

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Affordable Connectivity Program)	WC Docket No. 21-450
)	

**COMMENTS OF THE MULTICULTURAL
MEDIA, TELECOM AND INTERNET COUNCIL**

Robert E. Branson
President and CEO
Dr. Fallon Wilson
Vice President for Policy
Danielle Davis
Policy Counsel
MULTICULTURAL MEDIA, TELECOM AND
INTERNET COUNCIL
1250 Connecticut Avenue NW
7th Floor
Washington, DC 20036
(202) 261-6543
rbranson@mmtconline.org

December 8, 2021

TABLE OF CONTENTS

<u>I.</u>	<u>INTRODUCTION AND SUMMARY</u>	3
<u>II.</u>	<u>ACCESS TO BROADBAND AND SUPPORT FOR AFFORDABLE SERVICES ARE CRITICAL TO BRIDGING THE DIGITAL DIVIDE</u>	5
<u>III.</u>	<u>EBB PROGRAM BENEFITS HAVE BEEN A CRITICAL RESOURCE FOR LOW-INCOME HOUSEHOLDS</u>	8
<u>IV.</u>	<u>ACP SUPPORT SHOULD BE MAXIMIZED TO HELP MEET CONNECTIVITY NEEDS</u>	10
<u>V.</u>	<u>CONSUMERS SHOULD BE PERMITTED TO OPT-OUT OF THE ACP RATHER THAN BE REQUIRED TO AFFIRMATIVELY OPT-IN</u>	15
<u>VI.</u>	<u>PROMOTING AWARENESS ABOUT PARTICIPATION IN THE AFFORDABLE CONNECTIVITY PROGRAM</u>	17
<u>VII.</u>	<u>CONCLUSION</u>	20

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Affordable Connectivity Program)	WC Docket No. 21-450
)	

**COMMENTS OF THE MULTICULTURAL
MEDIA, TELECOM AND INTERNET COUNCIL**

The Multicultural Media, Telecom and Internet Council (“MMTC”) respectfully submits these comments in response to the *Public Notice* released by the Wireline Competition Bureau (“Bureau”) in the above-referenced proceeding on the requirements for the Affordable Connectivity Program (“ACP”). The ACP was established by the Infrastructure and Investment Jobs Act (the “Infrastructure Act”) and Congress set forth a timeline for its rapid implementation.^{1/}

Congress has correctly recognized – first through the Emergency Broadband Benefit (“EBB”) Program and now through the ACP – that affordable access to broadband connectivity, especially for low-income households and communities of color, is an essential requirement of daily life. However, the demanding administrative hurdles and extreme timelines imposed by Congress on the Commission and the Universal Service Administrative Company (“USAC”) to implement the ACP threaten to undermine its success. If the Commission and USAC fail to properly transition households currently enrolled in the EBB Program to the ACP, millions of disadvantaged families will suffer disproportionately and be prevented from engaging in the critical social, economic, and civic activities that have moved online. The Commission must

^{1/} See *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, Public Notice, DA 21-1453 (rel. Nov. 18, 2021) (“*Public Notice*”).

therefore interpret the Infrastructure Act to ensure that the transition to the ACP is smooth and that as many households as possible can continue to receive the maximum benefits allowable for the longest period permissible.

I. INTRODUCTION AND SUMMARY

MMTC is a national nonprofit and non-partisan organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadband industries. MMTC’s vision is a fully connected, educated, healthy, and empowered society in which all communities thrive. That is why MMTC was pleased that Congress established the \$3.2 billion Emergency Broadband Connectivity Fund in December 2020 and directed the Commission to use that fund to establish the EBB Program to provide eligible low-income households with discounted broadband services and certain connected devices during the COVID-19 pandemic.^{2/} MMTC supported the Commission’s efforts to implement that program and maximize its value to mitigate the harmful impacts of COVID-19 on broadband access and digital equity for low-income households the enrollment campaigns by submitting public comments, participating in the FCC’s Roundtable on the Emergency Broadband Benefit, and launching Black Churches 4 Broadband.^{3/}

Congress recently recognized that the dual needs of consumers – for connectivity *and* assistance to obtain that connectivity – are not short-term or restricted to the current pandemic by passing the Infrastructure Act.^{4/} The Infrastructure Act, which was signed by President Biden on

^{2/} See *Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612, ¶ 2 (2021) (“*EBB Program Order*”).

^{3/} See Comments of the Multicultural Media, Telecom, and Internet Council and National Urban League, WC Docket No. 20-445 (filed Jan. 25, 2021) (“MMTC NUL Joint Comments”).

^{4/} See Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), *available at* <https://www.congress.gov/117/bills/hr3684/BILLS-117hr3684enr.pdf> (“Infrastructure Act”).

November 15, 2021, transitions the EBB Program to the longer-term ACP and appropriates an additional \$14.2 billion to the re-designated Affordable Connectivity Fund. FCC Chairwoman Rosenworcel has likewise stated that she is focused on bridging the digital divide, including by eliminating the homework gap, and expressed support for the Infrastructure Act.^{5/} Indeed, she hailed the Infrastructure Act as “our best shot” at closing the digital divide for this generation.^{6/}

Consistent with Congressional intent and the Chairwoman’s stated goals, the Commission should interpret and implement the Infrastructure Act broadly to ensure that underserved communities, especially low-income families and communities of color, continue to receive the maximum benefits permitted by law for as long as possible. To accomplish that, the Commission should maintain the up-to-\$50 per month support level for those enrolled in the EBB Program prior to enactment of the Infrastructure Act, and who remain qualified after January 1, 2022, at least until EBB Program funding is exhausted.

The Commission should also permit those households that were participating in the EBB Program after enactment, but prior to the transition deadline of December 31, 2021, to continue to receive the current discount of up to \$50 per month on their broadband services until March 1, 2022. Although the bill text of the Infrastructure Act removed a reference to “associated equipment”, we strongly believe that costs for such equipment should continue to be eligible under the ACP. Households that receive a subsidy towards their broadband service will not be

^{5/} See, e.g., Marguerite Reardon, *FCC is Laser-Focused on Erasing the Digital Divide and Crushing Robocalls*, CNET (Sept. 30, 2021, 9:57 AM), <https://www.cnet.com/home/internet/fcc-is-laser-focused-on-erasing-the-digital-divide-and-crushing-robocalls/>; Jessica Rosenworcel, Acting Chairwoman, *Addressing the Homework Gap*, FCC (Feb. 1, 2021), <https://www.fcc.gov/news-events/notes/2021/02/01/addressing-homework-gap>.

^{6/} See *In Commerce Hearing, Tester Secures FCC’s Commitment to Rapid Implementation of Broadband Expansion in Infrastructure Bill*, JON TESTER (Nov. 17, 2021), https://www.testersenate.gov/?p=press_release&id=8731.

able to take advantage of this subsidy if they do not have the necessary equipment to access broadband. Maintaining associated equipment within the ACP program will enable the program to fully carry out its mission of making Internet connectivity affordable and accessible.

Finally, the Commission should use a participatory grantmaking lens for promoting awareness and enrollment into the ACP.

II. ACCESS TO BROADBAND AND SUPPORT FOR AFFORDABLE SERVICES ARE CRITICAL TO BRIDGING THE DIGITAL DIVIDE

As MMTC previously pointed out, connectivity is the cornerstone of full participation in American society.^{7/} The past 20 months have made that abundantly clear. Not only have Americans been forced to rely increasingly on connectivity to work, receive healthcare, and learn, but their daily lives, including the ability to see loved ones, have also shifted online because of the pandemic.^{8/} Recent studies have found that broadband use increased 30 percent in some areas and surged up to 60 percent in others during the pandemic.^{9/} In addition, 90 percent of Americans have indicated that internet access has been essential or important to them during this time.^{10/}

The pressures of the pandemic have not subsided and will likely continue for the foreseeable future. COVID-19 and its variants – including both Delta and now Omicron –

^{7/} See MMTC NUL Joint Comments at 3-5.

^{8/} See, e.g., *2020 State of Telemedicine Report*, DOXIMITY (Sept. 2020), <https://c8y.doxcdn.com/image/upload/Press%20Blog/Research%20Reports/2020-state-telemedicine-report.pdf>; Sharon Lurye, *Some Districts Plan for New Full-Time Virtual Schools to Outlast the Coronavirus Pandemic*, THE WASH. POST (Nov. 8, 2021), <https://www.washingtonpost.com/education/2021/11/08/virtual-schools-new-equity/>.

^{9/} See Stephen Shankland, *Broadband Use Surged More Than 30% During Pandemic, Industry Group Says*, CNET (Apr. 7, 2021), <https://www.cnet.com/tech/services-and-software/broadband-use-surged-more-than-30-during-pandemic-industry-group-says/>.

^{10/} Colleen McClain, *et al.*, *The Internet and the Pandemic*, PEW RESEARCH CENTER (Sept. 1, 2021), <https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/>.

continue to spread across the U.S. and threaten the health of the American public.^{11/} And with the upcoming holidays and colder weather approaching, the Biden Administration is preparing for an unprecedented “twindemic” of COVID-19 cases along with the seasonal flu.^{12/} It has expedited approval of booster shots and pressed for vaccine requirements in light of the expected uptick, but, as others observe, pandemics do not die – COVID-19 will likely settle into an endemic disease, and we will all emerge into a “post-pandemic normal.”^{13/} That means consumers, especially lower-wage workers and people of color, may continue to suffer throughout this winter if they have insufficient access to affordable broadband services.

But even if variants wane and the pandemic subsides, consumers’ reliance on connectivity will not. Press reports and consumer surveys confirm that digital connections will remain important for virtual activities, such as remote working, telemedicine, and distance learning, as well as for many other applications.^{14/} In a recent survey, 45 percent of respondents indicated that they would continue to attend virtual activities, such as medical appointments, and

^{11/} See Andrew Jacobs, *Omicron: What Is Known – and Still Unknown*, THE NEW YORK TIMES (Nov. 30, 2021), <https://www.nytimes.com/article/omicron-coronavirus-variant.html>.

^{12/} See, e.g., *Experts Warn of Possible “Twindemic” of COVID-19 and Flu This Season*, CBS NEWS (Oct. 11, 2021), <https://www.cbsnews.com/news/covid-19-flu-season-winter-twindemic/>; *“Twindemic” Threat: Ominous Flu Season Paired with COVID – What You Need to Know About Vaccination*, SCITECHDAILY (Oct. 10, 2021), <https://scitechdaily.com/twindemic-threat-ominous-flu-season-paired-with-covid-what-you-need-to-know-about-vaccination/>.

^{13/} See, e.g., Edward Carr, *COVID-19 is Likely to Fade Away in 2022*, THE ECONOMIST (Nov. 8, 2021), <https://www.economist.com/the-world-ahead/2021/11/08/covid-19-is-likely-to-fade-away-in-2022>.

^{14/} See, e.g., Luz Lazo, *More D.C. Area Employers are Coming to Terms with Telework Flexibility and Hybrid Schedules, Survey Says*, THE WASHINGTON POST (Oct. 25, 2021, 12:01 AM), <https://www.washingtonpost.com/transportation/2021/10/25/downtown-dc-economy-covid/> (“[T]he longer the pandemic continues, the more likely that work-from-home and hybrid schedules are going to just be an entrenched business norm.”); News Release, *New Survey Reveals Appeal of Telehealth Services; 63% Plan to Increase Use Post-Pandemic*, BUSINESS WIRE (Oct. 13, 2021, 9:00 AM), <https://www.businesswire.com/news/home/20211013005160/en/New-Survey-Reveals-Appeal-of-Telehealth-Services-63-Plan-to-Increase-Use-Post-Pandemic> (“[Telehealth] is quickly gaining traction and has staying power. . . . [M]ost respondents (63%) to Applause’s survey stated they plan to use telehealth more than they did prior to the pandemic.”).

approximately 60 percent of respondents indicated that they would continue to use the internet for grocery shopping or to participate in a virtual fitness class.^{15/} Even pre-pandemic, the nation increasingly relied on connectivity. As CTIA has observed, Americans have driven a 108-times increase in mobile data traffic over the past decade,^{16/} and mobile wireless data traffic topped 42 trillion MBs in 2021 alone – a 207 percent increase since 2016.^{17/}

It is therefore unquestionable that access to broadband internet services is vital and that closing the digital divide is critical. The Commission’s recent actions related to the Rural Digital Opportunity Fund and 5G Fund further demonstrate the importance of ubiquitous broadband access across the nation.^{18/} Communities of color are especially in need of robust connectivity. According to a recent Pew Research Center (“Pew”) study, more than one-third of Black and Hispanic school-aged children suffer from a homework gap.^{19/} Further, prior to the pandemic,

^{15/} See Rebecca Ruiz, *How a Year of Living Online Has Changed Us*, MASHABLE (Mar. 11, 2021), <https://mashable.com/article/covid-19-pandemic-internet-use>.

^{16/} See CTIA, *2021 Annual Survey Highlights*, at 8 (July 27, 2021) (“CTIA 2021 Annual Survey”), <https://api.ctia.org/wp-content/uploads/2021/07/2021-Annual-Survey-Highlights.pdf>.

^{17/} See CTIA 2021 Annual Survey at 8.

^{18/} See *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, ¶ 2 (2020) (“The Rural Digital Opportunity Fund represents the Commission’s single biggest step to close the digital divide by providing up to \$20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks.”); *Establishing a 5G Fund for Rural America*, Report and Order, 35 FCC Rcd 12174, ¶ 4 (2020) (“The 5G Fund for Rural America will use multi-round reverse auctions to distribute up to \$9 billion, in two phases, bringing voice and 5G broadband service to those rural areas of our country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks.”).

^{19/} See Brooke Auxier and Monica Anderson, *As Schools Close Due to the Coronavirus, Some U.S. Students Face a Digital “Homework Gap”*, PEW RESEARCH CENTER (Mar. 16, 2020), <https://www.pewresearch.org/fact-tank/2020/03/16/as-schools-close-due-to-the-coronavirus-some-u-s-students-face-a-digital-homework-gap/>; see also News Release, *New Analysis Shows Students of Color More Likely to Be Cut from Online Learning*, NATIONAL URBAN LEAGUE (Nov. 28, 2021, 7:00 PM), <https://nul.org/news/new-analysis-shows-students-color-more-likely-be-cut-online-learning> (“The COVID-19 pandemic has exposed the impact of the digital divide on the academic progress of our students, particularly from low-income, Black, Latino, and American Indian households. Roadblocks, including internet connectivity and access to a computer or tablet, have denied students of color the opportunity to meaningfully engage in online learning, resulting in learning loss and widening achievement gaps.”).

one-fifth of Black and Hispanic households with school-aged children reportedly had no access to high-speed internet.^{20/}

But *availability* is not the only factor. According to Pew, *affordability* continues to be the leading cause of being unconnected. Thus, even if broadband services are available, those who cannot afford connectivity will not be able to receive the services that will increasingly migrate to online platforms. That puts some of our most vulnerable communities at risk and puts them at a significant disadvantage for receiving adequate healthcare, fulfilling children’s educational needs, and obtaining other essential services.

III. EBB PROGRAM BENEFITS HAVE BEEN A CRITICAL RESOURCE FOR LOW-INCOME HOUSEHOLDS

Congress recognized the need to help make connectivity more affordable by creating the EBB Program as well as establishing other support mechanisms.^{21/} Interest and participation in the EBB Program thus far has been a resounding success. Despite being available for less than a year, more than eight million households have enrolled in the EBB Program,^{22/} and nearly 1,200 broadband providers are participating.^{23/} Currently, of the \$3.2 billion Congress appropriated, approximately \$1.1 billion of support has been claimed, leaving approximately \$2 billion

^{20/} See Riordan Frost, *Pandemic Highlights Disparities in High-Speed Internet Service*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY (Sept. 8, 2021), <https://www.jchs.harvard.edu/blog/pandemic-highlights-disparities-high-speed-internet-service>.

^{21/} See, e.g., Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 902(c) (2020), available at <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>; (establishing the Connecting Minority Communities Pilot Program); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 905(c) (2020), available at <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf> (establishing the Tribal Broadband Connectivity Program).

^{22/} See *Emergency Broadband Benefit Program Enrollments and Claims Tracker*, USAC, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Dec. 4, 2021) (“EBB Program Enrollment and Claims Tracker”).

^{23/} See *Emergency Broadband Benefit Providers*, FCC, <https://www.fcc.gov/emergency-broadband-benefit-providers> (last updated Nov. 12, 2021).

available after administrative expenses.^{24/} Low-income families have come to rely heavily on the EBB Program's benefits and the access to robust services that it provides. In fact, the quality and variety of services provided under the EBB Program far exceed what many low-income families have been receiving under the Lifeline program, which was created to meet similar needs principally related to telephone services pre-pandemic. Fixed broadband and Wireless EBB providers have been meeting and continue to meet new demands for service from individual families and students during the pandemic. Fixed broadband connections offer speeds that enable multiple family members to use video conferencing and other remote learning apps to meet the demands of prolonged online work from home and online learning. For example, many fixed broadband providers offer the EBB discount on plans offering speeds up to 1 Gbps. However, many services offered under the Lifeline program include limited data and *no* hotspot offerings. In contrast, under the EBB Program, wireless service providers are offering consumers low-cost unlimited talk, text, and data services as well as several gigabytes of hotspot data.^{25/} These additional features are often critical for meeting educational and work needs because hotspot data gives families both the connectivity traditionally associated with wired home broadband services *and* mobility.

^{24/} See EBB Program Enrollment and Claims Tracker.

^{25/} See, e.g., T-Mobile, Emergency Broadband Benefit, <https://www.t-mobile.com/business/government/state-local-government/emergency-broadband-benefit> (last visited Nov. 29, 2021) (offering a no-cost hotspot with 10GB high-speed data); AT&T, Emergency Broadband Benefit, <https://www.att.com/help/ebb/prepaid/> (last visited Nov. 29, 2021) (offering free unlimited data); Verizon, EBB Program FAQs, <https://www.verizon.com/home/promo/emergency-broadband-benefit/> (last visited Nov. 29, 2021) (offering mix and match unlimited phone plans and standalone mobile hotspot plans); see also *EBB Program Order* ¶¶ 76-77 (permitting service providers to offer bundled services under the EBB Program, including voice, data, and texting).

IV. ACP SUPPORT SHOULD BE MAXIMIZED TO HELP MEET CONNECTIVITY NEEDS

Recognizing the continued need for affordable connectivity, Congress has built upon the success of the EBB Program by creating the ACP. The funding designated for the ACP and the important guardrails established in the Infrastructure Act to transition households currently qualified to receive EBB Program benefits demonstrate Congress' intent that the ACP should last longer and reach even more households than the EBB Program. The Commission should therefore implement processes for ACP benefits with those goals in mind.^{26/}

The Infrastructure Act, among other things, reduces the current monthly discount off the standard rate for an internet service offering from up to \$50 per month to up to \$30 per month. The change in benefits is triggered on the date that the Commission provides Congress with notice that the 2020 appropriation of \$3.2 billion has been depleted or December 31, 2021, *whichever is earlier*.^{27/} As the Bureau observes and as noted above, with approximately \$2 billion in funds remaining, it is unlikely that the 2020 appropriations will be depleted during 2021. The Bureau therefore states that it considers December 31, 2021, to be the effective date of the ACP and the date on which the EBB Program ceases.^{28/} The Commission should ensure that once the effective date is triggered, the benefits currently available to households under the EBB Program continue to apply to as many potential recipients as possible for as long as possible under the ACP.

^{26/} See *Public Notice* ¶¶ 121-27.

^{27/} See *Infrastructure Act*, div. F, tit. V, § 60502(b)(1).

^{28/} See *Public Notice* ¶ 3.

First, the Commission should interpret Section 60502(b)(3) of the Infrastructure Act so that households enrolled in the EBB Program as of November 15, 2021, if they remain qualified for the ACP after December 31, 2021, may continue to receive benefits at their current levels until funding is exhausted.^{29/} Unlike Section 60502(b)(2) of the Infrastructure Act, which, as discussed further below, ensures that households participating in the EBB Program before December 31, 2021 maintain “the affordable connectivity benefit,” Section 60502(b)(3) states that an eligible household that was participating in the EBB Program prior to enactment – *i.e.*, before November 15, 2021 – and qualifies for the ACP after December 31, 2021, shall continue to have access to “an affordable service offering.”^{30/} This demonstrates Congress’ intent to provide the Commission with the discretion to determine what makes a “service offering” “affordable.” The Commission should exercise that discretion to find that a service offering will be affordable if program recipients continue to receive the up-to-\$50 in benefits available to EBB Program-enrolled households.

In addition, unlike Section 60502(b)(2), Section 60502(b)(3) does *not* include a specific time period – meaning it preserves the EBB Program benefits *indefinitely* until funding is exhausted for households that enrolled prior to November 15, 2021 and remain qualified for the ACP. That funding should be supported by at least the initial \$3.2 billion appropriated for the EBB Program. This would allow the approximately 7.6 million households enrolled in the EBB Program prior to November 15, 2021, assuming they remain qualified for the ACP after December 31, 2021, to maintain their benefits until around June 2022.^{31/} The Commission may

^{29/} As discussed below, those no longer eligible after December 31, 2021, may continue to receive the same benefits until March 1, 2022 pursuant to Section 60502(b)(2) of the Infrastructure Act.

^{30/} See *Public Notice* ¶ 125; Infrastructure Act, div. F, tit. V, § 60502(b)(3).

^{31/} As indicated in the EBB Program Enrollment and Claims Tracker, claims as of November 14, 2021 totaled approximately \$260 million per month. See EBB Program Enrollment and Claims Tracker.

also wish to consider funding households enrolled in the EBB Program prior to November 15, 2021 from the additional \$14.2 billion appropriated for the ACP as well as any additional funds that may be appropriated to support the ACP. These interpretations will help ensure that qualified households will “continue to have access to an affordable service offering” as Congress intended.

Second, as the Bureau has suggested, the Commission should interpret Section 60502(b)(2) of the Infrastructure Act broadly to preserve the support to those households enrolled in the EBB Program before December 31, 2021.^{32/} Section 60502(b)(2) states that a household that qualified for EBB Program benefits before December 31, 2021 and would otherwise see a reduction in program benefits after that date will be eligible for the same level of benefits for an additional 60 days – *i.e.*, until March 1, 2022.^{33/} The Commission should interpret this provision to mean that any qualified household that would experience *any reduction* in benefits will continue to receive the same discount of up to \$50 off their broadband internet access service until March 1, 2022. That includes (i) households that would otherwise see a reduction in their EBB Program benefit from up to \$50 to up to \$30 because they remain qualified for the ACP, but benefits have been reduced by the Infrastructure Act,^{34/} and (ii)

Thus, the remaining \$2 billion in EBB Program funding could support a little over seven additional months for those households enrolled prior to November 15, 2021, without taking into consideration those households enrolled or qualified after November 15, 2021 but before December 31, 2021, which would continue to receive funding for an additional 60 days.

^{32/} See *Public Notice* ¶ 4; *Emergency Broadband Benefit Program; Affordable Connectivity Program*, Order, DA 21-1477, ¶ 11 (“*Waiver and Preliminary Guidance Order*”).

^{33/} See Infrastructure Act, div. F, tit. V, § 60502(b)(2).

^{34/} As noted above, those households should continue to receive the benefits at the up to \$50 per month level indefinitely until funds are exhausted if they were enrolled in the EBB Program prior to November 15, 2021.

households that would otherwise see a reduction from up to \$50 to \$0 because they are now no longer qualified for the ACP based on the revised eligibility criteria in the Infrastructure Act.^{35/}

Not only are these interpretations of the Infrastructure Act consistent with Congressional intent, but they also serve the public interest. Congress could not have anticipated when establishing the EBB Program in 2020 that the Infrastructure Act would reduce the benefit amount or change the qualifications to participate. Instead, it intended for qualified households to be able to receive the up-to-\$50 per month discount until funding was exhausted. In addition, Congress refreshed funding in the Infrastructure Act, meaning that those households covered by the EBB Program should continue to receive the benefits contemplated by Congress under that Program. And it is reasonable to expect that Congress will continue to add funding to the Program – if that occurs, those funds should also be included. Even when the Infrastructure Act was enacted, Congress recognized that EBB Program funding could still be available after December 31, 2021, and therefore Congress created three different classes of households depending on their enrollment date so that benefits at the prior level could be extended for some participants. The Commission should therefore continue to provide EBB Program-level funding without a transition to ACP-level benefits as long as possible until funding is exhausted.

Moreover, while the EBB Program enjoys robust participation, outreach and education about the program have taken significant time and effort.^{36/} The Commission should not short-

^{35/} As the Bureau has recognized, only a “limited number of households” have enrolled in the EBB Program based on the two eligibility criteria that have been eliminated by the Infrastructure Act for the ACP – a substantial loss of income after February 29, 2020 or participation in a service provider’s approved COVID-19 relief program. *See Waiver and Preliminary Guidance Order* ¶ 13.

^{36/} *See, e.g., Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, Public Notice, 36 FCC Rcd 7614 (2021); News Release, *Emergency Broadband Benefit Starts Today*, FCC (May 12, 2021), <https://docs.fcc.gov/public/attachments/DOC-372389A1.pdf>; News Release, *FCC Announces First Slate of Emergency Broadband Benefit Providers*, FCC (Apr. 1, 2021), <https://docs.fcc.gov/public/attachments/DOC-371292A1.pdf>; *see also* FCC, *Emergency Broadband*

change those efforts or the program by unnecessarily abbreviating the time during which qualified households may take advantage of the benefits that Congress intended them to have in 2020. Additionally, because the Commission will not complete implementation of the ACP until next year, there is no reason to prevent those households that have already enrolled from receiving benefits under the previous implementation scheme. Qualified households that enrolled *after* November 15, 2020 will have had notice that Congress intended to reduce the benefit and therefore may receive the lower amount going forward (March 2, 2022 or January 2, 2022, depending on whether the household enrolled before December 31, 2021).

Finally, allowing all households that are qualified to receive the discount of up to \$50 under the EBB Program until funding is exhausted would help the Commission and USAC properly implement the ACP under the Infrastructure Act. The Infrastructure Act became law only a few weeks ago. Changes to the low-income support program are triggered on January 1, 2022 – just six weeks from the release of the *Public Notice*. Not only must the Commission and USAC adjust their rules and policies to accommodate the revisions to the qualifying programs, changes in benefits, and other modifications in the Infrastructure Act, the Commission and USAC must create new systems to validate low-income subscribers’ qualifications, adjust their payment systems for the new support level, conduct outreach, and manage and track the expected large influx of new households. As the EBB Program has demonstrated, those are substantial undertakings and, even then, circumstances may occur that will threaten to undermine the integrity of the program.^{37/} Allowing those already enrolled to continue to receive benefits at the

Benefit Outreach Toolkit, <https://www.fcc.gov/emergency-broadband-benefit-outreach-toolkit> (last updated Sept. 8, 2021).

^{37/} Even almost a year into implementation, the EBB Program has experienced instances of fraudulent activity, and the Commission and USAC have had to adjust program requirements to prevent instances of waste, fraud and abuse. *See, e.g., Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision*, Memorandum, FCC Office

current level will provide the Commission and USAC with the greatest flexibility and the highest chance of a successful roll out of the ACP.

V. CONSUMERS SHOULD BE PERMITTED TO OPT-OUT OF THE ACP RATHER THAN BE REQUIRED TO AFFIRMATIVELY OPT-IN

The Bureau proposes requiring all households seeking to participate in the ACP, including those households already enrolled in the EBB Program that remain eligible for the ACP, to opt-in or affirmatively request enrollment in the ACP.^{38/} But similar to the Bureau’s guidance on the 60-day transition period,^{39/} the Commission should determine that households participating in the EBB Program before December 31, 2021, and that remain qualified for the ACP, are *automatically enrolled* in the ACP unless they choose to *opt-out*.

Congress intended for the ACP to be a continuation of the EBB Program. With limited exceptions, the statutory provisions applicable to the EBB Program will govern the ACP. Automatically enrolling current EBB Program participants would therefore be consistent with Congressional intent. In contrast, requiring households to affirmatively opt-in to the ACP would likely lead to confusion and result in many households unknowingly and unwillingly dropping out of the ACP. For example, EBB Program-enrolled households that currently receive a \$30 or

of Inspector General (rel. Nov. 22, 2021), <https://docs.fcc.gov/public/attachments/DOC-378076A1.pdf>; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Broadband Benefit Program Enrollments Based on the Community Eligibility Provision*, Public Notice, DA 21-1464 (rel. Nov. 22, 2021); *Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Consent to Enroll and Require a Co-Pay for Connected Devices*, Public Notice, 36 FCC Rcd 8324 (2021); *Consumer Advisory: FCC Warns Public Of Emergency Broadband Program Imposter Website*, FCC (Aug. 27, 2021), <https://docs.fcc.gov/public/attachments/DOC-375275A1.pdf>.

^{38/} See Public Notice ¶ 122.

^{39/} See Waiver and Preliminary Guidance Order ¶ 11 (“Households that are enrolled in the EBB Program as of December 31, 2021 will automatically participate in the 60-day transition period and are not required to separately opt-in or affirmatively request enrollment solely for purposes of continuing to receive their benefit during the 60-day transition period.”).

less benefit will see no change in their benefits after the transition and continue to receive free services if they choose not to opt-out. In contrast, if they fail to opt-in, their monthly bill will increase from \$0 to \$30 per month, which could be particularly devastating if the household does not anticipate the change and accumulate months' worth of additional fees. Similarly, the difference in the monthly payment of EBB Program-enrolled households currently on a plan that provides greater than a \$30 benefit would be less than what it would be if they were required to opt-in and failed to do so. For example, a household that was enrolled in a \$40 plan that had its benefit reduced from \$50 to \$30 would see only a \$10 increase in its bill if it chose not to opt-out as opposed to a \$40 increase if it failed to opt-in.

Those households that fail to opt in could also be entirely disconnected from their broadband services if their costs for obtaining service rise above their ability to pay. This is especially true for low-income families and communities of color, many of which are receiving free services under the EBB Program and cannot afford to pay the standard rate they would be required to pay without the subsidy. These outcomes are directly contrary to the purpose of both the EBB Program and the ACP. As NTCA-The Rural Broadband Association recently pointed out, “[w]hile it is critical that these subscribers are made aware that their benefit can change when the transition to the ACP concludes, it is far more important that they are not de-enrolled and suddenly facing an inability to afford their broadband service due to the complete lapse of any subsidy.”^{40/}

As NCTA – The Internet & Television Association similarly observed, the experience of many service providers suggests that existing EBB Program participants will not provide their

^{40/} Letter from Michael Romano, Senior Vice President – Industry Affairs and Business Development, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450 and WC Docket No. 20-445, at 2 (filed Dec. 2, 2021).

opt-in consent to continue to receive benefits via the ACP even when they may experience negative consequences from loss of the benefit.^{41/} This outcome would be exacerbated by the fact that, as noted above, the transition to the ACP is only in a matter of weeks. And while initial enrollments in the EBB Program required providers to obtain informed affirmative consent from consumers, the Commission had several months to conduct the substantial outreach campaign that was required to make the program a success.^{42/} There is simply no time to do that here.

VI. PROMOTING AWARENESS ABOUT PARTICIPATION IN THE AFFORDABLE CONNECTIVITY PROGRAM

In May 2021, to support the Commission's enrollment efforts for the Emergency Broadband Benefit program, MMTC launched Black Churches 4 Broadband. The success of this campaign which ended in July 2021 included training 484 Black church leaders from across the country on how to enroll their congregations into the Emergency Broadband Benefit, 407 Black Church leaders signing a letter to Vice President Kamala Harris to support a Permanent Broadband Subsidy, and 2,000 emails, phone calls, and tweets sent to Congress in four days advocating for a long-term broadband subsidy.

MMTC learned three valuable lessons from this three-month campaign. First, it is important to co-create the enrollment campaigns alongside consumers and other community leaders. We worked with six national Black church non-profit organizations that served an estimated 10,000 Black church leaders. The Black church nonprofits were Samuel Dewitt

^{41/} See Letter from Steven F. Morris, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450 and WC Docket No. 20-445, at 2 (filed Nov. 23, 2021).

^{42/} See News Release, *FCC Enrolls Over 4 Million Households in Emergency Broadband Benefit Program, Continues with Additional Program Outreach*, FCC (July 28, 2021), <https://docs.fcc.gov/public/attachments/DOC-374473A1.pdf> (“In addition to extensive press engagement, agency staff have conducted over 320 virtual public presentations . . . [and] . . . enlisted over 25,000 partners . . . to help us spread the word about the Emergency Broadband Benefit Program.”).

Proctor Conference, National Council of Black Churches, The Fellowship of Affirming Ministries, The Balm in Gilead, Values Partnerships, and The Black Church PAC. Each organization represents a segment of the Black community, from Black church millennial leaders to LGBTQIA+ Black church leaders. Each organization was given a stipend for their participation. Each nonprofit shared best practices for launching outreach and enrollment strategies for black church leaders.

Second, MMTC learned it is important to schedule focus groups with nonprofit leaders to know in real time the challenges each organization was experiencing. Weekly, we hosted focus groups with each organization to learn of the success and challenges they were experiencing with their outreach and enrollment work. During these meetings, we learned that the church leaders in their networks needed funding to do actual on-the-ground enrollment. Nationally, Black church leaders were launching Covid testing sites and Covid Vaccine sites in their church parking lots, but did not have the additional funding to then enroll congregants in the EBB program. Black church leaders had the desire, but not the funding to do so. Therefore, MMTC, along with other civil rights organizations, was able to share this critical feedback to Congress and the FCC to now have funds for outreach and enrollment for the Affordable Connectivity Program.

Finally, MMTC learned that providing a stipend to each of our six national Black church nonprofits helped them designate a program lead to support the EBB advocacy and campaign work in their Black church networks. During one of MMTC's focus groups, each nonprofit extolled how they believed the EBB can help end the digital divide, but also appreciated the stipend to help with some of their internal cost to launch the advocacy work in their many Black church networks. Overall, given the successes and lessons learned from Black Churches 4 Broadband, MMTC is launching a new education and advocacy program entitled *Black*

Churches 4 Digital Equity where MMTC will inform Black church leaders, nationwide, about the ACP.

Reviewing the lessons learned by MMTC, each lesson fits within a "participatory grantmaking" framework where consumers are co-leaders in the planning and use of funds to support their EBB advocacy work. Therefore, MMTC is advocating that the Commission use a participatory grantmaking lens for promoting awareness and enrollment into ACP.

Given the statutory task of the Commission establishing a grantmaking process to support outreach efforts, MMTC recommends the Commission employ a participatory grantmaking process that will allow the Commission to develop an inclusive and exhaustive grantmaking process.⁴³ The ultimate focus of a participatory grantmaking "approach [is] to [cede] funding . . . decision-making power about grants to the very communities impacted by funding decisions."⁴⁴ Participatory grantmaking can help the Commission outline a process of launching grantmaking that is driven by the consumer groups that the ACP is designed to help. Normal grantmaking often does not involve constituents at the table to create the grantmaking process. However, given the pressing need to address the digital divide during the pandemic, it is important that the Commission make a grant making process that is driven by nonprofit organizations that serve the groups the ACP is intended to help.

That process should include focus groups with nonprofit organizations that serve consumer groups the ACP is intended to help, supported by an advisory committee consisting of nonprofit organizations using data from the focus groups to help the Commission build an

⁴³ Participatory grantmaking, "covers a wide range of institutional and individual activities such as incorporating grantee feedback into grant guidelines and strategy development, inviting non-Grantmakers to sit on foundation boards, crowdfunding, and giving circles." See Gibson, Cynthia, *Participatory Grantmaking: Has its Time Come* (Ford Foundation 2020).

⁴⁴ See *Candid Participatory Grantmaking: Special Collection*.

inclusive grantmaking process for ACP outreach and enrollment. Further, the advisory committee can work with the Commission on tracking ACP enrollments through the creation of an ACP map to visualize the work of outreach and enrollment of grantees across the U.S. Finally, the Commission should immediately begin the participatory grantmaking process of launching focus groups to build an inclusive and sustainable grantmaking process.

VII. CONCLUSION

MMTC appreciates Congress' and the Commission's efforts to make broadband internet access more affordable for low-income households and underserved communities. To maximize the remaining benefits available under the EBB Program and provide a smooth transition to the ACP, the Commission should ensure that households enrolled in the EBB Program prior to enactment of the Infrastructure Act and who remain qualified for the ACP after December 31, 2021, do not suffer a decrease in benefits while appropriated dollars remain in the EBB fund. In addition, the Commission should permit EBB Program recipients enrolled after November 15, 2021, but before December 31, 2021, to receive the same benefits under the program during the 60-day transition period. Further, the Commission should determine that households participating in the EBB Program before December 31, 2021, and that remain qualified for the ACP, are *automatically enrolled* in the ACP unless they choose to *opt-out*. Finally, MMTC

recommends that the Commission use a participatory grantmaking lens for promoting awareness and enrollment into the ACP.

Respectfully submitted,

Robert E. Branson
President and CEO
Dr. Fallon Wilson
Vice President for Policy
Danielle Davis
Policy Counsel
MULTICULTURAL MEDIA, TELECOM AND
INTERNET COUNCIL
1250 Connecticut Avenue NW
7th Floor
Washington, DC 20036
(202) 261-6543
rbranson@mmtconline.org

December 8, 2021