



November 5, 2021

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C., 20554

**RE: Emergency Broadband Benefit Program
WC Docket No. 20-445**

Dear Ms. Dortch:

On Friday, November 5, 2021, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”)¹ met with Eduard Bartholme, Associate Chief of the Federal Communications Commission’s (“Commission”) Consumer and Governmental Affairs Bureau, as well as Rashann Duvall, Jessica Campbell, and Sherry Ross with the Wireline Competition Bureau. The parties discussed NTCA members’ experience with Emergency Broadband Benefit Program (“EBB”) benefit transfers conducted without subscribers’ prior affirmative consent.

As an initial matter, NTCA pointed to its membership’s strong support for and wide participation in the EBB program, as well as appreciation for Commission action thus far to address the minor complications in program administration that have arisen from time to time.² NTCA discussed, however, the importance of proper administration of benefit transfers. While consumers should at all times have the ability to take the subsidy to any provider that meets their needs without delay or substantial hurdles, inherent in this is the notion of affirmative *choice* – benefit transfers made without the consumer’s affirmative consent are the antithesis of choice, and they should at no time find their EBB benefit transferred without their consent. Unfortunately, NTCA members have reported the occurrence of unwanted transfers, with providers reaching out to subscribers to confirm an intention to transfer their EBB benefit, only to find that such a transfer is not wanted. (In other cases, the subscriber has even contacted the provider, confused as to why the benefit no longer is being applied and surprised to discover a different provider is instead now indicated for the EBB benefit.) This necessitates initiating the process of transferring the benefit back to the original provider, and consumers are caught in the middle, having to give affirmative consent to their original provider once again. This

¹ NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities.

² *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-1098 (rel. Sep. 3, 2021) (granting “a limited waiver to participating providers that uploaded their reimbursement claims for discounted service provided in the July 2021 service month by August 16, 2021, but did not certify those claims by the August 16, 2021 claims deadline.”).

practice is disruptive to consumers as well as to providers, and undermines existing and potential beneficiaries' faith in the EBB program in a way that could undercut demand.

NTCA observed that this practice can be eliminated simply via clarification of existing EBB program rules. More specifically, in the *EBB Report and Order*,³ the Commission set forth several consumer disclosure provisions, and in doing so stated that, “[t]he provider must also retain documentation demonstrating that, having received such disclosures, the household provided affirmative consent to applying their Emergency Broadband Benefit to the service received from the EBB provider.”⁴ This language is not affirmation of the household’s receipt of such consumer disclosure, but rather a requirement that providers document having obtained affirmative consent from that household for applying the subsidy to the provider’s service following receipt of the disclosures. Most importantly, nothing in this language indicates this requirement applies only to the very first time a consumer seeks to obtain an EBB benefit. Any reading of this language that would be so limiting would enable unscrupulous providers to, at will and without consequence, transfer a household’s benefit without consent and reap the benefits of the subsidy for that month even if the consumer eventually transfers back to their original provider.⁵ This also undermines the “disclosure and consent process”⁶ the Commission intended to “help ensure that low-income households are aware of their choices in the EBB Program without creating overly burdensome application requirements for those households.”⁷

Moving forward, the Commission should clarify that, under the policy previously articulated above, all providers must obtain (and provide documentation of) affirmative and informed consent from an EBB eligible household prior to initiating a benefit transfer. More specifically, the Commission already requires participating providers to “maintain records to document compliance with all Commission requirements governing the Emergency Broadband Benefit Program.”⁸ The Commission should simply confirm that the affirmative consent requirements in paragraph 38 requiring that a consumer assent to having their benefit apply to any provider’s service (whether their first choice of provider for purposes of the EBB benefit or a new provider to whom they seek to transfer that benefit) are “Commission requirements” as encompassed by Section 54.1611 of its rules.

³ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29 (rel. Feb. 26, 2021) (“*EBB Report and Order*”).

⁴ *Id.*, ¶ 38.

⁵ As noted below, a provider can transfer-in a subscriber near the end of the month and be reimbursed for the entire monthly benefit while the transferring out provider (that has provided service for most of the month) cannot claim any reimbursement due the prohibition on partial reimbursements.

⁶ *EBB Report and Order*, ¶ 38.

⁷ *Id.*

⁸ 47 CFR 54.1611 (“Participating providers must maintain records to document compliance with all Commission requirements governing the Emergency Broadband Benefit Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator upon request.”).

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Finally, NTCA indicated its support for a proposal⁹ to include the name of and contact information for the transferring-in provider to National Lifeline Accountability Database notifications sent to the transferring-out provider. This information would enable providers to resolve at least some benefit transfer disputes without reliance on the subscriber's involvement. In addition, the Commission should reconsider its rules that prohibit partial reimbursements when a subscriber de-enrolls and transfers before end of the month. Because a provider can transfer in a subscriber near the end of the month and be reimbursed for the entire monthly benefit while the transferring-out provider (that has provided service for most of the month) cannot claim any reimbursement, unscrupulous actors may be incited to initiate unwanted benefit transfers at a time that yields the greatest benefit for that provider.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Brian Ford

Brian Ford

Director of Industry Affairs

NTCA—The Rural Broadband Association

cc: Eduard Bartholme
Rashann Duvall
Jessica Campbell
Sherry Ross

⁹ *Ex Parte* Letter from Brian Hurley, ACA Connects—America's Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (the "Commission"), WC Docket No. 20-445 (fil. Sep. 27, 2021), p. 3.