

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

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

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



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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments to discuss the record compiled 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

The record supports an eligibility and election process for providers that strikes a delicate balance between reasonable accountability measures that protect program funds from possible waste while simultaneously ensuring the EBB assists many consumers as quickly as possible. The process proposed by NTCA strikes that balance by simply requiring that all participating providers demonstrate a commitment to protecting the integrity of EBB funds, take reasonable steps to document that as they go along, and comply with requirements that enforce the “standard

¹ NTCA represents approximately 850 rural local exchange carriers. 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”).

rate” provisions found in the statute and discourage competitive gamesmanship. The measures proposed by NTCA and supported in the record would also ease the path for new entrants, with the Commission creating a “model” compliance plan for non-Eligible Telecommunications Carriers (“ETCs”), and would assist all providers via agency guidance on steps providers must take to document compliance with these measures.

NTCA further proposes that the process of verifying consumers’ eligibility for the EBB be as simple as possible. This should include simultaneously incorporating additional programs targeted toward low-income consumers into the National Lifeline Verifier (“Verifier”) while allowing other methods of verifying eligibility when the EBB is first launched. Should the Commission adopt the latter approach, or allow for a consumer “self-certification” process, consumers deemed eligible for EBB-supported service should be subject to a “back-end” verification either once additional programs are incorporated into the Verifier or once the subscriber can produce documentation of their eligibility.

The record also supports NTCA’s recommendation that the Commission adopt rules requiring providers to inform EBB-supported subscribers in writing, before enrolling in the program, that the program is temporary, using language from the Consolidated Appropriations Act. Commenters also agreed that providers must have the information necessary to give EBB subscribers advance notice of when the program will end, and thus the Commission should issue frequent (such as biweekly) updates to participating providers with respect to the amount of funds remaining in the EBB, including a best estimate of when the program will conclude. Finally, commenters note the importance of encouraging partners to promote awareness of the EBB and recommended the Commission create a central, coordinated marketing campaign.

II. COMMENTERS SUPPORT ACCOUNTABILITY MEASURES THAT ARE ADMINISTRATIVELY SIMPLE AND AVOID UNDERMINING THE CLEAR STATUTORY OBJECTIVE OF REACHING AS MANY CONSUMERS AS POSSIBLE AS QUICKLY AS POSSIBLE.

As NTCA stated in initial comments, the eligibility and election process for providers to participate in the EBB must strike a difficult and delicate balance – reasonable accountability measures must protect program funds from potential waste so that the program is defensible and sustainable while simultaneously ensuring the EBB assists as many consumers as quickly as possible. Thus, while it is important to ensure responsible participation in and use of the program, it is equally important that the requirements to participate in the program are not so burdensome that providers will be deterred from participating or delayed in their ability to offer the benefit to those in need. The record compiled in response to the Public Notice supports the Commission’s proposed provider eligibility provisions for both ETCs and non-ETCs. Indeed, one would be hard-pressed to argue that the proposals made in the Public Notice, as supported by NTCA, would overly burden providers or dissuade/delay the participation of any given provider, regardless of current ETC status, in the EBB.

At bottom, these processes simply require all participating providers to demonstrate a commitment to protecting the integrity of EBB funds and to take reasonable steps to document, as they go along, how funds are used and steps taken to prevent the potential for fraud. In the end, these measures largely amount to (1) non-ETCs agreeing to adopt “model” compliance plans that the Commission creates; (2) a requirement that the agency enforce the “standard rate” provisions found in the statute;⁴ (3) a provision to discourage competitive gamesmanship in terms of selecting which customers to serve; and (4) rules and guidance from the Commission on

⁴ *Id.* § 904(b)(6)(A).

steps providers must take to document compliance with these measures. These measures are not burdensome and will go a long way toward ensuring EBB funds are targeted to the consumers that need them the most, while maintaining the program’s integrity in lieu of exposing the program to potential fraud that might undermine continued support on the part of policymakers and other stakeholders.

Like NTCA, a number of commenters⁵ noted that the process for non-ETCs to qualify as EBB providers must, pursuant to statute, be “expedited”⁶ and as simple as possible. ACA⁷ and WISPA,⁸ for example, propose that the Commission create a “model compliance plan,” something that NTCA suggested as well,⁹ that can be modeled after the guidance offered in 2012 to non-facilities-based ETCs, tailored for the EBB.¹⁰ As WISPA notes, such a process would enable the Commission to “immediately determine that the applicant has a compliant plan without having to review differing narrative submissions and make judgment calls on which are acceptable, which require revision, and which are unacceptable – all of which would undermine

⁵ See Comments of ACA Connects – America’s Communications Association (“ACA Connects”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 3; Comments of NCTA – The Internet & Television Association (“NCTA”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 5; Comments of The Wireless Internet Service Providers Association (“WISPA”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 6.

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

⁷ ACA Connects, pp. 15-16.

⁸ WISPA, pp. 7-8 & Appendix A.

⁹ Comments of NTCA-The Rural Broadband Association (“NTCA”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 10.

¹⁰ 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).

the required ‘expedited process.’”¹¹ In short, the use of such a model plan would be “win-win” for everyone involved. New entrants, many of which are likely unfamiliar with the Commission’s Lifeline rules, would be spared the burden of creating their own compliance plan from whole cloth. The Commission would benefit as well, as staff would be spared the burden of reviewing varying types of compliance plans from hundreds of providers (or more) seeking admission to the EBB.

As an alternative, the Commission could look to the proposal made by INCOMPAS, under which non-ETCs could create a compliance plan similar to the one the Commission created in 2012 for non-facilities based carriers to participate in Lifeline.¹² INCOMPAS further proposes that providers be admitted into the EBB while the Commission is reviewing those plans, and further notes that “[a]ny deficiencies can be cured in consultation with the Commission before the participating provider seeks reimbursement.”¹³ In either case, whether a non-ETC commits to compliance with a “model” plan or the Commission adopts the INCOMPAS approach, the Commission should specifically require that such plans include provisions detailing how providers will be expected to prevent fraud and document the steps they take to do so.

Continuing with the process for admitting non-ETCs, NCTA offers several suggestions with respect to the statutory requirement that the Commission “shall automatically approve” a

¹¹ WISPA, pp. 7-8.

¹² Comments of INCOMPAS (“INCOMPAS”), WC Docket No. 20-445 (fil. Jan. 25, 2021), pp. 8-9.

¹³ *Id.* If permitted, such a “post hoc review” step would need to be undertaken and completed relatively quickly in order to keep accurate accounting of the extent to which program funds are committed and remain available given the finite amount of resources available.

broadband provider that has “an established [low-income] program as of April 1, 2020.”¹⁴

NCTA states that “Congress’s mandate that existing low-income and COVID-19 programs be automatically approved is an express recognition that those programs should already satisfy all the implementation obligations the Commission might otherwise impose, and that *any additional implementation obligations be expressly limited to ensuring that the EBB Program is not subject to waste, fraud, or abuse.*”¹⁵ NTCA largely agrees – indeed, the only “additional implementation obligations” that NTCA proposed would simply require that *all EBB providers* (whether ETCs or non-ETCs, whether they have established low-income programs, or not) document the steps they take to prevent the potential for fraud. Thus, NCTA and NTCA are largely on the same page here.

NCTA then argues that non-ETCs without established programs of April 1, 2020, should only be required to provide “reasonable assurances that the provider is technically and financially capable of providing the broadband Internet access service offerings for which it will seek reimbursement.”¹⁶ NCTA goes on to state that “[e]vidence that the provider is currently offering broadband Internet access service and has been providing that service for at least two

¹⁴ NCTA, p 7. (“The Act makes clear that a broadband provider that is not designated as an ETC may become a participating provider if it ‘meets requirements established by the Commission for participation in the [Program] and is approved by the Commission under subsection (d)(2),’ which directs the Commission to establish an expedited process to approve providers. The Act further provides that the Commission ‘shall automatically approve’ a broadband provider that has ‘an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.’”). Internal citations omitted.

¹⁵ *Id.*, emphasis added.

¹⁶ *Id.*, p. 8.

years based on Form 477 filings would be sufficient for approval.”¹⁷ However, NCTA’s comparison of this approach to the method for an applicant to demonstrate its operational experience and financial qualifications to participate in the Connect America Fund Phase II Auction and Phase I of the Rural Digital Opportunity Fund Auction misses the point in one important respect. Specifically, with respect to competitive bidding mechanisms, the requirement to demonstrate the provision of broadband service for two years was intended to ensure an auction awardee has experience offering broadband service to consumers and could do so to additional consumers should the provider be successful in the auction. Here, the application process is intended not only to ensure the provider will be able to deliver on the promise of delivering broadband service, but also can provide the Commission with assurance that funds will be used as intended and that the provider has systems and processes in place to combat waste, fraud and abuse. Should the Commission move forward with the “model compliance plan” as proposed above, non-ETCs without low-income programs in place can participate in the EBB with *the most minimally burdensome process* imaginable. Again, one would be hard-pressed to argue that such non-ETCs will be dissuaded from participating in the EBB under processes such as those suggested by NTCA, ACA, WISPA, and INCOMPAS.

Finally, NTCA urges the Commission to reject calls to enable providers to “pick and choose” where they will offer EBB supported services.¹⁸ Such an approach could very well lead to a kind of “cream-skimming,” used as part of competitive measures vis-à-vis other providers

¹⁷ *Id.*

¹⁸ *See* Comments of Microsoft, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2. (proposing to allow non-ETCs “to indicate the counties in which they want to provide the benefit rather than having to make the benefit available across the entirety of their service areas within the state.”).

rather than as part of a holistic plan to help consumers in need in the areas that each provider serves. Such selective geographic availability of the benefit should have no place in a program intended to provide much-needed broadband service to as many low-income consumers as possible on an “emergency” basis. Even worse than enabling competitive gamesmanship, this could also deny low-income consumers the same choice of providers that every other consumer already enjoys in competitive areas. To be sure, the EBB is not a “buildout” program – a provider lacking the facilities in place to offer an EBB-supported service tier in one portion of its service area when it is available in another need not extend services that do not exist today. Yet, the Commission should require providers to be equally committed to offering the EBB to all portions of its current service areas, as any other approach could invite gamesmanship for competitive purposes in lieu of keeping the focus of the program on helping as many eligible users as possible.

III. VERIFYING CONSUMERS’ ELIGIBILITY FOR THE EBB SHOULD BE SIMPLE AND RELIABLE AND INCORPORATE ADDITIONAL PROGRAMS TARGETED TO LOW-INCOME CONSUMERS INTO THE VERIFIER, GRANT NON-ETCs RAPID ACCESS TO THE VERIFIER, AND OFFER PROVIDERS GUIDANCE ON ALTERNATIVE VERIFICATION METHODS.

NTCA recommended in its initial comments that ETCs and non-ETCs alike be required to leverage the Verifier and NLAD wherever possible.¹⁹ Multiple commenters make the same recommendation, with the Competitive Carriers Association urging the Commission to “make every effort to leverage these established systems to verify eligibility, including for the new categories of eligibility proposed in the Consolidated Appropriations Act that are not currently

¹⁹ NTCA, p. 10.

addressed in those databases.”²⁰ Using the Verifier and NLAD will minimize the time that would be necessary for providers to develop their own verification process and obtain Commission approval for that method.²¹ The use of the Verifier to the fullest extent possible would also ensure a consistent, tested method for providers to determine consumers’ eligibility for those EBB criteria already captured by the Verifier.

That said, as NTCA and CTIA²² recommended, the Commission should also allow providers to use state verification systems already in place for Lifeline or other state-issued discounted telecommunications programs, where the public utilities commission conducts the verification and confirms there are no dual enrollments in a household.²³ Such systems are akin to the Verifier and serve the dual purpose of ensuring consistency among consumers seeking to receive the discounted service and integrity in the validation of eligibility criteria. As one example, the Commission should 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.²⁴ The Commission has already reviewed these processes and determined they are sufficiently robust; thus they need not be disturbed.

²⁰ Comments of Competitive Carriers Ass’n (“CCA”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 8. *See also* Comments of USTelecom (“USTelecom”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 3; Comments of Verizon (“Verizon”), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2.

²¹ Public Notice, p. 7, citing Sec. 904(b)(2) of the Consolidated Appropriations Act.

²² Comments of CTIA (“CTIA”), WC Docket No. 20-445 (fil. Jan 25, 2021), p. 6.

²³ NTCA, p. 10.

²⁴ *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).

A number of commenters also encouraged the Commission incorporate into the Verifier other EBB eligibility criteria not already captured by that database (such as the National School Lunch Program, for example).²⁵ While ideally this would offer a consistent and reliable approach for determining consumers' eligibility for the EBB, establishing a process through which existing systems such as the school lunch or Pell Grant program could interact with the Verifier will take time and require steps that could delay consumers' ability to be deemed eligible for the EBB. Thus, the Commission should allow other methods of verifying eligibility when the EBB is first launched, while simultaneously working to incorporate other programs into the Verifier as rapidly as possible to enable further sign-ups and to have a single repository of verification information to the greatest extent possible. The Commission could, for example, allow providers to accept a letter from a low-income consumer demonstrating the award of a Pell Grant, and once this program is incorporated into the Verifier, require a further "back-end" verification of that consumer's eligibility.²⁶ Indeed, the Higher Education Advocates propose several, alternative methods by which a provider could verify EBB applicants' Pell Grant eligibility.²⁷

²⁵ USTelecom, p. 3; Verizon, p. 2; CCA, p. 8.

²⁶ NCTA echoed this recommendation, stating that "[t]o the extent this update cannot be accomplished concurrently with other pre-launch activities, however, the Commission should not hold up the Program's start date." NCTA, p. 11. Similarly, INCOMPAS recommended the Commission "simultaneously work to update the NLAD so that the system can become a more robust repository for verification." INCOMPAS, p. 14.

²⁷ *Ex parte* letter, WC Docket No. 20-445, Higher Education Advocates (Jan. 22, 2021).

While a few commenters proposed a consumer “self-certification” process,²⁸ NTCA urges the Commission to ensure appropriate safeguards are in place if such a method is deemed necessary and permissible. This will be essential to ensure the funding will stretch as far as needed to serve the customers truly most in need. Therefore, if the Commission decides to allow providers to rely on consumers’ self-certification, consumers deemed eligible for EBB-supported service through self-certification should be subject to a “back-end” verification. Specifically, providers should be required to obtain from the consumer information reasonably necessary to confirm subsequently the consumer’s eligibility for the EBB, either once additional programs are incorporated into the Verifier or as soon as the consumer can produce documentation. This would prevent consumers from being delayed in receiving a much-needed broadband connection while also ensuring proper incentives are in place for providers and consumers alike. Such measures will also help ensure consumers ultimately found to be ineligible notwithstanding initial self-certification do not receive benefits for a prolonged period.

IV. COMMENTERS SUPPORT MEASURES TO PREVENT CUSTOMERS FROM BEING CAUGHT OFF GUARD WHEN EBB FUNDS ARE EXHAUSTED.

As NTCA stated in its initial comments, participating providers must make all consumers seeking to receive discounted service through the EBB aware not only of the cost of service with the discount (including a best estimate of taxes and fees), but also of the terms and conditions that will apply when the EBB concludes. This is necessary to ensure subscribers are not caught off guard by a notice that the discount they are receiving through the EBB will be eliminated on their next bill. Many commenters made a recommendation similar to NTCA’s, encouraging the Commission to adopt rules that would require providers to inform EBB customers in writing,

²⁸ Comments of Altice, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 5.

before enrolling in the program, that the program is temporary.²⁹ Commenters also recommended that this notice include information on EBB customers' option to continue receiving service at whatever level they select at the then-current rate or to discontinue their service without penalty.³⁰ To allow providers the ability to have the information necessary to give EBB subscribers advance notice of when the program will end, multiple commenters urged the Commission to issue frequent (such as biweekly) updates to participating providers with respect to the amount of funds remaining in the EBB, including a best estimate of when the program will conclude.³¹

As an important aside, the problem presented here by a finite one-time appropriation of funds highlights a much larger policy consideration and concern. Specifically, if Congress decides not to appropriate any additional funds to the EBB before the program runs out, millions of low-income consumers will lose their much-needed discount even as broadband service remains as critical a lifeline to health care, employment and/or education as it was when the consumer signed up for the service. Many low-income consumers will, post-pandemic and as the nation's economy begins what may be a long recovery, still need a broadband connection to

²⁹ Comments of National Affordable Housing Management Association, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 3; Comments of Stewards of Affordable Housing for the Future, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 4; Comments of The National Association of Telecommunications Officers and Advisors, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 7.

³⁰ Comments of EducationSuperHighway, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 10; Comments of The National Consumer Law Center and United Church of Christ OC. Inc., WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 13; Comments of the National League of Cities ("NLC"), WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2.

³¹ INCOMPAS, p. 22; Comments of the Multicultural Media, Telecom and Internet Council and National Urban League, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 11; Comments of the Open Technology Institute, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 9; Comments of Public Knowledge, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 10-11; Comments of The Benton Institute for Broadband & Society, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 42.

look for a better job (or a job at all), to further their education, or to continue having access to remote health care. Removing consumers' ability to maintain this critical connection does not benefit anyone and is contrary to the Commission's goal of connecting all Americans to high-speed Internet service.

The EBB funding horizon therefore highlights the danger of reliance upon an appropriated program to offer ongoing support for critical services that will be needed by beneficiaries for an indefinite period of time. Whether the Commission should conduct an examination of what an effective Lifeline subsidy should be and/or reinstate a conversation about how to shore up the universal service fund contribution mechanism – and NTCA submits that both steps are essential – the need for an effective low-income broadband program will outlive COVID-19. The Commission should begin planning now for that reality as a broader matter of public policy.

V. THE COMMISSION AND USAC MUST WORK WITH STATE AND LOCAL AUTHORITIES TO PROMOTE AWARENESS OF THE EMERGENCY BROADBAND BENEFIT PROGRAM.

A number of commenters, like NTCA, noted the importance of encouraging partners to promote awareness of the EBB and recommended the Commission create a central, coordinated marketing campaign.³² Commenters also pointed to various third-party partners that could help

³² NTCA, p. 10, citing WordSouth, Letter, WC Docket No. 20-445 (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 already using many of their resources to apply for admission to be an EBB provider and to smaller entities with limited or non-existent marketing budgets. *See also* Comments of Baltimore Digital Equity Coalition, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2; Comments of Colorado Communications and Utility Alliance, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 7; Comments of National Digital Inclusion Alliance, WC Docket No. 20-445 (fil. Jan. 25, 2021), pp. 3-5; Comments of Next Century Cities, WC Docket No. 20-445 (fil. Jan. 25, 2021), pp. 17-24.

promote awareness of the EBB, such as local governments, affordable housing providers,³³ state broadband authorities,³⁴ the Department of Housing and Urban Development, Public Housing Authorities, and Tribally Designated Entities.³⁵ These entities are already providing services to low-income communities and would therefore be able to readily share information about the EBB with those communities. NTCA supports the Commission considering how best to promote coordinated education efforts and marketing campaigns through providers, other federal and state agencies, and third-party stakeholders that will make consumers aware of the program and help them understand the scope of what is being offered.

VI. CONCLUSION

For the reasons set forth above, the record in this proceeding supports:

- provider participation rules that are at once administratively simple but that also safeguard the use of limited funding;
- leveraging existing mechanisms such as the Verifier and the NLAD, incorporating additional programs into the former, and allowing alternative verification methods with safeguards;
- preparing for the “endgame” with respect to the EBB given the uncertainty regarding what will happen when EBB appropriations are expended; and
- the Commission creating a central, coordinated marketing campaign.

³³ Comments of American Association of Service Coordinators, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 4.

³⁴ Comments of Illinois Office of Broadband, WC Docket No. 20-445 (fil. Jan. 25, 2021), pp. 3-4.

³⁵ *See* Comments of The National Ass’n of Housing and Redevelopment Officials, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2. Tribally Designated Entities might also be able to assist with identifying qualifying Tribal areas to help avoid duplicative enrollment. To ensure the widest reach possible, some commenters also recommended making marketing materials available in multiple languages and establishing a “help desk” at the Commission for consumers to call with questions about the program. *See* Comments of The Leadership Conference on Civil and Human Rights, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2-3; Comments of Internet for Dallas, WC Docket No. 20-445 (fil. Jan. 25, 2021), p. 2.

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