

Congress of the United States

Washington, DC 20510

December 15, 2023

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The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

Dear Chairwoman Rosenworcel,

We write asking you to clarify your recent congressional testimony regarding the Federal Communications Commission’s (FCC’s) Affordable Connectivity Program (ACP). At a hearing before the House Energy and Commerce Committee on November 30, 2023, you asserted—without evidence and contrary to the FCC’s own data—that “25 million households” would be “unplug[ged]...from the internet” if Congress does not provide new funding for the ACP.¹ This is not true. As Congress considers the future of taxpayer broadband subsidies, we ask you to correct the hearing record and make public accurate information about the ACP.

As you are aware, the Consolidated Appropriations Act of 2021 established the temporary \$3.2 billion Emergency Broadband Benefit (EBB) program to help consumers pay for their internet service during the COVID-19 pandemic when government lockdowns were common. Congress subsequently allocated an additional \$14.2 billion to create the ACP as the EBB’s successor program in the Infrastructure Investment and Jobs Act.²

As lawmakers with oversight responsibility over the ACP, we have raised concerns, shared by the FCC Inspector General,³ regarding the program’s effectiveness in connecting non-subscribers to the internet.⁴ While you have repeatedly claimed that the ACP is necessary for connecting participating households to the internet,⁵ it appears the vast majority of tax dollars have gone to households that already had broadband prior to the subsidy. According to your testimony, the Universal Service Administrative Company (USAC) found that only “20 or 22 percent” of ACP recipients lacked broadband prior to the ACP.⁶ Previous FCC surveys have found the number of

¹ *Oversight of President Biden’s Broadband Takeover: Hearing Before the Subcomm. on Communications and Technology, H. Comm. on Energy and Commerce*, 118th Cong. (November 30, 2023) (response by Chairwoman Rosenworcel to Rep. Clarke) (“*FCC Oversight Hearing*”), <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-hearing-oversight-of-president-biden-s-broadband-takeover>.

² Infrastructure Investment and Jobs Act, Pub. Law. No. 117-58 § 60502 (2021).

³ Response from Acting FCC Inspector General Sharon Diskin to Senator Cruz and Chairwoman McMorris Rodgers (May 30, 2023), <https://s3.amazonaws.com/warren-news.com/pdf/880931>.

⁴ Letter from Senators Cruz and Thune and Reps. McMorris Rodgers and Latta to Acting FCC Inspector General Sharon Diskin (May 8, 2023), <https://s3.amazonaws.com/warren-news.com/pdf/877918>.

⁵ Press Release, FCC, *Over 10 Million Households Enroll in Affordable Connectivity Program* (Feb. 14, 2022), <http://docs.fcc.gov/public/attachments/DOC-380259A1.pdf>; Press Release, FCC, *More than 20 Million Households Enroll in Nation’s Largest Broadband Affordability Program* (Aug. 14, 2023), <https://docs.fcc.gov/public/attachments/DOC-395990A1.pdf>.

⁶ *FCC Oversight Hearing* (response by Chairwoman Rosenworcel to Rep. Joyce), *supra* note 1.

non-subscribers served by the program to be even lower at 16 percent.⁷ The program's record of targeting taxpayer subsidies to consumers who already had broadband is further apparent in the FCC's enrollment numbers: The number of households in the ACP—approximately 22 million⁸—far exceeds the 16 million unconnected households according to 2021 Census data.⁹

When questioned about these wasteful discrepancies, you dismissed these concerns, claiming that Congress did not require broadband providers to ask subscribers whether they paid for broadband prior to the ACP program.¹⁰ You claimed, therefore, that any data on the ratio of new subscribers to subscribers who previously paid for broadband prior to ACP was merely “speculative.”¹¹

If anything, it is much more speculative to claim that 25 million households will lose broadband if the ACP does not get new funding. If you are going to dismiss concerns over the ACP's inefficiency as unproven (even where there is ample data underlying this fact), you should hold yourself to the same standard and avoid sweeping claims of effectiveness with no basis in data.

Further, any lingering ambiguity is exacerbated by the FCC's own failure to publish data that it committed to make publicly available. For example, the FCC's order implementing the ACP requires USAC to report the number of households enrolled through each eligibility threshold, including through a participating provider's existing low-income broadband program.¹² To date, this data has not been included in public reporting. The ACP order also required the FCC to collect data on broadband adoption by first-time subscribers.¹³ Neither this data nor information on the FCC's progress in reaching first-time subscribers has yet been made public. As part of correcting the record, all of this information should be made public as soon as possible.

The Biden administration's reckless spending spree has left America's current fiscal situation in a state of crisis, with gross debt at nearly \$34 trillion. It is incumbent on lawmakers to protect taxpayers and make funding decisions based on clear evidence. Unfortunately, your testimony pushes “facts” about the ACP that are deeply misleading and have the potential to exacerbate the fiscal crisis without producing meaningful benefits to the American consumer. We therefore ask you to supplement your testimony from November 30, 2023, with the correct information about the number of Americans that will “lose” broadband if the ACP does not receive additional funds, and correct the hearing record accordingly by January 5, 2024.

⁷ U.S. Government Accountability Office, *FCC Could Improve Performance Goals and Measures, Consumer Outreach, and Fraud Risk Management*, GAO-23-105399 (Jan. 2023), <https://www.gao.gov/assets/gao-23-105399.pdf>.

⁸ Universal Service Administrative Company, ACP Enrollment and Claims Tracker, <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Dec. 14, 2023).

⁹ According to 2021 census data, of 124,010,992 total households in the U.S., 107,890,425 households reported having a broadband subscription. See U.S. Census Bureau, 2021 American Community Survey 5-year estimates, Selected Social Characteristics, <https://data.census.gov/table/ACSDP5Y2021.DP02> (last visited Dec. 14, 2023).

¹⁰ *FCC Oversight Hearing* (response by Chairwoman Rosenworcel to Rep. Joyce), *supra* note 1.

¹¹ *Id.*

¹² *Affordable Connectivity Program, Emergency Broadband Benefit Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, at ¶ 44 (rel. Jan. 14, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-2A1.pdf>.

¹³ *Id.* at ¶¶ 210-13.

Additionally, we request that you provide the following information by January 5, 2024.

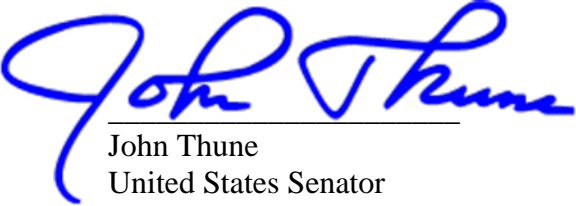
1. A description of efforts by the FCC to prepare for a potential lapse in ACP funding, including the agency's communications with participating providers regarding their plans to notify consumers;
2. Whether the FCC has continued to support the expansion of ACP enrollment, including by encouraging providers to expand enrollment, since August 2023;
3. A list of efforts by the FCC to identify low-income households that do not already subscribe to broadband service;
4. Why the FCC has not yet published data on the number of households enrolled through a provider's existing low-income program, as required by the ACP implementation order, and when it plans to do so;
5. Whether the FCC has collected and analyzed information about low-income households that currently lack broadband subscriptions to determine why those households do not purchase broadband;
6. Data that the FCC is collecting to measure progress towards achieving the goal of connecting households that were previously not subscribed to broadband, and how the FCC is using that data to measure progress towards that goal;
7. A list of efforts by the FCC to target ACP funds to households that previously lacked broadband subscriptions, rather than those that already had broadband, amid a potential lapse in funding;
8. A description of how the FCC has prioritized the ACP Outreach Grant Program applications that target unserved low-income households, as required by the ACP Outreach Grant Program implementation order;¹⁴
9. A list of efforts by the FCC to measure the performance of ACP with respect to broadband adoption, as urged by the 2021 Grant Thornton Lifeline Report,¹⁵ and a description of the extent to which such efforts distinguish the respective effects of ACP and Lifeline; and
10. Enumeration of all expenses covered by the two percent of total ACP funding that the FCC reserved for administration costs.

¹⁴ *Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450 at ¶ 68 (rel. Aug. 8, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-64A1.pdf>.

¹⁵ See Grant Thornton Public Sector, LLC, Universal Service Administrative Co. Lifeline Program 2020 Evaluation (Feb. 5, 2021), <https://www.neca.org/docs/default-source/wwpdf/public/7121usac.pdf>.

Thank you for your attention to this matter.

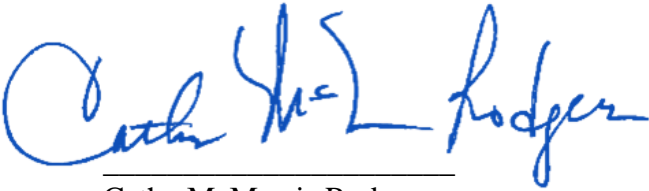
Sincerely,




John Thune
United States Senator



Ted Cruz
United States Senator



Cathy McMorris Rodgers
Member of Congress



Robert E. Latta
Member of Congress