



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF THE
CHAIRWOMAN

January 7, 2022

The Honorable Roger Wicker
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
512 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Wicker:

Thank you for your letter regarding the Federal Communications Commission's Office of Inspector General (OIG) advisory regarding efforts to identify fraud and abuse in the Emergency Broadband Benefit (EBB) Program. I share your concern that the enrollment practices of unscrupulous agents could undermine efforts to provide support for broadband services to low-income households and believe it is essential to address the issue identified by the FCC OIG, investigate those involved, and act swiftly to prevent any future instances of abuse. Moreover, I appreciate the work of the FCC OIG to identify ways to strengthen agency efforts to improve access to broadband and recognize that this review was an essential part of this program, as contemplated in the Consolidated Appropriations Act, 2021.

The FCC OIG advisory specifically concerns the provision in the Consolidated Appropriations Act, 2021 that makes clear that households with students participating in the National School Lunch Program (NSLP) are qualified for the EBB Program. To participate in the NSLP, students at some schools submit an application that is reviewed by a local school or district official before granting access to the benefits. Many other schools, however, use what is known as the Community Eligible Provision (CEP) option. Implemented pursuant to the Healthy, Hunger-Free Kids Act of 2010, the CEP is another NSLP meal service option in low-income areas that allows the nation's highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students and without collecting household applications. In the order establishing the rules for the EBB Program, the FCC decided that households with students attending CEP schools would be eligible for the EBB Program.

Upon learning about the OIG advisory on Thursday, November 18, 2021, my team quickly took action to assess what measures should be put in place to address the issues described. Though at this point they did not know specifically what would be in the advisory, they understood that it concerned an enrollment shortcut intended for use by families with children in the highest-poverty schools that had been misused by the sales agents of some broadband providers. My first discussion regarding this took place the following day, Friday, November 19, 2021. Though we did not yet have the benefit of details in the OIG advisory prior

to its release, we nonetheless determined that mitigation measures should immediately be put in place. To this end, staff first directed the EBB Program Administrator, the Universal Service Administrative Company (USAC) to immediately modify the EBB Program application to require applicants seeking to qualify based on enrollment at a CEP school to submit additional documentation to demonstrate eligibility. That modification was made over the weekend of November 20-21, 2021.

Next, in a Public Notice released by the Wireline Competition Bureau on Monday, November 22, 2021, the Bureau announced the application change made over the weekend and made clear that EBB Program applicants will be required to identify and provide documentation showing a member of the household attends a CEP school before the household can enroll in the EBB Program. The Bureau explained that the school enrollment documentation must at a minimum include the school name, the name of the student, and information sufficient to demonstrate that the student is enrolled in a CEP school. Examples of documentation sufficient to satisfy this requirement include a letter from the school confirming the student's enrollment at the school, or a report card identifying the student's name and the school name. At this point, having the benefit of more specific information as a result of the public release of the OIG advisory, I along with my office spoke with my colleagues to explain the matter and summarize this step and other elements of the agency's response.

Third, FCC staff directed USAC to start an integrity review of all households enrolled in the EBB program based on CEP status. As a result, on November 26, 2021, USAC began sending letters to households registered based on CEP status directing them to confirm their eligibility by submitting a new EBB Program application. USAC made clear that households that fail to establish continued eligibility for the EBB Program would be de-enrolled from the program pursuant to the Commission's rules. At the same time, USAC also alerted EBB providers serving these households to USAC's integrity review and the requirement that these households confirm their eligibility.

Fourth, FCC staff referred the matter of possible improper enrollments to the agency's Enforcement Bureau for investigation. Thus far, the Enforcement Bureau has identified one broadband provider that may have been abusing the CEP enrollment process in the application system, in the manner outlined by the FCC OIG in its advisory.¹ It is also continuing to evaluate the potential for further investigation of other providers. With respect to the provider identified, the Enforcement Bureau has formally initiated an investigation, which obligates the provider to gather documents and respond to specific questions concerning its enrollment practices. Such submissions may substantiate the Enforcement Bureau's concerns and if so, would provide the basis for the Commission to issue a Notice of Apparent Liability. The Notice of Apparent Liability is the agency's formal charging document, which typically sets forth the facts that lead the Commission to tentatively conclude that the target has violated the statute or agency regulations, and also proposes a fine or other penalty. It is a statutorily required precursor to the

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In addition to the above, I directed the Commission's Office of Managing Director to evaluate existing programmatic audit procedures to ensure proper checks are in place to identify any similar concerns in the future. USAC also has continued to provide guidance to providers in response to these changes to the CEP enrollment procedures, has updated its consumer and provider websites to reflect these changes, and has also held provider training sessions and webinars covering many aspects of the EBB Program, including CEP eligibility, and assistance for providers interacting with USAC systems.

On December 31, 2021, in accordance with Infrastructure Investment and Jobs Act, the EBB Program under the Consolidated Appropriations Act, 2021 ended and enrollments began in the Affordable Connectivity Program (ACP). During the interim period before the FCC adopts new rules, USAC and FCC staff are applying the basic framework of the EBB Program to the ACP. This includes maintaining the required information in the EBB Program application for the ACP, except where the Infrastructure Investment and Jobs Act has changed the eligibility criteria. In practice, this means that the application for ACP includes the qualifying programs for the EBB Program, including the CEP, but removes substantial loss of income, adds eligibility under the Special Supplemental Nutrition Program for Women, Infants and Children, and increases the income threshold to 200 percent of the Federal Poverty Guidelines. Accordingly, today, households seeking to enroll in the Affordable Connectivity Program based on a household member's attendance at CEP school must, consistent with the changes made following the FCC OIG advisory, identify the school and submit school enrollment documentation demonstrating that the student was in fact enrolled in the identified CEP school.

I am also mindful of our responsibility to protect the new ACP against waste, fraud and abuse. By statute, the Commission is required to promulgate specific rules for the ACP sixty days after enactment of the Infrastructure Investment and Jobs Act, or January 14, 2022. The agency's rulemaking for this program began with a Public Notice released on November 14, 2021. Since that time the FCC staff have been working to develop recommendations on a range

of issues related to the new program, and my office has been coordinating with my colleagues about the rulemaking and soliciting their views on the requirements of the new program.

Today, I shared with my colleagues a draft decision establishing final rules for the ACP. This document was also made available for public inspection, in order to facilitate meetings with stakeholders. I fully expect that the rules that are ultimately adopted by the agency for the ACP will include efforts to prevent waste, fraud, and abuse in the program. To this end, my colleagues and I are considering changes to the CEP enrollment process to make permanent the mitigations that were made following the release of the FCC OIG advisory. We also are considering restrictions on commission-based compensation for sales agents responsible for enrolling households in the ACP. I expect that we will determine the need for annual recertification for continued eligibility in the ACP as we did in the Lifeline program, as well as the need to prohibit funding for devices that could pose a national security risk. In addition, my colleagues and I are considering further measures that could be taken against ACP providers that engage in waste, fraud, and abuse, including enforcement actions, expedited removal from the program, and suspension and debarment.

The ACP also will continue to rely on information provided by other federal agencies. The Consolidated Appropriations Act, 2021 specifically required the Commission to rely on the USAC National Verifier system as one of three methods to verify eligibility for the EBB Program, and those methods will continue with the ACP. The USAC National Verifier has connections to state and federal databases for a range of eligibility programs so consumers who participate in those programs do not need to prove additional documentation to demonstrate that they qualify. To this end, the National Verifier has connections to the Centers for Medicare and Medicaid Services and the Department of Housing and Urban Development, allowing automated eligibility verification for recipients of Medicaid and Federal Public Housing Assistance, as well as connections with states and territories that can be used for the Affordable Connectivity Program.

I agree that it is imperative that the agency administer all of its support programs with high levels of integrity and to this end, the FCC staff continue to explore ways to combat waste, fraud, and abuse. To this end, the policies under consideration for the ACP reflect lessons learned from administration of the EBB Program. The agency is also broadly increasing the use of trend analysis in its risk assessment of its support programs, as part of an effort to identify and stop problems before they become more widespread. Finally, the Commission and USAC have implemented the Fraud Risk Management Framework of the Government Accountability Office (GAO) for a number of the agency's support programs and will apply this to the ACP later this month. GAO's Fraud Risk Management Framework encompasses control activities to prevent, detect, and respond to fraud, with an emphasis on prevention. Implementing this framework will help the agency combat fraud and preserve integrity in its essential support programs, including the ACP.

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Jessica Rosenworcel



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January 7, 2022

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

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Jessica Rosenworcel



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January 7, 2022

The Honorable John Thune
Ranking Member
Subcommittee on Communications, Media, and Broadband
Committee on Commerce, Science, and Transportation
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Thune:

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Subcommittee on Communications and Technology
Committee on Energy and Commerce
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The FCC OIG advisory specifically concerns the provision in the Consolidated Appropriations Act, 2021 that makes clear that households with students participating in the National School Lunch Program (NSLP) are qualified for the EBB Program. To participate in the NSLP, students at some schools submit an application that is reviewed by a local school or district official before granting access to the benefits. Many other schools, however, use what is known as the Community Eligible Provision (CEP) option. Implemented pursuant to the Healthy, Hunger-Free Kids Act of 2010, the CEP is another NSLP meal service option in low-income areas that allows the nation's highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students and without collecting household applications. In the order establishing the rules for the EBB Program, the FCC decided that households with students attending CEP schools would be eligible for the EBB Program.

Upon learning about the OIG advisory on Thursday, November 18, 2021, my team quickly took action to assess what measures should be put in place to address the issues described. Though at this point they did not know specifically what would be in the advisory, they understood that it concerned an enrollment shortcut intended for use by families with children in the highest-poverty schools that had been misused by the sales agents of some broadband providers. My first discussion regarding this took place the following day, Friday,

November 19, 2021. Though we did not yet have the benefit of details in the OIG advisory prior to its release, we nonetheless determined that mitigation measures should immediately be put in place. To this end, staff first directed the EBB Program Administrator, the Universal Service Administrative Company (USAC) to immediately modify the EBB Program application to require applicants seeking to qualify based on enrollment at a CEP school to submit additional documentation to demonstrate eligibility. That modification was made over the weekend of November 20-21, 2021.

Next, in a Public Notice released by the Wireline Competition Bureau on Monday, November 22, 2021, the Bureau announced the application change made over the weekend and made clear that EBB Program applicants will be required to identify and provide documentation showing a member of the household attends a CEP school before the household can enroll in the EBB Program. The Bureau explained that the school enrollment documentation must at a minimum include the school name, the name of the student, and information sufficient to demonstrate that the student is enrolled in a CEP school. Examples of documentation sufficient to satisfy this requirement include a letter from the school confirming the student's enrollment at the school, or a report card identifying the student's name and the school name. At this point, having the benefit of more specific information as a result of the public release of the OIG advisory, I along with my office spoke with my colleagues to explain the matter and summarize this step and other elements of the agency's response.

Third, FCC staff directed USAC to start an integrity review of all households enrolled in the EBB program based on CEP status. As a result, on November 26, 2021, USAC began sending letters to households registered based on CEP status directing them to confirm their eligibility by submitting a new EBB Program application. USAC made clear that households that fail to establish continued eligibility for the EBB Program would be de-enrolled from the program pursuant to the Commission's rules. At the same time, USAC also alerted EBB providers serving these households to USAC's integrity review and the requirement that these households confirm their eligibility.

Fourth, FCC staff referred the matter of possible improper enrollments to the agency's Enforcement Bureau for investigation. Thus far, the Enforcement Bureau has identified one broadband provider that may have been abusing the CEP enrollment process in the application system, in the manner outlined by the FCC OIG in its advisory.¹ It is also continuing to evaluate the potential for further investigation of other providers. With respect to the provider identified, the Enforcement Bureau has formally initiated an investigation, which obligates the provider to gather documents and respond to specific questions concerning its enrollment practices. Such submissions may substantiate the Enforcement Bureau's concerns and if so, would provide the basis for the Commission to issue a Notice of Apparent Liability. The Notice of Apparent Liability is the agency's formal charging document, which typically sets forth the facts that lead the Commission to tentatively conclude that the target has violated the statute or agency

¹ In response to your request, FCC staff will provide your staff the name of the investigative target separately and non-publicly because the Enforcement Bureau investigation is still ongoing.

regulations, and also proposes a fine or other penalty. It is a statutorily required precursor to the Commission formally imposing a penalty. If the provider does not or cannot provide persuasive proof rebutting the allegations in the Notice of Apparent Liability, the agency then issues an Order imposing sanctions on the company, including monetary penalties. In the event the Commission determines an improper payment has been made to a provider, it will seek to recover those funds. USAC is the fund administrator that handles recovery of funds pursuant to both the Commission rules and the Debt Collection Improvement Act, and FCC staff work with USAC to ensure any penalty resulting from an investigation includes repayment to the fund. Providers who commit apparent fraud also may be referred to the Department of Justice for criminal prosecution. Referrals for criminal prosecution are typically handled by the FCC OIG. As for continued participation in the program, under current regulations, debarment from funding programs is typically available after an entity has been convicted of fraud involving that funding program, but in the Public Notice seeking comment on rules for the new Affordable Connectivity Program, the agency is exploring additional procedures to remove providers from the new program in the event of non-compliance.

In addition to the above, I directed the Commission's Office of Managing Director to evaluate existing programmatic audit procedures to ensure proper checks are in place to identify any similar concerns in the future. USAC also has continued to provide guidance to providers in response to these changes to the CEP enrollment procedures, has updated its consumer and provider websites to reflect these changes, and has also held provider training sessions and webinars covering many aspects of the EBB Program, including CEP eligibility, and assistance for providers interacting with USAC systems.

On December 31, 2021, in accordance with Infrastructure Investment and Jobs Act, the EBB Program under the Consolidated Appropriations Act, 2021 ended and enrollments began in the Affordable Connectivity Program (ACP). During the interim period before the FCC adopts new rules, USAC and FCC staff are applying the basic framework of the EBB Program to the ACP. This includes maintaining the required information in the EBB Program application for the ACP, except where the Infrastructure Investment and Jobs Act has changed the eligibility criteria. In practice, this means that the application for ACP includes the qualifying programs for the EBB Program, including the CEP, but removes substantial loss of income, adds eligibility under the Special Supplemental Nutrition Program for Women, Infants and Children, and increases the income threshold to 200 percent of the Federal Poverty Guidelines. Accordingly, today, households seeking to enroll in the Affordable Connectivity Program based on a household member's attendance at CEP school must, consistent with the changes made following the FCC OIG advisory, identify the school and submit school enrollment documentation demonstrating that the student was in fact enrolled in the identified CEP school.

I am also mindful of our responsibility to protect the new ACP against waste, fraud and abuse. By statute, the Commission is required to promulgate specific rules for the ACP sixty days after enactment of the Infrastructure Investment and Jobs Act, or January 14, 2022. The agency's rulemaking for this program began with a Public Notice released on November 14, 2021. Since that time the FCC staff have been working to develop recommendations on a range

of issues related to the new program, and my office has been coordinating with my colleagues about the rulemaking and soliciting their views on the requirements of the new program.

Today, I shared with my colleagues a draft decision establishing final rules for the ACP. This document was also made available for public inspection, in order to facilitate meetings with stakeholders. I fully expect that the rules that are ultimately adopted by the agency for the ACP will include efforts to prevent waste, fraud, and abuse in the program. To this end, my colleagues and I are considering changes to the CEP enrollment process to make permanent the mitigations that were made following the release of the FCC OIG advisory. We also are considering restrictions on commission-based compensation for sales agents responsible for enrolling households in the ACP. I expect that we will determine the need for annual re-certification for continued eligibility in the ACP as we did in the Lifeline program, as well as the need to prohibit funding for devices that could pose a national security risk. In addition, my colleagues and I are considering further measures that could be taken against ACP providers that engage in waste, fraud, and abuse, including enforcement actions, expedited removal from the program, and suspension and debarment.

The ACP also will continue to rely on information provided by other federal agencies. The Consolidated Appropriations Act, 2021 specifically required the Commission to rely on the USAC National Verifier system as one of three methods to verify eligibility for the EBB Program, and those methods will continue with the ACP. The USAC National Verifier has connections to state and federal databases for a range of eligibility programs so consumers who participate in those programs do not need to prove additional documentation to demonstrate that they qualify. To this end, the National Verifier has connections to the Centers for Medicare and Medicaid Services and the Department of Housing and Urban Development, allowing automated eligibility verification for recipients of Medicaid and Federal Public Housing Assistance, as well as connections with states and territories that can be used for the Affordable Connectivity Program.

I agree that it is imperative that the agency administer all of its support programs with high levels of integrity and to this end, the FCC staff continue to explore ways to combat waste, fraud, and abuse. To this end, the policies under consideration for the ACP reflect lessons learned from administration of the EBB Program. The agency is also broadly increasing the use of trend analysis in its risk assessment of its support programs, as part of an effort to identify and stop problems before they become more widespread. Finally, the Commission and USAC have implemented the Fraud Risk Management Framework of the Government Accountability Office (GAO) for a number of the agency's support programs and will apply this to the ACP later this month. GAO's Fraud Risk Management Framework encompasses control activities to prevent, detect, and respond to fraud, with an emphasis on prevention. Implementing this framework will help the agency combat fraud and preserve integrity in its essential support programs, including the ACP.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Rosenworcel", with a long horizontal flourish extending to the right.

Jessica Rosenworcel