



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU ANNOUNCES ADDITIONAL PROGRAM INTEGRITY MEASURES TO PROTECT CONSUMER CHOICE IN THE AFFORDABLE CONNECTIVITY PROGRAM AND LIFELINE PROGRAM

WC Docket No. 21-450

In this Public Notice, the Wireline Competition Bureau (Bureau) announces that it is implementing additional measures to strengthen program integrity surrounding the enrollment of households in the Affordable Connectivity Program (ACP) who also qualify for the Lifeline benefit. Consumer choice and consent are fundamental principles for both the Affordable Connectivity Program and the Lifeline program. No provider should undermine those principles or take advantage of consumers. Consistent with the Commission's rules governing the Affordable Connectivity Program, the measures we announce here strengthen program integrity and protect the ability of qualifying households to enroll in both the Affordable Connectivity Program and the Commission's longstanding Lifeline program, and to apply their ACP benefit to their Lifeline service or a different service.

Pursuant to the Infrastructure Investment and Jobs Act, on December 31, 2021, the Commission launched the Affordable Connectivity Program.¹ The Affordable Connectivity Program modified and extended the Emergency Broadband Benefit Program (EBB Program), which had been established in 2021 in response to the COVID-19 pandemic, to a longer-term broadband affordability program.² On May 11, 2021, prior to the launch of the EBB Program, the Enforcement Bureau issued an advisory reminding providers of their obligation to comply with the consumer consent requirements when enrolling consumers into the EBB Program.³ That advisory noted that providers were engaging in practices that may have been deceptive and threatened the integrity of the EBB Program, including

¹ *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453, at 1, para 3 (WCB Nov. 18, 2021) (*Affordable Connectivity Program Public Notice*); *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 14, 2022) (*ACP Order*).

² 47 U.S.C. § 1752. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law and established an Emergency Broadband Connectivity Fund of \$3.2 billion in the United States Treasury to help Americans afford Internet service during the COVID-19 pandemic. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act). The Act directed the Federal Communications Commission (Commission) to use that fund to establish the EBB Program, under which eligible households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers can receive a reimbursement for providing such discounts. *Id.* § 904(b)(1), (4) & (5).

³ See generally *Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Co-Pay for Connected Devices*, Public Notice, 36 FCC Rcd 8324 (EB 2021) (*EBB Program Enforcement Advisory*).

linking EBB program enrollment to implementation of either technical changes necessary to retain the subscriber's existing service or automatically enrolling subscribers that provided information needed for another purpose.⁴ The *EBB Program Enforcement Advisory* made clear that "to avoid misleading consumers, providers must avoid practices or marketing that may confuse consumers about the EBB Program, including but, not limited to... [n]ot 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."⁵

In establishing the Affordable Connectivity Program, the Commission recognized that these prohibited provider practices that occurred in the EBB Program may also threaten the integrity of the Affordable Connectivity Program.⁶ Accordingly, the Commission adopted rules expressly prohibiting provider practices that link consent to enroll in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program, including not clearly distinguishing the process of signing up for ACP-supported services and devices from the process of signing up for, renewing, upgrading, or modifying other services, including Lifeline-supported services; suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services; and tying the submission of customer information provided for some other purpose to enrollment in the Affordable Connectivity Program.⁷ The *ACP Order* also makes clear that, as was the case with the EBB Program, qualifying consumers can participate in both the Affordable Connectivity Program and the Lifeline program, and may apply their ACP benefit to their Lifeline service or to a different service.⁸ The EBB Program rules requiring consumer consent to enroll in the program, to the extent consistent with the Infrastructure Act, govern until the relevant ACP rules concerning consumer consent take effect.⁹

On March 11, 2022, the FCC's Office of Inspector General (OIG) issued an advisory raising concerns about potential waste, fraud, and abuse with respect to ACP enrollments.¹⁰ Specifically, the advisory observes and describes that certain providers participating in both Lifeline and the Affordable Connectivity Program are misleading consumers by requiring consumers to consent to enroll in the Affordable Connectivity Program as a condition of completing their Lifeline application. In addition, the Commission has received consumer complaints that certain providers participating in both the Affordable Connectivity Program and Lifeline are requiring consumers to apply their ACP benefit with that provider in order to enroll in the Lifeline program. The OIG, the Bureau, the Enforcement Bureau, the Office of General Counsel, the Consumer and Governmental Affairs Bureau, and the Universal Service Administrative Company (USAC) are committed to addressing these issues, including by sharing information and program data and taking any additional necessary steps to improve program integrity and protect consumers in the Affordable Connectivity Program. The Bureau is committed to ensuring the integrity of the program and addressing potential abuse using the full range of the Commission's authority and available tools, including audit and investigatory procedures, and in cooperation with the FCC OIG and law enforcement agencies.

⁴ See generally *EBB Program Enforcement Advisory*.

⁵ *Id.* at 8325.

⁶ *ACP Order* at 84-85, para. 178.

⁷ 47 CFR § 54.1810(a)(3); *ACP Order* at 85, para. 178.

⁸ *ACP Order* at 32 and 59, paras. 59 and 121.

⁹ *Emergency Broadband Benefit Program et al.*, Order, DA 21-1654, at 4-5, para. 11 (WCB Dec. 30, 2021) (*Effective Rules Guidance Order*).

¹⁰ See generally *Advisory Regarding Provider Efforts to Deceive Lifeline Consumers to Enroll for Unwanted Government-Subsidized ACP Services*, (FCC OIG March 11, 2022), <https://www.fcc.gov/document/inspector-general-advisory-providers-deceiving-lifeline-consumers> (*OIG Advisory*).

Any providers using the types of improper enrollment tactics identified by the OIG must immediately stop using deceptive language, bring their application processes into compliance, and give consumers a choice as to which program benefit or benefits they wish to apply to their broadband service. As the *ACP Order* makes clear, qualifying households can participate in both the Affordable Connectivity Program and Lifeline, and can apply the ACP benefit to their Lifeline service or to a different service.¹¹ Coercive or deceptive enrollment practices by participating providers may compromise qualifying consumers' ability to choose whether to participate in both Lifeline and the Affordable Connectivity Program, and whether to apply their ACP benefit to their Lifeline service or a different service. The *ACP Order* also makes clear that participating providers are prohibited from linking consent to enroll in one program with the other.¹² Although the effective date of the ACP rules concerning consumer consent is April 15, 2022,¹³ providers are reminded that the EBB Program rules are still in effect until that date and, as was made clear in the *EBB Program Enforcement Advisory*, the practices identified by the OIG and in consumer complaints filed with the FCC are prohibited.¹⁴ Accordingly, the Bureau is taking immediate additional steps to address these issues concerning ACP enrollments of qualifying Lifeline households.

Given the nature of the issues raised in the FCC OIG Advisory and related consumer complaints, the Bureau will refer any potential violations of the Commission's rules to the Enforcement Bureau (with a copy to the Office of General Counsel) for further investigation and appropriate enforcement action. In addition, Commission staff will conduct a comprehensive evaluation of the complaints submitted by consumers to assess the scope of the issue. This evaluation will be essential in determining additional action to take against providers that engage in this misleading enrollment activity. The Bureau will also continue to track and refer to the Enforcement Bureau consumer complaints related to tying Lifeline enrollment to enrollment in the Affordable Connectivity Program. To increase consumer protection and guard against potential waste, fraud, and abuse in the Affordable Connectivity Program, the Bureau also directs USAC to conduct program integrity reviews of the enrollment and onboarding practices of Lifeline providers participating in the Affordable Connectivity Program. The Bureau further directs USAC to issue a communication reminding ACP providers that Commission rules prohibit practices tying consent to enroll in the Affordable Connectivity Program with some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program, and that participating providers should review their enrollment practices in light of this reminder. USAC is also directed to explore and implement additional accountability measures where appropriate. Additionally, the Bureau will coordinate with the Office of Managing Director and Office of General Counsel on recouping any improperly disbursed funds as warranted.

The immediate measures we describe in this Public Notice both strengthen program integrity with respect to ACP enrollments of qualifying Lifeline households and protect the ability of households to choose to participate in the Affordable Connectivity Program and Lifeline and select the participating provider they would like to enroll with for ACP or Lifeline service. These measures are also necessary to protect the integrity of the Affordable Connectivity Program by limiting opportunities for coercive or deceptive consumer practices and abuse.

For further information, please contact Negheen Sanjar of the Wireline Competition Bureau's Telecommunication Access Policy Division at 202-418-7390 or Negheen.Sanjar@fcc.gov.

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¹¹ *ACP Order* at 32 and 59, paras. 59 and 121.

¹² 47 CFR § 54.1810(a)(3); *ACP Order* at 85, para. 178.

¹³ *Wireline Competition Bureau Announces Effective Dates of Affordable Connectivity Program Rules and Comment and Reply Comment Deadlines for Related Further Notice*, Public Notice, DA 22-152 (WCB Feb. 14, 2022).

¹⁴ See generally *EBB Program Enforcement Advisory*.