



Federal Communications Commission
Washington, D.C. 20554

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS
COMMISSION AND THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
REGARDING THE AFFORDABLE CONNECTIVITY PROGRAM

I. PURPOSE AND PARTIES

1. On December 27, 2020, the Consolidated Appropriations Act, 2021 was signed into law. The Act established an Emergency Broadband Connectivity Fund in the United States Treasury in the amount of \$3.2 billion and directed the FCC to use that fund to establish an Emergency Broadband Benefit Program (EBBP).¹ Under this program, eligible households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers may receive a reimbursement for such discounts. Congress provided the Commission with authority to reimburse program participants during the emergency period as defined by the statute.²

2. On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (Infrastructure Act or Act),³ which directs the Commission to adopt final rules modifying and extending the EBBP to a longer-term broadband affordability program to be called the Affordable Connectivity Program (ACP).⁴ The ACP, as described in the Infrastructure Act features changes to the eligibility criteria, an adjusted subsidy rate, a new mechanism for providing an enhanced subsidy amount to households in high-cost areas, a transition period for existing EBBP households, and additional consumer protection provisions.⁵ The Infrastructure Act appropriates \$14.2 billion to the Affordable Connectivity Fund for the support of the ACP.⁶

3. The Infrastructure Act authorizes the Commission to use the services of USAC to implement the ACP, including developing and processing reimbursements and distributing funds to participating providers.⁷ In addition, the Infrastructure Act states that the Commission may not use more than

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904 (Dec. 27, 2020). The fund is subject to the Antideficiency Act. 31 U.S.C. §§ 1341(a), 1342, and 1517(a).

² Under Section 904, the emergency period “ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates.” A National Emergency concerning COVID-19 was originally declared on March 13, 2020, by Presidential Proclamation No. 9994. 85 FR 15337 (2020). It was extended on multiple occasions. 88 FR 9385 (2023). A resolution terminating the National Emergency concerning COVID-19 based on the powers granted in the National Emergencies Act was signed by President Biden on April 10, 2023. H.J. Res. 7, 118th Congress (2023-2024) Public Law No. 118-3, (Apr. 10, 2023), available at <https://www.congress.gov/bill/118th-congress/house-joint-resolution/7>.

³ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/3684/text> (Infrastructure Act).

⁴ Infrastructure Act, div. F, tit. V, § 60502(a)(2).

⁵ Infrastructure Act, div. F, tit. V, § 60502(b)(4).

⁶ Infrastructure and Investment Jobs Act, div. J, tit. IV.

⁷ Infrastructure and Investment Jobs Act, tit. IV(i)(5).

two percent (2%) of the Fund for administration.⁸

4. Previously, the Commission exercised its authority to use USAC's services to assist the Commission with the implementation and administration of the ACP by entering into an MOU with USAC.⁹ In this document, the Commission and USAC enter into a new MOU to facilitate the efficient management, oversight, and execution of the ACP. Upon execution this MOU supersedes and terminates the prior ACP MOU, applicable amendments, and extensions.¹⁰ This MOU is not intended to and does not in any way limit the Commission's authority over the ACP. The Commission is responsible for the effective and efficient management and oversight of the ACP, including all policy decisions. As will be further articulated in relevant Commission orders, public notices, and directives, USAC is responsible for the effective administration of the ACP, including administering the disbursement of program support, producing timely and relevant data and analysis to inform the Commission in its policy-making and oversight of the ACP, educating stakeholders to promote successful participation in the program, and advising the Commission on the program's operational requirements. To the extent USAC has any questions regarding its functions or duties pursuant to this MOU which are not fully addressed herein or in the Commission's orders, public notices, or directives, it should address its questions to the FCC's Managing Director.

5. The Commission notes that there is an overall cumulative cap of \$347.8 million on the administrative costs associated with the EBBP and the ACP. The cap consists of two percent (2%) of the amounts appropriated to the Affordable Connectivity Fund (minus \$10 million made available for the mapping of broadband infrastructure funded by the Federal Government pursuant to Division F, Title I, Section 60105, Broadband Deployment Locations map, subsection (h), Funding, of the Infrastructure Act)¹¹ and previously appropriated in the Consolidated Appropriations Act for the EBBP. The Commission expects USAC and the Commission to collectively incur administrative costs for the EBBP and ACP that are in total less than the \$347.8 million cap and controls need to be implemented to ensure that this cap is not exceeded. In reporting its costs to the Commission, USAC should use fully allocated costs for tracking and accounting for expenses for which USAC seeks reimbursement from the Commission. This funding is used by USAC to administer the ACP consistent with the Commission's rules, policies, orders, written directives, and other instructions promulgated by the Commission or its authorized bureaus and offices, this MOU, and other laws as applicable. Funding allocated to USAC for administrative costs of the ACP (\$225 million) and EBBP (\$48 million), the balance of which shall remain available to USAC for administration of the ACP under this MOU. The Managing Director, in consultation with the Wireline Competition Bureau, shall periodically review USAC's administrative budget, and authorize additional funding as necessary to promote efficient and effective administration of the ACP. Any additional ACP funding amounts authorized for USAC will be posted on the Managing Director's website. Under no circumstances, shall USAC incur total expenses under this MOU that exceed \$273 million (or the total funding authorized at the time, if the Managing Director authorizes additional funding), and under no circumstances shall the Commission be liable to USAC for total expenses more than approved funding. USAC shall notify the

⁸ Infrastructure and Investment Jobs Act, tit. IV(i)(8).

⁹ See Affordable Connectivity Program MOU Amendment (Sept. 17, 2024); Affordable Connectivity Program MOU Amendment (June 13, 2024); Affordability Connectivity Program MOU Amendment (Dec. 19, 2023); Affordable Connectivity Program MOU between the FCC and USAC (revised) (June 6, 2023); Affordable Connectivity Program MOU between the FCC and USAC (revised) (Dec. 2, 2022); Affordable Connectivity Program MOU between the FCC and USAC (revised) (Mar. 2, 2022); Affordable Connectivity Program MOU between the FCC and USAC (Nov. 16, 2021); Emergency Broadband Benefit Program MOU between the FCC and USAC (Feb. 3, 2021). These prior ACP and EBBP MOUs and extensions are available at, <https://www.fcc.gov/coronavirus-response-and-relief>.

¹⁰ *Id.*

¹¹ Infrastructure Act, Division F, Broadband, Title I, Broadband Grants for States, District of Columbia, Puerto Rico and Territories, Section 60105, Broadband deployment locations map. Section 60105 identifies the appropriation for the program as follows: "(h) Funding. —Of the amounts appropriated to carry out this division under this Act, \$10,000,000 shall be made available to carry out this section."

Managing Director 30 (thirty) days prior to the date any funding is expected to be exhausted.¹² Amounts disbursed to EBBP and ACP program participants are not considered administrative costs associated with the program and do not count against the \$347.8 million Commitments and disbursements to program participants shall be made by the Commission out of Commission funds, even though notification of such commitments may be sent to program participants by USAC.

6. While the USF is currently exempt from the Antideficiency Act,¹³ the Affordable Connectivity Fund is fully subject to the Antideficiency Act. Accordingly, USAC shall not enter into any contract that constitutes open-ended commitments of monies related to the Affordable Connectivity Fund, or any other commitments or obligations in violation of the Antideficiency Act. In addition, in connection with any monies related to the Affordable Connectivity Fund, USAC shall (a) establish USAC's maximum legal commitment at the time of award, either by establishing a firm fixed price or a not-to-exceed price that the contractor exceeds at its own risk; (b) not include any commitment by USAC to provide indemnification of any other party unless such indemnification has a stated not-to-exceed amount and such amount is considered a part of the total contract price for approval by the USAC Board of Directors and, if applicable, Managing Director, and (c) not include any provision authorizing any party to unilaterally increase the contract price, and not include any provision authorizing automatic renewal or extension of the contract without prior written authorization of USAC. When used in this paragraph, "commitment" refers to obligations USAC incurs to its own staff and its contractors, not to commitments made to ACP program participants.

II. APPLICABLE PROVISIONS

The Commission and USAC currently have a MOU, dated October 17, 2024, which governs the relationship between the Commission and USAC as it pertains to USAC's work as the Commission's designated administrator of the Universal Service Fund (USF).¹⁴ For the purposes of USAC's work for the Commission on the ACP, the selected MOU clauses listed below that are applicable to USAC's work as USF administrator are incorporated by reference herein to USAC's work on the ACP:¹⁵

- IV.A.1 – Coordination and Communication
- IV.A.11 – Assistance with Potential Rule Violations and Other Investigations
- IV.A.12 – USAC Records Management
- IV.A.3 – Conflicts of Interest
- IV.A.4 – Claims Involving the USF [to include the ACP]
- IV.A.5 – Potential Loss of Service
- IV.A.6 – Forms Approval

¹² We recognize that USAC has performed this notification with respect to the funds appropriated to the ACP under the Infrastructure Act and that on March 4, 2024, the Wireline Competition Bureau (WCB) of the Commission announced that the last fully funded month for the ACP benefit would be April 2024. DA 24-195. This 30 day notification provision would apply to any future appropriation.

¹³ Codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. Guidance is provided by OMB Circular A-11, Section 145 (July 25, 2024) and OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements (April 4, 2013).

¹⁴ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, October 17, 2024, is available online at: <https://www.fcc.gov/universal-service-fund-general-management-and-oversight>.

¹⁵ The FCC intends that the phrase "Affordable Connectivity Program" or "ACP" be used in lieu of "universal service fund" or "USF" in each of the USF MOU clauses listed in this letter.

- IV.A.7 – Stakeholder Engagement and Program Outreach [if directed by the Commission]
- IV.A.8 – Notification of Rule Violations and Potential Waste, Fraud and Abuse
- IV.A.9 – Enforcement Referrals
- IV.A.10 – USAC Website Changes
- IV.B.1 – Annual Procurement Plan
- IV.B.2 – Quarterly Procurement Reporting
- IV.B.3 – Procurement Advance Review
- IV.B.4 – Transparency
- IV.B.5 – Annual Procurement Report
- IV.B.6 – Procurement Standards and Procedures
- IV.B.8 – Transferability of Property Rights
- IV.B.9 – Contract Administration
- IV.B.10 – Conflicts of Interest
- IV.B.11 – Performance-Based Contracting
- IV.B.12 – Training
- IV.B.13 – Competition Advocate
- IV.C – Treatment of Non-Public Information
- IV. D – Reporting Requirements
- IV.D.1 – Financial and Programmatic Reports
- IV.D.2 – Commission Access to USF Analytics and Data
- IV.D.3 – Performance Measures [except for the “Contributor Performance” measure]
- IV.D.4 – Customer Service Standards
- IV.D.5 – Expenditure Records and Reporting
- IV.F – Government-Wide Statutes, Regulations, and Policy Guidance
- IV.G – USF Audits and Assessments [if requested by the FCC’s Managing Director and subject to the availability of funds]
- IV.G.1 – Beneficiary and Contributor Audits [if requested by the FCC’s Managing Director and subject to the availability of funds; except provision that the audit program shall be designed to verify that all audited contributors are making the appropriate contributions in accordance with the Commission’s rules does not apply to the ACP]
- IV.G.2 – Improper Payment Estimates, Identification, and Recovery.
- IV.G.4 – Audit Follow-up
- IV.G.5 – Internal Control
- IV.G.6 – Employing the Audit Program to Advance Program Goals Adopted by the Commission
- IV.H.1 – General Coordination

- IV.I – Freedom of Information Act Submissions [as needed and subject to the availability of funds]
- IV.J – USAC Requests for Guidance
- VI. – Revision and Duration
- VII. – No Private Cause of Action and Disclaimer
- VIII. – Severability
- Attachment A (USAC Confidentiality Agreement) (including Appendix A)

SIGNATURES

Date: _____

Date: October 17, 2024



Mark Stephens
Managing Director
Federal Communications Commission

Radha Sekar
Chief Executive Officer
Universal Service Administrative Company