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VIA ECFS

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

Re: *Ex Parte* Presentation of ACA Connects—America's Communications Association; *Emergency Broadband Benefit Program*, WC Docket No. 20-445

Dear Ms. Dortch:

On September 23, 2021, Terry Dickerhoof of Armstrong, Christopher Lord of Mediacom, Joel Tyus and Michelle Coffman of WOW! (collectively, "Member Company Representatives"), and Ross Lieberman and the undersigned of ACA Connects—America's Communications Association ("ACA Connects") met by videoconference with the Wireline Competition Bureau ("Bureau") staff copied on this letter. Armstrong, Mediacom and WOW! are ACA Connects member companies and participants in the Emergency Broadband Benefit ("EBB") program. The purpose of the meeting was to alert the Commission to potential misconduct among some EBB providers in performing benefit transfers that is creating confusion and frustration for those households that are caught in the middle.

Benefit transfers are an important component of the EBB program that, when implemented properly, facilitate consumer choice. The Commission's rules appropriately allow households to switch EBB providers at any time by signing up for the program with another provider. Conversely, a provider may not enroll a household that is already enrolled with another provider if the household is "not seeking to transfer" its benefit.[1]

Notwithstanding these requirements, ACA Connects members have found that other participating providers are performing a large and growing number of benefit transfers without the household's apparent knowledge or intent. The Member Company Representatives explained that, when they learn from the National Lifeline Accountability Database ("NLAD") that an enrolled household has "transferred out," it is their common practice to contact the

[1] *See* 47 CFR § 54.1606(d)(2). Participating providers are also required to keep records documenting their compliance with EBB program requirements. *See* 47 CFR § 54.1611.

household to confirm its intentions. In virtually all such cases their companies have witnessed so far, the household has been surprised to learn that a benefit transfer has occurred and that, as a result, the household's up-to-$50 benefit would no longer be applied to the service they are receiving from the ACA Connects member company. Many of these households commonly assume the transfer occurred as a result of being contacted by another provider that promised an attractive deal—including, in some cases, a free phone[2]—but did not make clear that taking the deal, which the household did, would require the household to transfer its EBB benefit to that provider.

Member Company Representatives explained that these benefit transfers tend to ramp up in the concluding days of each calendar month. The best explanation for this trend is that the providers in question are attempting to game the reimbursement process by adding households shortly before the "snapshot date." When these providers are successful, they receive the full benefit for that month, while the ACA Connects member or other provider that had been serving the household for virtually the entire month loses any right to claim any reimbursement. Moreover, even if the transfer took place without the household's knowledge and the household seeks to reverse the transfer, there is often not enough time to complete this step before the snapshot date and there exists no mechanism within the rules for reimbursements to be adjusted after the fact.

The Member Company Representatives further explained that it is common for households, when informed by the ACA Connects member that their benefit has been transferred to another provider, to indicate at such that time that they wish to re-enroll the ACA Connects member company—a request the member company promptly obliges. But when it performs the requested transfer, the other provider often reacts by transferring back the household immediately. The ACA Connects member then follows up and obtains consent to re-enroll the household, but as soon it completes that step, the other provider often immediately transfers back the household once again. There can be multiple rounds of these back-and-forth transfers for individual households; in one case, an ACA Connects member company was required to contact a household to obtain its consent for a benefit transfer *sixteen times* in order to fulfill the household's preference that it continue receiving the benefit from that company. This repetitive process is frustrating for consumers and administratively burdensome for ACA Connects members. The sheer speed and frequency with which providers on the other side are performing benefit transfers leads ACA Connects members to suspect that they are doing so without obtaining households' consent.

ACA Connects thus urges the Commission to investigate this matter thoroughly and take enforcement action as it deems appropriate. As the Member Company Representatives

[2] Because a participating provider may not claim support for a "connected device" unless the household receiving it makes a co-pay, and mobile phones do not qualify as connected devices in the first place, ACA Connects members presume that the free devices being offered by these providers are unsubsidized by the program.

explained during the meeting, the Commission need not take their word that a handful of providers are causing excessive "back-and-forth" benefit transfers: there will be records of these transfers, including the names of the providers triggering them, in NLAD.

ACA Connects also encourages the Commission to consider promptly issuing an enforcement advisory that clarifies that a participating provider may not complete a benefit transfer without the household's informed consent, which must include notifying the household that it will lose its current benefit as a result of the transfer. The Commission should further clarify that providers' obligations to obtain informed consent from households when performing benefit transfers are among the "Commission requirements" for which adequate records must be kept "to document compliance."[3]

In addition, the Commission should consider the following EBB program modifications to make benefit transfers run more smoothly:

- First, the Commission should promote a more seamless "handoff" from one provider to another when a benefit transfer occurs. For instance, the Commission could direct the Universal Service Administrative Company ("USAC") to augment the notifications that are sent to "transfer out" providers through NLAD to include the identity of the "transfer in" provider along with contact information for that provider. Alternatively, each transfer could automatically generate an email sent to both providers that includes this information. Such measures would enable providers on both sides of a transfer to work directly to resolve any problems, rather than rely on the household as an intermediary.

- Second, the Commission should reconsider its policy of denying reimbursements for months of service when a customer de-enrolls before end of the month. NLAD could be programmed to calculate partial reimbursements automatically, based on the percentage of days in a given month that a customer received service. This would be a more equitable approach for operators that provide service to a customer from the beginning of the month but then find themselves unable to reclaim any benefit for the provision of such service to the household because the household transferred away before the month's end. As noted above, benefit transfers by bad actors tend to ramp up in the concluding days of a calendar month, which is undoubtedly a consequence of the Commission's reimbursement policy. Revising the current policy to permit partial reimbursements would also reduce such gamesmanship.

Finally, the Member Company Representatives suggested during the meeting a technical fix that would improve the EBB program enrollment process. As the Member Company

[3] *See* 47 CFR 54.1611 ("Participating providers must maintain records to document compliance with all Commission requirements governing the Emergency Broadband Benefit Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator upon request.").

Representatives noted, a household's participation in Lifeline can trigger a "duplicate address" error message when attempting to enroll the household in the EBB program. In such cases, the ACA Connects member enrolls the customer by completing a "transfer," which permits the household to be enrolled in the EBB program without disrupting its Lifeline enrollment. Though this workaround has served its purpose so far, it could lead to unintended benefit transfers in cases of "true positives," i.e., where a "duplicate address" message reflects a household's participation in the EBB program with another provider. The Commission should direct USAC to take necessary steps to correct this deficiency in NLAD, which will make it easier for providers to determine in particular cases whether enrolling a customer in the EBB program would require an actual benefit transfer from another provider.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,

Brian Hurley

Cc: Rashann Duvall
Micah Caldwell
Jessica Campbell
Shelley Ross
Negheen Sanjar
Eric Wu