

ALERT

FCC to Wind Down the Affordable Connectivity Program Unless Congress Acts Soon

January 12, 2024

In an Order released by the Federal Communications Commission's (FCC) Wireline Competition Bureau (Bureau) on January 11, 2024, the agency announced plans and guidance for winding down the Affordable Connectivity Program (ACP), which was established in the Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act) to support discounted broadband service for qualified low-income households by providing a monthly benefit to help pay for broadband service. Providers participating in the ACP program should review the requirements and procedures to wind down the ACP to ensure compliance with program rules. A summary of the Order is provided below.

One day before this announcement, a bicameral, bipartisan group of U.S. lawmakers announced the introduction of the Affordable Connectivity Program Extension Act, which if enacted would provide \$7 billion to extend the life of the ACP, presumably to give Congress more time to establish a more permanent funding mechanism for the popular program. Without this additional funding, the FCC expects to deplete the initial \$14.2 billion provided for the program and to have to shut down the program in April of this year, potentially causing millions of households to lose their broadband benefit.

Background

The Infrastructure Act provided for the transition from an emergency broadband benefit program to the ACP as a longer-term broadband affordability solution, and the FCC began enrolling qualifying households for the ACP benefit immediately after adopting final

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program rules on December 31, 2021. The ACP provides eligible households with a monthly discount on broadband service of up to \$30 per month and up to \$75 per month for households on qualifying Tribal lands. This successful program has enrolled nearly 23 million households that otherwise might not be able to afford high-speed internet service.

Providers are reimbursed monthly for each eligible household enrolled in the program and receiving qualifying broadband service. Additionally, the FCC allocated up to \$100 million of the program's funding for an aggressive outreach campaign to increase enrollments. The number of program enrollees has grown rapidly in recent months, putting this program – which was projected to have sufficient funding to last for five years – at risk of ending after only 28 months.

The FCC Anticipated the Need for Wind-Down Procedures

Because of the fixed allocation of funding for the ACP, the FCC directed the Bureau in the ACP Order to monitor expenditures and develop a forecast for the depletion of ACP funding so as to allow for an orderly transition once it was apparent that exhaustion of funding was imminent. Specifically, the Bureau was tasked with prescribing a process for notifying enrolled ACP households about the impact of the program's end on their broadband service and billing, notifying consumers about the freezing of new enrollments, and providing guidance to ACP providers about the freezing of new enrollments and requirements regarding outreach requirements and final claims submissions and funding reimbursements.

Providers Must Prepare Their Customers for the ACP to End

The Bureau will announce the end of the ACP approximately 60 days before the end of the last fully funded month of the program, and has established the following wind-down procedures timeline for providers to adhere to:

January 25, 2024: Providers must provide the first of three required notices of the program's projected end to ACP households by this date, to generally advise enrollees about the possibility of program termination and the potential impact on their broadband service and bills when the program ends. All notices must be sent to ACP households in writing and be accessible to persons with disabilities, and should be sent using the consumer's preferred delivery format and language.

February 7, 2024: Providers must cease enrolling households after this date; the systems for accepting consumer applications and enrollment processing will become unavailable at 11:59 p.m. EST.

February 8, 2024: No new providers will be approved to participate in the program after this date. After this date ACP providers may, but are not required to, accept transfer-in enrollments from current ACP households seeking to transfer their benefit after the enrollment freeze. Also, activities to promote awareness of and facilitate enrollment in the ACP, including those conducted by recipients of outreach grants, must stop concurrently with the enrollment freeze.

Late February 2024: The Bureau expects to announce the last fully funded month of the ACP and projected amount available for reimbursement after the last fully funded month, if applicable (60-day

notice). ACP providers must provide the second of three required notices to ACP households no later than 15 days after this Bureau announcement, which must include 1) the date of the last bill on which the full ACP benefit will be applied, and 2) the monthly billing amount after the ACP benefit is no longer available; and must remind ACP households of their ability to change or terminate service. The third notice must contain the same information and coincide with the last bill or billing cycle in which the ACP benefit is applied.

April 1, 2024: Participating providers must submit reimbursement claims for the February 1 uniform “snapshot date” (i.e., the first day of the calendar month on which providers submit claims based on the number of qualifying households enrolled) and all claims and upward revisions for preceding months.

April 2024: Projected final service month for which ACP can fully reimburse providers for ACP discounts. Beginning February 1, 2024, providers must submit reimbursement claims no later than the first day of the second month after the snapshot date, with all claims for upward adjustment due by April 1, 2024.

May 2024: Partial provider claims for discounted service provided during this month may be available if funding remains, and will be disbursed on a pro-rata basis. To avoid financial hardship, ACP providers may choose whether to forgo providing ACP service and receiving partial payment for discounts passed through to ACP households after the last fully funded month.

These dates may change if program funding remains available after April 2024. The FCC and the Universal Service Administrative Company (USAC), which administers the ACP, will also provide information and updates throughout the wind-down process.

Providers are Encouraged, but Not Required, to Continue Offering Discounted Broadband Service to ACP-Qualifying Customers

The Bureau will require affirmative opt-in for all ACP households to continue receiving broadband service from their ACP provider after the program ends, which must be established by the household’s acknowledgement that it received required disclosures, and demonstration that the household is willing and able to pay for continuing broadband service after the program ends. The latter may be established if the household: 1) has informed their provider that service may continue at a higher rate; 2) was an existing paying internet service customer with their current provider at the time they were enrolled; or 3) currently pays a fee for their ACP-supported broadband service. The Order explains that this approach reduces the risk of service disruption to ACP households and helps avoid “bill shock” once they are no longer receiving the benefit.

The Bureau notes that many participating providers currently make low-income internet programs available to customers and encourages those providers to help interested ACP households not already participating in these programs to transition to them. Providers that do not currently offer low-income internet programs are encouraged to develop such programs to help keep ACP households connected after the program ends. Despite the need to shut down the program, the Bureau states that it “remains dedicated to providing ACP households an orderly transition out of the program and, more importantly, to keeping as many ACP households as possible connected to broadband service after the end of the program.”

The Order Cancels New Enrollments for the High-Cost Area ACP Benefit

On November 1, 2023, the Bureau announced that USAC would begin accepting applications from providers seeking to qualify to offer the high-cost area ACP benefit on January 17, 2024, but the Order states that such applications will not be accepted in light of the expected depletion of ACP funding.

Congress May Allocate More Funding to Extend the Program Through 2024

On January 10, 2024, U.S. Senators Peter Welch, J.D. Vance, Jacky Rosen, and Kevin Cramer, and U.S. Representatives Yvette D. Clarke and Brian Fitzpatrick introduced the Affordable Connectivity Program Extension Act, which would provide \$7 billion for the ACP, the estimated amount needed to continue the program for the remainder of this year. The proposed legislation is reportedly supported by 400 organizations.

If you have any questions about the ACP or next steps, please contact one of the attorneys listed on this alert or your usual Wiley contact.