

January 12, 2022

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: WC Docket No. 21-450, *Affordable Connectivity Program*

Dear Ms. Dortch:

On Tuesday, January 11, 2022, I spoke by telephone with Trent Harkrader, Acting Special Advisor to Chairwoman Rosenworcel and Deputy Bureau Chief, Wireline Competition Bureau, about the recently released draft Report and Order and Further Notice of Proposed Rulemaking¹ in the above-captioned Affordable Connectivity Program (“ACP”) docket. This notice of *ex parte* communication is timely filed pursuant to section 1.1200(a), as modified by the public notice released on January 6, 2022, for presentations made in this proceeding.²

During the call, I discussed the relationship between the statutory provisions that permit participating providers to terminate service after 90 days of non-payment but also prevent those providers from refusing to enroll an eligible household based on past or present arrearages with any provider. I focused in particular on Free Press’s agreement with the Commission’s properly narrow interpretation that these requirements “mean that although a provider may terminate a household’s broadband service after 90 days of non-payment, the provider cannot deny a household’s re-enrollment based on past or present arrearages”³ and the *Draft Report and Order*’s further clarification that “the termination for non-payment is limited to debts associated with any out-of-pocket expenses for the ACP-supported service.”⁴

As we previously explained in this proceeding, the Commission is correct to adopt a narrow reading of the termination for non-payment provision in this context.⁵ Any interpretation to the contrary would contravene the statutory provision preserving eligibility for applicants “regardless of whether any member of the household has any past or present arrearages with a

¹ See *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 21-450, FCC-CIRC22-450-010722 (rel. Jan. 7, 2022) (“*Draft Report and Order*”).

² See *Wireline Competition Bureau Announces Modifications to Ex Parte Rules in Affordable Connectivity Fund Proceeding*, WC Docket Nos. 20-445 & 21-450, Public Notice, DA 22-16, at 1 (rel. Jan. 6, 2022) (“Summaries of any oral *ex parte* presentations made on January 10-11, 2022, must be filed no later than 12:00 p.m. EST on January 12, 2022.”).

³ *Draft Report and Order* ¶ 142.

⁴ *Id.* ¶ 143.

⁵ See Reply Comments of Free Press, WC Docket No. 21-450, at 11 (filed Dec. 28, 2021) (“Free Press Reply Comments”).

broadband provider.”⁶ The *Draft Report and Order* rightly proposed mitigation efforts, such as moving a non-paying ACP recipient – with that customer’s consent – to a lower-priced tier for which there is no out-of-pocket payment because the ACP support fully covers the provider’s charge for the service.⁷

Taken together, these proposed rules faithfully implement the statute’s various mandates. The *Draft Report and Order* correctly prevents the non-payment provision from becoming a workaround to the statute’s clear preservation of eligibility even for recipients who are unable to pay any out-of-pocket expenses for their ACP-supported service for more than 90 days.⁸

Respectfully submitted,

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cc: Trent Harkrader
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⁶ See Consolidated Appropriations Act, Pub. L. No. 116-260, div. N, tit. IX, § 904(a)(6).

⁷ *Draft Report and Order* ¶ 144 (“[P]roviders may transfer a household to a service plan that is fully paid for by the affordable connectivity benefit once the consumer enters a delinquent status after the bill due date to mitigate the non-payment amount. However, a provider may only do so with the household’s consent to switch to the lower-priced service plan.”).

⁸ See Free Press Reply Comments at 11 (“[A]n otherwise eligible recipient whose service has been terminated should remain fully eligible for ACP-supported service from another participating provider in all instances – and even from the same participating provider with whom the present arrearage accrued when the ACP support payment covers the full cost of another, lower-priced offer from that provider.”); *see also id.* n.25 (“The Commission should not permit such service changes or downgrades without consent of the ACP recipient; but it should require participating providers to re-enroll eligible households who opt into an offering fully paid for by the ACP benefit even if that household has present arrearages with any broadband provider.”) (emphasis added).