



UNITED STATES GOVERNMENT
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF INSPECTOR GENERAL

September 28, 2023

FCC-OIG Advisory Regarding ACP Provider Noncompliance with Program Usage & De-Enrollment Rules

Since the inception of the Emergency Benefit Broadband Program (EBB) and its successor, the Affordable Connectivity Program (together ACP), participating providers have claimed more than \$10 billion to subsidize discounted devices and broadband service to low-income households. The Federal Communications Commission’s Office of Inspector General (OIG), whose statutory mandate is to protect the integrity of the FCC’s programs and operations by combating fraud, waste and abuse, previously identified enrollment fraud as the biggest threat to the integrity of the Lifeline program and the ACP. Today, OIG announces its growing alarm at the emergence of another major threat: significant provider noncompliance with program usage and de-enrollment rules. As described below, OIG’s concern originated from a recent OIG investigation of an ACP provider that improperly claimed \$44.5 million in program funds on behalf of subscribers who were not using their ACP service. Subsequent OIG work further deepened this concern.

OIG issues this advisory to alert providers, consumers, and the public of our emerging concern that some providers are failing to comply with the ACP’s usage and related de-enrollment rules. We highlight this issue for stakeholders to address and prevent further program losses caused by this conduct, whether intentional or not. This is not the first time our office raised concerns regarding provider compliance with FCC program usage requirements.¹ As in our previous advisories, providers, not low-income households, are responsible for the conduct we highlight.

Background

In May 2022, OIG sent a warning letter to a large ACP provider (Provider X) regarding abusive and potentially fraudulent EBB enrollments made by its sales agents. OIG issues warning letters to providers when we identify data and other evidence suggestive of fraud, waste or abuse, and

¹ https://www.fcc.gov/sites/default/files/oig_lifeline_usage_advisory_letter_01282020.pdf. In January 2020, we issued a public advisory to alert Lifeline stakeholders to the potential for widespread carrier noncompliance with the Lifeline usage rule after the FCC announced Sprint claimed monthly subsidies for serving approximately 885,000 Lifeline subscribers, even though those subscribers were not using the service. Sprint repaid approximately \$170 million in connection with that conduct. After acquiring Sprint, T-Mobile paid an additional \$200 million civil penalty to resolve the Commission’s investigation. November 4, 2020, FCC Press Release, “T-Mobile Will Pay \$200 Million Civil Penalty to Resolve Sprint Lifeline Investigation.”

our office concludes our mission will be best served by a direct inquiry and dialogue. Specifically, OIG was concerned Provider X's sales agents engaged in improper and abusive EBB program enrollments made in connection with the National School Lunch Program's Community Eligibility Provision as described in our November 22, 2021, advisory.

Later, in August 2022, OIG presented Provider X with an analysis of its claims data that raised serious questions regarding its compliance with EBB and ACP usage requirements. OIG requested Provider X demonstrate that it was compliant with those rules. After investigating, Provider X disclosed to OIG that it improperly claimed \$44.5 million due to improperly implementing the usage requirements. Provider X also disclosed it received \$2.6 million for improper enrollments associated with the National School Lunch Program's Community Eligibility Provision and \$2.3 million for claims associated with other compliance issues. In total, Provider X voluntarily repaid approximately \$50 million (or one-third) of the total ACP funds it received for service claims between June 2021 and July 2022.

The ACP Usage Rule

The Commission adopted the ACP usage and related de-enrollment rules as a safeguard against fraud, waste and abuse and to ensure taxpayer money is spent only to assist eligible subscribers who are actually using the service.² Whenever a provider does not assess and collect a monthly fee from an ACP subscriber, the provider is required to (i) track that subscriber's usage on a rolling thirty-day basis, (ii) send a notice if the subscriber has not used the service in a thirty-day period warning that their service will be terminated, and (iii) terminate that subscriber's service if it remains unused at the forty-fifth day.³ Providers may claim reimbursement for any subscriber on the first of the month if that subscriber used their service in the prior thirty days or cured their non-usage prior to the de-enrollment deadline.⁴

Under Commission rules, a subscriber uses the ACP service if they:

- (i) Make a call;
- (ii) Answer a call from a party other than the provider;
- (iii) Send an outbound text;
- (iv) Use data;
- (v) Purchase additional minutes;
- (vi) Purchase an additional data allowance; or,
- (vii) Respond to direct contact from the provider and indicate that he or she wants to continue service.

47 C.F.R. §54.407(c)(2), incorporated by reference in 47 C.F.R. 54.1808(c).

Provider X returned \$44.5 million after its investigation established it improperly claimed those funds for subscribers who had not used its ACP service, as defined by the FCC rules discussed

² Report and Order and Proposed Rulemaking adopting final rules for the Affordable Connectivity Program (January 21, 2022) ("2022 ACP Order"), para. 75; 2012 Lifeline Reform Order, para. 257.

³ 2022 ACP Order, footnote 223 and 47 C.F.R. § 54.1809(c). The de-enrollment process became mandatory for most providers as of June 15, 2022. It became mandatory for providers that served fewer than 100,000 broadband subscribers and that also served some of those subscribers on tribal lands as of September 16, 2022. Prior to those dates, the usage rule in EBB and ACP only required that a subscriber use the service a single time in a month in order to be claimed, 47 C.F.R. § 54.1608(c).

⁴ 47 C.F.R. § 54.1808(c).

above. The potential magnitude of program waste prevented by requiring providers to ascertain that subscribers are actually using ACP service before they may seek reimbursement, is demonstrated by the size of Provider X's initial improper claims and subsequent repayment. In short, the usage requirement plays an essential role in preventing significant program waste.

Though providers must certify, under penalty of perjury, that their subscribers used the service prior to making any claim for ACP reimbursement,⁵ contrary to OIG's recommendations, the Commission does not require providers to report any objective metric of individual subscriber usage to demonstrate compliance with the rules above before disbursing program funds.

OIG's Broader Usage Concerns

OIG identified Provider X's potential noncompliance with program usage rules through our analysis of NLAD and ACP claims data. Specifically, our analysis examined the percentage of its ACP subscribers for whom Provider X claimed program reimbursement each month during EBB.

On the first day of each month, USAC sends each provider a list of subscribers who are enrolled with that provider on that date to determine the provider's reimbursement claims for the prior month.⁶ Providers are responsible for identifying which subscribers on the monthly lists are eligible to claim for ACP reimbursement.⁷ USAC guidance also makes clear a provider may not seek reimbursement for providing ACP service to a subscriber who failed to use the service.⁸

OIG calculated each provider's monthly claims rates by comparing the number of subscribers claimed by a provider each month against the number of subscribers on USAC's monthly lists. We analyzed the results to look for trends. Provider X's monthly claims rates were conspicuous as it repeatedly claimed reimbursement for all or nearly all its enrolled subscribers for many months. As this trend indicated potential noncompliance with the program usage rule, we requested Provider X demonstrate compliance.

OIG recently adjusted its analysis to accommodate new ACP rules—most significantly, mandatory de-enrollment of ACP subscribers for non-usage⁹—and re-analyzed the results for all ACP providers. We made a startling and troubling discovery: dozens of participating mobile broadband providers de-enrolled few, if any, ACP subscribers for non-usage and, like Provider X, claimed reimbursement for all or nearly all their ACP subscribers (the suspect providers). In some instances, these suspect providers de-enrolled less than one percent of the subscribers that many similarly-sized ACP providers de-enrolled for non-usage. Extensive experience with the Lifeline program and ACP and comparisons with other ACP providers suggest these suspect providers are likely noncompliant with ACP usage and related de-enrollment rules.

Two tables below demonstrate the patterns OIG observed using enrollment, de-enrollment, and claims data from ten anonymized ACP providers. In both tables, Column B shows the total number of ACP subscribers ever served by the provider, and Column C shows the total

⁵ 47 C.F.R. § 54.1808(c)(2).

⁶ https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf

⁷ Each provider is also required to select "a reason code" in NLAD for each subscriber on the list who the provider does not claim. *Id.*

⁸ *Id.*

⁹ 47 C.F.R. § 54.1809(c)

subscribers de-enrolled by the provider for any reason, including non-usage.¹⁰ Column D shows the percentage of subscribers the provider has de-enrolled for any reason, including non-usage. Finally, Column E indicates the providers' average monthly claims rate.¹¹

Table 1 illustrates the data described above for five providers that are broadly representative of participating mobile broadband providers that serve 10,000 or more ACP subscribers (the representative ACP providers).¹² Table 2 shows the same data for five suspect providers.

Table 1: De-enrollment and Claims Data for 5 Representative ACP Providers

A	B	C	D	E
Anonymized Provider Name	Total Subscribers (ENROLLs + TRANSFERINs), rounded	Total Subscriber DEENROLLs, rounded	Ratio of Subscriber De-enrollments to Total Subscribers (C/B)	Avg Monthly Claims Rate
Provider 1	6,600,000	2,600,000	39.4%	87.3%
Provider 2	5,100,000	1,600,000	31.4%	89.0%
Provider 3	2,600,000	750,000	28.8%	91.2%
Provider 4	1,200,000	420,000	35.0%	78.2%
Provider 5	46,000	15,000	32.6%	93.1%

Providers 1-5, the representative ACP providers, de-enrolled 28.8%-39.4% of their total subscribers. De-enrollments for non-usage typically comprise nearly half the representative ACP providers' de-enrollments. These providers claimed an average of 78.2%-93.1% of their subscribers each month. These patterns are representative of most participating mobile broadband providers.

¹⁰ When a provider de-enrolls a subscriber, the provider is required to report a reason for the de-enrollment in NLAD, including non-usage, per USAC guidance. Not all providers appear to follow USAC's guidance. Out of an abundance of caution, we analyzed ACP providers' total de-enrollments in NLAD which include de-enrollments for non-usage. Were we to confine our analysis to providers' reported de-enrollments for non-usage, the conduct of the suspect providers would appear even more pronounced. This is another problem that should be addressed by USAC and the Commission. The accuracy of NLAD data is essential for ensuring and policing program integrity.

¹¹ This data is based on NLAD and ACP claims data from May 2021 through August 2023.

¹² Approximately half of all ACP households receive subsidized mobile broadband service. More than 98% of those households receive their service from participating mobile broadband providers that serve 10,000 or more ACP subscribers.

Table 2: De-enrollment and Claims Data for 5 Suspect ACP Providers

A	B	C	D	E
Anonymized Provider Name	Total Subscribers (ENROLLs + TRANSFERINs), rounded	Total Subscriber DEENROLLs, rounded	Ratio of Subscriber De-enrollments to Total Subscribers (C/B)	Avg Monthly Claims Rate
Provider 6	1,400,000	23,000	1.6%	98.6%
Provider 7	620,00	7,200	1.2%	99.8%
Provider 8	250,000	6,600	2.6%	99.7%
Provider 9	69,000	620	0.9%	100.0%
Provider 10	18,000	310	1.7%	100.0%

The contrast between the two sets of providers is clear. Providers 6-10 de-enrolled only 0.9%-2.6% of their subscribers, a tiny fraction of the de-enrollments by Providers 1-5, while claiming reimbursement for all or nearly all their subscribers. For example, Provider 4 enrolled 200,000 fewer subscribers than Provider 6 but de-enrolled 18 times as many subscribers. Similar comparisons may be drawn between the other providers in the two sets. The data is clear that Providers 6-10 (and the other suspect providers) are outliers.

As noted above, de-enrollments for non-usage typically comprise about half of de-enrollments by large mobile broadband ACP providers. We strongly suspect Providers 6-10 are not complying with program usage and related de-enrollment rules, because as reflected in Column D, those providers have barely de-enrolled any subscribers *at all*. Stakeholders should be concerned these data patterns also signal these providers' failure to comply with other program rules and requirements.¹³

Elevated rates of abandoned service are a persistent and pervasive characteristic of low-income subsidy programs like the Lifeline program and the ACP. Though some providers may ascribe higher rates of subscriber retention to higher quality service, more generous data packages or other service features, these are at best incomplete explanations for the aberrant data patterns we observed. Finally, OIG's concerns are not based solely on data analyses: OIG investigators have collected additional evidence that clearly demonstrates several suspect providers have repeatedly claimed reimbursement for furnishing discounted service to specific subscribers who were not using their service. To avoid compromising ongoing OIG investigations, we cannot provide additional details regarding this evidence at this time.

While many of the suspect providers identified by OIG individually serve a small percentage of total ACP households, several currently purport to serve hundreds of thousands of ACP households. As a group, these suspect providers have enrolled more than 3.7 million ACP households and currently serve more than 1.7 million ACP households. Cumulatively, the threat to program integrity posed by their likely noncompliance is significant.

¹³ We understand that many stakeholders may seek additional details regarding OIG's analysis and conclusions. The goal of this advisory is to highlight and address usage noncompliance among ACP and Lifeline program providers. For providers determined to defraud the program, sharing additional details regarding our methodology, benchmarks and findings may lead to further noncompliance that is more challenging to detect. We must balance these competing risks.

Next Steps and Remedial Action

ACP rules require all providers to implement policies and procedures to comply with all program rules.¹⁴ Providers relying on third-parties to monitor usage compliance are liable for violations of the ACP rules, and their liability extends to violations by their agents, contractors, and representatives.¹⁵

All ACP and Lifeline providers should urgently examine their usage monitoring procedures now, fully disclose any noncompliance to our office and the Commission and promptly repay any federal funds improperly received. Our office will not rely solely on warning letters to combat this serious threat to program integrity. We continue to investigate and will target ACP providers that flout program usage requirements for appropriate legal sanctions, including criminal prosecution.

In addition to provider responsibility, as noted above, the Commission does not require providers to regularly report any information to demonstrate subscribers are actually using the subsidized service before disbursing program funds. OIG has repeatedly urged the Commission to adopt such a requirement. While the Commission asserts that usage reporting may implicate privacy concerns, it should explore objective reporting options and codify requirements that demonstrate the government is paying for service that subscribers are actually using without undermining laws protecting consumer privacy. We encourage the Commission and Congress to work together to eliminate obstacles that preclude the agency from confirming the subsidized service is truly benefitting low-income households.

Fraud, waste, and abuse remains a serious problem for Commission programs. OIG provides objective, independent investigations, audits and reviews of FCC programs, including programs administered by the Universal Service Administrative Company (USAC). OIG is committed to our mandate and will continue to use a full range of tools to expose and combat fraud, waste and abuse in FCC programs. OIG encourages anyone with information regarding fraud, waste or abuse in any FCC program, to report such allegations via the OIG hotline.

Report Waste, Fraud & Abuse using the FCC OIG Hotline:

Telephone: (202) 418-0473

Toll Free: (888) 863-2244

FAX: (202) 418-2811

E-Mail: hotline@fcc.gov

¹⁴ 47 CFR § 54.1801(f).

¹⁵ Id.