The ISPs blanket opt-out approach fails to offer a compelling solution for these subscribers and as noted above, will likely hit EBB's low-income participants with bill shock.

Moreover, our hybrid approach will incentivize ISPs to conduct outreach and offer services that appeal to low-income subscribers. Under a blanket opt-out approach, ISPs will retain the same number of subscribers whether or not they help subscribers navigate the transition. This will not incentivize ISPs to conduct outreach or design plans to attract EBB participants. The opposite would be true under our hybrid approach.

B. Streamline Reenrollment After Failure to Opt-In

Finally, for any approach to the transition that involves an opt-in requirement (including our own), we encourage the Commission to streamline reenrollment for EBB subscribers who fail to opt-in.⁹ These subscribers have already proven their eligibility, and the Commission should therefore waive the burdensome need to reverify their identity and eligibility. We propose a 6 month window for this waiver after an EBB participant's disconnection. These subscribers will be rechecked through the annual reverification process and so providing a temporary waiver of reenrollment requirements will not increase the risk of enrolling ineligible subscribers.

\$30 benefit, worse, consumers could incur a bill for the difference in the subsidy levels. Local Governments call on the Commission to not only take steps to inform consumers of the change, but impose as an eligibility requirement on providers seeking an ACP payment, their agreement that the consumer knowingly and voluntarily accepted any co-payment requirement. Moreover, that the service being provided for the copay is consistent with marketplace rates.”) [hereinafter Local Governments Comments]

⁹ NCLC Comments, *supra* note 8 at 36

III. THE COMMISSION SHOULD ENSURE CONSUMERS HAVE SUFFICIENT INFORMATION ABOUT THE TRANSITION AND AVAILABLE PLANS

Informing consumers about the transition and the new ACP is the best way to maximize the program's impact. The more information consumers have, the fewer regulations will be required and the better competitive forces will work. We have identified three ways the Commission can provide information that facilitates the transition and empowers consumers.

A. Require ISPs to Notify EBB Subscribers About the Transition Repeatedly and Through Multiple Channels

The Commission should ensure subscribers are sufficiently notified about the upcoming change to their benefit. AT&T suggests that providers should be given flexibility in how they provide these notifications, noting that a one-size-fits-all approach does not work in all circumstances and that ISPs are well versed in conveying information to a range of households.¹⁰ We agree that ISPs have valuable experience, but we and many other commenters believe that some minimum notification requirements are needed to ensure EBB participants are fully aware about the changes to their benefit.¹¹ For example, ISPs should be required to:

- Notify the subscriber 60, 30, and/or 15 days before the transition takes place;
- Notify the subscriber through multiple channels, such as text, email, phone call, and mail;
- Notify the subscriber using clear and simple terminology and in the languages appropriate to the subscriber's location;

¹⁰ AT&T Comment, *supra* note 6 at 4 (“Participating EBB providers should be afforded flexibility in how this transition notice is conveyed to EBB-enrolled households as there is not a one-size-fits-all approach. For example, AT&T’s prepaid wireless customers are accustomed to receiving important information through text messages with links to additional online information and generally receive service-impacting information in this manner; whereas, AT&T’s home internet service customers are accustomed to receiving bill messages or direct mail with important service-impacting information. Participating providers have every incentive to make this transition as seamless as possible for EBB-enrolled households and will want to clearly convey this important information. Overly prescriptive rules around how notice is delivered will not benefit the consumer.”)

¹¹ SAHF Comments, *supra* note 8 at 5

- Highlight the transition’s impact, if any, on the subscriber’s bill — if their bill will change, emphasize this fact using bold, underlined, and/or colored text; do not bury it in blocks of fine print;
- Describe the change in benefit amount, eligibility requirements, and expected timeline of the program;
- Explain the opt-in or opt-out requirement and the consequences of non response;
- Provide information about alternative service plans; specifically, available plans that are fully paid for by the ACP benefit;
- Clearly state that the subscriber may cancel their service and switch providers at any time without penalty; simply saying that the subscriber may “transfer their benefit” to another provider at any time is not sufficient.

B. Require ISPs to Implement Broadband Nutrition Labels as Soon as Possible

ISPs should provide clear information about their service offerings so that customers can choose the plan that is best for them. The Infrastructure Investment and Jobs Act requires ISPs to adopt “broadband nutrition labels” that clearly describe broadband service terms and conditions, such as speeds, prices, taxes, and fees.¹² As New America’s Open Technology Institute notes, “people need to know exactly what they are paying for, especially those operating with fewer resources and less means, such as the households that qualify for the ACP benefit.”¹³ Adopting these labels as soon as possible will ensure that subscribers “have enough information to find better arrangements if needed... [and] will allow as many EBB participants as possible to make informed decisions about the transition.”¹⁴

¹² See H.R.3684 § 60504

¹³ New America's Open Technology Institute, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 13 (December, 2021), https://ecfsapi.fcc.gov/file/120824972010/OTL_ACPCComments_WCDocket_21-450.pdf [hereinafter OTI Comments]

¹⁴ OTI Comments *supra* note 13 at 14

C. The Commission Should Collect and Distribute Detailed Information About Service Offerings

The Commission should ensure that consumers and digital navigators have an easy time selecting the right provider. “Though the Commission lists providers by state, those providers generally do not offer their services statewide.”¹⁵ Thus, it can be difficult for consumers to find a provider in their area that offers the services and devices they want. We agree with the NCLC that the Commission should improve the “companies near me” tool to provide information such as: a product’s availability by zip code + four; if a product is wired or wireless; and if the provider offers products for less than \$30/month, less than \$75/month or over \$75 a month.¹⁶ In addition, we believe that the tool should include whether the provider offers a device discount and whether computers, tablets, or both are available, and how much the co-pay for the device is.

The Commission could make the information available to the public so that consumers and digital navigators could compare offerings in their area. Not only would this allow consumers to find the best product and maximize their ACP benefit, it would promote competition and incentivize ISPs to improve their offerings. 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.

IV. THE COMMISSION SHOULD ALLOW THE BENEFIT TO BE USED ON EXISTING GRANDFATHERED PLANS

We believe that ACP-eligible subscribers should be able to apply their benefit to their existing plans, even if those plans are grandfathered. We are not asking ISPs to make all legacy

¹⁵ Next Century Cities, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 24 (December, 2021)
<https://ecfsapi.fcc.gov/file/1208110605106/NCC%20ACP%20Comments%20Final%20-%20Filed%2012.08.21.pdf>
[hereinafter NCC Comments]

¹⁶ NCLC Comments *supra* note 8 at 5

plans available to the public but simply to allow existing subscribers to use their benefit on their existing plans. Our proposal has support in the docket from a broad range of commenters, including the NCLC, UCC MJ, NLC, the Vermont Department of Public Service, New York State Public Services Commission, and the City of Detroit.¹⁷

Our proposal aligns with Congress’s intent for the program because it allows subscribers to apply the benefit “to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.” Our proposal will also help the Commission “protect consumers... from inappropriate upselling or downselling.”¹⁸

- Grandfathered plans are a type of service offering made exclusively to existing subscribers. As service offerings, they should be eligible for the ACP benefit. The fact that grandfathered plans are exclusive does not mean they are not offerings; offers are often made to exclusive groups of people (e.g. first time subscribers, residents of a particular region, long-time subscribers, bulk or bundled subscribers), and they are still considered offerings and still eligible for the ACP.

¹⁷ NCLC Comments *supra* note 8 at 21 (“the Commission should interpret “any internet offering” to mean any product a consumer could otherwise obtain. Thus, if a consumer is using a grandfathered plan, the consumer should be able to apply their ACP discount to the grandfathered plan.”); NLC Comments *supra* note 8 at 4 (“If a household is currently enrolled in a service that may be more affordable because it is a grandfathered offering, that household should not be forced to change plans in order to apply an ACP subsidy to their existing service.”); Vermont Department of Public Service, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 3 <https://ecfsapi.fcc.gov/file/1209559209469/WC%2021-450%20-%202021.12.08%20-%20VT%20Comments%20-%20FINAL.pdf> (“The plain language of the Infrastructure Act makes clear that participating providers must allow eligible households to apply the ACP benefit to any Internet service offering. There is no distinction between legacy and similar plans versus current service offerings in the Act and therefore, it is highly unlikely that Congress intended to exclude such service offerings from the ACP.”) [hereinafter Vermont Comment]; New York State Public Service Commission (NYPSC), Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 3 <https://ecfsapi.fcc.gov/file/1208230545163/2021%2012%2008%20FCC%20Affordable%20Connectivity%20Program%20Comments%20.pdf> (“The NYPSC strongly urges the FCC to include legacy and grandfathered services as eligible services.”) [hereinafter NYPSC Comment]; City of Detroit, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 3 <https://ecfsapi.fcc.gov/file/12130993817062/City%20of%20Detroit.pdf> (December, 2021) (“Grandfathered plans from participating providers should be included in the process.”) [hereinafter Detroit Comment]

¹⁸ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. div. F, tit. V sec. 60502(a)(3)(B)(ii) (2021), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> [hereinafter Infrastructure Act]

- As part of their terms of service, non-ACP eligible subscribers are allowed to continue subscribing to plans after they have been grandfathered. By these same terms, ACP-eligible subscribers should be allowed to use their benefit to continue subscribing to plans after they have been grandfathered.
- If the benefit cannot be applied to grandfathered plans, then subscribers will have to choose between paying full price for their existing grandfathered plan or switching to a new ACP-eligible plan. This would create a system where new plans or participation in ACP have an inherent advantage over old plans, which could be exploited to raise prices for these customers, or to upsell or downsell them.

ISP commenters generally argue that the ACP benefit should not be applied to grandfathered plans. Based on our reading of the docket, their opposition can be organized into two main arguments: 1) grandfathered plans are not technically service “offerings” and therefore statutory language referencing “any internet service offering” does not apply to them; and 2) the administrative burden of applying the benefit to grandfathered plans is too great.

The first point is articulated by USTelecom: “An offering is defined as ‘something offered’ and an offer is defined as having ‘the opportunity to accept or take [something].’ A person does not have the opportunity to accept a broadband provider’s service if the particular service is no longer being made available. Grandfathered plans, by definition, are not offered to the public.”¹⁹ We disagree. This argument begs the question by defining an “offering” as something that must be offered to the entire general public. As stated above, offers are regularly

¹⁹ USTelecom - The Broadband Association, Comments on the Affordable Broadband Program, WC Docket No. 21-450, at 23 (December, 2021) <https://ecfsapi.fcc.gov/file/120856923313/USTelecom%20ACP%20FINAL%2012-8-21.pdf> [hereinafter USTelecom Comments]

made to certain groups or individuals, in private, or contingent on certain conditions (e.g. exclusively for first time subscribers). Grandfathered plans are no different; they are simply plans offered to existing subscribers.

The second point is articulated by AT&T: “The system upgrades that would be necessary to enable the ACP benefit to be applied to these antiquated plans would be burdensome and outweigh the benefit to this declining group of consumers.”²⁰ It may be true that the system upgrades would be challenging, but the benefit of these “antiquated” plans to this “declining” group of consumers should not be dismissed. Congress designed the ACP to promote connectivity among low-income households. Grandfathered plans are used by many low-income households. Denying the ACP for grandfathered plans would hurt connectivity among these households and conflict with the central purpose of the ACP.

The Vermont Dept. of Public Services describes why grandfathered plans are important: “In Vermont, the majority of consumers on legacy and similar plans are low-income and potentially eligible for the ACP benefit. To exclude legacy and similar Internet service offerings from the ACP would effectively exclude those consumers who need it most, running counter to the public interest.”²¹ The New York Public Service Commission echoes this sentiment: “By not allowing legacy and grandfathered services to be eligible for support under the ACP, these households would either be forced out of plans they otherwise have the right to participate under or would be unable to use the important support the ACP offers.”²² Detroit offers a similar perspective: “Local, underserved communities have limited home internet options. Many

²⁰ AT&T Comment *supra* note 6 at 10

²¹ Vermont Comment *supra* note 17 at 3

²² NYPSC Comment *supra* note 17 at 3

residents have had the same plan for decades and forcing them to choose between a new plan with ACP support or their old plan without ACP support is an unfair ultimatum.”²³

We believe that it is both Congress’s intent and good public policy to require providers to allow existing subscribers to use their ACP benefit on existing grandfathered plans.

V. THE COMMISSION SHOULD PROMOTE DEVICE ACCESS

As we noted in our initial comments, “although devices are necessary to connect, low income, elderly and people of color are unlikely to have one.”²⁴ This is one of the primary reasons that low-income consumers aren’t connected to the internet. Over 30% of non-broadband users cite the cost of a computer as one of the reasons they lack a home broadband connection.²⁵ The Commission is well poised to remedy this problem for ACP participants by maximizing the device discount for eligible households. The Commission can do this by (1) exploring ways to improve provider participation; (2) including associated equipment within the definition of a connected device, and (3) ensuring that devices offered through this discount meet the needs of the modern consumer.

A. Allow for Flexible Use of the Device Benefit

You cannot connect to the internet without a device. Nevertheless, barely more than half of low income households own a computer.²⁶ The device discount component of the EBB is intended to remedy this problem. However, less than 1/8 of households enrolled in the EBB received a connected device — in large part because relatively few providers participate in this

²³ Detroit Comment *supra* note 17 at 3

²⁴ PKCS Comments *supra* note 3 at 5.

²⁵ 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).

²⁶ EveryoneOn, Affordability and the Digital Divide at 18 (Dec. 2021).

component of the program.²⁷ We believe there are two ways the Commission can enhance the device discount program to help families connect.

i. Consumers Need Not be Required to Get Devices from Their ACP Provider

EBB rules only enable providers to seek reimbursement for the connected devices that they provide to their own clients participating in the EBB.²⁸ This has led some “households to choose between receiving internet from a non-device participating provider or a computer from lesser-known providers.”²⁹ To prevent consumers from making this difficult choice and to help get more devices into the hands of the households that need them, we urge the Commission to waive this rule. As noted by the City of Detroit, “the device and internet service can be tied, but they absolutely do not need to be tied together.”³⁰

ii. Encourage Providers to Partner with Device Manufacturers, Refurbishers and Retail Outlets

There is ample support in the record for our idea that providers should “partner with device manufacturers, refurbishers or retail outlets” so that they feel more comfortable participating in the program.³¹ For example, Stewards of Affordable Housing for the Future urge the Commission to “consider other strategic partnerships with organizations (such as PCs for People and Human I-T) to connect qualifying households with devices.”³² Likewise, Next Century City notes that “across the country, community organizations are working on refurbishing devices and making them available at a low cost to low income households.. [thus] enabling community-owned ISPs to partner with refurbishers in their area to provide devices

²⁷ 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/>

²⁸ PN at 27 paragraph 65

²⁹ Detroit Comment *supra* note 17 at 4

³⁰ Detroit Comment *supra* note 17 at 4

³¹ PKCS Comment *supra* note 3 at 7

³² SAHF Comments *supra* note 8 at 3

would enable existing partnerships to enhance the ACP.”³³ Encouraging these partnerships can help remedy poor provider participation in the device discount component of the ACP and enable households to get the devices they need to connect.

B. Allow the Benefit to Pay for Associated Equipment

Unlike the legislation establishing the EBB, the legislation establishing the ACP was silent as to whether eligible consumers could use the device discount to purchase ‘associated equipment’ that is necessary to get internet, such as routers, modems and hotspots. However, as the NCLC noted in its comments, “in the case of ambiguous statutory provisions, the Commission has the authority to interpret the provisions.”³⁴ Like NCLC, we believe that allowing the purchase of associated equipment aligns with Congressional intent. Because this equipment is necessary to connect, the Commission should continue to allow the device discount to be applied to it.

C. Establish Minimum Standards for Devices Purchased with the Benefit

There is broad support in the record for connected devices to meet certain minimum service standards because, without these standards, the devices may not be “sufficient for distance learning, telehealth, remote work, and other modern uses.”³⁵ In fact, according to the United Ways of California, students with low-end devices often struggle to see their screen, run applications, work or chat in real time, or hear instructions — all functions that are essential for online learning.³⁶ Even groups like the National Lifeline Association, which claims that devices

³³ NCC Comments *supra* note 15 at 15

³⁴ NCLC Comments *supra* note 8 at 23

³⁵ National Digital Inclusion Alliance, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 12 (December, 2021)

<https://ecfsapi.fcc.gov/file/1209138182004/NDIA%20Comments%20to%20FCC%20re%20ACP%20Implementation%20FINAL.pdf>

³⁶ United Ways of California, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 23 (December, 2021)

<https://ecfsapi.fcc.gov/file/1210166367993/UWCA%20comments%20Affordable%20Connectivity%20Program%20.pdf> [hereinafter United Ways Comment]

“should not be subject to minimum service standards,” nevertheless conceded that there would be no point in supporting devices if those devices could not connect to Wifi or be used for video conferencing and online learning.³⁷ Thus, we urge the Commission to adopt minimum service standards so that devices meet “modern work and education requirements.”³⁸

VI. THE COMMISSION SHOULD ALLOW SCHOOLS AND LIBRARIES TO ACT AS BULK PURCHASERS

In our original comments,³⁹ we suggested that the Commission should expand the definition of “bulk purchaser” to include schools and libraries. We believe that these institutions are well positioned to both understand the connectivity needs of their communities and, by leveraging their size and expertise, help their communities acquire high-quality service and devices at low costs. We are happy to see this suggestion echoed by a broad range of commenters in the docket.

Specifically, E-rate Central and SHLB Coalition offered a detailed and persuasive proposal about how schools and libraries can act as bulk purchasers to help students and patrons seamlessly transition onto the ACP if the Emergency Connectivity Fund runs out of funding.⁴⁰ A coalition of local governments explained how schools and public housing can help their vulnerable populations by aggregating ACP benefits, and they petitioned the Commission to

³⁷ National Lifeline Association, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 22 (December, 2021) <https://ecfsapi.fcc.gov/file/1208177518721/NaLA%20Comments%20on%20ACP%20Public%20Notice.12.8.21.pdf>

³⁸ PKCS Comments *supra* note 3 at 9

³⁹ PKCS Comments *supra* note 3 at 7

⁴⁰ E-rate Central and SHLB Coalition, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 4 (December, 2021)

<https://ecfsapi.fcc.gov/file/1208067271462/E-rate%20Central-SHLB%20ACP%20comments%20-%20FINAL%20-%20Dec.%208%202021.pdf> (“Schools and libraries, which are currently permitted to engage in bulk purchasing under the ECF program, should also be permitted to participate in the ACP program so that they can continue providing services to low-income families after the ECF program sunsets.”)

expand the definition of bulk purchasers to include these institutions.⁴¹ EducationSuperHighway identified a unique advantage to using schools as bulk purchasers because schools do not have direct financial interest in enrolling households in ACP and are thus well positioned to promote sustainable, high-quality connectivity in an equitable fashion.⁴² And finally, both United Ways of California and the California Emerging Technology Fund recommended that schools and libraries be used in a way similar to the Emergency Connectivity Fund to ensure that students and patrons have computers and internet, essential tools for modern learning.⁴³

We find that the docket contains broad support and little to no opposition to allowing schools and libraries to act as bulk purchasers in the ACP. We ask the Commission to consider these comments and recognize that schools and libraries are uniquely well-positioned to maximize the impact of the ACP and to promote high-quality, affordable connectivity that supports education, health, and employment.

VII. THE COMMISSION SHOULD ADOPT MINIMUM SERVICE STANDARDS

As expressed in our original comment,⁴⁴ we believe that public funds should be used to provide connectivity that supports critical services such as distance education, telehealth, and

⁴¹ Local Governments Comments *supra* note 8 at 9 (“The Commission should permit bulk purchasers of broadband services such as schools, public housing and public interests to continue to make purchases for eligible households and allow those households to assign any credit to the bulk purchaser.”)

⁴² EducationSuperHighway, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 16 (December, 2021)
<https://ecfsapi.fcc.gov/file/1209820028316/EducationSuperHighway%20Initial%20Comments%20on%20ACP%20-%20final.pdf> (“the trusted third party must be a state or local governmental entity (including housing authorities), a school or school district, or a non-profit organization. These entities have no direct financial interest in enrolling households in the ACP. Rather, their missions are to serve the public and provide charitable services, which are entirely appropriate for this role and consistent with the purpose of the ACP to connect low-income Americans.”)

⁴³ United Ways Comment *supra* note 32 at 18; California Emerging Technology Fund, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 23 (December, 2021)
<https://ecfsapi.fcc.gov/file/12092429515704/CETF%20Draft%20FCC%20Comments%20on%20ACP%20final%2012.8.2021.pdf>

⁴⁴ PKCS Comments *supra* note 3 at 9

remote work. These services require speeds and latencies above what some plans offer; and these plans, some of which may not even lift subscribers out of the FCC’s “unserved” category, are thus not the best use of the ACP’s limited resources. By allowing the ACP to subsidize these plans over the long term, the Commission risks using public funds to entrench inadequate connectivity and suppress incentives for ISPs to improve. Therefore, we ask the Commission to implement minimum service standards when and where doing so will not negatively impact subscribers.

In the docket, we find that ISPs generally oppose minimum service standards. The Wireless Internet Service Providers Association (WISPA) argues that minimum standards will hurt subscribers who live in areas where qualifying plans are not offered: “To narrow the benefit to include only those services offering certain broadband speeds will have the unintended consequence of penalizing households within areas where 25/3 Mbps or faster broadband speeds are not currently available to them.”⁴⁵ We agree in part. If an ISP is incapable of increasing speeds to meet the minimum requirements, then we agree that exceptions should be made so that eligible households are not denied the ACP’s benefit simply because their provider cannot offer a minimum level of service. However, if the ISP is capable of increasing service speeds, it should be required to do so in order to receive the ACP.

USTelecom and other ISP commenters argue that competition will be sufficient to provide subscribers with services that meet minimum standards, thereby rendering a requirement unnecessary: “If a consumer does not feel that they are getting adequate service for the price paid, they can seek out a different plan or different provider, and through the ACP they can do so at any time without penalty.”⁴⁶ We agree in part. Competition can indeed incentivize ISPs to offer

⁴⁵ The Wireless Internet Service Providers Association (WISPA), comments on the Affordable Broadband Program, WC Docket No. 21-450, at 4 (December, 2021)

⁴⁶ USTelecom Comments *supra* note 19 at 26

higher speeds at lower costs. However, not all subscribers have access to competitive markets. Across the country, more than 20% of households have access to just one fixed provider offering broadband speeds, and 44% have access to just two.⁴⁷ And even where competition exists, it only improves product quality if customers have the digital literacy and information needed to compare service offerings. (This is why, as noted previously, it is important for ISPs to make data about their products available to the Commission and to subscribers.) Given that there are areas in which ISPs do not face meaningful competition, or consumers lack the skills to understand options, we believe that minimum service standards are necessary.

We find that a broad range of non-ISP commenters express support for minimum standards. A coalition of local governments comments: “Congress has made it very clear that in order to benefit from federal broadband support, a service provider must be offering a meaningful speed. And while there may be areas where only a single provider will step up to provide ACP service, in those areas where competition exists, the Commission should follow the lead of its sister agencies and employ speed as a determining factor for eligibility.”⁴⁸ Benton suggests: “The Commission’s rules should not allow ACP discounts for service that would otherwise qualify a location as ‘unserved,’”⁴⁹ and the National Association of Telecommunications Officers and Advisors (NATOA) adds: “We cannot claim to be addressing the digital divide if we do not ensure that ACP-provided services are adequate to perform those tasks.”⁵⁰

⁴⁷ Federal Communications Commission, 2020 Communications Marketplace Report at 87, GN Docket No. 20-60 (Dec. 31, 2020), <https://docs.fcc.gov/public/attachments/FCC-20-188A1.pdf>.

⁴⁸ Local Governments Comments *supra* note 8 at 13

⁴⁹ Benton Institute for Broadband & Society, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 6 (December, 2021)

⁵⁰ National Association of Telecommunications Officers and Advisors (NATOA), comments on the Affordable Broadband Program, WC Docket No. 21-450, at 7 (December, 2021) [hereinafter NATOA Comments]

We believe that minimum service standards will help ensure that public funds support meaningful connectivity. Competition alone may suffice for some areas, but where it does not, minimum standards will ensure that subscribers can still participate in distance learning, telehealth, remote work, and other critical internet functions. Ensuring access to such services is why Congress created the ACP, and it is why the Commission should establish minimum service standards.

VIII. THE COMMISSION SHOULD INCREASE AWARENESS AND UNDERSTANDING OF THE ACP

As we noted in our initial comments, “we suspect that initially low enrollment numbers for the EBB stemmed in part from consumer’s lack of knowledge about the program” and the difficulty of the multi-step enrollment process.⁵¹ The record reflects an acknowledgement that robust advertising by multiple parties through multiple channels coupled with enrollment support will increase participation in the program.

A. The Commission Should Create a Grant Program for Outreach Partners

In its Public Notice, the Commission sought comment on “starting a grant program for consumer outreach partners.”⁵² The record reflects broad support for pass-through grants to outreach partners. According to Tech Goes Home, these partnerships “are critical not only to identifying the most effective mechanisms for reaching communities in need but will facilitate greater participation by leveraging the existing trust between residents and their local institutions and organizations.”⁵³ Likewise, NATOA noted that the Commission should “exercise the

⁵¹ PKCS Comments *supra* note 3 at 10

⁵² Public Notice *supra* note 1 at 43

⁵³ Daniel Noyes and Theodora Hanna with Tech Goes Home, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 2 (December, 2021) <https://ecfsapi.fcc.gov/file/1208011072137/TGH%20Comments%20-%20WC%20Docket%2021-450%20-%2012.8.21.docx>

authority provided by Congress to utilize grants to outreach partners such as local governments and non-profit organizations to assist with outreach, education and enrollment” because “these groups are trusted by communities and can produce content in a variety of languages and tailored to their locations.”⁵⁴

Community outreach partners can not only effectively reach eligible households, but they can also provide the “time intensive one-on-one and in-language support” that is necessary to help subscribers understand the program, determine eligibility, and navigate the enrollment process.⁵⁵ As noted in our comments, this sort of help will encourage enrollment by people who might otherwise be deterred by the burdensome enrollment process or incapable of participating due to language and/or accessibility barriers.

B. The Commission Should Create a Customer Service Toll-Free Line.

Eligible households may need help enrolling in the ACP, filing complaints, or asking questions about the program. These households may not be able to use the internet to address their issues, and thus it is important to provide a non internet-based solution. The current solution may require a burdensome process of calling multiple entities, such as the household’s ISP to USAC to local government helplines. We believe that households and digital navigators should have a one-stop shop to get official, reliable help with anything related to the ACP.

Thus, we would like to expand upon an idea suggested by the AARP: the Commission should “accept complaints via a toll-free number that is available from anywhere in the country.”⁵⁶ In addition to taking consumer complaints, this number should connect consumers and digital navigators to representatives capable of answering questions about the program,

⁵⁴ NATOA Comments *supra* note 50 at 3-4

⁵⁵ City of Seattle, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 4 (December, 2021) https://ecfsapi.fcc.gov/file/12090935900757/Seattle_Comments_FCC%20Affordable%20Connectivity%20Program_WC%20Docket%20No.%2021-450%20.pdf

⁵⁶ AARP, comments on the Affordable Broadband Program, WC Docket No. 21-450, at 9 (December, 2021) https://ecfsapi.fcc.gov/file/1208167030692/AARP_FCC_ACP_Comments_12-8-21.pdf

helping with enrollment, and managing complaints. It is important this help be available via a toll-free phone number because those seeking help may not have access to the internet or paid phone service. By providing an easy solution to questions about the ACP, this toll-free number could increase enrollment and participant satisfaction.

IX. CONCLUSION

Congress created the ACP to ensure that all people, regardless of their income, have access to the internet services and computer technologies that are essential in our modern, digital world. Common Sense and Public Knowledge use these Reply Comments to highlight proposals that achieve this and to rebut proposals that do not. In particular, we ask the Commission to use a hybrid approach to opt-in/opt-out requirements during the transition; ensure ISPs share information about the transition and their service offerings; allow the benefit to be applied to grandfathered plans; expand the device benefit; recognize schools and libraries as bulk purchasers; adopt minimum service standards; and provide multiple methods for disseminating information about the ACP. Above all, we urge the Commission to prioritize the needs of program participants who have often contended with limited options, unfair pricing, and inadequate service. The ACP is an exciting opportunity to empower these households and guarantee their access to essential technologies, and we look forward to helping the Commission with its promotion and implementation.