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AFFORDABLE CONNECVITY PROGRAM

The Affordable Connectivity Program (ACP) is a low-income broadband connectivity program established by the FCC pursuant Infrastructure Act, which was signed into law in November 2021.¹ As of December 31, 2021, the ACP replaced the Emergency Broadband Benefit Program, which was established in late 2020 to address, among other things, COVID-19 related connectivity concerns. On January 21, 2022, the FCC released final rules pertaining to the ACP.²

PROGRAM REQUIREMENTS

OVERVIEW

The ACP provides reimbursement to a “participating provider” for the monthly “affordable connectivity benefit” on the price of “broadband internet access service” it provides to “eligible households” plus any amount the participating provider is entitled to receive for providing a “connected device” to such households.

For purposes of the ACP, a “participating provider” includes a broadband provider that is designated as an eligible telecommunications carrier. The term also includes a non-ETC broadband provider that is approved by the FCC to participate in the ACP. The non-ETC category includes Internet Service Providers (ISPs) (*i.e.*, cable providers and wireless Internet service providers) and non-traditional broadband providers like community-owned networks, electric cooperatives, and municipal governments.

ELIGIBLE SERVICES

A participating provider may allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household that includes broadband internet access service or a bundle or broadband internet access service along with fixed or mobile voice telephony service, text messaging, or both.

ELIGIBILITY

A household is eligible for the Affordable Connectivity Program if the household income is at or below 200% of the Federal Poverty Guidelines, or if a member of the household meets at least one of the criteria below:

- Received a Federal Pell Grant during the current award year;
- Meets the eligibility criteria for a participating provider's existing low-income internet program;
- Participates in one of the following assistance programs:

¹ The ACP is the successor to the Emergency Benefit Program (EBB Program), which was created in late 2020 to address COVID-related connectivity concerns. The ACP modifies and expands the EBB Program, transforming it from “an emergency program designed to respond to a public health crisis to a longer-term broadband affordability program.” The Infrastructure Act appropriated to the FCC \$14.2 billion,¹ which is in addition to the \$3.2 billion that was provided to the FCC to establish the EBB Program.

² In the Matter of Affordable Connectivity Program, WC Docket No. 21-450, Emergency Broadband Benefit Program, WC Docket No. 20-445, FCC 22-2 (rel. Jan. 21, 2022).

- The National School Lunch Program or the School Breakfast Program, including through the USDA Community Eligibility Provision
 - SNAP
 - Medicaid
 - Federal Public Housing Assistance
 - Supplemental Security Income (SSI)
 - WIC
 - Veterans Pension or Survivor Benefits
 - Lifeline
- Participates in one of these assistance programs and lives on Qualifying Tribal lands:
 - Bureau of Indian Affairs General Assistance
 - Tribal TANF
 - Food Distribution Program on Indian Reservations
 - Tribal Head Start (income based)

SUPPORT AMOUNTS

An eligible household may receive a benefit of up to \$30/month for Internet service. The benefit is up to a \$75/month discount if the household is on qualifying Tribal lands. A one-time discount of up to \$100 for a laptop, tablet, or desktop computer (with a co-payment of more than \$10 but less than \$50). Only one monthly service discount and one device is allowed per household.

A participating provider that supplies an eligible household with a connected device may be reimbursed by an amount equal to the market value of the device less the amount charged to and paid by the eligible household but no more than \$100 for such connected device. A participating provider that provides a connected device to an eligible household shall charge and collect from the eligible household more than \$10.00 but less than \$50.00 for such connected device. An eligible household may receive, and a participating provider may receive reimbursement for no more than one connected device per eligible household. Households that received a connected device under the EBB Program are not eligible to receive a discounted connected device under the ACP.

APPLICATION PROCESS

A provider will need to obtain approval to participate in the ACP in new states (*i.e.*, states in which the provider is not an ETC and did not participate in the EBB Program). Applications submitted to the FCC's Wireline Competition Bureau are either automatically approved or reviewed pursuant to an expedited review process.

AUTOMATIC APPROVAL

The rules provide that the Wireline Competition Bureau shall automatically approve as a participating provider a broadband provider with an established program that, as of April 1, 2020; (1) is widely available; (2) offers Internet service offerings to eligible households; and (3) maintains verification processes that are sufficient to avoid fraud, waste, and abuse.³

The FCC has noted that the principal consideration in determining an "established program" for automatic approval is whether subscribers receive or were eligible to receive a financial benefit through reduced rates. According to the Commission, a program is "widely established" if it was offered to subscribers in a substantial portion of the service provider's service area in a particular state.

Any non-ETC broadband provider seeking to qualify for such automatic approval must file an application describing: (1) the states or territories in which it plans to participate; (2) the service areas in which the provider has the authority, if needed, to operate in each state; and (3) a description, supported by documentation of the established program with which the provider seeks to qualify for automatic admission to the ACP.

EXPEDITED REVIEW

Expedited review is available to non-ETC providers that do not qualify for automatic application processing. Applications submitted for expedited review must contain the following information: (1) a list of states or territories where the provider will offer ACP; (2) a statement identifying the jurisdictions in which the provider requires FCC approval and jurisdictions in which the provider is an existing ETC; and (3) certification of the provider's plan to combat waste, fraud, and abuse.

ELECTION NOTICE

All participating providers must file an election notice with USAC to participate in the ACP in new states – meaning the states in which the provider is not an ETC and did not participate in the EBB Program. The election notice must be made under penalty of perjury and contain the following minimum information: (1) a list of the states or territories in which the provider plans to participate in the ACP; (2) a statement that, in each such state or territory, the provider was a broadband provider; (3) a list of states or territories in which the provider is an existing ETC; (4) a list of states or territories in which the provider received approval to participate from the FCC's WCB; (5) a statement confirming whether the provider intends to distribute connected devices and supporting documentation; (6) any other information to establish the participating provider in USAC's systems.

³ The FCC has stated that a provider seeking to participate in the ACP can demonstrate an established program for automatic approval by submitting information demonstrating that it maintains an existing low-income program that was made available by April 1, 2020, to subscribers meeting at least one of the criteria in the revised definition of an eligible household.

SALES, ADVERTISING & MARKETING

Marketing & Communications

All participating providers in the ACP must advertise the availability of the ACP. More specifically, participating providers must:

- (1) make available the affordable connectivity benefit to eligible households;
- (2) publicize the availability of the ACP in a manner reasonably designed to reach those likely to qualify for the service and in a manner that is accessible to individuals with disabilities.
- (3) notify all consumers who either subscribe to or renew a subscription to an Internet service offering about the ACP and how to enroll.
- (4) frequently carry out public awareness campaigns in their ACP areas of service that highlight the value and benefits of broadband internet access service and the existence of the ACP in collaboration with state agencies, public interest groups, and non-profit organizations.

The notice required under (3) must include the following minimum information: (1) the eligibility requirements for consumer participation; (2) notice that the ACP is non-transferable and limited to one monthly internet discount and a one-time connected device discount per household; (3) how to enroll, such as customer service phone number or relevant website information; and (4) notice that the ACP is a federal government program operated by the FCC and that if the program ends or when a household is no longer eligible, subscribers will be subject to the provider's regular rates, terms, and conditions. The timeframe for issuing such notices is as follows:

Plan Type	Notice Requirement
New Subscribers	During enrollment
Renewals with fixed-term plans longer than 1 month	30 days before the renewal date
New subscribers with month-to-month or similar non-fixed term plans	Annually

Sales

A participating provider and its agents may not exert pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan.

COMPLIANCE, LEGAL AND REGULATORY (CLEAR)

Election Notice

Participating providers must maintain up-to-date contact and other administrative information contained in their election notice filed with USAC. These updates must be made within 10 days of the change. In addition, participating providers must update this information following any transaction that would result in a change to the identifying information submitted on an election notice.

Enrollment Agents & Compensation

To minimize waste, fraud, and abuse, enrollment agents and representatives must register with the Representative Accountability Database (RAD), as currently required for the Lifeline and EBB Programs. The Commission rejected the Bureau's proposal to prohibit any commission compensation for enrollment representatives or direct supervisors. Instead, the Commission adopted a limited prohibition restricting participating providers from offering or providing to their enrollment representatives or direct supervisors any commission compensation that is based on the number of households who apply for, are enrolled in, or receive the ACP benefit from that provider, or based on revenues the participating provider received in connection with the ACP, including payments for connected devices.

Verification

All participating providers must implement policies and procedures to ensure that households are eligible to receive the affordable connectivity benefit. A provider may not provide ACP supported services to a consumer until it has: (1) confirmed that the household is an eligible household; (2) completed any other necessary enrollment steps; and (3) securely retained all information and documentation it receives related to the eligibility determination and enrollment. To verify whether a household is eligible, a participating provider must: (1) use the National Verifier; or (2) rely upon an alternative verification process. The provider must check its own electronic systems to confirm that the household is not already receiving another affordable connectivity benefit from that participating provider.

Participating providers must query the National Lifeline Accountability Database to determine whether: (1) a prospective subscriber is currently receiving an ACP supported service from another participating provider; (2) another person living at the prospective subscriber's residential address is currently receiving ACP-supported service; and (3) a prospective recipient has previously received a connected device benefit.

A participating provider may not consider the results of a credit check as a condition of enrollment in the ACP, to determine which internet service plan to which a household may apply the ACP benefit, or to transfer a household's ACP benefit.

Consent

Prior to enrolling a consumer in the ACP, participating providers must obtain affirmative consumer consent either orally or in writing that acknowledges that, having reviewed the required disclosures regarding the ACP, the household consents to enroll in the program.

Annual Certifications

Participating providers are required to submit to USAC annual officer certifications relating to the ACP. An officer with responsibility for a participating provider's ACP must certify under penalty of perjury that the participating provider has policies and procedures in place to ensure compliance with ACP rules. (For similar, see Form 481, which is used for Lifeline and High-Cost programs).

ENFORCEMENT

On May 11, 2021, the Enforcement Bureau issued an Enforcement Advisory (EA) to remind broadband providers participating in the Emergency Benefit (EBB) program of their obligation to comply with EBB program rules, including ensuring that existing Lifeline customers: (1) give their informed affirmative consent to participate in the EBB Program and (2) are informed that they may choose another EBB service provider; and (3) that they may do so without jeopardizing their existing Lifeline service.

I. Informed Affirmative Consent:

Eligible subscribers, including Lifeline subscribers, must affirmatively provide their consent to be enrolled in the EBB Program. On this point, the Enforcement Bureau noted:

It has come to our attention that providers may be linking EBB Program enrollment to implementation of technical changes necessary to retain the subscriber's existing service or automatically enrolling subscribers that provide information needed for another purpose.

The Bureau stated that such practices may be deceptive, undermine the integrity of the EBB program, and threaten to put subscribers at risk of losing their existing Lifeline service. (DA 21-551, p. 2).

On the issue of consent, the Bureau stated that communications to consumers regarding the EBB Program must be **clear, accurate, and not misleading** as to: (1) the nature of the EBB program; (2) the EBB program's eligibility requirements; and (3) the timing of the EBB program and application process.

In terms of **practices to avoid**, the Enforcement Bureau noted the following examples:

- Not clearly distinguishing the process of signing up for EBB services from the process of signing up for, renewing, upgrading, or modifying other telecom services, including Lifeline services.
- Suggesting or implying that signing up for EBB services is required for obtaining or continuing other services, including Lifeline services.
- Tying the submission of customer information provided for another purpose (e.g., address verification) to enrollment in the EBB program.
- Failing to include the EBB Program disclosures required by the EBB Program rules prior to the point at which the consumer gives their consent to enroll in the EBB Program.

Regarding **enrollment**, the Bureau stated that Lifeline providers seeking to enroll their existing customers in the EBB program must obtain informed affirmative consent in the following manner: At a minimum, Lifeline providers must make it clear that subscribers may: (1) continue their existing Lifeline service without enrolling in the Lifeline provider's EBB program; (2) choose another EBB provider without jeopardizing their Lifeline service; and (3) transfer their EBB program benefits to another EBB provider at any time. (FCC 21-29, para. 38)

On the issue of **documentation**, the Bureau stated that the provider must retain documentation demonstrating that (having received the relevant disclosures) the household provided affirmative consent to applying their EBB benefit to the service received from the EBB provider. (FCC 21-29, ¶ 38). The Bureau noted that EBB providers may be required to provide such documentation to demonstrate compliance during an audit, validation, or investigation.

On the issue of **enforcement**, the Bureau stated that the Commission “may consider inaccurate or misleading marketing of the program or processing of applications to be an unjust and unreasonable practice subject to investigation and enforcement action.” (See 47 U.S.C. § 201(b))

Connected Device Co-Pay

The following language from the Bureau order confirms that the connected device co-payment issue is regarded as a serious one by the Commission:

- the Act and the Commission’s rules are **clear** that households must be charged a co-pay toward the cost of a subsidized connected device.
- failure to comply with the co-payment rule could provide an unfair competitive advantage and undermine program integrity by introducing opportunities for waste, fraud, and abuse.
- provider adherence to this mandate will be subject to confirmation during audits or investigations.

In terms of specific examples, the Bureau noted the following:

- a broadband provider must “actually **bill** the customer for the cost of the connected device more than \$10.00 but less than \$50.00, and the household must **make this payment** as a contribution toward the cost of the connected device.”
- advertising “free” connected devices as part of the EBB program is inconsistent with the program rules, misleading to customers, and could provide an unfair competitive advantage over other participating broadband providers charging the required co-pay.
- providers cannot use a scheme by which subscribers earn “credits” that can be applied toward the subscriber portion of the shared cost of a connected device to avoid the requirement that they collect the payment from their customers.
- a broadband provider cannot be said to be charging a co-pay if it universally or generally waives such charges for its subscribers.