

Fund (“EBCF”) in the Consolidated Appropriations Act, 2021² was an acknowledgment of this concern and the Emergency Broadband Benefit Program (“EBB” or “program”) was a welcome addition to broadband providers’ ability to provide assistance to consumers during the COVID pandemic. Nearly three-quarters of INCOMPAS’ members who offer broadband internet access service participated in the EBB enabling their customers to connect to high-speed Internet and avail themselves of critical services and applications during the pandemic.

However, our dependence on broadband services has only been amplified over the past year, and it is more evident now than ever before that reliable, robust, and affordable high-speed broadband connectivity is needed to connect Americans with their communities, vital services, jobs, schools, and commerce through online resources and services. INCOMPAS supports Congress’ decision to extend and modify the EBB with a focus on long-term affordability for eligible subscribers. The ACP is an important program will enable recipients of the subsidy to more easily connect to high-speed Internet and avail themselves of critical services and applications.

INCOMPAS and its members want the ACP to be successful. In this comment, INCOMPAS discusses the transition from the EBB to the ACP and offers specific suggestions related to the administration and implementation of the new program.

II. IN IMPLEMENTING THE ACP, THE COMMISSION SHOULD RELY ON PROCESSES AND REQUIREMENTS IT ESTABLISHED FOR THE EBB

With the EBB, the Commission took decisive action to ensure that eligible, low-income households would have immediate access to multiple internet service offerings from providers

² See Consolidated Appropriations Act, 2021 H.R. 133, div. N, tit. IX § 904(b) (1), 116th Cong. (2020) (enacted).

that were well-positioned to offer immediate assistance to their community. As the Commission considers the transition to a longer-term affordability program, it should rely on the rules and requirements that it established for the EBB and make adjustments that will aid in the administration and delivery of the ACP. INCOMPAS offers the following recommendations in order to facilitate the ACP's implementation:

Provider participation: As INCOMPAS indicated in its comments for the EBB Program, “enabling competitive alternatives will benefit consumers in the program. Because competitive networks typically offer better speeds and connectivity, competitors can help meet the needs of these families who require faster upload capability for video calls and other digital needs.”³ INCOMPAS believes the same holds true for the ACP. The Commission went to great lengths to establish an expedited approval process for companies, including non-ETCs, to participate in the EBB and it should implement the ACP in a manner that will allow it to retain as many of these providers as possible. The ACP should continue the EBB's goal of making it as simple and quick as possible for ISPs to enroll in the system. To that end, INCOMPAS supports the Commission's proposal to streamline the participation process by allowing existing EBB providers to forego filing or resubmitting a completely new application prior to resubmitting their ACP election notice to USAC.⁴ Our members also support the Commission's decision to continue to include non-ETCs in the ACP. Furthermore, INCOMPAS encourages the Commission to continue permitting providers to submit a single election form for any participating affiliates. As was the case with the EBB, allowing participating providers to submit a single election form

³ INCOMPAS Comments, WC Docket No. 20-445 (filed Jan. 25, 2021), at 5.

⁴ See *Public Notice* at para. 9.

for its affiliates will “ease administrative burdens and more quickly allow providers access to the [] Program.”⁵

Implementation of requirement to apply the ACP benefit to any internet service offering of a participating provider: One of the most significant changes to the ACP is with respect to covered services and devices and the requirement that eligible households may apply the benefit to any internet service offering of the participating provider.⁶ The Commission has indicated that the effective start date for the ACP will be December 31, 2021. Based on this compressed timeline for the start of the program, the Commission seeks comment on “providers’ ability to quickly implement the Infrastructure’s Act’s requirements that a household may apply the benefit to any internet service offering of the participating provider, at the same terms available to households not participating in the [ACP].”⁷ The Commission astutely surmises that this requirement “will have a significant impact on providers.”⁸ Indeed, INCOMPAS members support this change as it will allow low-income consumers to choose the BIAS offering that best meets their household’s needs.

Nevertheless, given the technological challenges associated with applying the benefit to all internet service offerings, nearly all INCOMPAS members will require additional time to be

⁵ See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, para. 19 (rel. Feb. 26, 2021) (“*EBB Order*”).

⁶ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong., div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i) (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (“Infrastructure Act”).

⁷ See *Public Notice* at para. 56.

⁸ *Id.*

prepared to participate in the ACP. Like others in the proceeding,⁹ INCOMPAS believes that providers will require “implementation flexibility” for this particular requirement as many providers will be unable to make the necessary modifications and updates to its operations, billing systems, and internal processes to make the discount available to each of its internet service offerings to enrolled households and new subscribers by the program start date.

Under the EBB, participating providers were required to apply the benefit to internet service offerings and products that were already available to households that qualified for the provider’s low-income program. As such, the changes that needed to be applied at that time to providers’ billing authorization and processing systems to onboard eligible households were relatively modest. To apply the ACP benefit for all BIAS service offerings, INCOMPAS members indicate that the new obligation will require extensive modifications and coding changes that will need to be applied to hundreds, and in some cases thousands of plans and products. Additionally, some providers rely on third-parties for coding or have existing wholesale arrangements that add another layer of administration that will need to be considered. In some circumstances, changes to plans and products will require a second set of approvals that will extend a participating provider’s implementation of the program.

To overcome this operational hurdle, INCOMPAS recommends that the Commission temporarily waive the obligation that would require participating providers to allow eligible households to apply the affordable connectivity benefit to any internet service offering.

⁹ See Ex Parte Notice of NCTA—The Internet & Television Association, WC Docket Nos. 21-450 & 20-445 (filed Nov. 30, 2021), at 2 (describing providers’ need for flexibility to complete billing system modifications and to apply the ACP benefit to any of a participating provider’s internet service offerings); Ex Parte Notice of NTCA—The Rural Broadband Association, WC Docket Nos. 21-450 & 20-445 (filed Dec. 2, 2021), at 1 (detailing the “adjustments to billing systems and other internal processes” to enable ACP obligations).

Participating providers that are making at least one widely available internet service offering available to eligible households—presumably the same plan offered under the EBB—should be afforded six additional months to make the necessary changes to allow the company to apply the benefit to any other internet service offering or product. This modest additional time to comply, so that all BIAS offerings are eligible for the ACP, will allow providers to make the changes that are necessary. Such a waiver will also avoid the Commission receiving potentially hundreds of waiver requests which may overburden FCC staff.

Disclosures and consumer consent: As eligible households are transitioned from the EBB to the ACP, INCOMPAS supports the Commission’s proposals to require participating providers to make disclosures about the nature, length, and ability of subscribers to obtain the benefit from and/or transfer the benefit to the provider of their choice.¹⁰ Particularly as the benefit is reduced from \$50 to \$30, subscribers will need these disclosures to make informed choices about the internet service offering or device that best meets their needs as a household, particularly if their broadband options will significantly increase, as the program contemplates. That said, since the ACP is a modification of a current government program and the majority of eligible subscribers are expected to remain in the program once the transition is complete, INCOMPAS submits that providers should only be required to seek proof of opt-in or affirmative consent for the program from *new* subscribers or those households that are transferring their benefit to another provider.¹¹

¹⁰ See *Public Notice* at para. 100.

¹¹ INCOMPAS strongly encourages the Commission to continue permitting providers to obtain oral consent to enroll subscribers, as is the practice in the EBB and Lifeline programs. See *Public Notice* at para. 102 (seeking comment on the methods providers can use to obtain affirmative consent).

As for subscribers who will be transitioned into the ACP, existing subscribers should automatically be allowed to continue their participation in the program, and providers should be required to provide these households with the opportunity to opt-out of receiving service. Requiring affirmative, opt-in consent to transition to the ACP program could lead to consumer confusion, or, in the worst case, lead a participating provider to de-enroll an existing subscriber that fails to opt-in. Given the changes in eligibility for the ACP, providers will already have to contend with losing or re-enrolling a portion of their subscribers that entered the EBB because they suffered economic hardship caused by the COVID-19 pandemic, but may not qualify for the ACP. Automatic transition of existing subscribers to the ACP will ease the administrative burden on participating providers and allow the program to retain the households most in need of this affordability program.

Customer Transfers: INCOMPAS continues to support the EBB Program rule that permits existing subscribers to transfer their benefit to another provider at any time.¹² This ensures that eligible households are able to take advantage of service offerings and products from competitive service providers as they choose to participate in the program. And while the program's ability to transfer the subsidy ensures that competition in the program will remain robust, our members also report that these provisions have made it easier for households enrolled in the EBB Program to be transferred to new providers without the household's consent or knowledge of the transfer, or its effect on the household's existing service.

To prevent this, INCOMPAS urges the Commission to better educate consumers about their ability to retain Lifeline with one provider and ACP with another provider, and require notification to the service provider from which a consumer transfers that the enrollee has

¹² *EBB Order* at para. 38.

transferred. Our members' experience has been that some customers who did switch did not intend to move their existing EBB benefit to another provider, and a majority of those who transferred their subsidy without intention wanted to switch back to the original service provider. Providing better disclosures to customers and requiring the new provider to notify the original provider of the transfer would reduce these instances of unwanted transfers, and in turn, would reduce the administrative burdens on program administrators, service providers, and consumers.

As noted above, subscribers that transfer their ACP benefit to another provider should be required to opt-in to the program or provide their affirmative consent to the transfer after reviewing the provider's program disclosures. As part of this affirmative process, consumers should be informed that they can have ACP credits from one provider and have Lifeline credits from another provider, even if the other service is a different technology such as a wireline home broadband service as opposed to a wireless service. INCOMPAS supports the proposal to "require participating providers, before transferring-in a household, to clearly disclose in easily understood language that the household will be transferred and that the ACP benefit will now be applied to the transfer-in provider's service."¹³ Furthermore, consumers should be informed they will lose the benefit with their current provider. INCOMPAS also supports the Commission's proposal that providers be "required to certify that all transfers completed by the provider are bona fide, requested by the household, and made pursuant to program rules" as well as documented in accordance with the *Public Notice*.¹⁴

¹³ *Public Notice* at para. 101.

¹⁴ *Id.* at para. 102.

Reimbursement: INCOMPAS urges the Commission to clarify the funding priority between the ACP and federal and state Lifeline subsidies in order to better align all state requirements with the federal requirements. Some states such as Missouri and Kentucky contradict the priority set by federal funding rules. In this proceeding, the Commission should require that any benefit provided by a state low-income broadband program be applied first before a participating provider calculates the amount to claim from the ACP. This uniformity of treatment will help with the administration of the program by providers that are participating in more than one state but maintain centralized billing systems.

Connected device eligibility mechanism: Finally, INCOMPAS urges the Commission to establish a mechanism that will allow providers to ascertain whether a customer has already received a connected device from another provider. Members report that, in some instances, they have provided a connected device to an EBB subscriber only to later find that the customer is ineligible or has previously received a connected device before transferring to their current provider. In the *Notice*, the Commission seeks comment on the process for resolving disputes involving the connected device reimbursement process.¹⁵ However, INCOMPAS maintains that incorporating a column or mechanism in the National Lifeline Accountability Database for eligible households that have already received a connected device would reduce the number of disputes as well as instances of waste, fraud, and abuse in the program.

III. CONCLUSION

INCOMPAS and its members stand ready to assist the Commission in its implementation of the ACP, and it urges the Commission to consider its comments to promote and enable

¹⁵ See *Public Notice* at para. 66.

competition in the program that will benefit consumers with faster speeds and better customer service, and will achieve more affordable pricing that will benefit low-income consumers.

Respectfully submitted,

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