



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 Federal Communications Commission (FCC or Commission) 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 two percent (2%) of the Fund for administration.⁸

4. The Commission is exercising its authority to use USAC's services to assist the Commission with the implementation and administration of the ACP. In order to utilize that authority, the Commission and USAC enter into and agree to comply with this Memorandum of Understanding (MOU) to facilitate the

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.”

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).

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

efficient management, oversight, and execution of the ACP. 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 \$348 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, including amounts 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 \$348 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. Upon the effective date of this MOU, USAC is allocated \$50 million in funding 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. This \$50 million is in addition to funding previously allocated to USAC for administrative costs of the 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 USAC authorized funding amounts will be posted on the Managing Director's website. Under no circumstances, shall USAC incur total expenses under this MOU that exceed \$50 million plus the balance remaining as of this date under the prior EBBP allocation of \$48 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 Managing Director 30 (thirty) days prior to the date any funding is expected to be exhausted. Amounts disbursed to EBBP and ACP program participants are not considered administrative costs associated with the program and do not count against the \$348 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,⁹ 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

⁹ Codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. Guidance is provided by OMB Circular A-11, Section 145 (Aug. 6, 2021) and OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements (April 4, 2013).

and its contractors, not to commitments made to ACP program participants.

II. APPLICABLE PROVISIONS

The Commission and USAC currently have a Memorandum of Understanding (MOU), dated December 19, 2018, 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).¹⁰ In addition, the Commission has an MOU, dated February 3, 2021, which governs the relationship between the Commission and USAC as it pertains to USAC's work related to the EBBP.¹¹ 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:¹² This MOU supersedes and terminates the prior EBBP MOU.

- IV.A.1 – Coordination and Communication
- 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
- 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

¹⁰ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, Dec. 19, 2018, is available online at: <https://www.fcc.gov/sites/default/files/usac-mou.pdf>.

¹¹ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, Feb. 3, 2021, is available online at: https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf.

¹² 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.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 – Statutes and Agency Directives Applicable to the USF [and to the ACP]
- 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. USAC shall also follow OMD’s June 15, 2020 Letter to USAC regarding the Payment Integrity Information Act (PIIA), Pub. L. No.116-117 with respect to the ACP.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: _____

Mark Stephens
Managing Director
Federal Communications Commission

Date: November 16, 2021



Radha Sekar
Chief Executive Officer
Universal Service Administrative Company