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EXECUTIVE SUMMARY

Through the Consolidated Appropriations Act of 2021 (“Consolidated Appropriations Act”), Congress tasked the Federal Communications Commission (“Commission”) with quickly creating and implementing the Emergency Broadband Benefit Program (“EBB”) to help consumers facing financial hardship due to the COVID-19 pandemic afford broadband service, a critical lifeline to education, employment and health care during the current crisis. NTCA offers herein a series of proposals to enable the Commission to implement the EBB as promptly as possible while ensuring support is most effectively targeted to as many in need of the EBB as contemplated by Congress.

As an initial matter, the Commission can and should adopt provider participation rules that are administratively simple but that also safeguard the use of limited funding. Accountability with respect to providers’ practices (as well as reasonable procedures for documenting providers’ compliance) is vital to target support toward connecting as many EBB-eligible consumers as possible and to avoid confusion or other concerns that could undermine the success of the program and its longer-term viability. This will require a delicate balance, as speed to reach consumers desperately in need of broadband is critical and accountability procedures must not bog down the delivery of such services or deter providers from participation. NTCA offers the following proposals to strike such a balance.

Leverage existing mechanisms wherever possible. One important measure the Commission can take to promote accountability and rapid launch of the EBB is to leverage existing mechanisms such as the National Lifeline Verifier (“Verifier”) and the National Lifeline Accountability Database (“NLAD”) to the greatest extent possible. Specifically, the EBB should leverage the Verifier and the NLAD as much as possible for consumers seeking EBB support via

programs that already qualify a consumer for Lifeline support and to enforce the “one-per-household” rule.

Non-ETCs seeking to participate in the EBB must be held to accountability measures similar to those required of ETCs. The Consolidated Appropriations Act directs the Commission to allow both Eligible Telecommunications Carriers (“ETCs”) and non-ETCs to participate in the EBB as a method of ensuring the widest possible availability of this program. In issuing this directive, however, the Commission once again has the challenging task of launching the EBB quickly while simultaneously guarding against misuse of the funds appropriated for this purpose. To accomplish these goals, the Commission rightly proposes to require non-ETCs seeking to participate in the program to make the EBB available across all of their service areas in each state in which the provider is approved to participate and to adopt a plan to combat waste, fraud and abuse. For the sake of simplicity and expediency, the Commission could create a “model” plan that non-ETCs could opt into for this purpose.

All EBB provider participants should be subject to cost-of-service disclosure requirements. To guard against provider attempts to profit financially from the EBB by increasing the rate charged for service prior to applying the EBB discount, the Commission proposes to require all provider participants to document their “standard rates.” To afford new customers the awareness needed to decide whether they can afford the broadband service even after the EBB discount has been applied, all providers should also be required to provide clear notice to the Commission and to new subscribers of the monthly rate the subscriber will be responsible for, including an estimate of taxes and fees (subject to any government-mandated changes in those), based upon the “standard rates.”

Clearly defined eligibility criteria for consumer participation in the EBB is a must.

Congress enumerated a number of different ways households could be eligible for the EBB, some of which extend beyond the Lifeline eligibility requirements and thus do not have established verification methods. While NTCA appreciates efforts to expand eligibility to as many low-income households as possible, providers need clear guidelines to follow when determining whether new customers are eligible (and should be provided flexibility to structure their EBB offerings for those qualifications that they are most confident of being able to verify). For clarity and simplicity, as noted above, NTCA recommends the Commission leverage the Verifier for those eligibility conditions that are already captured by that database. Also, to ensure EBB eligibility is not overinclusive and is available to as many consumers truly in need as possible, the Commission must ensure that a consumer's eligibility for the EBB due to participation in a free or reduced-price school lunch or breakfast program is based only upon the Richard B. Russell National School Lunch Act or section 4 of the Child Nutrition Act of 1966. To do otherwise would, as the Public Notice points out, "effectively qualify[] the entire school or school district" for the discounted rate, thereby allowing consumers that have no financial need to receive the discount offered by the EBB.

Plan now for when the EBB concludes. Finally, the Commission must prepare for the "end-game" with respect to this program so that providers and consumers alike know what to expect when appropriations are expended – demonstrating in significant part the perils of relying upon appropriations for essential universal service functions. No low-income consumer should obtain service via the EBB without a full understanding of the fact that support will be withdrawn when program funds are expended and without an awareness of the rate applicable to

their service once that takes place. Providers will also need sufficient notice of when program funds will be expended so that they can in turn communicate effectively with subscribers regarding potential service plan and rate changes.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Emergency Broadband Benefit Program) WC Docket No. 20-445

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Public Notice² released by the Federal Communications Commission (“Commission”) on January 4, 2021 in the above-captioned proceeding. The Public Notice seeks comment on the Emergency Broadband Benefit Program (“EBB”) established by the Consolidated Appropriations Act of 2021.³

NTCA members are eager for the promise the EBB offers to enable broadband connectivity for those Americans who have had their life upended by the COVID-19 pandemic, suffering economic adversity and being forced to work or learn from home where an Internet connection is more necessary than ever before. Hundreds of NTCA members joined the Commission’s Keep Americans Connected Pledge and are active participants in the Commission’s Lifeline program. NTCA and its members are hopeful this new initiative will

¹ NTCA represents approximately 850 rural local exchange carriers (“RLECs”). All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

² *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, Public Notice, WC Docket No. 20-445, DA 21-6 (rel. Jan. 4, 2021) (“Public Notice”).

³ Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020) (“Consolidated Appropriations Act”).

build upon, enhance, and expand the reach of the Lifeline program to help more Americans in need.

To ensure the EBB is available to as many households in need of discounted broadband service as possible while simultaneously establishing “guard rails” to provide accountability and certainty, NTCA recommends the Commission: (1) adopt EBB rules that mirror those in effect for the Lifeline program to the greatest extent possible; (2) take steps to ensure participating eligible telecommunications carriers (“ETCs”) and non-ETCs alike offer the EBB throughout all of their service areas in any state in which the provider seeks eligibility while also requiring non-ETCs to commit to avoiding waste, fraud and abuse akin to the same requirements ETCs must already adhere to for Lifeline; (3) require all participating providers, whether ETCs or non-ETCs, to adhere to specified accountability measures; (4) make subscriber eligibility for the EBB clearly defined and easily verifiable by leveraging the National Verifier (“Verifier”) for those eligibility conditions that are already captured by that database; and (5) adopt clear guidelines for participating providers and customers that account for when the EBB concludes.

II. THE COMMISSION CAN AND SHOULD BALANCE ACCOUNTABILITY FOR PROVIDERS’ USE OF EBB SUPPORT WITH SIMPLICITY AND THE AVOIDANCE OF UNNECESSARY BURDENS; PROGRAM RULES SHOULD MIRROR THOSE IN EFFECT FOR THE LIFELINE PROGRAM TO THE GREATEST EXTENT POSSIBLE.

A. A delicate balance is needed to ensure accountability while promoting provider participation and reaching as many consumers as possible.

The Public Notice seeks comment on the eligibility and election process for providers to participate in and offer broadband service to low-income consumers eligible for the EBB.⁴

Striking a delicate balance through reasonable accountability measures that will protect the

⁴ Public Notice, pp. 2-5.

program from allegations of waste and ensure its success, while also avoiding burdens that will deter provider participation or limit (or slow down) the program’s ability to reach the many consumers very much in need is essential.⁵ Additionally, neither the Universal Service Administrative Company (“USAC”) nor the Commission would be well-served by administrative complexity. NTCA offers in Sections II. B and C, *infra*, further proposals to achieve such a balance for providers currently designated as ETCs, as well as for new entrants hoping to leverage the EBB to serve low-income consumers.

With respect to accountability, rules must be in place that promote the proper use of EBB support to ensure the low-income consumers for whom this program is intended receive the benefit. These rules will also insulate the program from potential future criticism that could undermine its longer-term viability. EBB support must go only to those consumers that truly need it – and the proposals made herein seek to achieve that objective by ensuring the Commission only admits into the program those providers that can demonstrate upfront the commitment and ability to protect the integrity of funds made available for this purpose. The Commission must also prevent unscrupulous providers from “gaming the system” in a manner that undermines the effectiveness of the program, opens it to attack, and denies support

⁵ As the Commission is well aware, certain ETCs fulfill their obligations under various universal service programs through a combination of their own facilities and services and the offering of services through affiliated entities, such as Internet Service Provider (“ISP”) affiliates. *See, e.g., Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al*, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 at ¶ 262 (2016) (“We make clear that in considering whether a carrier is providing telephone exchange service and exchange access for purposes of section 214(e)(6), we look beyond the corporate entity that itself is seeking designation as a Lifeline Broadband ETC, and also consider affiliates of that entity.”). NTCA urges the Commission to confirm that similar treatment will be afforded here, such that to the extent an ETC relies upon an ISP or other affiliate to offer EBB-supported service, these affiliates will be considered eligible and approved for participation in the EBB program without the need for additional authorization or approval.

potentially to those consumers most in need. As discussed further below, rules that require participating providers to offer EBB-supported service throughout their service areas, as well the standard rate provisions, are necessary to ensure that this program is at all times about connecting as many low-income consumers as possible wherever they may reside. Put another way, providers should not be able to leverage EBB funds to pad profit margins or gain competitive advantages in carefully selected markets.

Ultimately, wasted or misappropriated support harms consumers who are denied a much-needed broadband connection because program funds were used instead for unintended purposes elsewhere. Moreover, reports of any such concerns that emerge after funds are distributed will undermine public and policymaker support for the extension of the program into the future despite an unmistakable need for more effective outreach and service delivery to disadvantaged communities.

That said, simplicity in administration of the EBB must also be a significant driver to allow the Commission to stand this initiative up as quickly as possible and promote the greatest level of participation by providers and consumers alike while simultaneously promoting reasonable accountability. Overly burdensome accountability measures that serve as a disincentive to providers' participation will only harm low-income consumers denied a choice of providers (or any provider at all). Furthermore, because Congress has made clear that the process of admitting providers into the program must be "expedited,"⁶ the Commission has a statutory directive to proceed here with an eye toward simplicity in all respects.

⁶ Consolidated Appropriations Act, § 904(d)(2)(A).

One important but simple step the Commission can take to achieve accountability is to adopt EBB rules that mirror those in effect for the Lifeline program to the greatest extent possible. For one, no provider looks forward to operating by reference to two different sets of rules when serving similar sets of customers – smaller operators such as those in NTCA’s membership would certainly face real challenges in attempting to do so and may decline to participate if faced with such a prospect. The Lifeline program’s “one per household” rule is just one example where the EBB can parallel existing rules to promote accountability – by contrast, an entirely new definition of “household”⁷ would only overly burden providers as well as USAC and the Commission in attempting to navigate two sets of rules that both serve low-income consumers. This would also likely complicate the use of the NLAD or, at the very least, require system modifications or other administrative changes. Such a result serves no one well, particularly if system changes divert EBB funds better spent elsewhere or delay connecting consumers. Of course, this applies across the board – any unnecessary deviation from the rules in effect in the Lifeline program must be avoided at all costs, so that providers, USAC, and the Commission can focus first and foremost on making the EBB a success without the delays that could follow by establishing new rules applicable only to this new (and temporary) program.

B. The process for admitting non-ETCs into the EBB as proposed in the Public Notice should be adopted with certain modifications.

The Public Notice seeks comment on admitting providers into the EBB program without requiring designation as an ETC (pursuant to the statutory directive to do so).⁸ Even as non-

⁷ Public Notice, pp. 5-7.

⁸ Consolidated Appropriations Act, § 904(a)(12)(B).

ETCs will not be required to seek such status from states or the Commission, similar provisions should govern their acceptance into and participation in the EBB to hold accountable those entrusted with the proper use of support. That said, consistent with the Congressional directive to approve provider participation on an “expedited” basis⁹ – and to maximize participation by providers – these accountability provisions should be carefully tailored to strike an appropriate balance between simplicity and protecting program integrity. The Public Notice largely strikes that balance.

As an initial matter, the Public Notice rightly proposes that non-ETCs should “[m]ake the Emergency Broadband Benefit available across all of its service areas in each of the states in which it is approved to participate.”¹⁰ Such a measure is critical to ensure providers do not engage in competitive gamesmanship by picking and choosing which low-income communities in their existing service areas will be offered EBB-supported connections. The Commission should not enable an unscrupulous provider to utilize this program only in the competitive portions of its service areas to lure subscribers from other providers. This program is clearly intended to aid low-income consumers across the country, and such competitive gamesmanship through selective geography has no place in the EBB.

The Commission should also move forward with the proposal to require non-ETCs to “adopt a plan to combat waste, fraud, and abuse similar to the compliance plans required of non-facilities-based carriers seeking approval to participate in the Lifeline program.”¹¹ However, a

⁹ *Id.* § 904(d)(2)(A).

¹⁰ Public Notice, p. 4.

¹¹ *Id.*

further step toward simplicity is warranted to ensure new entrants are not overly burdened or delayed in offering the EBB. More specifically, a “model” compliance plan, created by the Commission and available for providers to opt into, could serve as a “safe harbor” of sorts.¹² Pursuant to this approach, the Commission should modify the guidance offered in 2012 to non-facilities-based ETCs and tailor it for the EBB.¹³ Each non-ETC entity seeking to participate in the EBB would certify its commitment to comply with this plan and agree to document such for the purposes of audit. New entrants, many of which are likely unfamiliar with the Commission’s Lifeline rules on preventing waste, fraud, and abuse, would be spared the burden of creating their own compliance plans – while the Commission would be spared the burden of reviewing varying types of compliance plans from hundreds of operators (or more) seeking admission to the EBB. This approach, which should specifically include provisions detailing how providers will be expected to document their compliance with the anti-waste, fraud, and abuse rules, would go a long way toward safeguarding the integrity of the EBB while also expediting non-ETCs’ admittance into the program.

C. Additional accountability provisions should apply to all participating providers regardless of ETC status.

Additional accountability provisions, many proposed in the Public Notice, should apply to every provider regardless of whether the provider is an ETC.¹⁴ As an initial matter, NTCA

¹² See Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 (Jan. 12, 2021) (“ACA Letter”), p. 4.

¹³ See *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, 27 FCC Rcd 2186 (WCB Feb. 29, 2012).

¹⁴ With respect to ETC status, as the Commission knows, many of NTCA’s RLEC members (all of which are designated as ETCs) also have affiliates that operate competitively in other areas, offering voice and broadband service in areas outside the affiliated RLEC’s incumbent study area. These

supports the “notice of election”¹⁵ process set forth in the Public Notice that would require providers to submit a notice to USAC containing, among other things, the services it intends to offer and “documentation demonstrating the standard rates for the services for which it may claim reimbursement.”¹⁶ This election process should be sufficient to enable the Commission to make informed decisions with respect to admitting providers into the EBB while being minimally burdensome for providers.

With respect to this election process, the requirement to document “standard rates” is necessary to effectuate the statutory directive found in the Consolidated Appropriations Act¹⁷ that a provider not obtain support for an individual subscriber beyond what the subscriber would have been charged in the absence of this program’s establishment. This will also ensure

operations are typically managed by staff working for, or who have worked for, the parent ETC, and thus the staff are familiar with the Lifeline universal service fund and other Commission programs. Even where these entities have not been designated as ETCs, they should be permitted to participate in the EBB pursuant to the same processes and structures the Commission sets for ETCs. It would make little sense for the Commission to burden these competitive entities (and their parent companies) with having to apply to the EBB as non-ETCs and then operate under two different sets of rules or seek separate ETC status. Nor would it make sense to burden Commission staff with reviewing what would be two separate applications for admission to the EBB. Indeed, to keep the process as streamlined as possible, the Commission should enable an existing ETC to apply for admission to the EBB for both its existing service area as well as any areas served by its affiliates, in the same state, via one application.

¹⁵ *Id.*, pp. 2-3 (“We propose to require all providers that wish to participate in the Emergency Broadband Benefit Program to submit a notice to USAC indicating their election. We propose that such notice indicate, at least: (1) the states in which it plans to participate, (2) a statement that, in each such state, it was a “broadband provider” within the meaning of the Consolidated Appropriations Act as of December 1, 2020, (3) whether it seeks to participate in each state because it is either a designated eligible telecommunications carrier or is seeking designation by the Commission to participate (or both), (4) whether the provider intends to distribute connected devices in each such state, (5) a description of any Internet service offerings for which it plans to seek reimbursement in each state, and (6) documentation demonstrating the standard rates for the services for which it may claim reimbursement from the Emergency Broadband Benefit Program.”).

¹⁶ *Id.*

¹⁷ Consolidated Appropriations Act, § 904(a)(7).

providers are not able to raise rates to gain increased profits via the EBB. In the absence of such a prohibition, unscrupulous providers could increase their rates for a particular broadband service tier knowing that EBB support will still cover the difference.

The Commission should also require all participating providers to include in their notices of election, as well as in notifications to consumers seeking to participate in the EBB, the monthly rate the consumer will be responsible for, including reasonable estimates of taxes and fees, after the EBB discount is applied. This is necessary to provide consumers the information necessary to make an informed choice as to whether the service to which they subscribe will be affordable even if the EBB discount is applied.

Enforcement of accountability and transparency measures is critical to protect low-income consumers and to safeguard the use of EBB funds. The Commission would therefore be well-advised to enlist the assistance of state regulators. State public service and utility commissions have a long history of ensuring ETCs are accountable for how universal service funds are used. They are also closest to the community and the providers operating in their states, and are often the first to receive consumer complaints. To harness this experience and proximity to each consumer, the Commission should provide a monthly list of providers participating in the EBB to state commissions and broadband offices and specifically request that these agencies work with the Commission to promote the program's effectiveness. States could, at the very least, assist the Commission with identifying providers that are the subject of an inordinate number of complaints and for which Commission intervention and perhaps audit may be necessary.

Finally, clear rules with respect to documentation – for the purposes of the Commission’s ability to audit providers’ practices, use of funds, and verification of subscriber eligibility – are important as well. Once again, however, simplicity is essential, as steps taken to verify whether the accountability and transparency provisions adopted by the Commission are followed must not bog down providers or USAC. As one alternative, the Commission could – consistent with the “model” compliance guide created for non-ETCs as discussed above – offer EBB participating providers guidance on how to properly document compliance with accountability rules. As an alternative and at a minimum, the Commission should set a basic “expectation of reasonableness” with respect to documentation of program compliance, making clear that providers must preserve documents and take other steps as necessary reasonably calculated to prove that support was distributed only for eligible consumers and in keeping with the standard rate and other provisions designed to safeguard EBB funds. Providers should commit to submitting documentation of steps taken to comply with these accountability provisions and should agree to be subject to audit with penalties for noncompliance.

III. ELIGIBILITY CRITERIA FOR CUSTOMER PARTICIPATION IN THE EBB MUST BE CLEARLY DEFINED AND EASILY VERIFIABLE.

The Commission requested comment in the Public Notice on the method providers should use to verify customers’ eligibility for the EBB.¹⁸ NTCA recommends ETCs and non-ETCs alike be required to leverage the Verifier and NLAD wherever possible.¹⁹ Specifically, the

¹⁸ Public Notice, p. 6.

¹⁹ While the Verifier and the NLAD should be used to the furthest extent possible for the EBB, the Commission should also allow states to continue practices such as those used in Oregon, where the public utilities commission conducts the verification and confirms there are no dual enrollments in a household. *See Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in Oregon and Texas*, Public Notice, WC Docket No. 11-42 (Oct. 19, 2020).

Verifier should be used to confirm eligibility for low-income consumers seeking to receive EBB support via the qualifications set forth in Section 54.409 of the Commission’s rules.²⁰ The Commission, USAC, and providers have all invested substantial time and resources to bring the Verifier to fruition; therefore, the Verifier should be utilized to the fullest extent possible. The Verifier was intended to take the eligibility determination out of the hands of providers and to place it in the hands of a third-party specifically created to strengthen the eligibility determination process, and there is no reason for deviating here from the process used for the Lifeline program.

NTCA further recommends providers be permitted to help consumers interact with the Verifier rather than restricting eligibility to consumers who by themselves have the means to directly interact with the Verifier.²¹ Specifically, providers should have the option of remotely assisting consumers’ interaction with the Verifier if the consumer has provided verbal permission to the provider for this purpose. This is especially important now when many providers’ offices are closed due to the pandemic, thereby preventing consumers from having the option of coming in person to the provider’s office to interact with the Verifier. Allowing providers to assist consumers’ interaction with this database would in many instances also expedite the consumer’s eligibility for the EBB by, for example, ensuring the provider is aware of exactly how the consumer reports the household’s address in the Verifier. Without such interaction, NTCA members report that consumers seeking Lifeline eligibility have often entered their address

²⁰ 47 C.F.R. § 54.409 (setting forth the income-based or program-based (i.e., SNAP, Medicaid, etc.) qualifications for consumers’ receipt of federal universal service Lifeline support).

²¹ See Public Notice, p. 7 (“we propose to require eligible households to directly interact with the National Verifier to apply for the Emergency Broadband Benefit Program”).

differently than how the provider has the address recorded – including something as simple as St. instead of Street – resulting in the discounted enrollment being denied. The provider then has to contact USAC to resolve the discrepancy before the consumer can begin receiving the discount. Especially given the expected short duration of the EBB, this type of delay could significantly undercut the amount of time a consumer is able to receive the much-needed benefit offered by the EBB.

To the extent a prospective EBB-eligible consumer seeks to qualify by virtue of eligibility provisions found in the Consolidated Appropriations Act but not captured by the Verifier,²² clearly the Commission has no choice but to allow providers to set up their own verification system. However, to ensure accountability, any “alternative” system must be based upon actual documentation retained from the customer. The Commission should not be prescriptive in what kinds of documentation are acceptable, but rather, should set an expectation of reasonableness. Mere attestation of a Pell grant, for example, should not be seen as sufficient to establish eligibility.

NTCA believes the use of school lunch participation as a criterion for eligibility in the EBB could be particularly promising, especially given the efforts of many NTCA members to work with school districts during the pandemic to bring and keep more students online.²³ Based upon provider feedback from such efforts, to address existing privacy laws prohibiting the

²² Consolidated Appropriations Act, § 904(a)(6).

²³ A number of NTCA members, for instance, are participating in the K-12 Bridge to Broadband program where they work with school districts across the country to ensure every student who has an Internet connection at home can receive the broadband service necessary to participate in online school. See <https://www.ntca.org/member-services/business-solutions/partner-programs/digital-bridge> (last visited Jan. 19, 2021).

release of personal information regarding students to third parties, NTCA recommends requiring consumers to provide a letter from the school confirming the consumer's address and participation in an approved free or reduced lunch or breakfast program.²⁴ Additionally, the Commission must ensure that a consumer's eligibility for the EBB based on participation in a free or reduced price school lunch or breakfast program is based only upon the Richard B. Russell National School Lunch Act or section 4 of the Child Nutrition Act of 1966. More specifically, while the U.S. Department of Agriculture ("USDA") administers many important programs including school lunch distribution under its Community Eligibility Provision ("CEP"), treating recipients of this program as eligible for the EBB would be overinclusive. As the Public Notice acknowledges, making every recipient of the USDA CEP eligible for the EBB would "effectively qualify[] the entire school or school district" for the discounted rate, thereby allowing households that have no financial need to receive the discount offered by the EBB.²⁵ This in turn would reduce the amount of assistance available to those consumers Congress intended to help by using up the allocated EBB funds much more quickly.²⁶ Of course, households with students enrolled in schools that participate in the USDA free lunch program

²⁴ Eligibility for customers who are home schooled would have to be based on one of the other eligibility criteria identified by the Consolidated Appropriations Act and be verifiable due to the fact that customers in these circumstances are unable to provide a letter from a local school.

²⁵ Public Notice, p. 7.

²⁶ In many rural areas, for instance, the entire school district participates in the USDA CEP. Accordingly, if the USDA program was the only eligibility criteria these households needed to receive the EBB, nearly every household with a student enrolled in the local school district would be eligible for the discounted rate.

could still apply for the EBB using any of the other eligibility criteria set forth by the Consolidated Appropriations Act.²⁷

Due to the fact that broadband providers' participation in the EBB is voluntary, the Commission should allow each provider that participates in the program to decide which of the eligibility criteria enumerated by the Consolidated Appropriations Act the provider will accept. While providers would ideally accept as many of the eligibility criteria as possible, NTCA fears that compelling an "all or nothing" approach to program participation – regardless of size, staff levels, or experience with existing programs of this kind – could keep many smaller operators in particular from participating. Indeed, some providers, for instance, might feel uncomfortable enrolling customers based upon Pell Grants because the provider does not know how to validate such grants. Providing this flexibility in a way that still ensures accountability should result in more consumers reaping the program's intended benefit due to more robust provider participation.

NTCA also encourages the Commission to identify and encourage partners to help providers establish eligibility for the new criteria specified in the Consolidated Appropriations Act that are not among the criteria used to qualify customers for Lifeline. This assistance would further participation and accountability by providing an effective form of third-party verification and incenting providers to accept more of the items permitted to demonstrate EBB eligibility.

²⁷ The Commission should also empower schools to directly enroll eligible households in the EBB. School officials, with close to a year of experience in virtual schooling since COVID-19 has forced many students to learn from home, are closest to the "facts on the ground" in terms of which students/households are without an affordable connection, or one at all. Thus, school officials would have the ability to rapidly identify the potential EBB recipients in their school/school districts and, with some guidance from USAC, would be perfectly suited to directly interact with EBB applicants to assist them with the eligibility verification process. *See* Comments of EducationSuperHighway, WC Docket No. 20-445 (fil. Jan. 19, 2021).

In the case of households residing on Tribal lands, for example, the Commission’s Office of Native Affairs and Policy (“ONAP”) could provide valuable outreach to Tribal areas, making them aware of the EBB²⁸ and assisting Tribal households with demonstrating eligibility for the program’s Tribal discount.²⁹ The Commission noted that the Consolidated Appropriations Act provides eligible households located on Tribal lands with a discount of up to \$75 for Internet access service³⁰ and proposes to rely upon existing USAC determinations of Tribal areas. Specifically, the Commission proposes to use the same definition of Tribal lands as is used in the Lifeline program to determine eligibility for this discount for purposes of the EBB.³¹ While NTCA supports using the information already contained in USAC’s database wherever possible, not all Tribal lands are reflected in USAC’s database. Accordingly, to avoid inadvertently excluding eligible Tribal households, NTCA encourages the Commission to allow providers the option of using methods other than the USAC database to verify consumers’ eligibility for the Tribal land discount. Any alternative method of eligibility would have to be documented and

²⁸ In addition, with respect to awareness of the EBB, NTCA supports a USAC/Commission effort to create a central, coordinated marketing campaign. *See* WordSouth, Letter, WC Docket No. 20-445 (fil. Jan. 14, 2021). Pursuant to this approach, USAC or the Commission could create marketing materials for all participating providers to use, at their discretion. This would be particularly helpful to new entrants facing the daunting task of getting their own internal processes in place simply to apply for admission as an EBB participating provider and then offering supported broadband service – having marketing materials at the ready would speed their entry into this market. This would also benefit smaller entities with limited or even non-existent marketing budgets.

²⁹ Notably, one of ONAP’s roles is “to help build understanding and knowledge of FCC ... programs that can spur deployment of communications ... services in historically unserved or underserved Native communities.” *See* Office of Native Affairs and Policy, available at <https://www.fcc.gov/general/native-nations> (last visited Jan. 14, 2021).

³⁰ Public Notice, p. 10.

³¹ *Id.*

meet the criteria for Tribal land eligibility set forth in the Commission’s rules.³² NTCA also recommends the Commission address concerns regarding address verification in rural areas (including but not limited to Tribal locations), where USAC systems do not always accurately capture customers’ physical addresses.

IV. PROVIDERS AND SUBSCRIBERS NEED CLEAR GUIDELINES THAT ACCOUNT FOR WHEN THE EBB CONCLUDES.

The Commission points out that the EBB “will conclude at the end of the emergency period or when the amount appropriated to the ... Fund is expended.”³³ Accordingly, the Commission requests comment on how providers should make EBB subscribers aware of the terms and conditions of service that will apply when the program concludes. NTCA recommends providers be required to inform consumers in writing, before enrolling in the program, that the program is temporary, and use language from the Consolidated Appropriations Act (i.e., the program “will conclude at the end of the emergency period or when the full amount appropriated by Congress for this purpose has been dispersed”). This notice should also state that at the conclusion of the program, subscribers will have the option of continuing their service at whatever level they select at the then current rate or discontinuing their service without penalty. Uniform language among all participating providers will avoid confusion among consumers and provide certainty for providers.

In order to allow providers and customers adequate time to transition at the conclusion of the EBB, NTCA supports ACA Connects’ recommendation that the Commission issue an update to participating providers every two weeks stating the amount of funds remaining in the EBB

³² See 47 C.F.R. § 54.400(c) and 47 C.F.R. § 54.409(b).

³³ Public Notice, p. 13.

and, based on the number of consumers enrolled in the program, a best estimate of when the program will conclude.³⁴

V. CONCLUSION

For the reasons discussed above, the Commission should adopt provider participation rules that are at once administratively simple but that also safeguard the use of limited funding; leverage existing mechanisms such as the Verifier and the NLAD; and prepare for the “end-game” with respect to the EBB given the uncertainty regarding what will happen when EBB appropriations are expended.

Respectfully Submitted



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³⁴ See ACA Letter, p. 4.