

A photograph of a meeting table with laptops, papers, and a coffee cup. The table is made of light-colored wood. In the center, a black laptop is open. To its right is a grey coffee cup. On the left, there are several papers, including one with a bar chart. A person's hand is visible on the left side of the frame, holding a green folder. Another person's hands are visible on the right side, one holding a pen over a notepad. A smartphone is on the table near the laptop. The background is slightly blurred, showing a person in a dark patterned shirt.

LORMAN[®]

New Federal Program: Free Internet for Low-Income Families

Prepared and Presented by:

John W. Pestle, Esq., Varnum LLP
Jonathan L. Kramer, Esq., Telecom Law Firm, P.C.

LORMAN[®]

Lorman Education Services is a leading provider of online professional learning, serving individuals and teams seeking training and CE credits. Whether you're looking for professional continuing education or an enterprise-wide learning and development solution, you will find what you need in Lorman's growing library of resources.

Lorman helps professionals meet their needs with more than 100 live training sessions each month and a growing collection of over 13,000 on-demand courses and resources developed by noted industry experts and professionals.

Learn more about Lorman's individual programs, economical All-Access Pass, and Enterprise Packages:

www.lorman.com

New Federal Emergency Internet Discount Program for Low-Income Households

By John W. Pestle

LORMAN[®]



VARNUM
ATTORNEYS AT LAW

LORMAN

Important Notice: This presentation has been prepared by Varnum LLP for informational purposes only and does not constitute legal advice. Copyright ©, 2021 Varnum LLP. All rights reserved.

Varnum Law Firm

- One of Michigan's largest law firms - - 133 years old
- Large corporate firm with communications, municipal and utility practice, including at Federal Communications Commission
- For 25 years:
 - Representing property owners on cell tower leases
 - Including sales of over 100 leases, future leasing rights
- For 35 years representing municipalities on cable, telecommunications and cell tower matters
- Offers model cell tower and antenna leases, drafted from property owners' perspective at www.varnumlaw.com/lease
- Cell tower blog (www.varnumlaw.com/pestle-publications *and scroll to bottom of page*)

John Pestle

- Over 30 years' experience in communications, utility and energy law
- Chair of Varnum's Telecommunications Practice Group
- Graduate of Harvard College, Yale Graduate School and the University of Michigan Law School
- Admitted in Arizona and Michigan, Member Federal Communications Bar
- Actively involved on 1996 Telecommunications Act, 47 USC §§253, 332
- Past Chair of Municipal Lawyers Section of Michigan Bar and Legal Section of American Public Power Association
- Held FCC license to work on radio, TV, ship radar transmitters
- jwpestle@varnumlaw.com and 616-336-6725

Outline of Presentation

1. Origins of Program, FCC Implementation Order
2. One Page Summary
3. Discounts Described
4. What Households are Eligible for Discounts
5. Who Provides Discounts
6. How to Obtain Discounts
7. When are Discounts Available, for How Long

Part 1 - - Origins of Program, FCC Order

Origins of Program, FCC Order

- Created by Congress in year-end 2020 Federal stimulus/COVID relief bill, Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020) (“Act”)
 - In general to provide Internet discounts to low-income households
 - Due to importance of broadband access during pandemic for distance learning, telecommuting and telehealth, among other things
 - Appropriated \$3.2 billion, set general framework
- Federal Communications Commission (“FCC”) released Order (“Order”) implementing program on February 26
 - <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf>
 - Order has detailed discussions, explanations of rules, why they were adopted, alternatives which were considered and rejected, and why

Origins of Program, FCC Order (cont'd)

- Order is 94 pages long, 160 numbered paragraphs, so these slides are only a summary
 - But to aid those who will be involved in using it, and their attorneys, to go into more detail, the slides provide citations - - e.g., Order ¶ 6 - - to paragraphs supporting specific points
- In package for today's program, you should have the following as part of one pdf manual or document - - If not, contact Lorman, John Pestle or Jonathan Kramer for copies
 - John Pestle's slides
 - Jonathan Kramer's slides
 - FCC Order
 - FCC one-page Emergency Broadband Benefit Program Fact Sheet ("Fact Sheet") with summary, links to resources

Origins of Program, FCC Order (cont'd)

- This webinar is intended for schools, municipalities, libraries, churches, social service providers and others with an interest in
 - Making sure eligible households are aware of the discounts
 - Helping them apply for discounts,
 - Especially schools which under the Order are likely required to confirm students' eligibility

Part 2 - - One Page Summary of Order

One Page Summary

- Discounts of \$50/month (\$75 on Tribal lands) on Internet service, \$100 on equipment per “low-income” household
- “Low-income” includes getting free/reduced price school meals, Pell grant in 2020-2021, SNAP benefits, Medicaid, Lifeline phone/Internet service; lost job/substantial loss of income; “household” is broadly defined
- Discounts apply to any type of Internet service (cable, phone, cell phone, wireless) except dial-up - - Providers will provide the discounts on customer’s bills, then be reimbursed by Federal Government
- How to get discount - - Households enroll directly with a provider, or via a national website. Providers are audited, have to confirm household eligibility, e.g. - - with schools
- Discounts will start soon (before end of April) and end 6 months after pandemic ends or \$3.2 billion runs out, whichever comes first
- Order and related FCC Fact sheet included with webinar

Part 3 - - Discounts Described

Discounts Described

- Monthly discount is \$50 (\$75 on Tribal lands) from provider's rate schedule on December 1, 2020. Order ¶ ¶ 13, 72
 - December date prevents gaming program by raising rates to offset discount
 - Rates are before applicable taxes, etc. Id. ¶ 70
- Discount also applies to “bulk billing”, Id. ¶ 45 where Internet service is included in monthly rent, such as for households in
 - Mobile home parks
 - Apartment buildings
 - Low-income housing
 - Senior centers
 - Assisted living and nursing homes
 - For eligible households their monthly rent is reduced by the discount

Discounts Described (cont'd)

- Discount applies to “bundled services” that include text messaging, and voice mail, Order ¶¶ 76-77, as well as to bundles that include modems, routers, hotspots, etc. Id. ¶ 78
 - Not to bundles that include “video”, Id. ¶¶ 76-77, so not to bundles with conventional cable TV service.
 - Discounts thus apparently apply to most cell phone service packages.
- One time discount of up to \$100 for equipment applies only to laptop computers, desktops or tablets, not to cell phones. Id. ¶¶ 79-80
 - Discount is once per household”,
 - And household must contribute between \$10 and \$50 towards cost of device. Id. ¶ 81.

Part 4 - - What Households are Eligible for Discount

What Households are Eligible for Discounts

- Discussed at length in the Order at ¶¶ 43-68, see same for details.
- A household is eligible if one member of the household qualifies, Id. ¶ 44
- Five major ways a member can qualify:
 1. Experienced a substantial loss of income since February 29, 2020,
 - Shown for example by
 - Layoff or furlough notice, or
 - Applying for/receiving unemployment benefits
 - And the household had a total income in 2020 below \$99,000 for single filers and \$198,000 for joint filers. Id. ¶ 58

What Households are Eligible (cont'd)

- Five ways to qualify (cont'd):
- 2. Family member received a Federal Pell Grant in the current award year. Id. ¶¶ 51, 59;
- 3. Family member who in the current school year receives benefits under the free and reduced-price school meals program, including through the USDA Community Eligibility Provision, or did so in the 2019 - 2020 school year. Id. ¶ ¶ 51, 55-57, 68 and passim.
 - Lengthy discussion in Order of eligibility, and how to comply with student privacy, parental consent, and minimizing burden on schools, Id. ¶ 68
 - If entire school qualifies for USDA free or reduced lunch, e.g. – in areas with high poverty rates – then all students qualify. Id. ¶ ¶ 56-57

What Households are Eligible (cont'd)

- Five ways to qualify (cont'd):
- 4. One family member meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program. Id. ¶ 60.
- 5. One family member qualifies for FCC Lifeline program for low-income consumers by participating (list is not exhaustive) in programs such as
 - Medicaid,
 - Supplemental Nutrition Assistance Program (SNAP),
 - Supplemental Security Income (SSI),
 - Federal Public Housing Assistance (FPHA),
 - Veterans and Survivors Pension Benefit),
 - Having an income at or below 135% of the Federal Poverty Guidelines or
 - On Tribal lands qualifying Tribal-specific federal assistance program
 - See Act, div. N, tit. IX, § 904(a)(6)(A); Order ¶ ¶ 7, 43

What Households are Eligible (cont'd)

- “Household” is broadly defined as

“[A]ny individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household . . . If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.”
Order ¶ 44 (emphasis supplied).

What Households are Eligible (cont'd)

- Again, a household is eligible if one member of the household qualifies, Id. ¶ 44
- For multiple qualifying households at same address, each household qualifies to get discounts. Id. ¶ 46.
 - For example, for multiple families in a homeless shelter, each can qualify. Id. and fn. 112
- And households are eligible for discounts despite being behind on their payments to a provider, now or in the past, not paying/having paid termination fees for a current or prior service, or not complying with a “gap” or waiting period between changing services. Id. ¶ ¶ 37, 43.

Part 5 - - Who Provides the Discounts

Who Provides the Discounts

- Discussed at length in the Order at ¶¶ 10-42
- But in English, both
 - Traditional communications providers
 - Cable companies
 - Telephone companies
 - Cell phone companies
 - And less traditional providers
 - Municipalities, such as those providing broadband service
 - Cooperatives, such as rural electric/telephone cooperatives which often by microwave provide broadband to rural areas
 - Wireless internet service providers, also often providing service by microwave dishes
 - Community broadband networks. Order ¶ 12

Who Provides the Discounts (cont'd)

- To be eligible to provide the discounts, and then be reimbursed for them by the Federal Government, providers must
 1. Either
 - Already be approved to assist low-income households as an “Eligible telecommunications carrier” for the FCC’s Lifeline program (many large companies are) or
 - Be approved by an expedited approval process which the Order creates for this program, and
 2. Comply with requirements set up in the Order on how to sign-up households, keep records, get reimbursed, etc.
 - These approvals and requirements are set forth generally in the Order at ¶¶ 10-42, and 86-132 and are beyond the scope of this presentation

Who Provides the Discounts (cont'd)

- What broadband service qualifies? Basically conventional Internet service
 - Must have been part of provider's Internet offerings as of December 1, 2020, Id. ¶¶ 13, 29
 - Must be faster than dial-up, Id. ¶ 12, otherwise no specific minimum speed requirement, Id. ¶¶ 73-74
 - Not “metered” service based primarily on a data allowance (e.g., one gigabyte for \$5), Id. ¶ 70
 - Technology neutral - - Any technology meeting preceding qualifies. Id. ¶ 12
- Participating providers
 - Must provide the discounts on at least one of their broadband offerings, and do so throughout their entire service area, and
 - Are encouraged to provide the discounts on all their broadband offerings. Id. ¶ 37

Part 6 - - How to Obtain the Discounts

How to Obtain the Discounts

- The FCC Fact Sheet indicates that enrollment will either be
 - Through the provider offering the discount, or
 - By registering with USAC (which administers the FCC's program of discounts on phone and Internet service)
- Too soon for either of the preceding to have been set up, so stay tuned!
- FCC says to check its web site, www.fcc.gov/broadbandbenefit, regularly for updates and latest information.
- Assumption/Best Guess
 - Providers may reach out to schools, customers, on program, how to apply
 - Especially for people with no Internet, or unlikely to be aware of program - - schools, social service entities and the like will reach out to people to inform them.
 - Last several pages of Order are all about promoting public awareness. Id. ¶¶ 133 ff
 - Hence this program!

How to Obtain the Discounts (cont'd)

- Please note: Providers will have to verify that households are eligible for the discounts, in order to be reimbursed.
- Three ways to confirm eligibility. Order ¶ 49 and fn 130
 1. School-based eligibility verification: Schools confirming to a provider that a student receives free or reduced-price meals. Id. ¶ 68.
 - This will be a major method of verification, building on the verification process some schools already use to confirm student's eligibility for discounted phone and broadband service (e.g., FCC Lifeline program)
 - Order is sensitive to need for parental consent to disclose student information, privacy concerns; may issue consent form, protective order form
 - Again, still under development

How to Obtain the Discounts (cont'd)

- Three ways to confirm eligibility (continued)
 2. A student or parent register with and has eligibility verified by United Service Administrative Company (“USAC”), <https://www.usac.org/>
 - This is in an expansion of USAC’s role administering the FCC “Lifeline” program
 - Order directs USAC to set up a web page, program to verify eligibility for these new discounts. Id. ¶¶ 49ff - - Too soon, web page has not been set up yet.
 - In general, would appear to be most useful for households receiving Medicaid, SNAP or other Federal benefits (see slide 17 above) as USAC computers apparently can automatically cross-check on these items
 - Household can do this in advance, so approval should be quick once provider checks with USAC

How to Obtain the Discounts (cont'd)

- Three ways to confirm eligibility (continued)
 3. Comply with a provider's FCC-approved verification process. Id. ¶¶ 62-67
 - Order allows providers to set up their own programs to verify eligibility
 - Unclear to what extent this will occur.
- Practical suggestions:
 - Local providers are crucial
 - Reach out to them, their local managers, government affairs people, for guidance, to work together
 - Elected officials, state and local, often know/can easily find out whom to contact, especially for entities (e.g. cell companies) with little local presence
 - Similarly state professional organizations, associations and their gov't affairs people usually know the state government affairs people for major providers

Part 7 - - When Are Discounts Available

When Are Discounts Available

- FCC Fact Sheet says it expects discounts to be available in April 2020
- Discounts end on earlier of
 - Six months after Secretary of HHS determines pandemic emergency is over, or
 - Exhaustion of \$3.2 billion appropriated by Congress. Id. ¶ 110.
- Providers must give customers at least 30 days notice of discounts terminating, and
 - Customers must affirmatively “opt in” to being charged for service at the full, non-discounted rate once the program ends. Id. ¶ 132.

17661737 v7.pptx



LORMAN[®]

New Federal Emergency Internet Discount Program for Low-Income Households

Presenter:

Dr. Jonathan L. Kramer

Senior Partner

Telecom Law Firm, P.C.

www.TLF.Law

Copyright © 2021 TLF.Law



Jonathan L. Kramer, Esq., J.D., LL.M, LP.D

- **Telecom Law Firm, P.C.**
 - Admitted to practice law in California and New Mexico
 - Licensed by FCC since early 70s (holds six licenses/certs)
 - Licensed as a Communications Contractor in California (inactive)
 - Licensed as a Real Estate Broker in California
 - 35+ years in telecom engineering/safety reviews (RF, broadband, fiber, outside plant safety, code compliance, RF safety)
 - 33+ years consulting on telecom matters > 1,000 governments/firms; 25+ years of wireless siting and planning >2,000 cases/matters
 - Expert witness/trial advisor in 40+ wireless, wired telecom cases
 - Co-author, Co-editor of FCC's 'A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance'
- **Member:**
 - IMLA (Attorney Member)
 - NATOA (Twice Member of the Year)
 - FCBA (Attorney Member)
 - Society of Broadcast Engineers (Senior Member)
 - SCTE (UK) (Fellow Member); SCTE (US) (Emeritus Senior Member)
- **Education:**
 - Doctor of Law and Policy, Northeastern Univ., Boston (LP.D)
 - Master of Law *with honors*, Strathclyde University School of Law, Glasgow (I.T. & Telecom Law) (LL.M)
 - Juris Doctor *cum laude*, Abraham Lincoln School of Law, Los Angeles (JD)
- **Teaching:**
 - Doctoral, Masters level Instructor; Regulatory Law and Policy, Northeastern University; Boston and Seattle



Dr. Jonathan L. Kramer

Kramer@TLF.Law
2001 S Barrington Avenue
Mail: Ste 306 Messenger Ste 315A
Los Angeles, California 90025
(310) 405-7333



Emergency Broadband Benefit Program Providers:

Eligible Telecommunication Carriers (ETCs)

(no review required; automatic eligibility)

and

Non-ETCs (expedited review for eligibility):

Traditional Internet Service Providers (ISPs)

...including cable TV/Fiber optic providers

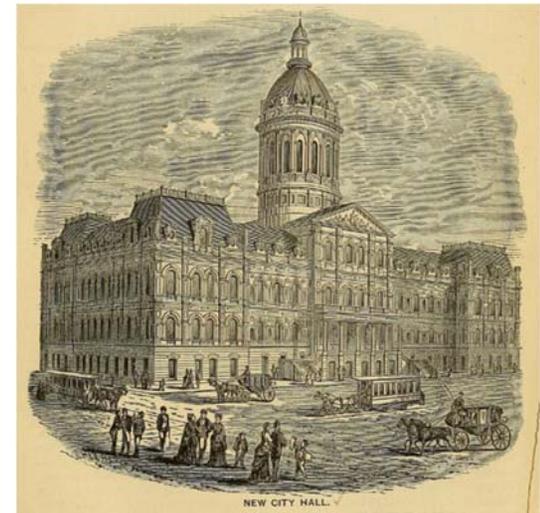
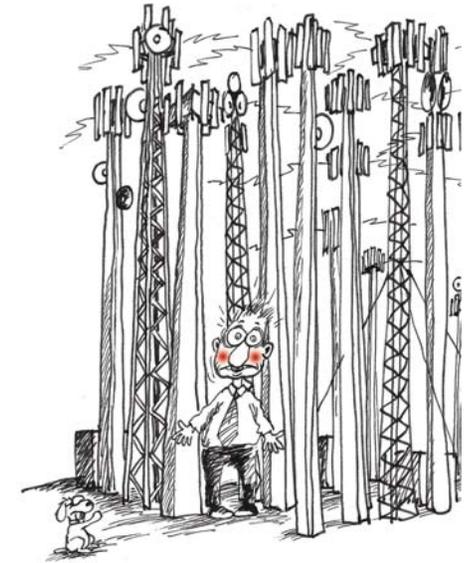
...Wireless Internet Service Providers (WISPs)

Non-traditional broadband providers:

...community-owned networks

...electric cooperatives

...municipal governments



LORMAN



Eligible Households for the Lifeline Program

Provides for discounts on voice or broadband Internet access service, as well as on bundled services

Test: Do only animals live in the household? *Not eligible.*

Test: Do some humans live there? Likely eligible if...

...they can be found via the National Verifier or the National Lifeline Accountability Database, *and*

...they are participating in a qualifying assistance program

i.e., Medicaid, Supplemental Nutrition Assistance Program (SNAP)

Supplemental Security Income (SSI)

Federal Public Housing Assistance (FPHA)

Veterans and Survivors Pension Benefit

In school areas covered by the USDA Community Eligibility Provision

or

the human earns no more than 135% of the Federal Poverty Guidelines (Contig. 48 in 2021: 1 person earning no more than \$17,388).

Tribal lands: Qualify for the Lifeline program by meeting any of the criteria above *or* by participating in a qualifying Tribal-specific federal assistance program.



How Provided?

Dial Up

('You've got real slow')

DSL (copper)

('You've got a wee-bit faster')

Coax (cable TV)

('You've got fast to really fast')

Wireless ISP

('Mainly you've got faster than DSL and up to fast')

Community Wi-Fi

('You've also got faster than DSL and up to fast')

Wireless Carrier Internet

('You've also got very faster to really, really fast')

Fiber to the Home

('I hate you, you speed demon!')



Why Does Fast Matter?

Dial Up

(Downloads, especially video/large images are painful)

DSL (copper)

(Take few minutes to relax)

Coax (cable TV)

(Ah, that was really quick unless during prime time)

Wireless ISP

(Ah, that wasn't as quick)

Community Wi-Fi

(Not in a speed race with Cable TV)

Wireless Carrier Internet

(It depends on distance from the tower, users, backhaul)

Fiber to the Home

(My fingers are burning up)



Ways and Means

Dial Up

(No changes; program overlay on the technology)

DSL (copper)

(No changes; but likely not long for this world...)

Coax (cable TV)

(No changes; program overlay on the technology)

Wireless ISP

(No changes; program overlay on the technology plus new)

Community Wi-Fi

(No changes; program overlay on the technology plus new)

Wireless Carrier Internet

(No changes; program overlay on the technology)

Fiber to the Home

(No changes; program overlay on the technology)



Sites and Sight

Wireless ISP *and* Community Wi-Fi (Local government Wi-Fi like Community Wi-Fi)

- Wireless ISP** (commonly commercial, hill tops, tall towers, tall rooftops)
- Community Wi-Fi** (commonly community centers, service buildings, in-buildings)
- Municipal Wi-Fi** (commonly traffic signals for parking meters; destinations such shopping districts, government buildings, PD logging; public works logging, etc.)



Siting and Planning and OTARD, oh my!

Wireless ISP *and* Community Wi-Fi
(Local government may not be subject to planning)

FCC Over the Air Receiving Devices (OTARD) rules likely to apply

See: <https://docs.fcc.gov/public/attachments/FCC-21-10A1.pdf> (FCC 21-10, adopted Jan 6, 2021, released Jan. 7, 2021)

“1. Today, we update the Commission’s rule for over-the-air reception devices (OTARD) to expand its coverage to include hub and relay antennas that are used for the distribution of broadband-only fixed wireless services to multiple customer locations, regardless of whether they are primarily used for this purpose, provided the antennas satisfy other conditions of the rule.¹ By making this modest adjustment to our rule while maintaining the other existing OTARD restrictions, we place fixed wireless broadband-only service providers on similar competitive footing with other service providers. This rule change should allow fixed wireless service providers to bring faster Internet speeds, lower latency, and advanced applications—like the Internet of Things, telehealth, and remote learning—to all areas of the country, and to rural and underserved communities in particular.”

Internal citations omitted



Over the Air Receiving Devices (OTARD)

Examples:

TV reception antennas *and* masts to adequately receive over-the-air TV signals

(“Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes.”)

Satellite Dishes (1 meter or less)

Wireless Internet end-user antennas (1 meter or less)

Wireless carrier end-user antennas

Fees:

“Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited.”

But not...

CB antennas

Ham radio antennas

Digital Audio Radio Services (e.g., SiriusXM®)

See: <https://www.fcc.gov/media/over-air-reception-devices-rule>



Siting and Planning and OTARD, oh my!

Wireless ISP *and* Community Wi-Fi
(Local government may not be subject to planning)

FCC Over the Air Receiving Devices (OTARD) rules likely to apply

See: <https://docs.fcc.gov/public/attachments/FCC-21-10A1.pdf> (FCC 21-10, adopted Jan 6, 2021, released Jan. 7, 2021)

“2. The Commission’s OTARD rule prohibits laws, regulations, or restrictions imposed by State or local governments or private entities that impair the ability of antenna users to install, maintain, or use over-the-air reception devices.” “The rule prohibits restrictions that unreasonably delay or prevent installation, maintenance, or use of an antenna; unreasonably increase the cost of installation, maintenance, or use of an antenna; or preclude reception of an acceptable quality signal. For the OTARD rule to apply, the antenna must be installed on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property upon which the antenna is located.”

Internal citations and quotes omitted



Recognizing Wireless Internet OTARD Providers

1. Not (yet) being filed by traditional wireless carriers
2. Relatively wide-area footprint sites, usually on hills, rooftops, and towers
3. Often uses very small aperture dish antennas with whip-type and panel antennas
4. May offer ‘dial-up’ telephone services (look for state PUC/PSC rights)
5. May have one or more ‘distribution sites’



Recognizing Community Wi-Fi OTARD Providers

1. Not (yet) being filed by traditional wireless carriers
2. Relatively small footprint coverage sites, usually on local hills, rooftops, and towers inside the served community
3. Often uses whip-type and sometimes panel antennas
4. Unlikely to offer ‘dial-up’ telephone services
5. May have one or more ‘distribution sites’ inside the community



Recognizing Municipal Wi-Fi OTARD Providers

1. Operated by the/a local government unit
2. Functions related to government operations and tourism/economic development
3. Often uses small whip-type panel antennas attached to traffic signals interconnected by a 'mesh' network connected back to City Hall/data center
4. Unlikely to offer any form of telephone services, but might have some limited traffic/security camera uses
5. Will likely have many 'distribution sites' inside the jurisdiction



Special considerations for Local Governments

If participating in the Emergency Broadband Benefit Program (and even if not!) it is vital that your government adopt and enforce an “acceptable use policy” (AUP) for all internal users and external public.

Some examples AUPs online (search ‘municipal government Wi-Fi acceptable use policy’):

<https://www.calfund.org/guest-wireless-access-acceptable-use-policy/>

<https://www.lakeforestca.gov/DocumentCenter/View/2122/Acceptance-Use-Policy-PDF>

<https://www.schools.nyc.gov/about-us/policies/internet-acceptable-use-policy>

<https://www.anacorteswa.gov/1114/Acceptable-Use-Policy>

Ask your IT specialists about how they are performing access control now, and how they (hopefully) developed and use an AUP. Ask whether they are using a ‘radius server’ or equivalent



Wrap Ups and Take-Aways

The Emergency Broadband Benefit Program is, at a fundamental level, an important tool for bridging the digital divide.

The EBBP provides discounted connectivity, but user hardware (i.e., computers) remains a problem.

Expect multiple program participants in the EBBP, each may use the program to expand their footprints.

OTARD figures into EBBP and local government planning staff must understand the updated FCC OTARD rules as they exist today.

The EBBP is a limited-time program but may open the legislative door to longer-term means of reducing the digital divide. Beneficiaries should look out for sign-up fine print that automatically ‘opts-in’ a household to the full rate after the program ends.

Hang on; keep all body parts inside the ride.



Resources

Telecom Law Firm, P.C. web site:
<http://TLF.Law/>

FCC RF Safety Page:
<http://www.fcc.gov/encyclopedia/radio-frequency-safety>

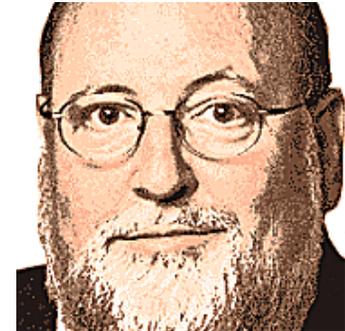
Jonathan Kramer's Wireless Blog:
Wireless.Blog.Law

3,000+ Cell Site Example Photographs:
<http://www.CellTowerPhotos.com>

“A Practical Guide to Radio Frequency Emissions Safety”
<http://www.TelecomLawFirm.com>

John Pestle's Blog:
<http://www.varnumlaw.com/blogs/cell-phone-tower/>

Contact Information:



DR. JONATHAN L. KRAMER
Telecom Law Firm, P.C.
Direct Tel: 310 405-7333
Kramer@TLF.Law
2001 S. Barrington Avenue
Mail: Suite 306 Messenger: Suite 315A
Los Angeles, CA 90025

3570 Camino del Rio North, Suite 102
San Diego, CA 92108

This lecture is Copyright © 2021 Telecom Law Firm, P.C. Our Orange Antenna Ball logo is Reg. USPTO by TLF. This lecture is presented for informational purposes only. Hopefully, you found it entertaining, as well. This lecture was prepared and presented in March 2021. The lecture and these slides are not intended to provide legal counsel to any person in regard to any specific matter, and may not reflect recent developments in the law, regulation, and court cases. No attorney-client relationship is formed whatsoever by these materials. You are advised to consult with your legal counsel before you sign on *any* dotted line; it's likely to cost you much more to fix things *after* you sign. If you don't have competent legal counsel to assist you, just ask John or myself for some ideas. -Jonathan

Copyright © 2021 TLF.Law

LORMAN

47

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

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

REPORT AND ORDER

Adopted: February 25, 2021

Released: February 26, 2021

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Simington issuing separate statements, Commissioner Carr approving in part, concurring in part and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION..... 1
II. BACKGROUND..... 4
A. Emergency Broadband Benefit Program 4
B. Lifeline Program 7
III. DISCUSSION 9
A. Participating Providers..... 10
1. Providers Eligible to Participate..... 12
2. Election to Participate in Emergency Broadband Benefit Program by Existing ETCs and Bureau-Approved Providers 14
3. Non-ETC Provider Application and Approval Process..... 25
4. Conditions and Requirements for Participating Providers 36
5. Application and Election Procedures 41
B. Household Eligibility 43
1. Emergency Broadband Benefit Program Eligible Households 43
2. National Verifier and NLAD Eligibility Determination..... 49
3. Participating Provider Alternative Verification Process 62
4. School-Based Eligibility Verification 68
C. Covered Services and Devices..... 69
D. Benefits for Households on Tribal Lands 83
E. Budget and Reimbursement..... 86
1. Emergency Broadband Connectivity Fund and Reimbursement for the Emergency Broadband Benefit..... 86
2. Reimbursement for Connected Devices 96
3. Timing of Reimbursement Claims 98
4. Payment Administration..... 102
5. Tracking and Reporting of Available Funding..... 110
6. Program Sunsetting 114
F. Promoting Awareness 133
G. Audits..... 139
H. Enforcement..... 141
I. Application of Other Part 54 Regulations..... 142
J. Delegations to the Bureau and Office of Managing Director 152
IV. PROCEDURAL MATTERS..... 156
V. ORDERING CLAUSES..... 159
APPENDIX A – FINAL RULES

I. INTRODUCTION

1. In this Order, we establish the Emergency Broadband Benefit Program to support broadband services and devices to help low-income households stay connected during the COVID-19 pandemic.¹ Efforts to slow the spread of COVID-19 have resulted in the dramatic disruption of many aspects of Americans' lives, including social distancing measures to prevent person-to-person transmission that have required the closure of businesses and schools across the country for indefinite periods of times, which in turn has caused millions of Americans to become newly unemployed or unable to find work. These closures have also led people to turn to virtual learning, telemedicine, and telework to enable social distancing measures, which has only increased every household's need for access to broadband services. The cost of broadband services, however, can be difficult to overcome for low-income families and for families that have been struggling during the pandemic.

2. On December 27, 2020, the Consolidated Appropriations Act, 2021 (Consolidated Appropriations Act) became law.² Among other actions intended to provide relief during the pandemic, the Consolidated Appropriations Act establishes an Emergency Broadband Connectivity Fund of \$3.2 billion in the Treasury of the United States for the fiscal year 2021,³ to remain available until expended. The Consolidated Appropriations Act directs the Federal Communications Commission (Commission) to use that fund to establish an Emergency Broadband Benefit Program, under which eligible low-income households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers can receive a reimbursement for such discounts.⁴

3. In creating the Emergency Broadband Benefit Program, the Consolidated Appropriations Act does not preclude the Commission from utilizing in whole or in part any of our part 54 rules or amending them to suit the EBB Program.⁵ Moreover, Congress directed the Commission to utilize existing regulatory tools in support of the EBB Program, such as the National Verifier and the National Lifeline Accountability Database,⁶ originally designed to support the existing Lifeline program, which helps ensure low-income consumers have access to affordable voice or broadband Internet access service, though the EBB Program is funded through a separate appropriation from the Universal Service Fund.⁷

¹ The coronavirus COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States. See Centers for Disease Control and Prevention, Coronavirus (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited Feb. 2, 2021).

² Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135.

⁴ *Id.* § 904(b)(1). Under Section 904, the emergency period “ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates.” *Id.* § 904(a)(8).

⁵ Section 904(f) *Part 54 Regulations* provides that “[n]othing in this section shall be construed to prevent the Commission from providing that the regulations in part 54 of title 47, Code of Federal Regulations, or any successor regulation, shall apply in whole or in part to the Emergency Broadband Benefit Program, shall not apply in whole or in part to such Program, or shall be modified in whole or in part for purposes of application to such Program.” *Id.* § 904(f).

⁶ *Id.* § 904(b)(2).

⁷ Section 904(i)(4) *Relationship to universal service contributions*, provides that “[r]eimbursements provided under this section shall be provided from amounts made available under this subsection and not from contributions under section 254(d) of the Communications Act of 1934 (47 U.S.C. § 254(d)).” *Id.* § 904(i)(4).

Consistent with Congress' direction in the Consolidated Appropriations Act, we now establish the Emergency Benefit Broadband Program.

II. BACKGROUND

A. Emergency Broadband Benefit Program

4. Pursuant to the Consolidated Appropriations Act, the Emergency Broadband Benefit Program (EBB Program or Program) will use available funding from the Emergency Broadband Connectivity Fund to support participating providers' provision of qualifying broadband service offerings and connected devices to qualifying households. To participate in the Program, a broadband provider must elect to participate and either be designated as an eligible telecommunications carrier (ETC) or be approved by the Commission.⁸ Participating providers will make available to eligible households a monthly discount off the standard rate for an Internet service offering and associated equipment, up to \$50.00 per month.⁹ On Tribal lands, the monthly discount may be up to \$75.00 per month.¹⁰

5. Participating providers will receive reimbursement from the EBB Program for the discounts provided.¹¹ Participating providers that also supply an eligible household with a connected device, defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet, for use during the emergency period may receive a single reimbursement of up to \$100.00 for the connected device, if the charge to the eligible household for that device is more than \$10.00 but less than \$50.00.¹² A participating provider may receive reimbursement for only one supported device per eligible household.¹³ Providers must submit certain certifications to the Commission to receive reimbursement, and the Commission is required to adopt audit requirements to ensure provider compliance and prevent waste, fraud, and abuse.¹⁴

6. In implementing the EBB Program, the Consolidated Appropriations Act permits the Commission to apply rules contained in part 54 of the Commission's rules, including those governing the Lifeline program,¹⁵ which requires the Commission to enforce the requirements of the Consolidated Appropriations Act and treat any violation of the Consolidated Appropriations Act as a violation of the Communications Act of 1934,¹⁶ exempts the Commission from certain rulemaking requirements under the Administrative Procedure Act and the Paperwork Reduction Act,¹⁷ and grants the Commission authority to use the services of the Lifeline program administrator, the Universal Service Administrative Company

⁸ *Id.* §§ 904(a)(12), (d)(2).

⁹ *Id.* § 904(a)(7).

¹⁰ *Id.* In its comment, TDI et al. asks that the reimbursement level should be "at the highest allowable level" for "households that have a person who is deaf, hard of hearing, DeafBlind, or deaf with mobility issues." TDI et al. Comments at 2. However, the higher allowable amounts are specifically reserved for "eligible household[s] on Tribal land." Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7).

¹¹ *Id.* § 904(b)(4).

¹² *Id.* § 904(b)(5).

¹³ *Id.*

¹⁴ *Id.* § 904(b)(6).

¹⁵ *See id.* § 904(f).

¹⁶ *See id.* § 904(g).

¹⁷ *See id.* § 904(h) (establishing that 5 U.S.C. § 553 shall not apply to a regulation promulgated under section 904(c) or a rulemaking proceeding to promulgate such a regulation and that a collection of information conducted or sponsored under the regulations required by section 904(c) shall not constitute a collection of information for the purposes of 44 U.S.C. §§ 3501-3531).

(continued....)

(USAC), to implement the EBB Program.¹⁸ The Consolidated Appropriations Act also requires the Commission to adopt audit requirements to ensure that participating providers comply with the Consolidated Appropriations Act and to prevent waste, fraud, and abuse.¹⁹ The Consolidated Appropriations Act required the Commission to provide a 20-day public comment period not later than 5 days after its enactment, to provide a 20-day public reply comment period immediately following the initial comment period, and to promulgate regulations not later than 60 days after its enactment.²⁰ On January 4, 2021, the Wireline Competition Bureau (Bureau) sought comment on how the Commission should implement the EBB Program.²¹

B. Lifeline Program

7. The Commission's Lifeline program provides qualifying low-income households discounts on voice or broadband Internet access service, as well as on bundled service.²² Consumers can qualify for the Lifeline program by participating in a qualifying assistance program (i.e., Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Federal Public Housing Assistance (FPHA), or Veterans and Survivors Pension Benefit) or by having an income at or below 135% of the Federal Poverty Guidelines. Residents of Tribal lands can also qualify for the Lifeline program by meeting the aforementioned criteria or by participating in a qualifying Tribal-specific federal assistance program.²³

8. The Lifeline program is administered by USAC, which operates the National Lifeline Eligibility Verifier (National Verifier) and National Lifeline Accountability Database (NLAD) to make eligibility determinations, prevent duplication, and record enrollment in the program.²⁴ In the Lifeline program, service providers use the NLAD to enroll households that have qualified for Lifeline through the

¹⁸ *Id.* § 904(i)(5). USAC is an independent, not-for-profit corporation designated as the permanent administrator of the Universal Service Fund by the Commission. *See* 47 CFR §§ 54.701 *et seq.* On February 3, 2021, the FCC executed an MOU establishing USAC as the administrator of the program. The MOU is available at https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf. We interpret Section 904(i)(5) as authorization for us to use USAC to perform any services in connection with the EBB Program that USAC currently performs in connection with other FCC programs. This approach best implements the statutory text, which directs us to “avail” ourselves of “the services of [USAC],” and reflects the fact that Congress “is and has been aware” of USAC’s involvement in other FCC programs, and did not limit or restrict any such involvement here. *La. Forestry Ass’n Inc. v. Sec’y of U.S. Dep’t of Labor*, 745 F.3d 653, 674 (3d Cir. 2014). As set forth below, we also expressly adopt for the EBB Program our rule from the Lifeline program restricting USAC from making policy, interpreting unclear statutes or rules relied upon to implement the EBB Program, or interpreting the intent of Congress. *See infra* para. 150.

¹⁹ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(7).

²⁰ *Id.* § 904(c).

²¹ *See Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6, at 2 (WCB 2021) (*Public Notice*).

²² *See* 47 CFR § 54.400(n) (“Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.”).

²³ *See* 47 CFR § 54.409(b) (listing the following qualifying Tribal specific federal assistance programs: Bureau of Indian Affairs general assistance, Tribally-administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), and the Food Distribution Program on Indian Reservations).

²⁴ *See Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6734, para. 179 (2012) (*2012 Lifeline Order*); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006-21, paras. 126-66 (2016) (*2016 Lifeline Order*).

National Verifier, creating a record that forms the basis of providers' claims for reimbursement.²⁵ The National Verifier checks an applicant's identity, address, eligibility based on income or qualifying government program participation, and compliance with the one per household limit.²⁶ The National Verifier has launched in all 56 states and territories as of December 2020.²⁷ USAC also operates the Representative Accountability Database (RAD), with which all ETC enrollment representatives must register to access USAC's Lifeline systems in the process of Lifeline enrollment, benefit transfers, subscriber information updates, recertification, and de-enrollment.²⁸ The use of these databases and systems in the Lifeline program has helped to facilitate the enrollment and reimbursement processes while combatting waste, fraud, and abuse in the Lifeline program.

III. DISCUSSION

9. We now establish the requirements and processes of the EBB Program, pursuant to the Consolidated Appropriations Act. In this section, we discuss the providers that may participate in the EBB Program, the household eligibility requirements for the program, benefits for covered services and devices, the program's budget and reimbursement, and other administrative aspects of the program.

A. Participating Providers

10. Congress in the Consolidated Appropriations Act established that in order to participate in the EBB Program a carrier must have provided broadband Internet access service to households as of December 1, 2020.²⁹ To meet these requirements, Congress defined "participating provider" as either existing ETCs or providers approved by the Commission under an "expedited approval process."³⁰ Congress directed the Commission to create an "expedited approval process" to approve providers to participate EBB Program where the provider is not an ETC.³¹ This expedited approval process requires that providers with an "established program as of April 1, 2020" offering broadband services to eligible households with verification process sufficient to prevent fraud, waste, and abuse "shall be automatically approve[d]."³² We seek to encourage as many providers as possible to participate in the EBB Program. Consistent with the Consolidated Appropriations Act and the proposal in the Public Notice, we also adopt a carrier election process administered by USAC applicable to all providers participating in the EBB Program.³³ Providers that have not already been designated as an ETC by a state or the Commission must also file for automatic approval or seek expedited approval from the Commission. In the Consolidated Appropriations Act, Congress recognized the pressing need to quickly deliver much-needed support to Americans by providing the Commission with the authority to streamline and expedite the provider participation process. At the same time, the Commission must also safeguard the Program's funding to

²⁵ See 47 CFR § 54.407(a).

²⁶ Universal Service Administrative Co., *Eligibility Decision Process*, <https://www.usac.org/lifeline/eligibility/national-verifier/eligibility-decision-process/> (last visited Feb. 17, 2021).

²⁷ Universal Service Administrative Co., *Lifeline – January 2021 Newsletter* (Jan. 28, 2021), <https://view.outreach.usac.org/?qs=06ef94802948a9a144a414c5df5142fd2a5dc44036c6bb4097c736f9e9575a3f1efd6571786bc81d214534733a1ba43ea9ab825942ff2bc1e5ffb4d78e5496576e68ac1b7c78ce6> (last visited Feb. 8, 2021).

²⁸ *Bridging the Digital Divide for Low-Income Consumers*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10918, para. 78 (2019) (*2019 Lifeline Order*).

²⁹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(2), (a)(9), (a)(12), (d).

³⁰ *Id.* at § 904(a)(12)(A).

³¹ *Id.* at § 904(d)(2).

³² *Id.* at § 904(d)(2)(B).

³³ See *Public Notice* at 2.

ensure it provides help to those in need and is not wasted by providers unable to quickly deliver broadband services. Accordingly, the election and approval processes we adopt provide assurances that providers can promptly deliver broadband services to low-income households.

11. We direct the Wireline Competition Bureau, within seven days of the adoption of this Order, to announce a timeline for the submission of information by providers required by the Consolidated Appropriations Act, such as applications from non-ETCs to participate in the EBB Program, requests by all providers for approval of alternative verification processes, and the submission by ETCs and non-ETCs of election notices. The announcement will specify the date for a priority application deadline by which providers must submit these filings to receive approval prior to the beginning of the EBB Program. We also direct the Bureau to announce at a later date other administrative deadlines or milestones, such as when the EBB Program will begin and when providers may begin enrolling subscribers in the program. We expect that the EBB Program and the enrollment process will begin in less than 60 days after the adoption of this Order.

1. Providers Eligible to Participate

12. In the Consolidated Appropriations Act, a “participating provider” for the EBB Program shall be a “broadband provider” that is either “designated as an eligible telecommunications carrier” or seeks approval from the Commission for participation in the EBB Program.³⁴ We agree with commenters that the Commission should establish a broad, technologically neutral approach to provider participation in the EBB Program.³⁵ This interpretation of provider eligibility aligns with the plain language of the Consolidated Appropriations Act, which defines “broadband provider” as any “provider of broadband internet access service.”³⁶ Further, the Consolidated Appropriations Act defines “broadband internet access service” broadly by referencing the definition in section 8.1 of the Commission’s rules.³⁷ Section 8.1 defines “broadband internet access service” as:

“a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.”³⁸

Accordingly, ETCs and non-ETCs seeking to participate in the EBB Program must establish they provide broadband services to participate, and we decline to further narrow provider eligibility among those providers that offer broadband services as defined by the Consolidated Appropriations Act. This interpretation allows not only for ETCs or non-ETCs like traditional Internet Service Providers (ISPs) including cable providers and wireless Internet service providers, but also permits non-traditional broadband providers like community-owned networks, electric cooperatives, or municipal governments.³⁹

³⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(12).

³⁵ See ACA Connects Comments at 3-5; American Association of Service Coordinators at 2; California Emerging Technology Fund (CETF) Comments at 4-5; City and County of San Francisco Comments at 1; City of Austin, TX Comments at 2; City of Longmont, CO Comments at 3; Colorado Communications and Utility Alliance Comments at 2-3; National Association of Housing and Redevelopment Officials Comments at 2; National Association of Telecommunications Officers and Advisors Comments at 2-3; Nebraska Public Service Commission Comments at 5.

³⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(2).

³⁷ *Id.* § 904(a)(1).

³⁸ 47 CFR § 8.1(b).

³⁹ See, e.g., Next Century Cities Comments at 8-11 (describing community-owned networks and non-traditional ISPs); City of Longmont, CO Comments at 2; City of Seattle, Washington State Broadband Office, *et al.* Comments (continued....)

13. In the Consolidated Appropriations Act, Congress established that participating providers would be eligible to receive reimbursement for “internet service offering[s]” offered in the “same manner, and on the same terms, as described in any of such provider’s offerings for broadband internet access service to [an eligible] household[s], as on December 1, 2020.”⁴⁰ We interpret this provision to require participating providers to have offered retail broadband Internet access service to eligible households as of December 1, 2020. Consistent with the Commission’s broadband data reporting rules, participating providers will be able to establish through certification that they provided broadband Internet access service and reimbursable Internet service offerings on December 1, 2020 through reference to timely filing of FCC Form 477.⁴¹ For providers that do not file FCC Form 477, participating providers must certify that they provided retail broadband Internet access service to end-users as of December 1, 2020.⁴² We further clarify that the retail broadband Internet access service must be provisioned to end users, meaning the provider of retail broadband Internet access service maintains a direct relationship with the customer, is responsible for dealing with customer complaints, handles customer billing, and provides quality of service guarantees to the end user.⁴³ We find these provider certifications, in addition to the submission of broadband plan and rate information described below, appropriately satisfy the Consolidated Appropriations Act’s eligibility requirements. As described further below, ETCs must make a showing that they offer qualifying broadband service in the election notice filed with USAC. Non-ETCs will make a threshold showing in the approval process to the Bureau.

2. Election to Participate in Emergency Broadband Benefit Program by Existing ETCs and Bureau-Approved Providers

14. The Consolidated Appropriations Act directed the Commission to establish an expedited process where existing ETCs and other approved providers could “elect” to participate in the EBB Program and gain access to the necessary USAC databases being used to administer the Program.⁴⁴ We adopt the proposal to require all participating providers to file an election notice to participate in the EBB

at 7; City of Los Angeles, *et al.* Comments at 15-17; City of Oakland Comments at 1-2; National Association of Telecommunications Officers and Advisors (NATOA) Reply at 5-6; Small Business & Entrepreneurship Council (SBE) Reply at 2; LGBT Technology Partnership Reply at 2; The Wisconsin Department of Public Instruction Reply at 3; City of Casa Grande, Arizona Reply at 1; Next Century Cities Reply at 12-14; City of San Jose Reply Comments at 2.

⁴⁰ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9).

⁴¹ See *Form 477 Data as of December 31, 2020 are Due No Later than March 1, 2021*, Public Notice, DA 21-33 (OEA 2021); See FCC, *Form 477 Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources> (Jan. 22, 2021). The Commission will consult the subscription data provided on the FCC Form 477 to determine compliance with this requirement. To fulfill this requirement, a provider should reference the most recent FCC Form 477 data month submission showing service in the jurisdiction. See FCC, *Who Must File Form 477?*, <https://us-fcc.app.box.com/v/WhoMustFileForm477>, para. 1 (Dec. 31, 2019) (“An entity that is a facilities-based provider of broadband connections to end users must complete and file the applicable portions of this form if it has one or more broadband connection in service to an end user on the as-of date associated with the form (either June 30 or December 31).”). For providers that cannot reference an earlier FCC Form 477 filing and will be filing FCC Form 477 data for the December 31, 2020 on the extended deadline, the provider should certify to providing service as of December 1, 2020 and reference the upcoming FCC Form 477 filing. See *FCC Form 477 Filing Interface Experiencing Technical Issues; Filing Deadline Extended*, Public Notice, DA 21-218 (OEA 2021).

⁴² Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

⁴³ This approach is consistent with the Commission’s approach to “offering” services. See *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, 35 FCC Rcd 6077, 6129, para. 139 & n.322 (2020).

⁴⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(12)(B), (3).

(continued....)

Program.⁴⁵ This election will be filed with USAC to facilitate the administration of the program and provide USAC the necessary information to incorporate providers into its systems for eligibility determination, enrollment, and reimbursement.⁴⁶

15. Existing ETCs will need to only file an election with USAC, while non-ETCs will need to first apply and then obtain Bureau approval prior to filing their election with USAC. Accordingly, we direct the Bureau to establish a priority application window during which non-ETC providers seeking approval to participate in the EBB Program will have the opportunity to obtain approval prior to commencement of consumer enrollments. Non-ETCs that file complete applications for approval meeting the necessary criteria by the priority application deadline will know of their status prior to the start date for the EBB Program. We believe establishing this priority application deadline provides adequate time for prospective providers to evaluate the rules of the EBB Program adopted today and to prepare applications, while also encouraging prospective providers to accelerate their consideration consistent with the need to quickly begin providing these supported broadband services. We direct the Bureau and USAC to work expeditiously to review provider applications and elections, respectively, and we direct the Bureau to issue additional guidance and instruction as necessary for providers seeking to participate in the EBB Program. Further, we expect the Bureau and USAC to prioritize their reviews to limit excessive delay in issuing approvals of the applications and elections once properly submitted by the providers.

16. We agree with commenters that providers and, more importantly, their subscribers should have equal opportunity and access to the Emergency Broadband Benefit.⁴⁷ By allowing non-ETC providers to obtain the necessary administrative approvals prior to the commencement of the program, eligible households will have more choices in the provider they can select to obtain supported broadband service and devices. Following the close of this priority application window, the Bureau, in coordination with USAC, will establish and announce a uniform start date on which providers can begin to enroll qualifying subscribers in the EBB Program.⁴⁸ This start date must allow for processing of elections and applications of both existing ETCs and non-ETCs to enable a consistent start date for all providers.

17. By establishing a priority application window and uniform start date, we intend to afford providers the necessary time to update their systems and enrollment processes to effectively participate in the Program. Furthermore, preparation and modification to both Commission and USAC systems is necessary to administer the Program. While leveraging the existing Lifeline processes provides some efficiencies, USAC needs to modify the Lifeline systems to accommodate workflows associated with the EBB Program, including updates to the National Verifier, NLAD, RAD, and the Lifeline Claims System (LCS). These updates require development, security assessments, and privacy assessments and approvals

⁴⁵ *Public Notice* at 2.

⁴⁶ See USTelecom Comments at 12, 17; Verizon Comments at 4; ACA Connects Comments at 14; CETF Comments at 27; Comcast Comments at 11-13; Competitive Carrier Association (CCA) Comments at 5; Emergency Broadband Benefit Carriers Comments at 3-4; Hughes Network Systems Comments at 3; NTCA Comments at 14-15; Thacker-Grigsby Telephone Company, Inc. Comments at 1-2; T-Mobile Comments at 8.

⁴⁷ See ACA Connects Comments at 3-5; American Association of Service Coordinators at 2; CETF Comments at 4-5; City and County of San Francisco Comments at 1; City of Austin, TX Comments at 2; City of Longmont, CO Comments at 3; Colorado Communications and Utility Alliance Comments at 2-3; Comcast Comments at 18-20; National Association of Housing and Redevelopment Officials Comments at 2; National Association of Telecommunications Officers and Advisors Comments at 2-3; Nebraska Public Service Commission Comments at 5; NCTA-The Internet & Television Association (NCTA) Comments at 6-7; Wireless Internet Service Providers Association Comments (WISPA) Comments 4-6; ACA Connects Reply at 2; CTIA Reply at 5; SBE Reply at 2; Starry Reply at 8; Verizon Reply at 3.

⁴⁸ A participating provider may not begin offering the Emergency Broadband Benefit or claim reimbursement for that benefit until after the Program has started, the provider has received all necessary application and election notice approvals.

required by the Privacy Act,⁴⁹ such as System of Records Notices (SORNs), Computer Matching Agreements (CMAs),⁵⁰ and systems testing to ensure an effective launch. These measures comply with Congressional and government-wide directives designed to protect the privacy and security of members of the public who submit their information to the government, including households who choose to participate in the Program. While we can launch the EBB Program with manual review processes that do not require all of these approvals, automated eligibility, and administrative processes greatly improve functionality. We remain committed to expeditiously and successfully launching the EBB Program.

a. Obligations of Existing ETCs to Participate in the Emergency Broadband Benefit Program

18. The Consolidated Appropriations Act provides that an existing ETC is a “participating provider” for the purposes of the EBB Program.⁵¹ The Consolidated Appropriations Act does not require existing ETCs to seek approval to participate in the Program.⁵² Instead, existing ETCs must only “elect” to participate in the Program to be eligible for reimbursement for broadband services.⁵³ Existing ETCs will be able to file these elections to participate in the EBB Program in the states or territories where they have already received an existing ETC designation. To ease administrative burdens, we allow an ETC to file an election for itself and its affiliates who provided broadband service as of December 1, 2020 within the states or territories (collectively “jurisdictions”) where the provider was designated as an ETC.⁵⁴ In other jurisdictions where neither the provider nor its affiliate has an existing ETC designation, the provider must seek either automatic or expedited approval from the Bureau prior to submitting the election notice to USAC.

19. We find extending elections to ETC affiliates is consistent with the Commission’s practices in Lifeline and High Cost that ETCs can satisfy their statutory obligations to “offer” reimbursable and supported services through affiliated entities.⁵⁵ Similarly, commenters support the ability of ETCs and affiliates to elect to participate in jurisdictions where the ETC is designated.⁵⁶ Allowing elections to be filed for both ETCs and affiliates without seeking additional approval for the affiliated entities will also ease administrative burdens and more quickly allow providers access to the

⁴⁹ 5 U.S.C. § 552a.

⁵⁰ 5 U.S.C. § 552a(r).

⁵¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(12)(A)(i).

⁵² *Id.* § 904(d)(2)(A).

⁵³ *Id.* § 904(a)(12)(B).

⁵⁴ See 47 U.S.C. § 153(2) (defining an affiliate as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person”). We also find support in the record for permitting the election to be made by ETCs and affiliates within the ETC’s service area. See Viasat Comments at 4; T-Mobile Comments at 8; Verizon Comments at 4-5; WTA Comments at 8; AT&T Comments at 10; NTCA Comments at 3 n.5, 7-8 n.14.

⁵⁵ See *2016 Lifeline Order*, 31 FCC Rcd at 4058-59, para. 262 (explaining that under the Commission’s interpretation of section 214(e)(1), the requirement that an ETC offer the supported services through “its own facilities or a combination of its own facilities and resale of another carrier’s service” would be satisfied when service is provided by any affiliate within the holding company structure); *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020; Notice and Filing Requirements and Other Procedures For Auction 904*, WC Docket Nos. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6128-29, paras. 138-139 (2020) (explaining the Commission’s practice of not requiring a provider to offer universal service wholly over its own facilities and allowing a provider to offer services over facilities as either exclusively the ETC’s own or when the service is provided by any affiliate within the holding company structure).

⁵⁶ See Viasat Comments at 4; T-Mobile Comments at 8; Verizon Comments at 4-5; WTA Comments at 8; AT&T Comments at 10; NTCA Comments at 3 n.5, 7-8 n.14; Tracfone Reply at 4-7.

(continued....)

EBB Program. Further, ETCs and affiliated entities are more familiar with the obligations and requirements within a particular jurisdiction to safeguard funds similar to the EBB Program. We find permitting this election is consistent with the Consolidated Appropriations Act's provisions regarding ETC elections and the Commission past treatment of ETC requirements.

20. We decline to adopt the proposals in the record that would allow an existing ETC to offer service supported by the EBB Program in any jurisdiction, or even nationwide, regardless of where the ETC has been designated or where it had previously provided broadband service.⁵⁷ First, ETC designations are inherently geographically limited due to the unique authority states have to designate ETCs.⁵⁸ Thus, we believe the provision in the Consolidated Appropriations Act that relies on existing ETC designations and automatically qualifies ETCs to participate in the EBB Program supports the proposition that ETCs should be limited in the EBB Program to the jurisdictions in which they have already been designated. Moreover, had the Consolidated Appropriations Act intended to allow ETCs to offer supported service everywhere regardless of the designation, Congress would not have needed to provide a path for non-ETC providers to participate in the program in addition to ETCs.⁵⁹ As identified in the record,⁶⁰ providers with existing ETC designations or affiliated with ETCs have significant relevant experience with the policies and procedures needed to carry out the EBB Program obligations. However, in states where a provider is not designated as an ETC, we have less confidence that the provider has established procedures and compliance processes necessary for program participation in that state. This decision is further bolstered by the Consolidated Appropriations Act's requirement that participating providers would be eligible to receive reimbursement for "internet service offerings" offered in the "same manner, and on the same terms, as described in any of such provider's offerings for broadband internet access service to [eligible] household, as on December 1, 2020."⁶¹ Approving a provider to participate in a jurisdiction where it previously did not offer service would render this statutory provision moot.

b. Provider Election Process to Participate in the Emergency Broadband Benefit Program

21. We direct USAC, under the supervision of and in coordination with the Bureau, to establish and administer a process to enable all participating EBB Program providers to file election notices containing information sufficient to effectively administer the program. We direct USAC to collect information in such notices that includes: (1) the states in which the provider plans to participate in the EBB Program; (2) a statement that, in each such state, the provider was a "broadband provider" as of December 1, 2020; (3) a list of states where the provider is an existing ETC, if any; (4) a list of states where the provider received FCC approval, whether automatic or expedited, to participate, if any; (5) whether the provider intends to distribute connected devices under the EBB Program; (6) a description of the Internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state; (7) documentation demonstrating the standard rates for those services; and (8) any other administrative information necessary for USAC to establish participating providers in the EBB Program. In addition to these criteria, participating providers must certify under penalty of perjury that the information set forth in the election notice is true, accurate, and complete; they understand and will

⁵⁷ See NaLA Comments at 4-8 (proposing all ETCs designated by any state of the Commission should be permitted to offer the Emergency Broadband Benefit in all states and that the December 1, 2020 limitation in the statute does not impose geographic limitations).

⁵⁸ See 47 U.S.C. § 214(e)(2) ("A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.").

⁵⁹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(12)(A)(ii).

⁶⁰ See Viasat Comments at 4; T-Mobile Comments at 8; Verizon Comments at 4-5; WTA Comments at 8; AT&T Comments at 10; NTCA Comments at 3 n.5, 7-8 n.14; Tracfone Reply at 5-6; Verizon Reply at 2-3.

⁶¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9).

comply with all statutory and regulatory obligations described within this Order, including the public interest conditions of offering EBB Program services throughout the provider's designated service area; and all terms and conditions and other requirements applicable to using the National Verifier, NLAD, RAD, and other USAC systems. Providing materially false information in the election notice will disqualify a provider from participation in the EBB Program. We find support in the record for adopting these requirements and certifications.⁶² These requirements align with the Consolidated Appropriations Act's requirements for provider participation and eligibility.⁶³

22. Provider elections must include the following information to establish that the provider has met the criteria and can provide enough information to allow USAC to administer the program. We direct USAC, under the supervision of and in coordination with the Bureau, to establish and administer this election process consistent with this Order.

- (a) *List of states in which the provider plans to participate in the EBB Program.* A provider must list each state in which it will offer EBB Program services. Consistent with USAC's existing processes, providers should be prepared to identify to USAC the postal ZIP code(s) or Census Block(s) where the provider will offer EBB Program service to obtain Service Provider Identification Number(s) (SPINs) or Study Area Codes (SACs) to the extent necessary.
- (b) *A statement that, in each such state, the provider was a "broadband provider" as of December 1, 2020.* Consistent with the Commission's broadband data reporting rules, participating providers will be able to establish that they provided broadband Internet access service and reimbursable Internet service offerings on December 1, 2020 through reference to previous FCC Form 477 filings.⁶⁴ Providers are required to submit data as of December 31, 2020, and reference to a FCC Form 477 filing for the December data submission will demonstrate the provider offered broadband services.⁶⁵ Providers that are not required to file FCC Form 477 must certify that they provided retail broadband Internet access service to end users as of December 1, 2020 and identify the underlying carrier providing the network facilities.⁶⁶
- (c) *A statement identifying where the provider is an existing ETC.* A provider who is an ETC or is affiliated with an ETC seeking to begin offering the Emergency Broadband Benefit must submit

⁶² See USTelecom Comments at 12, 17; Verizon Comments at 4; ACA Connects Comments at 14; CETF Comments at 27; Comcast Comments at 11-13; CCA Comments at 5; Emergency Broadband Benefit Carriers Comments at 3-4; Hughes Network Systems Comments at 3; NTCA Comments at 14-15; Thacker-Grigsby Telephone Company, Inc. Comments at 1-2; T-Mobile Comments at 8.

⁶³ Consolidated Appropriations Act, div. N, tit. IX, §§ 904(a)(9), (a)(13), (d)(2)(A) ("The Commission shall establish an expedited process by which the Commission approves as participating providers broadband providers that are not designated as [ETCs] . . .").

⁶⁴ See *Form 477 Data as of December 31, 2020 are Due No Later than March 1, 2021*, Public Notice, DA 21-33 (OEA 2021); See FCC, *Form 477 Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources> (Jan. 22, 2021). The Commission will consult the subscription data provided on the FCC Form 477 to determine compliance with this requirement. To fulfill this requirement, a provider should reference the most recent FCC Form 477 data month submission showing service in the jurisdiction. See FCC, *Who Must File Form 477?*, <https://us-fcc.app.box.com/v/WhoMustFileForm477>, para. 1 (Dec. 31, 2019) ("An entity that is a facilities-based provider of broadband connections to end users must complete and file the applicable portions of this form if it has one or more broadband connection in service to an end user on the as-of date associated with the form (either June 30 or December 31)."). For providers that cannot reference an earlier FCC Form 477 filing and will be filing FCC Form 477 data for the December 31, 2020 on the extended deadline, the provider should certify to providing service as of December 1, 2020 and reference the upcoming FCC Form 477 filing. See *FCC Form 477 Filing Interface Experiencing Technical Issues; Filing Deadline Extended*, Public Notice, DA 21-218 (OEA 2021).

⁶⁵ *Id.*

⁶⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

(continued....)

to USAC documentation demonstrating that it is a participating provider in specific states. While ETCs are automatically eligible to participate and likely have already obtained administrative numbers from USAC, such as SPINs or SACs, requiring demonstration of ETC status, filing this statement with USAC will allow for better processing of elections.

- (d) *A statement identifying where the provider received FCC approval to participate in the EBB Program.* Providers seeking approvals outside of states where they are existing ETCs or are affiliated with existing ETCs will need to identify those states and submit the Bureau approval to participate in the program.⁶⁷
- (e) *A statement confirming whether the provider intends to distribute connected devices under the EBB Program.* Providers seeking reimbursement for connected devices must submit a statement of intent to distribute connected devices as part of their election notice. These providers should also include documentation detailing the equipment, rates, and applicable costs of the laptop, desktop or tablet. Connected devices should be accessible to and usable by users with disabilities.⁶⁸ To the extent the provider will offer connected devices that are also generally available to the public, it may provide summary information regarding the devices, rates, and costs, such as a link to a public website or screenshots.
- (f) *Description and documentation of the Internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state.* Providers must submit documentation for the Internet service offerings they will offer through the EBB Program. The participating provider should provide information detailing each service offering for which it plans to seek reimbursement from the EBB Program. This information and documentation should identify the service plan, details about the service such as speed and data caps, the service offering standard rate, equipment costs, jurisdiction where it is offered, and documentation establishing the rate was available on December 1, 2020. The provider can provide this information and documentation through the submission of price lists, rack rates, rate cards, or similar documentation. For service offerings that are publicly available a website or screenshot can be provided. For offerings that cannot be publicly viewed the provider should submit documentation demonstrating the offering was available on December 1, 2020 such as customer bills or publicly available advertisements. The provider can provide aggregated summaries of service offerings and standard rates made available to eligible households, if those offerings and rates are the same for multiple jurisdictions. This will reduce the administrative burden for both participating providers and the Commission in producing and reviewing voluminous service offering descriptions that are substantially similar.⁶⁹

23. In addition, providers must also be able to provide or otherwise obtain the necessary administrative registrations to utilize Commission and USAC processes. These processes include the Commission Registration System (CORES), FCC Registration Number (FRN), Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), System for Award Management (SAM), and/or Dun & Bradstreet DUNS number for all entities the provider anticipates seeking reimbursement. Providers should be prepared to provide this administrative information during the election process to USAC.

24. *Processing of Elections.* We direct USAC in coordination with the Bureau to

⁶⁷ See 47 U.S.C. § 153(2) (defining an affiliate as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person”).

⁶⁸ See TDI et al. Comments at 4 (stating that if “people who are deaf, hard of hearing, DeafBlind, or deaf with mobility issues cannot access the equipment that allows them to most effectively utilize broadband service, they will be less likely to maximize use of their broadband service”).

⁶⁹ See Letter from Mike Saperstein, Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 2 (filed Feb. 19, 2021); Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 2 (filed Feb. 22, 2021); NCTA Comments at 7.

expeditiously process election notices. USAC should establish necessary systems and processes to systematically review election notices as quickly as possible, and at least ensure all elections filed by existing ETCs and elections from providers seeking approvals in the priority application window are processed prior to the commencement of the program. USAC should notify a provider promptly if its election notice is incomplete or otherwise contains errors that prevent USAC from processing the election notice. USAC shall process election notices received during the priority application window prior to the uniform reimbursement start date. USAC will only reject election notices that are materially incomplete and that the provider fails to update.

3. Non-ETC Provider Application and Approval Process

25. The Consolidated Appropriations Act establishes that providers not already designated as an ETC that wish to participate in the EBB Program can seek either an automatic or expedited approval from the Commission based on certain criteria.⁷⁰ Specifically, the Consolidated Appropriations Act requires the Commission to establish an expedited process for such approval and “to automatically approve as a participating provider 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.”⁷¹ Consistent with this Congressional directive, we establish both an automatic approval and an expedited approval process for non-ETC providers seeking to participate in the Program. We delegate to the Bureau the authority to establish the process by which providers seek these approvals, including through appropriate direction to USAC. Eligible providers that have submitted complete applications by the priority application deadline will know prior to the start date of the EBB Program if they are eligible to participate. Applications from providers filed after priority application deadline will be reviewed on an expedited, rolling basis.

26. Some commenters have suggested the Commission provide an opportunity for states to assist in the decisions to approve non-ETC providers for the EBB Program. After due consideration, we decline to provide a formal role in the approval process to state public utilities commissions (PUCs). First, we acknowledge the states’ traditional and essential role in designating ETCs as provided in section 214.⁷² It is well-established that states have the primary responsibility for designating ETCs, and the Commission is only to designate an ETC where a state lacks jurisdiction over the carrier applying for designation.⁷³ In fact, in the Consolidated Appropriations Act, Congress has recognized the importance of states’ roles in the selection of providers for the EBB Program by permitting ETCs designated by states automatic entry. However, the Consolidated Appropriations Act also specifically requires that non-ETC providers be approved for participation by the Commission and does not provide a role for the states.⁷⁴ We also recognize this is a temporary, emergency program with limited funding and it is essential we move quickly in establishing the program and approving the participating providers. While we decline to establish a formal role for states in the approval of those non-ETC providers, we understand the states’ interest in knowing the providers who are or will be providing the supported broadband service in their jurisdiction and thus we will make publicly available the names of approved providers in each state, along

⁷⁰ Consolidated Appropriations Act, div. N, tit. IX, § 904(d).

⁷¹ *Id.* § 904(d)(2).

⁷² See California Public Utilities Commission Comments at 3-4; Michigan Public Service Commission (Michigan PSC) Comments at 2-5; Mississippi Public Service Commission Comments at 3; NARUC Comments at 9, 11-12; Nebraska Public Service Commission Comments at 5-6; Vermont Public Utility Commission and Vermont Department of Public Service (Vermont PUC et al.) Comments at 4-5; Michigan Department of Labor and Economic Opportunity Reply at 2-3; Michigan Department of Agriculture and Rural Development Reply Comments at 2-3; Michigan Economic Development Corporation Reply at 2-3; Michigan Department of Health and Human Services Reply at 2-3; Vermont PUC and Department of Public Service Reply at 1-2.

⁷³ See 47 U.S.C. §§ 214(e)(2), (6).

⁷⁴ See Consolidated Appropriations Act, div. N, tit. IX, § 904(d)(2).

(continued....)

with other information related to our approvals.

a. **Automatic Approval Process for Providers with Existing Support Programs**

27. We adopt an automatic approval process consistent with the Consolidated Appropriations Act to enable non-ETC broadband providers with “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” to be automatically approved upon the filing of information meeting the criteria.⁷⁵ Any non-ETC broadband provider seeking to qualify for such automatic approval must file an application describing: (1) the jurisdiction in which it plans to participate, (2) the service areas in which the provider has the authority, if needed, to operate in each state, but has not been designated an eligible telecommunications carrier, and (3) a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the EBB Program.

28. *Established Program as of April 1, 2020.* To facilitate provider participation in the program, we adopt a broad interpretation of what constitutes an “established program” that is “widely available.”⁷⁶ We find that this requirement encompasses any eligible broadband provider that maintains an existing program that was made available by April 1, 2020 to subscribers meeting at least one of the criteria in the Consolidated Appropriations Act’s definition of an eligible household.⁷⁷ Specifically, providers offering broadband subscribers discounted rates based on criteria such as low-income, loss of income, participation in federal, state, or local assistance programs, or other means-tested eligibility criteria qualify for this automatic approval process. Additionally, providers that made commitments to keep subscribers connected during the pandemic and offered widely available bill forbearance or forgiveness programs beginning no later than April 1, 2020 and continuing through the end of this EBB Program, will be eligible for automatic approval. We find that providing automatic approval for providers that actively offer targeted low-income programs or programs in which providers otherwise engaged in systematic and ongoing billing practices, like forbearance or forgiveness, that actively reduced costs for struggling subscribers is consistent with the Consolidated Appropriations Act’s requirements. These actions reduced the financial burden on struggling households consistent with the Congressional intent of the EBB Program. The principal consideration in determining an “established program” for automatic approval is whether subscribers receive or were eligible to receive a financial benefit through either reduced rates or rate forbearance.

29. Consistent with such a broad interpretation, we find that a program is “widely established” when it was offered to subscribers in a substantial portion of the service provider’s service area in a particular state. We decline to adopt an interpretation that a program must be offered throughout the provider’s national or multi-state service territory to be widely available. We find support in the record that many considerations factor into offering such programs that are not consistent across jurisdictions, such as state and local privacy laws, access to eligibility information, broadband carrier requirements, or the lack of consistent assistance programs.⁷⁸ We believe Congress’s use of “widely

⁷⁵ *Id.* § 904(d)(2).

⁷⁶ *Id.* § 904(d)(2); *see also* Information Technology & Innovation Foundation Comments at 2-3; ACA Connects Comments at 17-19; NCTA Comments at 4-5; WISPA Comments at 8-10; Starry at 3; Verizon at 5; Comcast at 4, 14-15; Charter Communications at 4-5; City of Longmont, CO Comments at 5-6; Multicultural Media, Telecom and Internet Council, National Urban League Comments at 8-9 (Multicultural Media *et al.*); Starry Comments at 3; WTA Comments at 8.

⁷⁷ *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

⁷⁸ *See* ACA Connects Comments at 18-19; CCA Comments at 6-7; Cherokee Nation Comments at 2; City of Longmont, CO Comments at 5-6; DigitalC Comments at 4-5; LeadingAge Comments at 3; NeighborWorks America Comments at 3; Stewards of Affordable Housing at 2.

available” in lieu of more sweeping alternatives expresses the intent to have this term apply to service offerings made publicly available even if the existing program was not available throughout a providers entire service area. Further, the public interest favors an interpretation of this requirement that broadly defines the type of qualifying programs, supports expeditious entry where possible and in turn makes EBB Program support available as quickly as possible.⁷⁹

30. *Required Verification Processes.* The Consolidated Appropriations Act also requires that providers seeking automatic approval to participate in the EBB Program have established programs that maintain verification processes that are “sufficient to avoid fraud, waste, and abuse.”⁸⁰ We find that applying this requirement in a forward-looking manner strikes the appropriate balance between responsible stewardship of the funds and ensuring broad provider participation. Providers that have been offering a broadband program for eligible households have generally foregone collecting revenue they might otherwise have assessed from participating subscribers. Those providers therefore already have incentive to prevent enrollment in their programs by ineligible households. Providers submitting applications for automatic approval must describe only the established program and participation requirements to meet the approval criteria.⁸¹

31. Providers that receive automatic approval to participate in the EBB Program will use the Lifeline National Verifier and NLAD to verify household eligibility or their own alternative household eligibility verification processes, or the combination of both before seeking reimbursement. Even if a provider has its own existing broadband program for determining eligible households, it may decide to use the National Verifier for some or all applications to the EBB Program, although it is not required to do so. We find that permitting automatically approved providers to use USAC’s eligibility determination systems in a manner consistent with the Consolidated Appropriations Act as described below further bolsters program protections against waste, fraud, and abuse.⁸²

32. *Timing of Approvals.* Providers that file applications certifying to and making necessary demonstrations for the criteria outlined above will receive approval automatically upon filing once the Bureau confirms all required information was submitted. We agree with commenters in the record who argue the intent of Congress was to create an automatic presumption of approval for providers with existing support programs.⁸³ Thus, we delegate to the Bureau the authority to create and administer an application process that will automatically approve provider applications meeting the criteria described above. Additionally, once approved, all providers must file with USAC an election to participate in the EBB Program to gain access to USAC systems.

b. Expedited Review Process for Non-ETC Providers

33. We adopt an expedited review process for non-ETC providers that do not qualify for automatic application processing and are not affiliated with an ETC in the same jurisdiction. Such providers must file an application for expedited review to receive approval from the Bureau to participate

⁷⁹ See ACA Connects Comments at 18-19; CCA Comments at 6-7; Cherokee Nation Comments at 2; City of Longmont, CO Comments at 5-6; DigitalC Comments at 4-5; LeadingAge Comments at 3; NeighborWorks America Comments at 3; Stewards of Affordable Housing at 2.

⁸⁰ Consolidated Appropriations Act, div. N, tit. IX, § 904(d)(2)(b).

⁸¹ See *infra* paras. 62-67.

⁸² *Infra* Section III.B.2-3, paras. 49-67.

⁸³ ACA Connects Comments at 17-19; NCTA Comments at 4-6; WISPA Comments at 8; Starry at 3; Verizon at 5; Comcast at 4, 14-15; Charter Comments at 4-5; CTIA Comments at 11; INCOMPAS Comments at 10; Information Technology & Innovation Foundation Comments at 2-3; Student Internet Equity Coalition Comments at 7; T-Mobile Comments at 8; Altice Reply at 1-2.

(continued....)

in the EBB Program. As proposed in the *Public Notice*,⁸⁴ each non-ETC broadband provider seeking to participate must file an application describing: (1) the state(s) in which it plans to participate, (2) the service areas in which the provider has the authority, if needed, to operate in each state but has not been designated an eligible telecommunications carrier, and (3) documentation of the provider's plan to combat waste, fraud, and abuse. These requirements align with the Consolidated Appropriations Act's requirements for provider participation and eligibility.⁸⁵

34. Provider applications for review must establish a sufficient showing that the provider has met the criteria for expedited review and approval, as outlined below. We direct the Bureau to establish and administer this expedited application review process consistent with this Order.

- (a) *A list of states or territories where the provider will offer EBB Program services.* A provider seeking approval must list each jurisdiction in which it seeks to be approved to offer EBB Program services. While the provider need only identify the state or territory where it plans to offer qualifying services for purposes of its submission to the Bureau, providers should be prepared to identify to USAC in their election the postal ZIP code(s) or Census Block(s) where Program service will be offered to obtain Service Provider Identification Number(s) (SPINs) or Study Area Codes (SACs), as necessary.
- (b) *A statement identifying the jurisdiction in which the provider requires FCC approval and jurisdictions in which the provider is an existing ETC.* Providers that are designated as an ETC or affiliated with an ETC⁸⁶ in some states or territories must submit an application and obtain Bureau approval to participate in the Program in states or territories where the provider is not designated as an ETC. Providers, even if already designated as an ETC in some states or territories, must seek Bureau approval to offer EBB Program services in states or territories in which the provider is not designated as an ETC. Because such applications will be reviewed on either an automatic or expedited basis, we do not expect such a requirement to impose a significant burden on providers. Providers without an ETC designation or unaffiliated with an ETC must certify that they are authorized to provide broadband services as of December 1, 2020.
- (c) *Documentation of the provider's plan to combat waste, fraud, and abuse.* Participating provider applications must include a certification that the provider understands and complies with all statutory and regulatory obligations, including those described within this Order, as public interest conditions of offering EBB Program services. Specifically, a provider must certify that it will:
 - (i) confirm a household's eligibility for the Program through either the National Verifier or a Commission-approved eligibility verification process prior to seeking reimbursement for the respective subscriber;
 - (ii) follow all enrollment requirements and obtain all certifications as required by the EBB Program, including providing eligible households with information describing the Program's eligibility requirements, one-per-household rule, and enrollment procedures;
 - (iii) interact with the necessary USAC systems, including the National Verifier, NLAD, and RAD, before submitting claims for reimbursement, including performing the necessary checks to ensure the household is not receiving duplicative benefits within the EBB Program;
 - (iv) de-enroll from the Program any household it has a reasonable basis to believe is no longer

⁸⁴ *Public Notice* at 5.

⁸⁵ Consolidated Appropriations Act, div. N, tit. IX, §§ 904(a)(9), (13), (d)(2)(A) ("The Commission shall establish an expedited process by which the Commission approves as participating providers broadband providers that are not designated as [ETCs] . . .").

⁸⁶ See 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

eligible to receive the benefit consistent with Program requirements;

- (v) comply with the Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and
- (vi) agree to the Commission's enforcement and forfeiture authority.

35. *Timing of Approvals.* Providers that have filed an application satisfying the criteria outlined above will receive expedited review. We decline to adopt a deemed granted date or other specific application review deadlines for the expedited review process. Providers submitting applications by the priority application deadline will receive a determination prior to the start of the EBB Program. Accordingly, we believe specific application review deadlines are unnecessary. We delegate to the Bureau the authority to create and administer an application review process that will expeditiously consider provider applications meeting the criteria described above. Additionally, all approved providers must file an election with USAC to participate in the EBB Program.

4. Conditions and Requirements for Participating Providers

36. We find there is authority within the Consolidated Appropriations Act to require participating providers to offer the EBB Program benefit throughout the provider's approved service area. Additionally, we find that use of existing USAC databases is the most efficient way to begin the program quickly while ensuring adequate safeguards to prevent waste, fraud, and abuse. Accordingly, we authorize USAC to make available the appropriate databases to administer the program including the National Verifier, NLAD, RAD, and LCS. We direct USAC to take the appropriate actions to update, modify, or create the necessary USAC systems to administer the EBB Program in line with the Commission's direction in this Order. We further delegate authority to the Bureau and the Office of Managing Director to supervise and coordinate with USAC all actions necessary to make USAC databases and systems available for the EBB Program.

37. *Public Interest Conditions of Approvals.* We adopt our proposal to require providers to offer the EBB Program discount on at least one service offering across all of its approved service areas in each of the states in which it is approved to participate. We find that such an approach is consistent with the Consolidated Appropriations Act's requirements regarding the establishment of the Program to reimburse providers for discounts provided to subscribers⁸⁷ and supports the public interest in ensuring subscribers have access to the EBB Program. Further, the Consolidated Appropriations Act grants the authority to the Commission to determine whether a provider meets the requirements to participate in the EBB Program.⁸⁸ We agree with commenters that providers should not have to extend service offerings into areas where they currently do not exist and should not be mandated to offer a certain quality of service for the reasons further explained below.⁸⁹ Requiring providers to expand or otherwise deploy service offerings or existing programs into areas where they currently do not exist increases provider burdens and delays implementation for providers seeking to quickly offer EBB Program services. Approved providers must offer at least one EBB Program-reimbursed service to each of its eligible households within its service area. However, we also encourage participating providers to make EBB Program support available for all its service offerings for eligible households. Additionally, pursuant to the Consolidated Appropriations Act, participating providers must not deny an eligible household the ability to participate in the EBB Program based on any past or present arrearages with that provider, may not require an eligible household to pay an early termination fee if the household enters into a contract for its EBB Program-supported service and later terminates that contract, and may not subject EBB Program-

⁸⁷ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(4).

⁸⁸ *Id.* §§ 904(a)(12), (d)(2).

⁸⁹ *Supra* para. 20; *infra* Section III(C), paras. 70-75.

supported service to a mandatory waiting period based on a household having previously received service from that provider.⁹⁰

38. *Notice to Consumers.* Providers also play an important role in ensuring that their customers are informed about the EBB Program at the point of application and enrollment. Providers will have a direct relationship with their customers, and as such, have a responsibility to ensure that these customers have the information they need to make an informed decision about the broadband service product they subscribe to supported by the EBB Program. Accordingly, we require participating providers to collect and retain documentation demonstrating that, prior to enrolling an existing subscriber in the EBB Program, the provider clearly disclosed to the household that the EBB Program is a government program that reduces the customer's broadband Internet access service bill, is temporary in nature, that the household will be subject to the provider's undiscounted rates and general terms and conditions at the end of the program if they continue to receive service, that the household may obtain broadband service supported by the EBB Program from any participating provider of their choosing, and that the household may transfer their EBB Program benefit to another provider at any time. The 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. We believe that this disclosure and consent process will help ensure that low-income households are aware of their choices in the EBB Program without creating overly burdensome application requirements for those households.

39. *Use of the National Verifier, NLAD, RAD and other USAC databases.* We find that, consistent with the Consolidated Appropriations Act's provision allowing us to use USAC's systems and services to implement the EBB Program, participating providers will be required to use certain USAC systems, such as the Lifeline NLAD and RAD, for program administration and will be permitted to use the National Verifier to determine household eligibility.⁹¹ We adopt our proposal to rely on the USAC-administered National Verifier, NLAD, RAD, LCS, and other established processes for the EBB Program, including the provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews.⁹² Accordingly, we adopt the applicable part 54 rules that currently govern Lifeline provider interactions with these USAC systems. Specifically, we apply the requirements of sections 54.400(i), (o) defining the NLAD and National Verifier; 54.404 outlining carrier interactions with the NLAD; 54.406 outlining enrollment agent activities and requiring registration with the RAD; 54.410 where appropriate in requiring the use of the National Verifier for eligibility determinations; and 54.419 allowing the use of electronic signatures.⁹³ We direct the Bureau, and USAC as directed by the Bureau, to issue any further guidance or instruction necessary to clarify the obligations of EBB Program providers when using USAC databases and the administrative process established for the EBB Program.

40. *Safe harbor for participating providers.* The Consolidated Appropriations Act provides a safe harbor provision stating that the Commission may not enforce a violation of the Consolidated Appropriations Act using sections 501, 502, or 503 of the Communications Act, or any rules of the Commission promulgated under such sections, if a participating provider demonstrates that it relied in good faith on information provided to such provider to make any verification required by subsection

⁹⁰ See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6), (b)(6)(B)(ii)-(iii).

⁹¹ This requirement is only to the extent necessary as determined by the Bureau and USAC to administer the program. Providers with approved alternative verification process will not be required to use the National Verifier to enroll subscribers through that alternative process.

⁹² *Public Notice* at 12.

⁹³ See 47 CFR §§ 54.400(i), (o), 54.404, 54.406, 54.410, 54.419. We clarify that where the language of the existing Lifeline rules conflict with the directions in this Order or any later guidance issued by WCB, or by USAC at the direction of WCB, the Order or subsequent guidance is controlling.

904(b)(2).⁹⁴ Section 904(b)(2) imposes a duty on participating providers to verify whether a household is eligible to receive the service and connected devices supported by this Program. We establish that this safe harbor will apply to providers who utilize the National Verifier for eligibility determinations or any alternative eligibility verification process that has received approval from the Commission consistent with this Order. The safe harbor applies to providers who act in “good faith” with respect to these eligibility verification processes.⁹⁵ The Commission has extensive experience in evaluating good faith actions of regulated entities in both negotiation and cost reimbursement.⁹⁶ In line with this experience, this safe harbor applies to participating providers for eligibility determinations who act in good faith based on information provided to them in the household eligibility and enrollment process. Good faith will be determined on the totality of circumstances surrounding the participating providers actions or statements. Participating providers that reasonably rely upon the documentation regarding eligibility determinations provided by eligible households or eligibility determinations from the National Verifier will be able to avail themselves of this statutory safe harbor for purposes of their compliance with the EBB Program rules.

5. Application and Election Procedures

41. A provider application to participate in the EBB Program will provide information used to determine whether the applicant has the legal and technical qualifications to participate in the EBB Program. An applicant must certify, under penalty of perjury, its qualifications. Non-ETC providers must certify under penalty of perjury that the information set forth in their application is true, accurate, and complete; they understand and will comply with all statutory and regulatory obligations described within this Order; and all terms and conditions and other requirements applicable to using the National Verifier, NLAD, RAD, and other USAC systems. Providing materially false information in the application will disqualify a provider from participation in the EBB Program. Eligibility to participate in the program is based on an applicant’s submission of required information and certifications. A potential applicant must take seriously its compliance duties and responsibilities and carefully determine before filing an application that it is able to meet the obligations associated with EBB Program support. An applicant’s filing and subsequent approval does not guarantee the applicant will receive EBB Program reimbursement. Each participating provider must file all required forms, information, and certifications with the Commission and USAC to receive reimbursement.

42. A non-ETC provider seeking to participate in the EBB Program must file the appropriate application, whether it is eligible for expedited or automatic approval, electronically, whether filing for automated or expedited approval, through the process announced by the Bureau following the adoption of this order.⁹⁷ An applicant provider bears full responsibility for submitting an accurate, complete, and timely application, and should thoroughly review the Program participating provider requirements, in addition to any subsequent guidance, to ensure all required information is included in its application. An applicant provider should be cognizant that submitting an application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the appropriate instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false

⁹⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(j).

⁹⁵ *Id.*

⁹⁶ See *DIRECTV, LLC and AT&T Services, Inc. vs. Deerfield Media, Inc., et al.*, Memorandum Opinion and Order, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695, 10696-98, paras. 1-6 (2020) (discussing the Commission’s good faith obligations in retransmission consent); 47 CFR § 27.1182 (requiring good faith submission of cost sharing plan for AWS relocations); 47 CFR § 54.711 (requiring good faith estimates of contributor’s policies and procedures).

⁹⁷ Applicants will receive a response confirming receipt and should contact the Bureau if they do not receive such confirmation. Confirmation of receipt does not constitute determination that the application is complete as filed.

(continued....)

certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future Commission auctions or competitions, as well as criminal prosecution and/or liability under the False Claims Act.

B. Household Eligibility

1. Emergency Broadband Benefit Program Eligible Households

43. The Consolidated Appropriations Act directs that a household will qualify for the EBB Program⁹⁸ if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program;⁹⁹ (2) has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act¹⁰⁰ or the school breakfast program under section 4 of the Child Nutrition Act of 1966¹⁰¹; (3) has experienced a substantial loss of income since February 29, 2020 that is documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable through the National Verifier or the NLAD;¹⁰² (4) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965¹⁰³ in the current award year;¹⁰⁴ or (5) meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest.¹⁰⁵ A household is eligible for the EBB Program regardless of whether any member of the household already receives a Lifeline benefit.¹⁰⁶ Further, a household is eligible for the Program "regardless of whether any member of the household has any past or present arrearages with a broadband provider."¹⁰⁷

⁹⁸ We also received comments seeking to expand eligibility to include other bases, such as participation in HUD programs that are not included in the Lifeline program, but we decline to expand eligibility beyond the eligibility requirements provided in the Consolidated Appropriations Act. *See, e.g.*, Internet for All Coalition – Internet for Dallas Comments at 2; LeadingAge Comments at 1-2; National Affordable Housing Management Association Comments (NAHMA) at 2; Stewards of Affordable Housing for the Future Comments at 2-3; American Association of Service Coordinators Comments at 2 (AASC).

⁹⁹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(A). A low-income consumer qualifies for Lifeline if the household is at or below 135% of the Federal Poverty Guidelines for a household of that size, or if at least one member of the household participates in Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Federal Public Housing Assistance (FPHA), or Veterans and Survivors Pension Benefit. 47 CFR § 54.409(a). Under section 54.409(b), if the household is on Tribal lands, the household is eligible for Lifeline if at least one member of the household participates in in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations. 47 CFR § 54.409(b).

¹⁰⁰ 42 U.S.C. § 1751 *et seq.*

¹⁰¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(B); *see* 42 U.S.C. § 1751 *et seq.* (Richard B. Russell National School Lunch Act); 42 U.S.C. § 1773 (Child Nutrition Act of 1966).

¹⁰² *Id.* § 904(a)(6)(C).

¹⁰³ *See* 20 U.S.C. § 1070a.

¹⁰⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(D).

¹⁰⁵ *Id.* § 904(a)(6)(E).

¹⁰⁶ *Id.* § 904(a)(6).

¹⁰⁷ *Id.*

44. While the Consolidated Appropriations Act provides a definition for “eligible household,”¹⁰⁸ it does not define “household” itself, and the *Public Notice* sought comment on “using the definition of ‘household’ provided in our Lifeline rules for purposes of administering the Program.”¹⁰⁹ The Lifeline rules define “household” as:

any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.¹¹⁰

The record contains broad consensus supporting the proposal to use Lifeline’s definition of household, and we adopt this proposal.¹¹¹ Other commenters agree generally, without reference to the Lifeline definition, that multiple people should be able to receive the Program benefit at a single address, so long as the people were part of different households, similar to Lifeline’s definition of a household.¹¹² Some commenters disagree with our proposal to permit one benefit per household, noting that often times households will have multiple people requiring access to quality broadband and devices, and each may need a benefit even though they are part of the same household.¹¹³ While we are cognizant of the varying needs of households, we read the Consolidated Appropriations Act to allow only a single benefit per household.¹¹⁴ As a result, we will use the Lifeline program’s definition of household and we limit to each economic unit a single monthly Emergency Broadband Benefit and single connected device reimbursement. To help applicants determine if there is more than one household at an address, we will

¹⁰⁸ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

¹⁰⁹ *Public Notice* at 6.

¹¹⁰ 47 CFR § 54.400(h).

¹¹¹ See Vermont PUC et al. Comments at 5; NCLC and United Church of Christ (NCLC and UCC) Comments at 7; NTCA – The Rural Broadband Association Comments at 11 (NTCA); T-Mobile USA, Inc. Comments at 13; WISPA Comments at 10; National League of Cities Comments at 1; CTIA Comments at 5; EBBC Comments at 9 (EBBC); Microsoft Comments at 6-7; CETF Comments at 16; INCOMPAS Comments at 12-13; Michigan PSC Comments at 6; New York State Public Service Commission Comments at 4 (NYSPSC); Public Knowledge Reply at 8.

¹¹² Cathy Murahashi Comments at 1; Cities of Los Angeles et al. Comments at 18 (people living in family shelters, domestic violence shelters, or other temporary shelters should not be considered a single household); National Rural Electric Cooperative Association Comments at 6 (separate units at a single address should be separate households); LeadingAge Comments at 2 (there should not be a limit on beneficiaries at a multifamily housing address, even if there are no separate units and apartments); Baltimore Regional Housing Partnership Comments at 2 (the Commission should clarify that address includes separate units and apartments at multifamily housing properties); National Affordable Housing Management Association Comments at 3 (same); TracFone Wireless, Inc. Comments at 15 (Tracfone); Greater Washington DC Chapter of the Internet Society Comments at 4 (support having all economic households eligible for the benefit).

¹¹³ Tech Goes Home Comments at 1; American Association of People with Disabilities Comments at 2 (suggesting that the “program allow for a number of enrollments and associated devices equal to the number of eligible people with disabilities in each household”) (AAPD); Navajo Nation Telecommunications Regulatory Commission Comments at 6-7; Council of the Great City Schools Comments at 5; Council of the Great City Schools Reply at 3-4.

¹¹⁴ See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6) (distinguishing between a household and a member of the household); *id.* § 904(a)(7) (allowing the emergency broadband benefit of a monthly discount for “an eligible household,” and not for separate members of a household).

(continued....)

make available for the EBB Program a Household Worksheet to confirm whether an applicant is part of an independent economic household from other existing EBB subscribers.¹¹⁵ For providers conducting eligibility determinations pursuant to an approved alternative verification process, we will require that such processes include measures to confirm that a household, under the definition we adopt here, is not receiving more than one EBB Program benefit. We also direct USAC to conduct periodic program integrity reviews to confirm that EBB subscribers located at the same address are in compliance with these requirements.

45. Commenters also argue the EBB Program should support broadband provided to multiple dwelling units at a single address, such as senior and student living, mobile home parks, apartment buildings, and federal housing units, that receive service as part of a bulk billing arrangement where the households “are not directly billed for services by their internet service provider, but instead pay a monthly fee for broadband services to their landlord.”¹¹⁶ Similarly, there may be “entities such as school districts, health care providers, assisted living or nursing facilities, and local governments who purchase service ‘in bulk’ for eligible households.”¹¹⁷ We conclude on balance to make available the Emergency Broadband Benefit available in these arrangements as long as the provider is approved in the Program and the household is eligible under the statute. These eligible households are at risk of missing out on broadband services supported by the EBB Program because they may not be directly billed by the participating provider and may not have a typical relationship with the participating provider. As a result, we believe that including support in the EBB Program for these eligible households will increase the number of struggling households that are able to benefit from the EBB Program. In situations where the support is passed through as a discount off of the monthly price paid by the eligible household, the eligible household must provide consent to the bulk purchaser/aggregator or participating provider to apply their EBB Program benefit to that service, and the participating provider must retain documentation of such consent.¹¹⁸ The participating provider claiming reimbursement for the service provided under the bulk arrangement must retain documentation demonstrating that the amount claimed by the provider from the EBB Program is fully passed through to the eligible household as a discount off of the monthly price that the eligible household otherwise would have paid directly to the bulk purchaser. To ensure compliance with these requirements, we require participating providers offering service through such bulk billing arrangements to retain documentation demonstrating the identity of the entity or entities through which the discount was passed and the eligible households who received the subsidized service. As an example, if a bulk purchaser typically provides eligible households broadband service for \$30 a month, each eligible household that receives such service must provide consent to the bulk purchaser or participating provider that the participating provider can seek reimbursement from the EBB Program for the \$30 a month service. The participating provider would need to retain documentation of such consent, as well as documentation that the \$30 that the participating provider is seeking reimbursement for will be fully passed through to the eligible household. As a result of the discount, the bulk purchaser would be paying \$30 less to the participating provider, and the eligible household would be receiving free broadband service and not paying anything to the bulk purchaser. In cases where the household does not pay a fee for the service, either to the provider or a bulk purchaser/aggregator, but the fee is paid by another entity, the service cannot be claimed for EBB Program support.

¹¹⁵ See Universal Service Administrative Co., *Lifeline Program Household Worksheet*, available at https://www.usac.org/wp-content/uploads/lifeline/documents/forms/LI_Worksheet_UniversalForms-1.pdf.

¹¹⁶ Charter Comments at 5-6; National Association of Telecommunications Officers and Advisors Comments at 3-4.

¹¹⁷ City and County of San Francisco Comments at 2; *see also* Cities of Los Angeles et al. Comments at 15; National League of Cities Comments at 2.

¹¹⁸ Such consent must be retained by the participating provider in compliance with the program requirements.

46. The *Public Notice* sought comment on whether there should be a limitation on the number of benefits per address regardless of the number of households.¹¹⁹ We conclude that we should not impose any limitations inconsistent with the Lifeline definition of a “household.” We also sought comment on whether additional enrollments at a single address require a separate, more rigorous verification process.¹²⁰ Some commenters cautioned against using a separate process,¹²¹ and we find that the Household Worksheet as used in Lifeline will help protect against duplicate benefits, while not being overly burdensome to applicants. The *Public Notice* also sought comment on whether an applicant should certify that no other person in the economic household is receiving a benefit.¹²² We find that the Household Worksheet requires an applicant to confirm their understanding of the one-per-household rule and that the person will lose their benefit if they break the rule, and we do not need any further certification from an EBB Program subscriber regarding more than one benefit at a household.¹²³ We further direct USAC to apply its existing periodic Lifeline program integrity reviews for addresses with an unusually high number of subscribers to addresses enrolled in the EBB Program as well.

47. The Bureau also sought comment on whether the EBB Program should adopt the same NLAD processes used for Lifeline.¹²⁴ After consideration of the record, we conclude that the Commission should use the NLAD for a variety of functions for the EBB Program. The Consolidated Appropriations Act, for example, contemplates the use of the NLAD by participating providers for purposes of determining whether a household is an eligible household.¹²⁵ The *Public Notice* sought comment on a proposal to require all participating providers to track enrollments of eligible households in the EBB Program in the NLAD to prevent duplicative support.¹²⁶ There was broad support in the record supporting the proposal,¹²⁷ and we adopt it. Further, we find that all providers, including those that use an approved alternative verification process or verify eligibility via a school as discussed below,¹²⁸ must enroll their subscribers in the NLAD prior to claiming reimbursement for those subscribers, to prevent duplicative support between providers.

48. Finally, we observe that households are eligible to participate in both the EBB Program and the Lifeline program, either on the same or different services,¹²⁹ and we direct USAC to enable the NLAD to allow an eligible household to have separate subscriber IDs for the EBB Program and Lifeline and to associate such subscriber IDs with a respective Lifeline provider or Emergency Broadband Benefit provider, as applicable. If a household is enrolled only in the Lifeline program, then it will only have a Lifeline subscriber ID and be associated with a Lifeline provider. If a household is enrolled only in the

¹¹⁹ *Public Notice* at 6.

¹²⁰ *Id.*

¹²¹ City and County of San Francisco Comments at 2; Free Press, Action Now Comments at 5 (there should not be additional verification barriers for multiple households at a single address).

¹²² *Public Notice* at 6.

¹²³ See Universal Service Administrative Co., *Lifeline Program Household Worksheet*, available at https://www.usac.org/wp-content/uploads/lifeline/documents/forms/LI_Worksheet_UniversalForms-1.pdf.

¹²⁴ *Public Notice* at 6; see also 47 CFR § 54.404(b)-(c).

¹²⁵ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(3)(A).

¹²⁶ *Public Notice* at 6.

¹²⁷ California PUC Comments at 4-5; TracFone Comments at 8; USTelecom-The Broadband Association Comments at 6; WISPA Comments at 11; AT&T Services, Inc. Comments at 3; CTIA Comments at 5; National Lifeline Association Comments at 12 (NaLA); City of Longmont, CO Comments at 6; Colorado Communications and Utility Alliance Comments at 6; CETF Comments at 16; INCOMPAS Comments at 13; NYSPSC Comments at 4.

¹²⁸ See Consolidated Appropriations Act, div. N, tit. IX § 904(b)(2)(B)-(C).

¹²⁹ *Public Notice* at 6.

(continued....)

EBB Program, then it will only have an EBB Program subscriber ID and be associated with an EBB Program provider. If a household is enrolled in both the Lifeline program and the EBB program, then it will have separate Lifeline and EBB Program subscriber IDs, and each of those subscriber IDs will be associated with their respective Lifeline or EBB Program provider (in some cases, a household may choose the same provider for both the Lifeline program and the EBB Program).

2. National Verifier and NLAD Eligibility Determination

49. The Consolidated Appropriations Act provides that participating providers can use one of three methods to verify eligibility for the EBB Program.¹³⁰ In this section, we discuss the first method of verification, use of the National Verifier and NLAD. The Consolidated Appropriations Act allows a participating provider to use the National Verifier and NLAD to confirm applicants' eligibility.¹³¹ We find that allowing participating providers to use the National Verifier will help to stand up the EBB Program quickly and provide administrative efficiency, while also serving as an effective tool to prevent waste, fraud, and abuse. We direct USAC to make available an EBB Program consumer portal and application form leveraging the existing National Verifier infrastructure. Commenters also requested that we enable a service provider portal or eligibility check application programming interface (API)¹³² so that providers can help consumers with the application process.¹³³ We agree that these additional application methods would enable providers to help enroll consumers, and we direct USAC to make available these other application methods as well if feasible within the overall timeframe of the Program.

50. Generally, the National Verifier is a system of systems, with computer connections to state and federal eligibility databases that can automatically check and confirm a household's eligibility electronically,¹³⁴ followed by manual review of eligibility documentation for any applicants whose eligibility cannot be verified using an automated data source. To assist those participating providers that want the National Verifier to be a one-stop shop for determining eligibility for the EBB Program¹³⁵ and do not to conduct their own verification processes, we direct USAC to enable the National Verifier to verify three additional eligibility bases that are required by the Consolidated Appropriations Act for the EBB Program: (1) participation in free and reduced lunch program under the Richard B. Russell National School Lunch Act or the school breakfast program under section 4 of the Child Nutrition Act;¹³⁶ (2) a substantial loss of income since February 29, 2020;¹³⁷ and (3) receipt of a Federal Pell Grant under section

¹³⁰ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2). These methods are (1) use of the National Verifier or NLAD; (2) an alternative verification process of the participating provider; or (3) relying on a school based on participation of a household in the school breakfast or lunch programs.

¹³¹ *Id.*

¹³² An eligibility check API would allow a provider to connect their own systems with the National Verifier, allowing a consumer to apply for the EBB Program on the provider's own website.

¹³³ CTIA Comments at 7 (provider-focused document API should be enabled); NaLA Comments at 10 (requesting the Commission to enable the service provider document transmission API).

¹³⁴ The National Verifier "has federal data connections with the United States Department of Housing and Urban Development (HUD) to verify participation in the Federal Public Housing Assistance program (FPHA) and with the Centers for Medicare and Medicaid Services (CMS) to verify participation in Medicaid," and also has connections with many other state databases. Universal Service Administrative Co., *Eligibility Decision Process*, <https://www.usac.org/lifeline/eligibility/national-verifier/eligibility-decision-process/> (last visited Feb. 8, 2021).

¹³⁵ AT&T Comments at 2-3; CTIA Comments at 6; NTCA Comments at 11; USTelecom Comments at 7; *see also* Altice Comments at 3-4 (requesting that the Commission establish a single database that allows providers to access to verify eligibility).

¹³⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(B).

¹³⁷ *Id.* § 904(a)(6)(C).

401 of the Higher Education Act of 1965 in the current award year.¹³⁸ The Consolidated Appropriations Act contemplates substantial loss of income and Federal Pell Grant participation would be verified by the National Verifier where possible,¹³⁹ and commenters agreed with adding those eligibility bases to the National Verifier.¹⁴⁰ Commenters also suggested that participation in school breakfast or lunch should also be added to the National Verifier,¹⁴¹ and we agree. Where possible, we direct USAC to enable database connections through computer matching agreements with the respective government entities for those programs. Where not possible, we direct USAC, under the direction of the Bureau, to allow eligible households to submit documentation so that USAC can manually process the eligibility information for inclusion in the National Verifier. We delegate authority to the Bureau to direct USAC in these efforts and to provide any additional interpretations of Section 904 necessary for implementing use of the National Verifier for the EBB Program. Unless and until such database connections have been enabled, USAC will verify program eligibility based on manual documentation review, consistent with the guidelines discussed below.

51. Where the National Verifier cannot verify eligibility through any automated data sources, we delegate to the Bureau to direct USAC to establish documentation criteria for the three added eligibility programs. While the Consolidated Appropriations Act identified a few types of documentation to demonstrate income loss, such as “layoff or furlough notice, application for unemployment benefits, or similar documentation,”¹⁴² we sought comment on other types of documentation.¹⁴³ Some commenters argued that other documentation for substantial loss of income should be construed broadly,¹⁴⁴ or that we should keep in mind the widespread loss of income.¹⁴⁵ Consistent with our clarification of “substantial loss of income since February 29, 2020,” discussed below, any documentation must clearly show loss of a job, including due to a furlough, that began after February 29, 2020, however documented, as well as the household’s annual income for 2020. In addition, many commenters suggested acceptable documentation for receipt of a Pell Grant under Section 904(a)(6)(D), including: (1) written or electronic confirmation from a student’s Institution of Higher Education that the student has received a Pell Grant for the current award year; (2) a student’s official financial aid award letter documenting the amount of a student’s Pell Grant award received for the current year; (3) a copy of a student’s paid invoice that clearly documents the student’s receipt of a Pell Grant during the current award year; and (4) a copy of a student’s Student Aid Report that clearly documents the student’s receipt of a Pell Grant during the current award year.¹⁴⁶ USAC should consider these documents when establishing documentation criteria for receipt of a Pell Grant.

¹³⁸ *Id.* § 904(a)(6)(D).

¹³⁹ *Id.* §§ 904(a)(6)(C)-(D).

¹⁴⁰ USTelecom Comments at 5-7; Verizon Comments at 6; Competitive Carriers Association Comments at 8; SBE Council Reply at 2.

¹⁴¹ USTelecom Comments at 4-5; Illinois Office of Broadband Comments at 10; NaLA Comments at 12.

¹⁴² Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C).

¹⁴³ *Public Notice* at 6, n.40. Other commenters also sought clarification on what “other similar documentation” is sufficient to qualify a customer. *See, e.g.*, EBBC Comments at 8.

¹⁴⁴ *See, e.g.*, GCI Comments at 4-5 (some employees may not have received a formal furlough letter, but an e-mail or text instead); Vermont PUC et al. Comments at 6; City of Longmont, CO Reply at 5.

¹⁴⁵ Benton Institute Comments at 33.

¹⁴⁶ *See, e.g.*, Alejandro Espinozaw Olazaba Comments at 1; Stephanie Bunsey Comments at 1; Higher Learning Advocates Comments at 2; William Davies Comments at 1; Students United Comments at 1; Anita Kilbroune Greer Comments at 1; New America SHEEO Comments at 7; uAspire Comments at 1; New America’s Open Technology Institute Comments at 5-6; Public Knowledge Comments at 4; LeadMN Comments 1-2; National Collegiate Attainment Network Comments at 2; Higher Learning Advocates Reply at 1.

(continued....)

52. The Consolidated Appropriations Act allows that current Lifeline enrollees are automatically eligible for the EBB Program based on their Lifeline eligibility. Many commenters suggested that customers already enrolled in Lifeline should not have to also apply for the EBB Program.¹⁴⁷ We find that current Lifeline households will not need to apply for the EBB Program or submit new eligibility documentation if they are already enrolled in NLAD.¹⁴⁸ Current Lifeline enrollees, however, must still opt-in or affirmatively request enrollment in the EBB Program.¹⁴⁹ As explained above, providers must collect and retain documentation demonstrating that, prior to enrolling an existing Lifeline household in the EBB Program, the provider made clear disclosures regarding the EBB Program benefit and the consumer's choices within the EBB Program, and the household provided affirmative consent to applying their Emergency Broadband Benefit to the service received from the EBB provider.¹⁵⁰

53. In the Lifeline program, potential households are required to provide the last four digits of a Social Security Number to enroll in National Verifier and NLAD to verify subscriber identity.¹⁵¹ Some commenters, however, argue that the Consolidated Appropriations Act does not require a Social Security Number for enrollment in the EBB Program, and that if the Commission imposes a Social Security Number requirement, many of the neediest households may not be able to enroll because they may not have a Social Security Number, may have difficulty accessing data, or fear providing a Social Security Number.¹⁵² Commenters have suggested alternative forms of identification instead of a Social Security Number, such as an Individual Taxpayer Identification Number (ITIN),¹⁵³ Government ID,¹⁵⁴ current utility bill,¹⁵⁵ or current employment photo identification badge.¹⁵⁶ While we permit a consumer to use the last four digits of a Social Security Number during enrollment, we are persuaded that accepting only a Social Security Number may prevent eligible households from enrolling in the EBB Program. Applicants who choose not to provide the last four digits of their Social Security Number or cannot be verified using a Social Security Number may verify their identity using a variety of other types of identity

¹⁴⁷ EBBC Comments at 6; USTelecom Comments at 3; AAPD Comments at 3.

¹⁴⁸ For Lifeline households in states that have opted out of the NLAD (California, Oregon, and Texas), and whose participation in Lifeline cannot be verified in the NLAD, USAC may require documentation demonstrating Lifeline enrollment, and we direct USAC to work with the Bureau to determine if documentation is necessary and if so, to establish documentation criteria for Lifeline households in those states.

¹⁴⁹ See USTelecom Comments at 3-4.

¹⁵⁰ See *supra* para. 38.

¹⁵¹ See 47 CFR §§ 54.404(b)(6), (c)(4), 54.410(d)(2).

¹⁵² See, e.g., Hispanic Technology & Telecommunications Partnership Comments at 2; LeadingAge Comments at 2; Multicultural Media et al. Comments at 6; National Hispanic Media Coalition Comments at 5-6; Stewards of Affordable Housing Comments at 4; Charter Comments at 7; Cities of Los Angeles et al. Comments at 14; Public Knowledge Comments at 105; NCLC and United Church of Christ Comments at 9; Benton Institute for Broadband & Society, American Civil Liberties Union, New America's Open Technology Institute, Common Cause, National Hispanic Media Coalition, Public Knowledge, UnidosUS, Joint Center for Political and Economic Studies, MediaJustice, Free Press Reply at 4-5; Westchester County Legislators Reply at 1.

¹⁵³ NCLC and United Church of Christ Comments at 9; Public Knowledge et al. Comments at 4-5; Hispanic Technology & Telecommunications Partnership Comments at 2; Multicultural Media et al. Comments at 6; National Hispanic Media Coalition Comments at 5-6.

¹⁵⁴ Public Knowledge et al. Comments at 4-5; National Hispanic Media Coalition Comments at 2, Cities of Los Angeles et al. Comments at 14; Benton Institute for Broadband & Society, American Civil Liberties Union, New America's Open Technology Institute, Common Cause, National Hispanic Media Coalition, Public Knowledge, UnidosUS, Joint Center for Political and Economic Studies, MediaJustice, Free Press Reply at 4-5; Westchester County Legislators Reply at 1.

¹⁵⁵ Cities of Los Angeles et al. Comments at 14.

¹⁵⁶ *Id.*

documentation, including a government-issued ID, passport, driver's license, or Individual Taxpayer Identification Number documentation.¹⁵⁷ We direct USAC to work with the Bureau to establish approval criteria for acceptable identity documentation. In developing that criteria, USAC should consider the methods used to verify identity by providers with existing low-income programs.

54. The *Public Notice* proposed that eligible households will be required to interact directly with National Verifier as is currently required for the Lifeline benefit,¹⁵⁸ and many commenters supported this proposal.¹⁵⁹ We adopt this proposal and will require households to interact directly with National Verifier. Some commenters suggested that the Commission permit service providers to submit verification requests through the National Verifier on behalf of households even if the households consumers are not physically present with the service provider,¹⁶⁰ while others were concerned that consumers may not be able to access National Verifier as they do not have broadband access, and places such as libraries or community centers that typically offer broadband access are closed or operating in a limited capacity due to the pandemic.¹⁶¹ Although allowing service providers to remotely submit information on behalf of consumers may benefit some consumers, we find that the risk to program integrity and potential for waste, fraud, and abuse outweighs the benefit. Further, households that do not have Internet access to apply electronically through the National Verifier may still apply for the Program using a paper application. In addition, verification through the National Verifier is not the only way for households to get verified in the Program, as service providers may have their own approved alternative verification processes to enroll households, while other households may be qualified by a provider through verification with a school. Given these alternatives, we do not think that permitting providers to sign up consumers remotely is necessary.

55. The Consolidated Appropriations Act permits households with members who qualify for free and reduced-price school lunch or the school breakfast program to enroll in the EBB Program. As a result, we will permit qualifying households to apply for the EBB Program and will have USAC enable the National Verifier to approve the household based on participation in free and reduced lunch program or the school breakfast program. In the *Public Notice*, the Bureau sought comment on the reduced or free school breakfast or lunch eligibility from Section 904(a)(6)(B) and how to treat households with students enrolled in this program in schools or school districts that participate in the USDA Community Eligibility Provision.¹⁶² Participation in the Community Eligibility Provision allows the nation's highest-poverty schools and school districts to serve breakfast and lunch at no cost to all enrolled students without needing to collect individual household applications.¹⁶³ Thus, households with a student enrolled in a school or school district participating in the Community Eligibility Provision will not have "applied for and been approved to receive" school lunch or breakfast programs,¹⁶⁴ but are still beneficiaries of these programs. Many commenters support that households with children enrolled in largely low-income

¹⁵⁷ See *id.*; HTTP Comments at 2; MMTCC NUL Comments at 6; National Hispanic Media Coalition Comments at 6; NCLC and United Church of Christ Comments at 9; Public Knowledge Comments at 4-5.

¹⁵⁸ *Public Notice* at 7.

¹⁵⁹ See, e.g., ITIF Comments at 2.

¹⁶⁰ ACA Connects Comments at 22-23; Altice Comments at 3-4; NTCA Comments at 11; Related Companies Reply at 2.

¹⁶¹ Michigan PSC Comments at 6; Michigan Department of Labor and Economic Opportunity Reply at 3; Michigan Department of Agriculture and Rural Development Reply at 3; Michigan Economic Development Corporation Reply at 3; Michigan Department of Health and Human Services Reply at 3.

¹⁶² *Public Notice* at 7.

¹⁶³ USDA, Food and Nutrition Service, Child Nutrition Programs, Community Eligibility Provision, <https://www.fns.usda.gov/cn/community-eligibility-provision>.

¹⁶⁴ See Consolidated Appropriations Act, div. N. tit. IX § 904(a)(6)(B).

schools or school districts that participate in the Community Eligibility Provision should be eligible for the emergency broadband benefit under Section 904(a)(6)(B) despite not individually applying for assistance.¹⁶⁵ We agree with these commenters.

56. Some commenters argue that accepting participation in the Community Eligibility Provision would be overinclusive.¹⁶⁶ On balance, we find that the risk of including otherwise ineligible households is outweighed by the importance of making the EBB Program accessible and removing barriers to participation. Indeed, because the schools that participate in the Community Eligibility Provision are the among the highest-poverty schools in the nation, we believe that including households with students that attend those schools efficiently targets low-income households and excluding such schools would counterintuitively effectively remove the National School Lunch Program as a qualifying program for households in largely low-income schools and school districts. We also recognize that allowing use of the Community Eligibility Provision as a qualifying program limits disclosure to less sensitive information of households.¹⁶⁷ While the Consolidated Appropriations Act does not provide a specific time frame for when the member of the household should have been approved for benefits under the free and reduced price lunch or breakfast programs,¹⁶⁸ the California Emerging Technology Fund proposed that the Commission should allow proof of enrollment in these programs for either the 2019-2020 and 2020-2021 school year, given that many schools have been closed since mid-March 2020 due to the pandemic and students may not be enrolled in the programs in the current school year.¹⁶⁹ We agree with this proposal. We therefore will accept for eligibility determination purposes a household's confirmation that the household has dependent children who participated or are participating in the Community Eligibility Provision school breakfast or free and reduced-price school lunch program in the 2019-2020 or 2020-2021 school year. We direct USAC to develop a process for such eligibility determinations that has the capability to, after a household provides the name of a dependent child's school, automatically check for CEP participation against the nationwide lists maintained by U.S. Department of Agriculture and/or the Food Research & Action Center. We also direct USAC to conduct program integrity reviews of a sample of households who enrolled in the Program using this eligibility criteria to confirm Program compliance.

57. The *Public Notice* also sought comment on whether a school's participation in the E-Rate program would facilitate any needed verification.¹⁷⁰ We received some comments supporting the idea that a school participating in E-Rate should be sufficient to confirm household eligibility for its students' households.¹⁷¹ However, schools can participate in E-Rate even if less than 1% of its students are eligible for the National School Lunch Program.¹⁷² As such, we do not find that a school's participation in E-Rate

¹⁶⁵ Cities of Los Angeles, CA, Chicago, IL, Portland, OR, Boston, MA, and the Texas Coalition of Cities for Utility Issues Comments at 10, 13 (Cities of Los Angeles et al.); Tech Goes Home Comments at 2; DigitalC Comments at 8; Center for Democracy & Technology Comments at 4 (CDT); WISPA at 10; Free Press, Access Now Comments at 5-6; New America's Open Technology Institute Comments at 6; Benton Institute for Broadband & Society Comments at 31 (Benton Institute); CETF Comments at 18 (CETF); Aurora Institute Comments at 2-3; NAHMA Comments at 2; AASC Comments at 3; Council of the Great City Schools Comments at 3.

¹⁶⁶ NTCA Comments at 13.

¹⁶⁷ CDT Comments at 4; Free Press, Access Now Comments at 6.

¹⁶⁸ See Consolidated Appropriations Act, div. N. tit. IX § 904(a)(6)(B).

¹⁶⁹ CETF Comments at 18.

¹⁷⁰ *Public Notice* at 7.

¹⁷¹ City of Austin, TX Comments at 3; DigitalC Comments at 8; Student Internet Equity Coalition Comments at 6-7.

¹⁷² Universal Service Administrative Co., *Discount Matrix*, <https://www.usac.org/wp-content/uploads/e-rate/documents/samples/Discount-Matrix.pdf> (last visited Feb. 5, 2021). GCI Communications Corp. noted in its comments that some schools may report that 100% of their students are eligible for free and reduced price lunch, and therefore those schools should be included. GCI Communications Corp. Comments at 2-3 (GCI). We find,

(continued....)

alone will provide any help as to the eligibility of households that have students enrolled in that school, and we decline to use participation in E-Rate as a basis of eligibility for qualifying for school lunch or breakfast.

58. Households with members who have experienced a substantial loss of income are also qualified to enroll in the EBB Program according to the Consolidated Appropriations Act. The Bureau sought comment on how to define a “substantial loss of income since February 29, 2020” in Section 904(a)(6)(C) and whether households with an income above a certain level should be excluded from the program.¹⁷³ Although we received comments that the Commission should clearly define “substantial loss of income,”¹⁷⁴ only a few commenters provided criteria for the Commission to consider.¹⁷⁵ Consistent with the requirements of the Consolidated Appropriations Act,¹⁷⁶ we clarify that a “substantial loss of income” includes the loss of a job, including a furlough, that is documented by a layoff or furlough notice, application for unemployment insurance benefits, or similar documentation. We permit households with such members to enroll in the EBB Program through the National Verifier. To target eligibility to households most in need, we agree with commenters that we should impose a household income limitation, and consistent with the criteria established by the Centers for Disease Control to halt evictions, a household that has suffered a job loss must not have had an income in 2020 greater than \$99,000 for single-filers and \$198,000 for joint filers to be eligible for the EBB Program.¹⁷⁷

59. The Consolidated Appropriations Act also permits eligibility into the EBB Program if a member of a household has received a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 in the current award year.¹⁷⁸ Commenters supported and welcomed the inclusion of receipt a Pell Grant as an eligibility basis for the Program.¹⁷⁹ USTelecom has asked for clarification on what constitutes a household for purposes of a Pell Grant, given that students that are awarded Pell Grants are typically living away from parents, yet that student may be dependent on parental support.¹⁸⁰ We clarify that consistent with the Program’s adoption of the Lifeline definition of “household,” people are part of the same household if they share income and expenses and live at the same address. If the recipient of a Pell Grant lives at a separate address from the recipient’s parents, the recipient and the family are separate households, and only the recipient of the Pell Grant would be eligible for the Program using Pell Grant eligibility.

60. The Consolidated Appropriations Act also allows into the EBB Program a household where at least one member meets the eligibility criteria for a participating provider’s existing low-income

however that it is better to rely on participation in Community Eligibility Provision, as that provides a more robust data set and will be more administrable.

¹⁷³ *Public Notice* at 6, n.40.

¹⁷⁴ Benton Institute Comments at 32-33 (suggesting that the Commission consult with the CDC to see how CDC defines “substantial loss of household income”); USTelecom Comments at 6; Emergency Broadband Benefit Carriers (ETCs) Comments at 8 (EBBC).

¹⁷⁵ *See, e.g.*, USTelecom Comments at 5-6 (suggesting a percentage decline in monthly household income, how long the decline was, whether a new job offset that loss).

¹⁷⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C).

¹⁷⁷ *See* Benton Institute Comments at 32-33 (noting for purposes of income limits for eviction protection that CDC considered people to be low-income if they were, among others earning no more than \$99,000 in annual income (\$198,000 for joint) for calendar year 2020).

¹⁷⁸ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(D).

¹⁷⁹ Alejandro Espinozaw Olazaba Comments at 1; LeadMN Comments at 1; Stephanie Bunsey Comments at 1.

¹⁸⁰ USTelecom Comments at 6-7.

(continued....)

or COVID-19 program.¹⁸¹ For eligibility under this provision, commenters suggested that providers should be able to continue to operate the program with the existing eligibility requirements.¹⁸² Although this provision of the Consolidated Appropriations Act suggests the Commission could impose other eligibility requirements on these existing programs that we consider necessary for the public interest, at this time and given the emergency nature of the EBB Program, we decline to modify the programmatic or income eligibility requirements of any provider's existing low-income or COVID-19 program for purposes of eligibility in the EBB Program. Some commenters suggested that we should work with providers to set a baseline eligibility for the provider's existing low-income or COVID-19 program.¹⁸³ We similarly believe imposing baseline criteria on all existing low-income or COVID-19 programs would be disruptive to those programs and cause undue burden on the providers at a time when it is essential those programs continue to operate efficiently. Finally, consistent with the Consolidated Appropriations Act's allowance that a broadband provider that had an established a low-income or COVID-19 program as of April 1, 2020 shall be automatically approved as a participating provider,¹⁸⁴ and to ensure that such eligibility determinations are made pursuant to well-established verification mechanisms, we find that a participating provider's existing low-income or COVID-19 program must have been available as of April 1, 2020, and any eligibility criteria for such programs must have been established as of April 1, 2020, for use of that program as a qualifying program under Section 904(a)(6)(E).¹⁸⁵

61. Some commenters suggested that although we do not allow Lifeline applicants to self-certify, we should allow EBB Program applicants to self-certify given the emergency nature of the EBB Program.¹⁸⁶ While we recognize that self-certification could in some circumstances lessen the burden on some households, we decline to allow self-certification. Self-certification presents a sizable risk of waste fraud and abuse in the EBB Program. Further, we find the Consolidated Appropriations Act contemplates documentation and verification to confirm eligibility and permitting a household to enroll in the EBB Program while only self-certifying to eligibility would run contrary to these statutory requirements.¹⁸⁷ And given the many bases of eligibility through which a household is able to enroll in the EBB Program and different avenues for verification, we find that these ample opportunities make self-certification far less urgent.

3. Participating Provider Alternative Verification Process

62. The Consolidated Appropriations Act also allows a participating provider to “rely upon an alternative verification process of the participating provider,” subject to certain conditions.¹⁸⁸ As set out by the Consolidated Appropriations Act, the “participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement,” and the Commission has seven days after receipt of the information to notify the participating provider if the

¹⁸¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(E).

¹⁸² ACA Comments at 24; HTTP Comments at 2.

¹⁸³ HTTP Comments at 2.

¹⁸⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(d)(2)(B).

¹⁸⁵ See *id.* § 904(a)(6)(E) (permitting the Commission to impose “any other eligibility requirements [it] may consider necessary for the public interest”).

¹⁸⁶ Verizon Comments at 7 (households in free and reduced price lunch program should be able to self-certify); Public Knowledge Reply at 4-5; Higher Learning Advocates Reply at 2 (self-certification proposed by Verizon should be extended to Pell Grant recipients).

¹⁸⁷ See, e.g., Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C) (requiring that loss of income should be documented or otherwise verifiable through the National Verifier); *id.* § 904(a)(6)(D) (requiring that receipt of a Federal Pell Grant be verifiable).

¹⁸⁸ *Id.* § 904(b)(2)(B).

participating provider's "alternative verification process will be sufficient to avoid waste, fraud, and abuse."¹⁸⁹

63. The *Public Notice* sought comment on what information should be provided to the Commission concerning the alternative verification process,¹⁹⁰ and the criteria the Commission should consider in determining whether a provider's alternative verification process is sufficient to avoid waste, fraud, and abuse.¹⁹¹ Some commenters suggested that the Commission create a model "alternative verification process" for participating providers to choose,¹⁹² while others suggested that the Commission automatically approve the verification processes for providers that have low-income programs that are not provided with government assistance and instead subsidized by the provider, as those providers already have strong incentives to ensure that only qualified customers take advantage of those programs.¹⁹³ Other commenters proposed that local governments may act as the alternative verification process for providers.¹⁹⁴ The Navajo Nation Telecommunications Regulatory Commission suggested that the Commission should work with providers who have worked in Indian Country to get their input as to verification, given the challenge that Lifeline has in verifying consumers in Indian Country.¹⁹⁵ We also received comments that any alternative verification process should be allowed to have different household eligibility definitions,¹⁹⁶ but we cannot expand eligibility beyond what the Consolidated Appropriations Act authorizes. We do note, however, that under Section 904(a)(6)(E) a broadband provider's eligibility criteria for their *existing* low-income or COVID-19 program may provide eligibility bases other than those explicitly listed in Sections 904(a)(6)(A)-(D).

64. Regardless of how a provider seeks or receives authorization to participate in the EBB Program (as an ETC, as a non-ETC with expedited approval, or as a non-ETC with automatic approval), a provider must submit and receive Bureau approval of its alternative verification process prior to using such a process to enroll consumers in the EBB Program.¹⁹⁷ The *Public Notice* proposed that the Commission delegate to the Bureau authority to review and approve (or deny) alternative verification processes,¹⁹⁸ and we adopt this proposal. We direct the Bureau to develop a process for submitting proposed alternative verification processes and to review and approve or reject such submissions within the seven days required by the Consolidated Appropriations Act. For ETCs, we direct such providers to submit to the Bureau requests for approval describing their alternative verification process after submitting their notice of election to USAC. The ETC's request for approval of its alternative verification process must still go through the approval process required by Section 904(b)(2)(B) and be

¹⁸⁹ *Id.*

¹⁹⁰ *Public Notice* at 8.

¹⁹¹ *Id.*; see *supra* para. 25.

¹⁹² Benton Institute Comments at 31.

¹⁹³ Charter Comments at 4 (the Commission should automatically approve providers that have existing verification processes for their own programs); Comcast Comments at 10-11; Competitive Carriers Association Comments at 7; Hispanic Technology & Telecommunications Partnership Comments at 2; NCTA Comments at 12-13; ACA Connects Comments at 21; ITIF Comments at 2.

¹⁹⁴ NATOA Comments at 2-3; City of Longmont, CO Comments at 7-8 (explaining that Longmont has a program providing broadband for qualifying low-income consumers); Colorado Communications and Utility Alliance Comments at 5; Delaware Department of Technology and Information Reply at 1-4; NATOA Reply at 3-4.

¹⁹⁵ Navajo Nation Telecommunications Regulatory Commission Comments at 5.

¹⁹⁶ See, e.g., NeighborWorks America Comments at 3-4; EducationSuperHighway Comments at 7; ACA Connects – America's Communication Association Comments at 25.

¹⁹⁷ See Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B).

¹⁹⁸ *Public Notice* at 8.

approved by the Bureau before the ETC can begin providing EBB Program service.¹⁹⁹ For providers seeking a non-ETC approval from the Bureau, we direct such providers to submit requests for approval describing their alternative verification process along with their application to participate in the EBB Program, where possible. Although the provider application to participate may be granted automatically if the provider qualifies for such a grant,²⁰⁰ the provider's request for approval of its alternative verification process must still go through the approval process required by Section 904(b)(2)(B) and be approved by the Bureau before the provider can begin providing EBB Program service.²⁰¹

65. We also agree with commenters that non-ETCs that are automatically approved as a participating provider based on having an established low-income or COVID-19 program as of April 1, 2020 pursuant to Section 904(d)(2)(B) should also have the alternative verification processes for those programs automatically approved.²⁰² The Consolidated Appropriations Act not only provides an automatic approval for such providers but also deems as eligible for the EBB Program households with at least one member that meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program. We find Congress' heavy reliance on these existing aid programs instructive. We are persuaded that such providers have strong incentives to ensure that only qualified customers take advantage of a provider's own low-income or COVID-19 program, as these programs are currently subsidized by the provider. Any such automatically approved provider must still submit a description of their alternative verification process to the Bureau.

66. The *Public Notice* proposed to allow alternative verification methods that are at least as stringent as methods used by the National Verifier,²⁰³ and we received comment agreeing with this proposal.²⁰⁴ To be at least as stringent as the National Verifier, information collected by participating providers in the alternative verification process should at least include the applicant's: (1) full name, (2) phone number, (3) date of birth, (4) e-mail address, (5) home and mailing addresses, (6) name and date of birth of the benefit qualifying person if different than applicant, (7) basis for inclusion in program (e.g., SNAP, SSI, Medicaid, school lunch, Pell Grant, income, provider's existing program, etc.) and documentation supporting verification of eligibility, and (8) certifications from the household that the information included in the application is true. The provider must describe the processes it (or a third-party) uses to verify the requested information above, including the applicant's identity and eligibility, and as required by the Consolidated Appropriations Act, the provider must explain why the provider's alternative process will be sufficient to avoid waste, fraud, and abuse. For example, Comcast requires consumers to submit an application to obtain proof of identification and establish eligibility for its Internet Essentials program, which is open to individuals in a high poverty area or through participation in a government assistance program.²⁰⁵ Comcast cross-references information from the application against internal databases populated with publicly available data from government sources to confirm participation in National School Lunch Program, residence at a public housing address, or residence in high poverty area, and if eligibility cannot be verified through internal databases or based on participation in a different government program, Comcast requires documentation of proof of participation and the documentation is reviewed by a vendor.²⁰⁶ The provider must also explain how it trains its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents. If the

¹⁹⁹ *See id.*

²⁰⁰ *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(d)(2)(B).

²⁰¹ *See id.*

²⁰² *See supra* note 192.

²⁰³ *Public Notice* at 8.

²⁰⁴ AT&T Services, Inc. Comments at 4-5 (AT&T).

²⁰⁵ Comcast Comments at 10.

²⁰⁶ *Id.* at 11.

alternative verification process fails to include any of the above information, the provider should explain why it thinks such information is not necessary to prevent waste, fraud, and abuse. If a provider without an established low-income program seeks approval of an alternative verification process, it must explain why it proposes to use an alternative verification process instead of the National Verifier eligibility determinations. We decline to issue a model alternative verification process, and we further decline to approve any of the other alternative verification processes submitted by commenters at this time.

67. The *Public Notice* also sought comment on documentation and records providers should be required to keep to comply with audit requirements.²⁰⁷ Commenters suggested that the providers should at least collect and retain documentation of the applicant's identity and eligibility criteria.²⁰⁸ We require that providers keep all documentation provided to them from the applicant used to make eligibility determinations, for as long as the applicant receives the Emergency Broadband Benefit, and also for no less than the six full calendar years following the termination of the EBB Program.²⁰⁹ For example, if a subscriber enrolls in the Program through participation in the school breakfast or lunch program or the Pell Grant, retained documentation should include the name of the school and school year for which the subscriber has claimed eligibility. This requirement is similar to the document retention requirement used in the Lifeline program but is long enough to cover the statute of limitations under the False Claims Act²¹⁰ laws for federal wire fraud,²¹¹ and ensures that documentation is available to confirm program compliance. Commenters also agree²¹² with the proposal in the *Public Notice* that providers identify the alternative verification process used when enrolling a household in the NLAD,²¹³ and we adopt that proposal. We also direct USAC to conduct periodic program integrity reviews to ensure that subscribers enrolled through a provider's alternative verification process are eligible for the emergency broadband benefit.

4. School-Based Eligibility Verification

68. The Consolidated Appropriations Act also allows a participating provider to rely on a school to verify eligibility under the free and reduced price school lunch or school breakfast program.²¹⁴ The *Public Notice* proposed that a provider identify the school it relied on when enrolling a household in NLAD,²¹⁵ and commenters agreed.²¹⁶ We also sought comment on what other information a participating provider should be required to submit or maintain.²¹⁷ Commenters were concerned about the ability of schools to provide information about households and individuals enrolled in the program without violating data privacy and confidentiality laws.²¹⁸ We also received a comment suggesting that we create a standard protective order or consent form that providers can use.²¹⁹ One commenters was also

²⁰⁷ *Public Notice* at 8.

²⁰⁸ AT&T Comments at 5.

²⁰⁹ See CETF Comments at 18 (recommending retaining documentation for at least five years).

²¹⁰ See 31 U.S.C. § 3731(b)(1).

²¹¹ See 18 U.S.C. §§ 1343, 3282.

²¹² Nebraska PSC Comments at 6.

²¹³ *Public Notice* at 7; Benton Institute Comments at 31.

²¹⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(C).

²¹⁵ *Public Notice* at 7.

²¹⁶ NaLA Comments at 12.

²¹⁷ *Id.*

²¹⁸ CDT Comments at 3-4; Council of the Great City Schools Comments at 2-3; NTCA Comments at 12-13.

²¹⁹ Council of the Great City Schools Reply at 2.

concerned that there may be significant administrative burdens and staffing requirements placed on schools if they are required to verify students, particularly if schools have a large number of students that qualify.²²⁰ One commenter estimates that it could take a school district 192 hours a month to process income verification requests from service providers.²²¹ We share those concerns and are sympathetic to the burdens this method could impose on schools, especially during the pandemic when so many school administrators and teachers are struggling with the challenges of safe, in-person education, supporting students in need, and distance learning. We conclude that, to comply with the requirements of the Consolidated Appropriations Act, for a participating provider to rely on information provided by a school when enrolling a household in the EBB Program, the participating provider must certify in NLAD that it relied on information provided by a school for eligibility verification and that it retains documentation indicating: (1) the school providing the information, (2) the program(s) that the school participates in, (3) the household that qualifies (and qualifying student(s)),²²² (4) and the program(s) the household participates in.²²³ We believe this permits access to the EBB Program for student households through the school and also minimizes the burden on the school, especially in light of the relevant privacy and consent requirements.²²⁴ At the same time, households with students can also verify eligibility for and enroll in the EBB Program without relying upon schools, and will be able to use on any of the qualifying criteria for eligible households set forth in the Consolidated Appropriations Act. And while we decline to create a standard protective order or consent form at this time, we recognize that may be a beneficial tool for consumers and providers and delegate to the Bureau the authority to create such a form if it is needed for the National Verifier's processes.

C. Covered Services and Devices

69. The COVID-19 pandemic continues to challenge Americans' access to and reliance on broadband connections as households try to adapt and ensure that they have the tools to succeed in their everyday tasks, including telework, telehealth, telemedicine, and virtual learning.²²⁵ The Consolidated Appropriations Act permits, in the EBB Program, eligible households to receive a discount off the cost of broadband service and certain connected devices, and participating providers can receive a reimbursement for such discounts during the emergency period.²²⁶

²²⁰ *Id.* at 3.

²²¹ *Id.*

²²² Some commenters thought that the Commission should not require documentation of the qualifying student. WISPA at 10. However, we do not find that identifying the name of the qualifying student, with parental consent, is inappropriate. For example, in the Lifeline program, if a household qualifies for Lifeline based on the participation of a child in a federal assistance program, the household must identify the child as the benefit qualifying person when applying for Lifeline. Universal Service Administrative Co., *Do I Qualify?*, <https://www.lifelinesupport.org/do-i-qualify/> (last visited Feb. 5, 2021).

²²³ Commenters agreed that schools need to obtain parental consent to disclose a student's participation in a school lunch or breakfast program. *See, e.g.*, CDT Comments at 5-6; Public Knowledge Comments at 5 (arguing that schools should proactively reach out to students to obtain parental consent); State Educational Technology Directors Association, Consortium for School Networking, and Alliance for Excellent Education Comments at 3; Council of the Great City Schools Comments at 2.

²²⁴ *See* Disclosure of Children's Free and Reduced Price Meals and Free Milk Eligibility Information in the Child Nutrition Programs, 72 Fed. Reg. 10885 (Mar. 12, 2007) (requiring parental consent to disclose a student's participation in certain programs except in limited circumstances).

²²⁵ TDI et al. Comments at 3 (noting that "the COVID-19 pandemic has exacerbated communication barriers for people who are deaf, hard of hearing, DeafBlind, or deaf with mobility issues").

²²⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(1).

70. *Services.* In describing the services eligible for EBB Program support, the Consolidated Appropriations Act defines “internet service offering”²²⁷ as a broadband Internet access service provided to a household, and defines “broadband Internet access service” with the meaning given to that term in section 8.1(b) of the Commission’s rules.²²⁸ The Consolidated Appropriations Act further requires that an Internet service offering must have a “standard rate” in order to receive the emergency broadband benefit,²²⁹ and that standard rate equals the “the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020, excluding any taxes or other governmental fees.”²³⁰ We interpret this requirement to mean that an Internet service offering eligible for EBB Program support must have a retail rate that was on offer as of December 1, 2020 and that, but for the application of the EBB Program discount, would have been charged to the customer on a monthly basis. We interpret the Consolidated Appropriations Act’s reference to a “monthly retail rate”²³¹ to exclude broadband service products that are priced based primarily on the data allowance of the product (for example, a purchase 1 GB of data for \$5.00) and are sold separate from a monthly recurring service plan). This requirement also helps to focus limited funding toward more robust broadband service offerings to maximize the program’s benefits for enrolled households. Additionally, we clarify that the Consolidated Appropriations Act’s application of the emergency broadband benefit as a discount off of the monthly retail rate charged to the subscriber means that service plans that are already offered with no fee to the end user—for example, as a result of Lifeline program support or other benefit programs—are not eligible for additional or duplicative support from the EBB Program. At the same time, the Consolidated Appropriations Act does permit plans where the end result is no fee being assessed on the household *after* the application of the monthly benefit.²³²

71. Some parties have asked that we require participating providers to make the emergency broadband benefit available on all of their service offerings.²³³ On balance, we believe that dictating the required offerings in a temporary program will discourage participation and result in less consumer choice than would otherwise be available if we provided participating providers with more flexibility. However, we note that participating providers may apply the emergency broadband benefit to any of their eligible offerings, including promotional offerings that were available as of December 1, 2020. Specifically, pursuant to the Consolidated Appropriations Act, participating providers are required to make available to eligible households a monthly discount off the standard rate for an Internet service offering and associated equipment, up to \$50.00 per month. For households residing on Tribal lands, the monthly discount may be up to \$75.00 per month.²³⁴ Participating providers will receive reimbursement from the Program for the discounts provided.

²²⁷ *Id.* § 904(a)(9).

²²⁸ *See id.* § 904(a)(1) (citing 47 CFR § 8.1(b)).

²²⁹ *See id.* § 904(a)(7).

²³⁰ *See id.* § 904(a)(13).

²³¹ *Id.*

²³² *See id.* § 904(b)(6)(B)(i)(I).

²³³ NDIA Comments at 7 (“The FCC should clarify . . . that an eligible household has the right to apply EBB to any internet service offering of a participating provider that was available to that household as of December 1, 2020”); Nat’l League of Cities Comments at 1 (urging the Commission to “require participating providers to offer their full suite of broadband options throughout their entire service area”); Free Press and Access Now Reply at 13-14 (suggesting that the Commission should clarify that “approved providers must accept the benefit for all available service tiers”); Common Cause Reply at 2-4; *see also* MMTCC NUL Comments at 8 (low-income consumers should be made aware that the benefit can be used to offset the cost of higher-priced broadband plans, and is not limited to low-cost broadband plans).

²³⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7).

72. We provide further clarity on the Internet service offerings and associated equipment eligible for reimbursement.²³⁵ Internet service offering is defined as “broadband internet access service provided by such provider to a household, offered in the same manner, and on the same terms, as described in any of such provider’s offerings for broadband internet access service to such household, as on December 1, 2020.”²³⁶ Accordingly, providers who participate in the EBB Program are only eligible to receive reimbursement for offerings that were available on and include the same terms as those available as of December 1, 2020. The majority of commenters do not oppose the service offering date of December 1, 2020, but some commenters explain that the December 1, 2020 date should not limit the ability of providers to offer upgrades on top of such existing service offerings to consumers.²³⁷ We agree and find that participating providers may offer free enhancements of service quality elements of a discount-eligible Internet service offerings but may not increase the price charged for that offering. We believe the December 1, 2020 restriction is best understood as a method of avoiding arbitrage opportunities and waste in the Program by allowing unscrupulous providers to take advantage of the increased subsidy available. By referring to offerings that were available prior to the enactment of the law, the Consolidated Appropriations Act prevents participating providers from increasing prices above the usual market rate for their services for the purpose of claiming the maximum reimbursement amount. Interpreting that restriction to also restrict the ability of participating providers to offer free upgrades to the quality of the broadband services provided to eligible households, however, such as speed, data caps, and other non-price elements, would be contrary to the law’s purpose of supporting robust modern broadband service during an unprecedented pandemic. We therefore permit provider offerings that were available on and include the same terms as those available as of December 1, 2020 to include free enhancements in quality with respect to such non-price elements.²³⁸

73. *Minimum Service Standards.* We decline to apply minimum service standards to covered services for the EBB Program. We find that qualifying Internet service offerings must include a broadband connection (as defined in section 904(a)(9))—fixed or mobile—that permits households to rely on these connections for the purposes essential to participating in society during the pandemic, such as telework, remote learning, and telehealth. A majority of commenters support this approach, explaining that broadband speeds should be sufficient for telework and distance learning, and discount-eligible Internet service offerings should feature speeds comparable to those offered to market-rate customers.²³⁹ We also recognize that Congress did not limit the discount to lower-cost broadband plans. Consumers purchasing discounted services under the EBB Program qualify for the same protections as those purchasing services at standard rates. Thus, providers that offer discounted broadband services pursuant to the EBB Program rules, either on a standalone or bundled basis, must comply with the same consumer-protection requirements that apply to the corresponding services that they offered on or before December

²³⁵ *Public Notice* at 8.

²³⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9).

²³⁷ Participating providers are required to file an election notice with USAC that would, amongst other things, include a description of any Internet service offerings for which the provider plans to seek reimbursement in each state, while also including documentation of the standard rates for those offerings. *See, e.g.,* Altice Comments at 7 (“The Commission should make clear that any one or more of a provider’s existing plans in a certain service area of geographic market is eligible for reimbursement through EBBP.”).

²³⁸ *See* AT&T Comments at 8 (suggesting the Commission apply the EBB program benefits “to service plans that have been enhanced since December 1, 2020 if the changes to the offering benefits the consumer”); CTIA Reply at 8 (explaining that “providers should be permitted to apply the EBB subsidy to plans that have been enhanced . . . as long as the enhanced service plans cost less for the value received than the provider’s plan on December 1, 2020”); Verizon Reply at 11 (“The reality, of course, is that in the competitive marketplace service offerings will continue to improve, and Congress clearly intended EBB customers to be able to apply their benefit to the same improved service offerings that are available to non-EBB customers.”).

²³⁹ NARUC Comments at 10; California PUC Comments at 6-7.

1, 2020. Thus, providers must disclose accurate information regarding the performance characteristics, commercial terms, and other features of their discounted broadband services to enable consumers to make informed choices regarding the purchase and use of such services.²⁴⁰

74. Some commenters also suggest that participating providers should offer services that meet the Commission's definition of broadband at 25/3 Mbps²⁴¹ or encourage the Commission to require high-capacity, affordable broadband service.²⁴² Given the emergency nature of the EBB Program and the vital need to maximize consumer choice and benefits in a short timeframe, we are not persuaded by such arguments. By administering the program within the definition of "Internet service offering," and permitting non-ETCs to participate, we obviate the need for lengthy service obligations and the risk of slow speeds and maintain consumer choice—allowing consumers to select offerings that work best for their household—as well as permit participating providers to serve eligible households as quickly as possible during the emergency period.²⁴³ We further decline to apply the Lifeline program's minimum service standards to covered services for the EBB Program.²⁴⁴ We recognize that some commenters encourage us to use Lifeline's minimum service standards or the Lifeline program itself as a starting point.²⁴⁵ Indeed, we understand that low-income consumers must have access to reliable broadband connections vital for basic education, health care, remote work, disability access and public safety, but the Consolidated Appropriations Act does not indicate Congressional intent that we apply Lifeline's minimum service standards for the EBB Program. We are supported in this decision by the measures we adopt today that clarify that participation in the EBB Program does not preclude the same household from participating in the Lifeline program or other aid programs offered at the state and local level as long as participants meet the requirements for such programs.²⁴⁶ Even though the EBB Program is an emergency,

²⁴⁰ 47 CFR § 8.1(a). In addition, to the extent providers' bundled service offerings are subject to the Commission's truth-in-billing rules, providers' bills for discounted offerings must include clear descriptions of the service corresponding to each identified charge on the bill, so that consumers can confirm that the services for which they are billed correspond to those that they have requested and received; and such bills may not include any charges that consumers have not authorized. 47 CFR §§ 64.2401(b), (f).

²⁴¹ EducationSuperHighway Comments at 11; Benton Institute Comments at 36; NRECA Comments at 4; Hughes Network Systems Comments at 6; California PUC Comments at 6-7; Common Sense Comments at 5; INCOMPAS at 14; *see also* AARP Reply at ("The FCC should ensure that the program does not result in an inferior "tier" of service offered to low-income households.").

²⁴² Common Sense Comments at 5 (explaining that students need speeds of 200/10 Mbps); NARUC Comments at 10 (broadband access services must remain affordable); NRECA Comments at 4 (supporting additional benchmark of 100/20 Mbps); Starry Reply at 6-7 (asserting that service should exceed 25/3 because that standard falls short of household needs); State of Colorado Office of e-Health Innovation Reply at 1 (supporting a minimum bandwidth of 100 Mbps symmetrical speed or greater); Montgomery County, MD Reply at 11 (recommending a minimum upload speed of 10 Mbps while providing estimates on speed/usage needs of various applications and households).

²⁴³ CTIA Comments at 8-9 (explaining that consumers should be able to choose the service they want applied to the EBBP); *see also* CETF Comments at 9 (expressing concerns that providers may offer slow speeds that will not meet consumer needs).

²⁴⁴ On July 31, 2020, the Wireline Competition Bureau updated the minimum service standards for speed and data capacity for Lifeline-supported services as required by the *2016 Lifeline Order*. *See 2016 Lifeline Order*, 31 FCC Rcd at 3989-3997, paras. 73-98; 47 CFR § 54.408. Here, we note as it relates to broadband speeds, as of December 1, 2020, the Lifeline minimum service standard for fixed broadband speed is 25 Mbps downstream and 3 Mbps upstream, as calculated from FCC Form 477 data, and the Lifeline minimum service standard for mobile broadband speed remains 3G mobile technology. *See Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, 35 FCC Rcd 8121(WCB 2020).

²⁴⁵ NTCA Comments at 18; NYSPSC Comments at 3.

²⁴⁶ *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(e) (explaining that the EBB Program "shall not affect the collection, distribution, or administration of the Lifeline Assistance Program"). *See also* Illinois Office of Broadband Comments at 6 (encouraging the Commission to clarify that households are permitted to combine EBBP

(continued....)

temporary program, it will operate concurrently with Universal Service Fund programs and other existing programs at the state and local levels so eligible consumers can choose a broadband connection that meets their connectivity needs.

75. We do, however, anticipate that providers that elect to participate in the EBB Program that are already designated as ETCs through their participation in other Universal Service Fund programs, particularly the Lifeline program, will draw from that experience and offer similar or upgraded broadband services. In the EBB Program, we anticipate that existing ETCs will continue to offer quality and innovative services, and we encourage other broadband providers (non-ETCs) to offer service standards that promote robust broadband access to vital services.

76. *Bundled Service Offerings.* We also recognize that participating providers in the EBB Program may offer qualifying broadband service combined with other services, otherwise known as bundled service offerings (e.g., voice, data, texting, associated equipment). While the Consolidated Appropriations Act does not explicitly direct the Commission regarding how to handle bundled broadband service offerings, we find if such bundled service options were offered “in the same manner, and on the same terms” on December 1, 2020, participating providers should be able to apply the monthly discount of up to \$50 per month, or up to \$75 for Tribal lands, to the entire bundled service. We draw this conclusion from record support that views such offerings as enhancing flexibility between participating providers and consumers.²⁴⁷ Also, we draw from our experience with the Lifeline program that participating providers in the EBB Program, including ETCs that are already adept at applying such a discount in the Lifeline program to bundled services, offer bundled service offerings to address consumer demands outside of any Commission regulation.²⁴⁸ In contrast to the record support for permitting EBB Program reimbursement for broadband bundled services that include voice and/or text messaging, there is not similar support for permitting reimbursement for the full price of broadband bundled services that include video service.²⁴⁹ We find that permitting EBB Program reimbursement for the full price of a bundle that includes video service is not contemplated by the statute and is not necessary to ensure that consumers in the EBB Program have robust service choices, and we therefore do not permit support for such bundles with video service.

77. We find that the Consolidated Appropriations Act’s requirement that the service

support for a connected device with aid from other state, local, or community programs to help defray cost); ACA Connects Comments at 6 (“Commission should ensure that EBBP is able to leverage existing programs that provide free or discounted broadband service to households impacted by COVID-19, including programs that are tailored to K-12 schoolchildren lacking broadband at home.”); Comcast Comments at 3 (explaining that providers should be able to offer their low-income programs as well as other existing offerings that meet the program criteria).

²⁴⁷ NaLA Comments at 8; AT&T Comments at 7; California PUC Comments at 7; Michigan PSC Comments at 3; NYSPSC Comments at 2; NRECA Comments at 5; NCTA Comments at 17; T-Mobile Comments at 3; TracFone Comments at 12; CTIA Comments at 9; USTelecom Comments at 12; Verizon Comments at 9; Verizon Reply at 8-9; USTelecom Reply at 9; CTIA Reply at 6; TracFone Reply at 3; Frontier Reply at 4; EBBC Reply at 5; AT&T Reply 6-7; NaLA Reply at 10-15. *See* Letter from Michele K. Thomas, Indra Sehdev Chalk, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 4 (filed Feb. 5, 2021) (T-Mobile *Ex Parte*) (urging the Commission to “allow bundled data/voice/text offers without the need to engage in cumbersome cost-allocations”). *See also* Public Knowledge Comments at 13-14 (supporting the inclusion of bundled plans while also urging that EBB Program “funds go towards the broadband services they were intended for”); *but see* Starry Reply at 7-8 (“[T]he Commission should not accept EBB reimbursement requests for bulk service offerings and should only reimburse for the broadband service line items on bundled bills.”).

²⁴⁸ *See, e.g.*, Comcast, Internet Essentials Program, <https://www.internetessentials.com/> (last visited Feb. 11, 2021); Cox, Connect2Compete, <https://www.cox.com/residential/internet/connect2compete.html> (last visited Feb. 11, 2021); AT&T, Access from AT&T, <https://www.att.com/internet/access/> (last visited Feb. 11, 2021).

²⁴⁹ *See* Verizon Reply at 9 (noting that including support for broadband bundles with voice and text messaging service does not implicate the inclusion of “costlier non-broadband services such as video”).

(continued....)

offerings be offered “in the same manner” as they were on December 1, 2020, authorizes the Commission to support both standalone broadband service offerings and broadband service offerings bundled with voice, text messaging, and/or associated equipment.²⁵⁰ For many fixed and mobile Internet service offerings, it is common to offer broadband service as part of a bundle without separating out the price of the broadband component and its associated equipment.²⁵¹ By permitting participating providers to offer broadband in those same bundles in the EBB Program, we permit providers to make available Internet service offerings “in the same manner” as they were on December 1, 2020.

78. *Associated Equipment and Other Customer Premises Equipment.* The Consolidated Appropriations Act requires participating providers to make available to eligible households a monthly discount off the rate for an Internet service offering *and* associated equipment, up to \$50.00 per month, and on Tribal lands, the monthly discount may be up to \$75 per month.²⁵² In the *Public Notice*, the Bureau also sought comment on how to define associated equipment and whether that undefined term should include, for example, the monthly rental costs for modems and/or routers that are offered as part and parcel of an Internet service offering.²⁵³ The record overwhelmingly supports including modems, routers, and hotspot devices and antennas, if offered as monthly rental costs or part and parcel of an Internet service offering as eligible for the EBB monthly discount as of December 1, 2020.²⁵⁴ Combined with record support and recognizing that the Consolidated Appropriations Act does not specifically define or identify any associated equipment as it relates to any particular broadband service, we find that associated equipment includes equipment necessary for the transmission functions of Internet service offerings supported through the EBB Program which households may choose to receive. Commenters support our conclusion by encouraging the Commission to define the scope of eligible associated equipment “in a technology-neutral manner” to accommodate household choice and the different types of broadband networks.²⁵⁵ We agree that a technology-neutral approach is appropriate as long as it meets the requirements of the Consolidated Appropriations Act. However, we decline to include Wi-Fi extenders or repeaters as associated equipment or any other customer premises equipment that enhances or extends a broadband signal beyond a participating provider’s Internet service offering.²⁵⁶ First, any associated

²⁵⁰ See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9).

²⁵¹ See *2020 Communications Marketplace Report*, GN Docket 20-60, Report, FCC 20-188, at 29, 30, 100-01, paras. 38-40, 142 (explaining that mobile wireless providers “compete using differentiated plans and bundle services” and that cable providers also bundle “mobile broadband services with their fixed broadband and other offerings”) (*2020 Communications Marketplace Report*). The *2020 Communications Marketplace Report* also noted that “AT&T and Verizon mobile customers are also able to purchase fixed/mobile broadband service bundles where available in AT&T’s and Verizon’s fixed broadband footprint.” *2020 Communications Marketplace Report* at 100-01, para. 142 & n.417 (citing AT&T 2019 SEC Form 10-K at 2; Verizon 2019 SEC Form 10-K at 3). See, e.g., Verizon, *Verizon Fios Home Internet*, <https://www.verizon.com/home/fios-fastest-internet/> (last visited Feb. 18, 2021).

²⁵² See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7).

²⁵³ *Public Notice* at 8.

²⁵⁴ USTelecom Comments at 16; Verizon Comments at 12; Local Governments Comments at 19-21; WISPA Comments at 13; TechFreedom Comments at 5; Vermont PUC et al. Comments at 7; Internet for Dallas Comments at 2; National Association of State Directors of Adult Education Comments at 1; Free Press Comments at 4; Public Knowledge Comments at 11-12; T-Mobile Comments at 14; NCTA Comments at 16; CCA Comments at 6; NDIA Comments at 7; Hughes Network Systems Comments at 6; City and County of San Francisco Comments at 2; Michigan PSC Comments at 7; NYSPSC Comments at 4; NNTC Comments at 8 (also supporting the use of antennas for fixed wireless systems); NCLC and United Church of Christ Comments at 10; State Educational Technology Directors Assoc. et al. Comments at 4-5; HelpAge USA Comments at 1-2 (also supporting the additional use of VPN equipment, and VSAT dishes and antennae); Connected DMV Reply at 3.

²⁵⁵ Viasat Comments at 6.

²⁵⁶ NDIA Comments at 7 (supporting Wi-Fi repeaters as associated equipment); City and County of San Francisco Comments at 2 (supporting other customer-premise equipment); HelpAge USA Comments at 1-2 (also supporting

(continued....)

equipment that enhances or extends a broadband signal from its existing coverage area as outlined in the participating provider's Internet service offering would not be offered "in the same manner, and on the same terms" as defined in the Consolidated Appropriations Act.²⁵⁷ Second, these types of devices are typically sold as add-on options to a broadband connection or sold separately through major manufacturers and are therefore not offered as part and parcel of an Internet service offering.²⁵⁸ Accordingly, Congress does not clearly allow us to include these devices, and if it had intended to do so, it would have included such devices in its definition of "connected devices."²⁵⁹ We also note that the "associated equipment" discussed in this paragraph must be billed monthly on the same terms and same manner as it would have been in an offering available on December 1, 2020. The price for such associated equipment cannot be frontloaded. For example, if a provider has a \$30 monthly service offering and would have offered a modem for a monthly rental of \$5 for a total monthly fee of \$35, the provider cannot front-load the monthly rental fee and charge \$20 for four months of a modem rental in the first month in order to maximize reimbursement up to the \$50 monthly discount allowed.

79. *Connected Devices.* The Consolidated Appropriations Act clearly and narrowly defines a "connected device" eligible for a separate, one-time reimbursement as "a laptop or desktop computer or tablet."²⁶⁰ In the *Public Notice*, we sought comment on whether the Commission should provide any further clarity regarding connected devices that are eligible for reimbursement.²⁶¹ The Consolidated Appropriations Act does not leave room for a broad interpretation of "connected device." Congress explicitly declined to include mobile phones in its definition, and thus we find that the definition of a tablet does not include devices that can independently make cellular calls such as large phones or phablets.²⁶²

80. Various commenters urge the Commission to fund additional end-user devices outside the scope of the Consolidated Appropriations Act, including mobile phones (i.e., smartphones)²⁶³ and portable Wi-Fi hot spots²⁶⁴ arguing that these devices are capable of supporting video conferencing

the additional use of VPN equipment, and VSAT dishes and antennae); City of Seattle, Washington State Broadband Office, *et al.* Comments at 12 (supporting the additional use of Wi-Fi signal repeaters).

²⁵⁷ See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7).

²⁵⁸ See, e.g., Verizon, *Verizon Fios Wi-Fi Extenders*,

<https://www.verizon.com/support/residential/internet/equipment/network-extender> (last visited Feb. 17, 2021)

(offering a wide variety of equipment to maximize a Wi-Fi connection); Xfinity, *xFi Pod*,

<https://www.xfinity.com/learn/internet-service/wifi/xfi-pod> (last visited Feb. 17, 2021) (offering a device to extend

and enhance a Wi-Fi network as a "one-time purchase" that is added to a consumer's next bill); Google, *Nest Wifi*, https://store.google.com/us/product/nest_wifi (last visited Feb. 17, 2021) (offering "a scalable system that creates a mesh network, which delivers a consistently strong, reliable signal" in which the strength and speed of the signal depends on your internet provider).

²⁵⁹ See Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(4) (Connected device means a laptop or desktop.).

²⁶⁰ See *id.*

²⁶¹ *Public Notice* at 8.

²⁶² We do not find a sufficient legal basis to allow households to seek reimbursement for more than one connected device. See *infra* para. 81; see, e.g., HelpAge USA Comments at 1-2 (seeking a guarantee that the program applies to a wide range of connected devices); TDI *et al.* Comments at 4-5 (noting that "for households that contain a person who is deaf, hard of hearing, DeafBlind, or deaf with mobility issues, the Commission should consider providing reimbursement for more devices").

²⁶³ NNTRC Comments at 8-10; CTIA Comments at 10; CCA Comments at 4; TracFone Comments at 16-17; CTIA Reply at 9-10; TracFone Reply 8-9; Internet Society Reply at 14-15; CCA Reply at 3-4.

²⁶⁴ University of California Student Assoc. Comments at 2; see also State of Colorado Reply at 1 (suggesting that connected devices should include "wireless routers, modems, hotspots, antennas, and indoor Wi-Fi signal repeaters").

platforms and other software, and limiting such devices could “impose more financial burdens to a student.”²⁶⁵ CTIA, for example, explains that “mobile devices from the 4G era or later should qualify as ‘tablets’ under the definition” while “mobile phones, including feature phones and smartphones from the 3G era or earlier, should not qualify as ‘tablets.’”²⁶⁶ T-Mobile explains “that certain mobile phones that provide similar functionality as a basic tablet” should be considered a “connected device.”²⁶⁷ TDI et al. proposes that devices that enable Video Relay Service or Internet Protocol Captioned Telephone Service should be eligible for reimbursement.²⁶⁸ Conversely, other commenters support the exclusion of mobile phones, with one commenter opposing the inclusion of tablets, as a connected device.²⁶⁹ Common Sense Media, in its comments, excludes cell phones from its research-based list of requirements for a robust learning experience, explaining that “students and teachers need laptops or tablets capable of meeting the distance learning requirements of their curriculum.”²⁷⁰ The record also indicates that while tablets are capable of supporting video conferencing platforms and other software, commenters express caution that tablets may require more specific service standards or a broad interpretation.²⁷¹ Taking into consideration the record, and the narrow and specific language in the Consolidated Appropriations Act’s definition of a connected device, we are unable to expand the definition of connected device and we conclude that the EBB Program will provide reimbursement for any connected device, defined as “a laptop or desktop computer or tablet.”²⁷²

81. We next clarify that participating providers may only receive a single reimbursement of up to \$100 for one connected device per household, and the eligible household must contribute towards the cost of the connected device at least \$10 but no more than \$50. The *Public Notice* sought comment on whether eligible households should be able to receive more than one connected device through the EBB Program, for example, if the household changes providers.²⁷³ The Consolidated Appropriations Act provides that a participating provider may receive reimbursement for no more than one connected device per eligible household,²⁷⁴ but it is silent as to whether households may receive the connected device reimbursement benefit from more than one provider. Although some commenters suggest that eligible households should receive more than one connected device, we find no legal basis to do so.²⁷⁵ In order to

²⁶⁵ University of California Student Assoc. Comments at 2; *see also* American Association of People with Disabilities (AAPD) Comments at 1-2 (suggesting that a connected device should include assistive devices, such as built-in voice assistants).

²⁶⁶ CTIA Comments at 10.

²⁶⁷ T-Mobile Comments at 14; *see also* TechFreedom Comments at 5 (explaining that the Commission “should support any broadband connection capable of delivering data to devices that can perform the functions of a computer or tablet” and “must include smartphones”).

²⁶⁸ *See* TDI et al. Comments at 2.

²⁶⁹ Common Sense Comments at 4-5; EveryoneOn Comments at 2; CETF Comments at 20; DigitalC Comments at 9-10 (proposing the exclusion of tablets and cell phones).

²⁷⁰ Common Sense Comments at 4-5.

²⁷¹ TracFone Wireless Comments at 19-20 (suggesting that “tablet” include 4G/LTE devices that contain a touchscreen); EBBC Comments at 13 (suggesting the “Commission adopt a broad interpretation of ‘tablet’; Michigan PSC Comments at 8 (explaining that “some confusion may likely exist between distinctions of devices such as smaller tablets and larger mobile phones”).

²⁷² Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(4).

²⁷³ *Public Notice* at 6.

²⁷⁴ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(5).

²⁷⁵ *See, e.g.*, City of Seattle, Washington State Broadband Office, *et al.* Comments at 11-12 (suggesting more than one device for eligible households); INCOMPAS Comments at 13 (recommending “the Commission establish rules that offer flexibility that would allow households with school-aged children to demonstrate that more than one

(continued....)

preserve limited funds, ensure that benefits reach the greatest number of eligible households, and avoid wasteful spending, we find that households are limited to a single connected device during the EBB Program for which a provider seeks reimbursement. We take this position in order to maintain the integrity of the EBB Program—ensuring that reimbursements, and the subsequent disbursements, for a connected device are only processed for valid claims that comply with the Consolidated Appropriations Act.

82. *Minimum System Requirements for Connected Devices.* In the *Public Notice*, the Bureau sought comment on whether the Commission should impose minimum system requirements for connected devices supported by the EBB program.²⁷⁶ We adopt our proposal that a connected device supported by the EBB Program should be expected to support video conferencing platforms and other software essential to ensure full participation in online learning, should be Wi-Fi enabled, and have video and camera functions.²⁷⁷ The record overwhelmingly supports that, at a minimum, connected devices must be able to support video conferencing and camera functionality and online learning software.²⁷⁸ Recognizing however that the ongoing COVID-19 pandemic has compounded challenges for numerous households to maintain broadband services, we find that setting minimum system requirements for connected devices could limit consumer choice and exacerbate barriers to broadband service that may have existed prior to COVID-19. While some commenters suggested specific standards the Commission should adopt for connected devices,²⁷⁹ we decline to adopt such standards and instead encourage

connected device is needed to meet distance learning or school-based requirements”); CETF Comments at 20 (supporting more than one device for a household); EBBC Comments at 13 (explaining that certain households may need more than one device); AAPD Comments at 1-2 (suggesting the “Commission increase the number of support devices households can receive”); LeadingAge Comments at 3 (recommending one device per person, not per household); Bethlehem Area School District Reply at 1 (“Eligible households should be allowed to receive more than one connected device as many have more than one student in the school district system.”).

²⁷⁶ *Public Notice* at 9.

²⁷⁷ *See id.*

²⁷⁸ CTIA Comments at 10; CCA Comments at 4; Aurora Institute Comments at 3; NCLC and United Church of Christ Comments at 10; National Association of State Directors of Adult Education Comments at 1; EveryoneOn Comments at 2; NaLA Comments at 17; CETF Comments at 20; Internet for Dallas Comments at 2; Public Knowledge Comments at 11-12; WISPA Comments at 13; TracFone Wireless Comments at 19-20; TechFreedom Comments at 7; DigitalC Comments at 9-10; Local Governments Comments at 21; City and County of San Francisco Comments at 2; Student Internet Equity Coalition Comments at 6; HTTP Comments at 3; Nebraska PSC Comments at 6-7; Maine Department of Economic and Community Development/Connect Maine Authority Comments at 2; *but cf.* Michigan PSC Comments at 7-8 (explaining that minimum system requirements could exclude vulnerable populations for participating in the program (e.g., those without children or a need for online learning). *See also supra* Section III(A) (explaining the election process for participating providers that requires documentation of their Internet service offerings and connected devices).

²⁷⁹ City of Seattle, Washington State Broadband Office, et al. Comments at 11-12 (suggesting the following minimum system requirements: Operating system: Windows 10 Home or Pro and Mac OS 10.13 or higher; Microsoft Office; minimum processor: Core i5, recommended, i7; 8 GB RAM or higher; 250 GB hard drive (minimum), 500 GB+ (recommended); 512 MB video memory of higher graphics card; integrated or external webcam; headset w/ microphone; virus protection software; wi-fi adaptor; 2 year warranty, including battery; insurance for breakage, liquid spills; web content filtering program as option for parents; 7 inch min. screen size); City of Madison, WI Comments at 1-2 (explaining that “School district system requirements include a Chromebook device with webcam, microphone, 4 GB RAM, processor capable of handling virtual meetings, 32GB flash storage and touch-screen display for elementary-aged students” and newly purchased devices must guarantee 4 years of Google Chrome OS management support); NNTRC Comments at 8-10 (supporting the Commission’s proposed requirement for video conferencing and other essential software for virtual learning but also suggests that the Commission adopt a standard that allows support for all devices capable of running apps for the most popular collaborative video conferencing systems such as Zoom, WebEx, and Microsoft Teams); R Street Comments at 6 (“If a user does not need video conferencing capabilities to meet their needs, for example, it does not make sense for

(continued....)

participating providers and interested stakeholders to explore other opportunities, including partnering with school districts and state and local programs that may provide funding or other avenues for access to end-user devices and equipment due to the COVID-19 pandemic. We also expect that connected devices be accessible to and usable by people with disabilities.²⁸⁰

D. Benefits for Households on Tribal Lands

83. The Consolidated Appropriations Act also provides a discount up to \$75 for Internet service offerings to eligible households on Tribal Lands.²⁸¹ It is vital that we utilize the EBB Program in an efficient way to help provide more households on Tribal lands with affordable, reliable connectivity.²⁸² We adopt our proposal in the *Public Notice* to use the same definition of Tribal lands as used in the Lifeline program, including certain lands near the Navajo Nation treated as Tribal lands.²⁸³ We also allow members of households on Tribal lands to use their participation in the same Tribal programs permitted under the Lifeline program to qualify for the EBB Program, in addition to other permitted means of qualifying.²⁸⁴ We also adopt our proposal to use the processes USAC has in place for identifying the location of a household residence.²⁸⁵

84. Many commenters support our proposal to use the Lifeline program's definition of Tribal

the Commission to force an offering to contain such capabilities. With additional flexibility, lower cost devices may be the best option, lowering the burden on the program as a whole and maximizing the value of each subsidy dollar spent.”).

²⁸⁰ See 47 U.S.C. §§ 255, 617 (requiring equipment that provides telecommunications and advanced communications services to be accessible); see also TDI et al. Comments at 2-4 (explaining the reliance of people who are deaf or hard of hearing on video communications and the accessibility gaps in video conferencing services); AAPD Comments at 1-2 (recommending that connected devices include built-in voice assistants).

²⁸¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7).

²⁸² Cherokee Nation Comments at 2; NNTRC Comments at 10.

²⁸³ See *Public Notice* at 10. Tribal lands include “any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands - areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412.” 47 CFR § 54.400(e). See *Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission's Rules*, WC Docket No. 03-109, Memorandum Opinion and Order, 20 FCC Rcd 7701, 7704-08, paras. 8-17 (2005) (granting Smith Bagley Inc.'s petition for waiver of section 54.400(e) of the Commission's rules explaining that “[a]lthough the Eastern Navajo Agency is not entirely comprised of Tribal lands under the Commission's definition, the area is almost exclusively populated by Native Americans that suffer from the same conditions present on other federally-recognized Tribal lands”); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission's Rules*; *Sacred Wind Communications, Inc, Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, Order, 21 FCC Rcd 9227, 9239-43, paras. 27-35 (WCB 2006) (clarifying that the 2005 waiver of the Commission's Lifeline and Link-Up eligibility rules to enable eligible residents of the Eastern Navajo Agency to receive enhanced Lifeline and Link-Up support applies to Sacred Wind as well as Smith Bagley, Inc. and granting waiver to permit Sacred Wind and other eligible telecommunications carriers serving the area immediately adjacent to the Eastern Navajo Agency to offer Tier 4 Lifeline and Link-Up benefits to qualified residents).

²⁸⁴ 47 CFR § 54.409(b). A consumer residing on Tribal lands can qualify for Lifeline if they participate, or a dependent or someone else in their household participates in certain Tribal-specific assistance programs, including: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

²⁸⁵ *Public Notice* at 10.

(continued....)

lands as well as existing USAC processes for verifying eligibility of households on Tribal lands.²⁸⁶ We find this is the best and most efficient approach for households and participating providers in the EBB Program because it will continue to help the Commission quickly address existing impediments to connectivity on Tribal lands and allow providers to offer EBB Program benefits to a wide-range of households that will, in turn, increase the number of subscribers of broadband Internet access service.²⁸⁷ We therefore decline to use any other definitions suggested by commenters that would expand upon the established definitions in our Lifeline rules and would accordingly prevent USAC from using the existing Lifeline informational tools to identify whether an applicant resides on Tribal lands.²⁸⁸

85. With respect to other accommodations to ensure eligible households on Tribal lands are able to participate in the EBB Program, some commenters encourage a flexible approach that would use additional methods other than USAC databases (i.e., National Verifier, NLAD) to verify addresses.²⁸⁹ We disagree with such an approach and find that USAC's databases, especially its mapping tool in the National Verifier, offer a sufficiently comprehensive process for identifying residences on Tribal lands for the EBB Program.²⁹⁰ Additionally, USAC provides multiple other methods for applicants and providers to submit residential location data to confirm whether an applicant resides on Tribal lands. Expanding or otherwise modifying the USAC systems to accommodate new methods would also require additional time. To facilitate timely and efficient processing of participating providers and eligible households on Tribal lands, we find the benefits of using USAC's existing mapping tool and other address verification methods far outweighs commenters' concerns to this action and also eliminates time-consuming or

²⁸⁶ EBBC Comments at 13-14; GCI Comments at 6-7; Cherokee Nation Comments at 2; CETF Comments at 23 (also recommending against the use of Tribal lands definitions as applied in for spectrum licensing); ISOC-DC Reply at 1; Internet Society Reply at 11-12; Seneca Nation of Indians Reply at 2; *see also* EBBC Comments at 14 (supporting the application of the Lifeline program's definition and also recommending that the Commission *also* include "the three-types of off-reservation lands designated in the 5G Fund Order"). As explained above, we decline to further expand the definition of Tribal lands under 47 CFR § 54.400(e).

²⁸⁷ The definition of "Tribal lands" in 47 CFR § 54.400(e) includes "any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412." We include such lands in the definition of Tribal lands for purposes of the EBB Program to include any land designated as part of the Lifeline program.

²⁸⁸ *See* California PUC Comments at 8 ("FCC should use a broad definition of Tribal Lands that includes the locations where Native Americans actually live."); Greater Washington DC Chapter of the Internet Society (ISOC-DC) Comments at 3 (recommending the "Commission use the definition of Tribal lands contained in 47 CFR § 73.7000"); National Council of Urban Indian Health Reply at 5-6 (urging the Commission to provide Urban Indians the same benefits that AI/ANs living on tribal lands are getting under the Lifeline program); Hawaii Broadband Initiative Reply at 2 (expressing concern about the eligibility of Native Hawaiians who do not reside on Hawaiian Homelands); ISOC-DC Reply at 1 (changing its previous recommendation for the definition in 47 CFR § 73.7000 and now urging the Commission to use the definition of Tribal lands under 47 CFR § 54.400(e)); Internet Society Reply at 11-12 (supporting the Lifeline definition of Tribal lands and also opposing the exclusion of Tribal lands based on population density measures). We note, however, that § 73.7000 includes the same list of federally recognized lands provided in 47 CFR § 54.400(e).

²⁸⁹ NTCA Comments at 15-16 (suggesting that the Commission also address concerns regarding address verification in rural areas); GCI Comments at 7 (encouraging the Commission to ensure current address verification processes are available to the EBB Program explaining that "Lifeline applicants without a postal address can enter either a descriptive address or the description of the place where they receive their mail (for example, a central village point where mail is brought in)").

²⁹⁰ Consumers who are required to resolve address errors when submitting applications through the National Verifier (service provider portal, consumer portal, or eligibility check API) are automatically prompted to use the National Verifier mapping tool to drop a pin on a map showing their primary residence. USAC uses the pin-drop to capture the coordinates of the consumer's primary residence. *See National Verifier AMS Resolution Guide*, USAC, at <https://www.usac.org/wp-content/uploads/lifeline/documents/nv/National-Verifier-AMS-Resolution-Guide.pdf>. *See also Enhanced Tribal Benefit*, USAC, at <https://www.usac.org/lifeline/get-started/enhanced-tribal-benefit/#Eligible>.

wasteful administrative processes. We direct USAC to make available its existing comprehensive address verification methods to applicants and providers in the EBB Program, including providers using their own alternative verification process pursuant to the Consolidated Appropriations Act.

E. Budget and Reimbursement

1. Emergency Broadband Connectivity Fund and Reimbursement for the Emergency Broadband Benefit

86. The EBB Program is funded through the \$3.2 billion Emergency Broadband Connectivity Fund in the Consolidated Appropriations Act, and does not rely on contributions to the Universal Service Fund.²⁹¹ The Consolidated Appropriations Act further provides that no more than 2% of the Emergency Broadband Connectivity Fund (Fund) or \$64 million is to be used for the administration of the EBB Program,²⁹² and funding for the EBB Program will remain available until the Fund is expended or six months after the end of the Emergency Period as defined in the Consolidated Appropriations Act, whichever comes first.²⁹³ We recognize that while Congress has allocated that a portion of the Fund be used for the administration of the EBB Program, the primary purpose of the Fund is to provide support for the households enrolled in the program. To that end, we direct USAC, in coordination with the Office of the Managing Director, to re-evaluate no later than three months after the start of the EBB Program to determine if there are any of its administrative funds that can be used to fund reimbursements for service and connected device claims. Moreover, we direct USAC to continue to regularly report to the Office of Managing Director its projected budget for its administration of the EBB Program. Based on USAC's initial estimates provided to the Office of Managing Director, USAC's EBB Program administrative costs will be under the 2 percent cap, which includes costs associated with business process outsourcing, project management, IT professional fees, and call center activities. Pursuant to the terms of the Memorandum of Understanding between USAC and the Commission, USAC and the Commission will not incur administrative costs beyond the \$64 million cap.²⁹⁴

87. The emergency nature of this program requires a prompt processing of claims that ensures participating providers, including those who currently have no relationship with USAC, receive reimbursement for valid claims for services and connected devices provided to eligible households. To ensure that there is a mechanism for disbursing funds to providers that balances the need to guard against waste, fraud, and abuse in the program with the need to reimburse valid claims quickly and efficiently, we adopt the following requirements for the reimbursement process.

88. *Lifeline Claims System.* We recognize the importance of using existing, functional systems such as the NLAD and the Lifeline Claims System to ensure that EBB Program providers can submit timely reimbursement claims yet are not claiming support for the same household.²⁹⁵ The NLAD plays a vital role in ensuring that providers can only claim subscribers enrolled in NLAD on the first of each month and the information captured in NLAD serves as the basis for claims in the Lifeline Claims System. As with Lifeline, we will require providers in the EBB Program to transmit to the NLAD the required information necessary to uniquely identify households. To help maintain the integrity of the

²⁹¹ Consolidated Appropriations Act, div. N, tit. IX, §§ 904(b)(1), (i)(4).

²⁹² *Id.* § 904(i)(3); see also *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company Regarding the Emergency Broadband Benefit Program*, at 2, (Feb. 3, 2021), https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf (providing that USAC's expenses for the administration of the EBB Program as outlined in the Memorandum of Understanding (Emergency Broadband Benefit MOU) shall not exceed \$48 million.).

²⁹³ Consolidated Appropriations Act, div. N, tit. IX, § 904(i)(2); see also *Public Notice* at 12-13.

²⁹⁴ Emergency Broadband Benefit Program MOU at 2.

²⁹⁵ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6734-37, paras. 179-187 (2012).

(continued....)

EBB Program and to facilitate efficient processing of reimbursement claims, we adopt the proposal in the *Public Notice* to use USAC's Lifeline Claims System to reimburse providers for the provision of covered devices, services and associated equipment to eligible households.²⁹⁶ The Lifeline Claims System is the online filing system hosted by USAC that service providers use to submit claims for reimbursement for service they provide to Lifeline customers.²⁹⁷ In the Lifeline program, providers are required to submit a reimbursement request through the Lifeline Claims System based on the number of subscribers enrolled in the NLAD on a specific date each month, called a snapshot date. Providers are instructed to review the snapshot report from NLAD for all of the provider's households in NLAD as of that date, validate the households for which they wish to seek reimbursement, or indicate a reason for not claiming reimbursement for other households on the report, and review, correct, and certify the requested reimbursement amount. We will employ the same process for reimbursing providers in the EBB Program. We direct USAC to make the Lifeline Claims System available to EBB Program providers, once they are approved to participate in the program, subject to USAC system access requirements.

89. Commenters generally support the Bureau's proposal to use the Lifeline Claims System for managing reimbursements, stating that the use of an existing USAC platform will avoid unnecessary delays that would result from developing a new reimbursement platform for use in the EBB Program.²⁹⁸ Some noted the importance of issuing reimbursements quickly, particularly for smaller providers that may find it financially difficult to wait months for reimbursement.²⁹⁹ The Information Technology and Innovation Foundation (ITIF) contends that using the Lifeline Claims System for managing reimbursements will "expedite[] financial recovery by providers to ensure stability while also leveraging a tested, already established system with Lifeline."³⁰⁰ Other commenters, such as the National Consumer Law Center and the United Church of Christ OC, Inc. (NCLC and UCC) noted that using the Lifeline Claims System will provide integrity to the program by helping to ensure that the funds are directed to providers and consumers for eligible services and connected devices.³⁰¹

90. *Uniform snapshot date.* The disbursement of EBB Program claims will be based on the number of Program subscribers enrolled with a provider in the NLAD as of the first of each month. The first of the month will serve as the uniform snapshot date.³⁰² When establishing the uniform snapshot date for Lifeline, the Commission found that the practice would 1) reduce the risk that the program would reimburse multiple providers for serving the same customer in a month; 2) assist with the adoption of uniform audit procedures; and 3) aid in the calculation of support based on the number of subscribers that a service provider has listed in NLAD.³⁰³ Commenters also recognize the value of establishing a uniform snapshot date for use in the EBB Program.³⁰⁴ For example, T-Mobile states that applying the uniform snapshot date will simplify the enrollment and reimbursement process in the EBB Program as it currently

²⁹⁶ *Public Notice* at 8-9 (citing *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128 (WCB 2018)).

²⁹⁷ See USAC, Lifeline Claims System, <https://www.usac.org/lifeline/reimbursement/lifeline-claims-system> (last visited Feb. 11, 2021).

²⁹⁸ TracFone Comments at 5.; see also WISPA Comments at 12.; NaLA Comments at 15.

²⁹⁹ See 98 Small Broadband Providers Comments at 1.

³⁰⁰ ITIF Comments at 3.

³⁰¹ NCLC and UCC Comments at 10.

³⁰² See 47 CFR § 54.407(a).

³⁰³ *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7898, para. 242 (2015).

³⁰⁴ See TracFone Comments at 5; NaLA Comments at 15.

does for Lifeline.³⁰⁵ We agree that the uniform snapshot date brings efficiencies to the reimbursement process by restricting support to those eligible subscribers that are enrolled in NLAD on the first of each month and removing any uncertainty that would come with a requirement for providers to claim subscribers on a pro-rata basis in the event households receive service for less than the full month. On the other hand, employing a method that allows for partial claims would be cumbersome to administer and would make it difficult for USAC to track disbursements from the Emergency Broadband Connectivity Fund. We find it most efficient to require providers to claim subscribers that are enrolled in NLAD as of the first of the month regardless of how many days in the month the provider was providing service to the subscriber.

91. *Program-wide use of NLAD for reimbursements.* We also establish that NLAD will be used as a tool for reimbursement calculations and duplicate checks in all states, territories and the District of Columbia, regardless of a state's NLAD opt-out status for purposes of the Lifeline Program.³⁰⁶ Uniformity in the ways providers interact with the Lifeline Claims System and other USAC systems is essential in ensuring that this program operates efficiently, which is a priority given the emergency and temporary nature of the Program. Asking USAC to develop and administer different reimbursement processes for different states would delay the implementation of this emergency program and potentially burden state administrators. Moreover, we recognize the need for non-ETC providers to quickly become familiar with the reimbursement process to ensure that claims are made correctly and to reduce the need for revisions. Having multiple reimbursement processes would further complicate the program and lead to confusion among providers who are not familiar with existing Lifeline processes, particularly in opt-out states. This uniform approach and program-wide reliance on the NLAD for the generation of the snapshot report is important in facilitating the swift processing of reimbursement claims.

92. *Certification requirements.* To submit their reimbursement claims for broadband Internet access service provided to eligible households, we require participating providers to review their snapshot report and validate the eligible households for which they are requesting reimbursement. The provider shall confirm that the reimbursement amount matches the amount of the monthly service or connected device for which the participating provider is permitted to seek reimbursement and make any corrections to the amount as necessary. We also require providers to review the snapshot report and to confirm that households receiving a fully subsidized service have used the service during the relevant period. If a household has not used their service during the relevant period, then the provider shall not submit a reimbursement claim for service provided to that household until the service is used and the non-usage is cured. To add more accountability and to help ensure that only service that subscribers are using is funded through the Program, we require that providers certify that their EBB Program service claims for reimbursement meet the usage requirements. To ensure that the Program is supporting broadband service that is actually being used, we will not permit providers to seek reimbursement for a service month in which a household did not meet the usage requirements, even if the household meets the usage requirements in subsequent months.

93. Additionally, we require providers to make the certifications, including those set forth in the Consolidated Appropriations Act when submitting a reimbursement claim. The Consolidated Appropriations Act requires that in order to receive reimbursement from the Emergency Broadband Connectivity Fund, the providers shall make several certifications regarding the accuracy of their claims,

³⁰⁵ T-Mobile USA, Inc. Comments at 15 (T-Mobile Comments).

³⁰⁶ The Lifeline NLAD opt-out states are California, Oregon, and Texas. The California Public Utilities Commission, the state administrator that oversees the verification of California subscribers in the Lifeline program urges the Commission to require that providers share data with states regarding the rates charged, devices distributed and households served, but does not request that NLAD opt-out states use their own duplicate and eligibility determination processes for the administration of the EBB Program. See California Public Utilities Commission Comments at 3-4.

compliance with the requirements of the program and various consumer protection-related provisions.³⁰⁷ Specifically, the Consolidated Appropriations Act requires that providers certify that the amount for which they are seeking reimbursement from the Emergency Broadband Connectivity Fund is not more than the standard rate,³⁰⁸ and that each eligible household for which the provider is seeking reimbursement for providing Internet service has not or will not be charged (1) for that offering if the standard rate for that offering is less than or equal to the amount of the EBB Program benefit for that household; or (2) more for that offering than the difference between the standard rate for that offering and the amount of the EBB Program benefit for that household.³⁰⁹ The provider is also required to certify that each eligible household for which it is seeking reimbursement will not be required to pay an early termination fee, was not after December 27, 2020, subject to a mandatory waiting period for the covered broadband Internet service, and will otherwise be subject to the provider's generally applicable terms and conditions as they are applied to other customers.³¹⁰ Moreover, providers are required to certify that each household for which they are seeking a reimbursement for a connected device has been charged more than \$10 and less than \$50 for the connected device.³¹¹ Finally, for providers that are claiming households that they determined to be eligible to enroll in the EBB Program through the alternative verification process, providers must provide a description of that verification process and certify that the process was designed to avoid waste, fraud, and abuse and has been approved by the Commission as required by section III(B) of this Order.³¹²

94. The *Public Notice* proposed that these certifications accompany each reimbursement claim, in addition to an annual certification submitted by participating providers. Commenters did not object to this certification, although some asked for additional certifications³¹³ while others requested that the Commission not require certifications beyond those listed in the Consolidated Appropriations Act.³¹⁴ We find that certifications, along with the possibility of audits, are a vital tool for managing waste, fraud, and abuse. While the certifications required by the Consolidated Appropriations Act address many of the Program requirements, we find that additional certifications are necessary to ensure compliance with Commission's requirements that we find essential to help guard against waste, fraud, and abuse in the EBB Program. Accordingly, we direct USAC to make any adjustments necessary to the Lifeline Claims System to ensure that providers are prompted to certify that their reimbursement claims meet the usage requirements and to certify the statements included in section 904(b)(6) of the Consolidated Appropriations Act. We further direct USAC, in coordination with the Bureau, to develop an annual certification for all participating providers and a process for its submission. As discussed below, we also adopt additional certifications to accompany reimbursement claims for connected devices distributed through the Program.

95. As well-established in the record, the Emergency Broadband Connectivity Fund has limited funding and we must make every effort to ensure that we maximize the use of these funds to serve

³⁰⁷ See Consolidated Appropriations Act, div. N, tit. IX, § 904 (b)(6).

³⁰⁸ *Id.* § 904(b)(6)(A).

³⁰⁹ *Id.* §§ 904(b)(6)(B)(i)(I)-(II).

³¹⁰ *Id.* §§ 904(b)(6)(B)(ii)-(iv).

³¹¹ *Id.* § 904(b)(6)(C).

³¹² *Id.* § 904(b)(6)(D).

³¹³ NCLC and UCC Comments at 11 (requesting that the Commission include a certification that the provider has notified participating households of how to file a complaint with the Commission complaint hotline.). We decline to add certifications that the providers have notified consumers of the process for filing a complaint, but we do direct EBB Program subscribers that are unable to resolve EBB Program-specific issues with their provider to file a complaint with the FCC at <https://consumercomplaints.fcc.gov/hc/en-us> or call 1-888-225-5322.

³¹⁴ T-Mobile Comments at 16-17.

as many eligible households as possible, including responsibly leveraging EBB funding with other sources of support. To that end we require participating providers that are applying both the Lifeline discount and the Emergency Broadband Benefit to a household's supported broadband service to apply the full Lifeline discount first before calculating the reimbursement amount claimed under the EBB Program.³¹⁵ This approach responsibly stewards limited EBB funding where Lifeline support is available and is consistent with the requirements of section 54.403(b) of the Commission's rules regarding the application of the Lifeline support amount.

2. Reimbursement for Connected Devices

96. EBB Program providers can also seek up to \$100 reimbursement for a connected device provided to a household satisfying the requirements set forth in this Order and as long as the household has been charged more than \$10 but less than \$50 for the device.³¹⁶ To facilitate the efficient review and processing of reimbursement claims for connected devices, we direct USAC to modify the Lifeline Claims System to manage these claims. Because the Consolidated Appropriations Act limits the connected device reimbursement to providers who are providing the EBB Program benefit to the household, we require that claims for connected devices must be made concurrent with or after the provider's first reimbursement claim for service for that household.³¹⁷ To ensure that a household does not receive more than one connected device for which a provider has received reimbursement from the EBB Program, providers are also required to confirm in NLAD that no reimbursement claim for a connected device has been made for that household.

97. Some commenters agreed with the proposal in the *Public Notice*³¹⁸ to require providers to certify that the household receiving the device is an EBB Program beneficiary and that the household has been charged the required co-pay for the device.³¹⁹ To help make the Emergency Broadband Connectivity Fund last as long as possible, Public Knowledge urges the Commission to require providers to prove the retail value of the connected device to ensure that the provider is not receiving a reimbursement that exceeds the value of the device.³²⁰ We acknowledge the need to balance speedy and efficient processing of reimbursement claims with the need to protect the integrity of the program by ensuring the reimbursements are only processed for valid claims that comply with the requirements of this Order. To that end, to ensure the quick reimbursement of valid claims for connected devices, USAC will not be required collect and review documentation before processing a reimbursement claim. Instead, we require providers, under penalty of perjury, to certify that the connected device meets the Commission's requirements, that the reimbursement claim amount reflects the market value of the device, that the household has been charged a compliant co-pay amount, and that the connected device has been delivered to the household. Providers are instructed to retain any materials that document compliance with these requirements, including the device type (*e.g.*, laptop, tablet, mobile hotspot, modem, gateway, router, antenna, receiver, or satellite dish) and device make and model. We find that requiring certifications under penalty of perjury along with the possibility of an audit will help to encourage compliance with EBB Program requirements and reduce the incidence of improper payments.

³¹⁵ See AT&T Comments at 10; Verizon Comments at 10; Verizon Reply at 11.

³¹⁶ See Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(5).

³¹⁷ See *id.* § 904(b)(5).

³¹⁸ *Public Notice* at 9.

³¹⁹ See 98 Small Broadband Providers Comments at 1; WISPA Comments at 12 (arguing that providers should not have to demonstrate the retail price of a connected device because the rates will exceed the maximum reimbursement amount of \$100 and instead providers should certify that the retail cost of a connected device exceeded the discounted amount); California Emergency Technology Fund Comments at 21-22; NaLA Comments at 17; and Michigan PSC Comments at 8.

³²⁰ Public Knowledge Comments at 7, 9-10.

3. Timing of Reimbursement Claims

98. The EBB Program is a limited duration program with limited funds and it is important that we be able to project accurately when those funds will run out. To this end, USAC must have actual reimbursement claims information from providers as soon as possible after each service month. USAC will use this claims information for reporting the disbursement information to the public and for creating a forecast for the projected final month of the program, both of which are discussed below. To ensure that this claims information is submitted to USAC by providers in a timely manner so that it can be used to administer the program efficiently, and so providers can receive timely reimbursement for the discount they provide to households, we establish a limited time period during which providers can submit reimbursement claims. The process for submitting a reimbursement claim will largely track the process in the Lifeline program, where a snapshot report of a provider's enrolled subscribers as of the first of the month is sent to the provider. Providers will then have until the 15th of each month, or the following business day in the event the 15th falls on a weekend or holiday, in which to submit to USAC their reimbursement claims for both service and connected device support for households captured on the snapshot report. For those providers seeking to have their reimbursement claim processed quicker, they must review and certify their reimbursement claims sooner, as established by USAC.

99. The record is clear that there is universal support for accurate and timely reporting of reimbursement information so that providers and the public can make informed decisions regarding their participation in the EBB Program.³²¹ Providers can help us ensure that USAC is collecting nearly real-time claims information by submitting their accurate reimbursement claims as soon as possible and within that 15-day period. Moreover, given the importance of the projection of the program's end date as it relates to the smooth administration of the end of the EBB Program, we trust that providers will do their part in ensuring that USAC has reimbursement claims information as soon as possible. We also believe providers will be motivated to receive reimbursements as soon as possible. To that end, to ensure the timely filing of reimbursement claims so that USAC's projections are reliable and based on current activity in the EBB Program, we find it necessary to restrict the processing of reimbursement claims to those submitted by the deadline set for each month – either the 15th of that month or the following business day in the event that the 15th falls on a holiday or weekend. Reimbursement claims submitted after that deadline will not be processed. Therefore, providers are strongly encouraged to submit their claims as soon as possible.

100. To further support our effort to track disbursements and to provide a projection for the depletion of the Fund that is based on the most accurate and up-to-date household and disbursement information, we are prohibiting providers from revising previously submitted claims associated with the provision of EBB Program services and connected devices. We expect this limitation encourages providers to be especially cautious when reviewing reimbursement claims prior to submission to ensure accuracy. Moreover, preventing changes to prior disbursements will give the Commission, USAC, providers and households confidence in the reported disbursement amounts.³²² Providers are required to certify to the accuracy of reimbursement claims and that the United States, the Commission, and USAC retain the right to pursue recoveries as well as take enforcement action for any claims improperly disbursed from the Fund. Additionally, to help support USAC's efforts to project the end of the EBB Program, we seek participating providers' cooperation and request that they transmit to NLAD the amount they intend to claim for service and connected device support for each household they enroll in NLAD. While the reimbursement amount processed for the provider will be based on the amount contained in the provider's certified reimbursement claim submitted through the Lifeline Claims System,

³²¹ See e.g., ACA Comments at 27; Altice Comments at 10; AT&T Comments at 4-5; Baltimore Regional Housing Partnership Comments at 3; Benton Institute Comments at 42; Comcast Comments at 20; Hughes Network Systems Comments at 9; INCOMPAS Comments at 22; NaLA Comments at 20-21; New America's Open Technology Institute Comments at 9; SBE Council Reply at 2; LGBT Technology Partnership Reply at 4.

³²² Nothing in this Order alters the duty of a provider to disclose non-compliant conduct and return improperly received funds received from this Program to the Commission.

the information transmitted to NLAD will, in part, be relied upon for calculating the Program's projected end date. We encourage providers to transmit a good faith estimate of the monthly support amount for service and any device provided to the household through the Program within seven days of enrolling the household in NLAD.

101. *USAC training and support.* Finally, we recognize that the EBB Program will attract a variety of broadband providers, including those with no prior experience with USAC and its systems. To provide guidance on the reimbursement claims process, we direct USAC, subject to the oversight of the Office of the Managing Director and the Bureau, to conduct extensive training, including webinars, to distribute instructions, and otherwise to provide support to broadband providers considering participation in the program. We further direct USAC to ensure that interested providers are given access, subject to system and USAC requirements, to the USAC systems essential for the management and processing of reimbursement claims.

4. Payment Administration

102. While USAC will be administering the EBB Program, as permitted under Section 904(i)(5) and pursuant to the terms of the MOU between the Commission and USAC that authorizes the use of USAC for the administration of the EBB Program,³²³ the Commission must authorize the payments from the Emergency Broadband Connectivity Fund in the United States Treasury to providers who have submitted valid claims for reimbursement.³²⁴ In this Order, we describe steps to remove impediments to participation in the EBB Program for those providers that would otherwise be prohibited from receiving reimbursements due to unpaid debts to the Commission or which the Commission has referred to the United States Department of the Treasury (Treasury). We also provide guidance on the information providers must be prepared to provide to ensure timely payment of reimbursement claims from the Fund.

103. *Red Light Rule.* We find that there is good cause to suspend the Commission's red light rule for the EBB Program and that doing so will serve the public interest. To implement the requirements of the Debt Collection Improvement Act of 1996, the Commission established what is commonly referred to as the "red light rule," although the red light rule itself is not a statutory requirement and therefore can be waived by the Commission.³²⁵ Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt.³²⁶

104. Generally, the Commission's rules may be waived for good cause shown.³²⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³²⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.³²⁹

105. We find that the temporary nature of this emergency program and the enduring disruption

³²³ See generally *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company Regarding the Emergency Benefit Program* (Feb. 3, 2021), available at https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf.

³²⁴ See Treasury Financial Manual, Vol. 1, Part 4a, Ch. 3000, § 3040—Designation of Certifying Officers, <https://tfm.fiscal.treasury.gov/v1/p4/ac300.html> (explaining that certifying officers who are designated to approve disbursement of federal funds must be government employees).

³²⁵ *Amendment of Parts 0 and 1 of the Commission's Rules/Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004).

³²⁶ 47 CFR § 1.1910(b)(2).

³²⁷ 47 CFR § 1.3.

³²⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³²⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co.* at 1166.

caused by the COVID-19 pandemic justify a waiver of the red light rule. In order to encourage provider participation and facilitate consumer choice in the EBB Program, we find that it is in the public interest and that good cause exists to waive the red light rule with respect to providers submitting otherwise valid claims for reimbursement in the EBB Program. Allowing more providers to participate in this program, even those who may be in red light status, is a crucial step in expanding the broadband service options available to low-income consumers through the EBB Program. We issue this waiver to ensure that otherwise eligible broadband providers are not discouraged from participating in the EBB Program for fear that a debt owed to the Commission would prevent them from receiving reimbursement. To be clear, this waiver is limited only to participation of providers in the EBB Program and does not affect the Commission's right or obligation to collect any debt owed by an applicant by any other means available to the Commission, including by referral to the Treasury for collection.

106. *Treasury Offset.* The Treasury has a number of collection tools, including its offset program, known as the Treasury Offset Program (TOP), pursuant to which it collects delinquent debts owed to federal agencies and states by individuals and entities, by offsetting those debts against federal monies owed to the debtors. EBB Program providers that owe past-due debt to a federal agency or a state may have all or part of their EBB payments offset by Treasury to satisfy such debt. Prior to referral of its debt to Treasury, a provider is notified of the debt owed, including repayment instructions.³³⁰ If the referred debt of an EBB Program participating provider remains outstanding at the time of a payment from the EBB Program to that provider, the provider will be notified by Treasury that some or all of its EBB Program payment has been offset to satisfy an outstanding federal or state debt. EBB Program providers are required to pass the EBB Program discount to the customer for the service or connected device claimed even if Treasury offsets the payment for such service or device against debt owed by the provider. EBB Program providers that owe past due federal or state debts are encouraged to resolve such debts and in doing so, consult the TOP Frequently Asked Questions for the Public, available at <https://fiscal.treasury.gov/top/faqs-for-the-public.html>, for delinquent debt that has been referred to Treasury, and for delinquent debt that the Commission has not yet referred to Treasury, consult <https://www.fcc.gov/general/red-light-frequently-asked-questions>.

107. *Additional Requirements.* To be eligible to receive disbursements from the Emergency Broadband Connectivity Fund, providers must obtain and report an FCC Registration Number (FRN). Persons or entities doing business with the Commission are required to obtain an FRN, a unique identifier that is obtained through the Commission Registration System (CORES).³³¹ Participating providers are directed to obtain an FRN if they do not already have one and report it as directed by USAC or the Commission.

108. All entities that intend to provide service through the EBB Program must also register with the System for Award Management (SAM). SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's partners in support of federal awards, grants, and electronic payment processes. Registration in the SAM provides the Commission with an authoritative source for information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014 (collectively the Transparency Act or FFATA/DATA Act).³³² Only those providers registered in SAM will be able to

³³⁰ See 31 CFR § 285.5(d)(6)(ii).

³³¹ 47 CFR § 1.8001. To register for or look-up an FRN, providers are directed to visit <https://www.fcc.gov/licensing-databases/commission-registration-system-fcc>. For assistance, please contact the CORES Help Desk e-support page at <https://www.fcc.gov/available-support-services> or call (877) 480-3201 (select option 4).

³³² Pub. L. No. 109-282, 120 Stat. 1186 (2006) and Pub. L. No. 113-101, 128 Stat. 114 (2014), codified at 31 U.S.C. § 6101 note. In August 2020, the Office of Management and Budget updated the rules governing compliance with the Transparency Act as part of wider ranging revisions to title 2 of the Code of Federal Regulations. 85 FR 49506

receive reimbursement from the Emergency Broadband Connectivity Fund. EBB Program providers that are already registered with SAM do not need to re-register with that system in order to receive payment from the Emergency Broadband Connectivity Fund. Broadband providers not yet registered with SAM may still elect to participate in the program, enroll eligible customers and receive program commitments. Active SAM registration, however, is required for an eligible provider to receive a payment from the EBB Program.³³³ Furthermore, participating providers may be subject to reporting requirements. To the extent that participating providers subaward the payments they receive from the EBB Program, as defined by FFATA/DATA Act regulations, providers may be required to submit data on those subawards.³³⁴

109. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019 (PIIA), the Commission is required to ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any federal funds.³³⁵ To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the Treasury’s Bureau of the Fiscal Service.³³⁶ If a check of the Do Not Pay system results in a finding that an EBB Program provider should not be paid, the Commission will withhold issuing commitments and payments. USAC may work with the EBB Program provider to give it an opportunity to resolve its listing in the Do Not Pay system if the provider can produce evidence that its listing in the Do Not Pay system should be removed. However, the EBB Program provider will be responsible for working with the relevant agency to correct its information before payment can be made by the Commission.³³⁷

5. Tracking and Reporting of Available Funding

110. While we have considered carefully many of the details of the implementation of the EBB Program, the amount of appropriated funds is finite and we must also prepare for a transition when funds are exhausted.³³⁸ The Consolidated Appropriations Act provides that the EBB Program will conclude upon the earlier of six months after the end of the emergency period³³⁹ or when the amount in the Fund is exhausted.³⁴⁰ At the conclusion of the EBB Program when the discount is eliminated,

(published August 13, 2020) (including revisions to 2 CFR Parts 25, 170, 183, and 200). OMB explained that the SAM registration requirements were expanded “beyond grants and cooperative agreements to include other types of financial assistance” to ensure compliance with FFATA. 85 Fed. Reg. 49506 at 49517.

³³³ It is strongly recommended that unregistered providers start that registration process immediately because it may take up to 10 business days for the registration to become active and an additional 24 hours before that registration information is available in other government systems. To register with the system, go to <https://www.sam.gov/SAM/> and provide the requested information.

³³⁴ 2 CFR Part 170, App. A.

³³⁵ Payment Integrity Information Act (PIIA), Pub. L. No. 116-117, 134 Stat. 113 (2019). PIAA recodifies and amends the prior improper payment statutes (*i.e.*, The Improper Payments Information Act of 2002, Pub. L. 107-300; The Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 114–204; The Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248; and The Fraud Reduction and Data Analytics Act of 2015, Pub. L. No. 114-186.

³³⁶ For additional information, please see: <https://fiscal.treasury.gov/DNP/>.

³³⁷ For additional information, please see: <https://fiscal.treasury.gov/dnp/privacy-program.html#data-correction-process>.

³³⁸ The Consolidated Appropriations Act provides that the Emergency Broadband Benefit Program will end at the end of the emergency period or when the amount appropriated to the Emergency Broadband Connectivity Fund is expended. *Public Notice* at 13 citing § 904(a)(8) and § 904 (i)(2).

³³⁹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(8).

³⁴⁰ *Id.* § 904(i)(2).

(continued....)

participating households will be subject to their provider's "generally applicable terms and conditions."³⁴¹ We agree with commenters that the Emergency Broadband Connectivity Fund may well be depleted before the end of the emergency period,³⁴² which means that the benefit on which households have been relying to afford broadband service may disappear while the public health emergency is ongoing. To prepare providers and households for the end of the program and the benefit, commenters stress the importance of transparency regarding the financial state of the EBB Program and have urged the Commission to track and report disbursements from the program at frequent intervals so that the public can anticipate the end of the program.

111. Commenters recommend the creation of a tracker that displays the number of enrollments and amounts of disbursements made from the Emergency Broadband Connectivity Fund.³⁴³ Some commenters suggest that the tracker be updated either in real-time, or on a weekly or monthly basis.³⁴⁴ Commenters also urged the Commission to display disbursements and enrollment activity by different geographic levels or by provider, and to provide additional information about the programs through which EBB Program customers are qualifying.³⁴⁵ Commenters argue that providers need this information prepare their customers for the elimination of the benefit.³⁴⁶

112. We agree that tracking and reporting on disbursement and program enrollment activity will be an essential tool for managing the EBB Program and for developing an informed forecast of the end of the program. Given the anticipated limited duration of the EBB Program, we further agree with commenters that clear and frequent updates on the remaining funds available will help give participating

³⁴¹ *Id.* § 904(b)(10).

³⁴² See National League of Cities Comments at 2; WTA – Advocates for Rural Broadband Comments at 5-6; AT&T Comments at 5 (noting that the funds could be exhausted after a few months).

³⁴³ Benton Institute Comments at 43 (“Information should include the number of participating providers, the number of consumers (both new and existing) the program is benefiting, how much of the Emergency Broadband Connectivity Fund has been used, and when the Commission estimates the Emergency Broadband Connectivity Fund will be completely drawn down.”); NaLA Comments at 21-22; MMTC NUL Comments at 11; State E-Rate Coordinators Alliance Comments at 7; National Affordable Housing Management Association Comments at 2.

³⁴⁴ NTCA—The Rural Broadband Association Comments at 16-17 (Commission should provide updates every two weeks with information about the remaining funds and the customers enrolled); T-Mobile Comments at 17 (requesting real-time updates of funding status); Free Press and Access Now Comments at 7 (Commission should gather and report monthly data on households enrolled and reimbursement amounts); Open Technology Institute Comments at 9 (expenditures and participation rate should be posted weekly); Comcast Comments at 20; CTIA Comments at 12; Emergency Broadband Benefit Carriers at 15-16; NCTA Comments; DigitalC Comments at 15; Altice Comments at 10 (noting that information about remaining level of funds could inform Congress and prompt them to grant additional monies to the Emergency Broadband Connectivity Fund); Public Knowledge Comments at 10-11; INCOMPAS Comments at 22.

³⁴⁵ National Digital Inclusion Alliance (NDIA) Comments at 3 (“The FCC and/or USAC should provide a public online dashboard of EBB participation data, including total broadband accounts and devices subsidized by the provider, state and county; EBB funds expended, and the balance remaining.”); MMTC NUL Comments at 12 (asking that USAC report on the programs through which EBB Program consumers qualify; those that qualified through the National Verifier and those that participated in other low-income plans); State Educational Technology Directors Association (SETDA), the Consortium for School Networking (CoSN), and the Alliance for Excellent Education (All4Ed) Comments at 5 (“[t]he Bureau should take steps to collect information about how EBBP funding is used and what household subsidy strategies worked most effectively to increase connectivity rates for students and their families.”) (Education Technology Commenters).

³⁴⁶ CCA Comments at 10 (arguing that “Because participating providers are reimbursed after their services are delivered (and consumers have received discounts), this information will be important so that providers can make informed decisions about their participation in the EBB Program and communicate effectively to their customers.”); Hughes Network Systems Comments at 9; ACA Connects Comments at 27 (“Transparency about the availability of funds will help providers make these transitions as seamless as possible.”); NaLA Comments at 21; INCOMPAS Comments at 22.

providers the data they need to begin the process of providing notice to subscribers about the end of the benefit and preparing them for a potential transition to other broadband options. We will develop and publish online a tracker that, at a minimum, displays 1) the number of EBB Program households enrolled in NLAD; 2) the number of net new households enrolling into the Program each week; and 3) the total dollar amount of the reimbursement claims approved to date, disaggregated by monthly amounts for Internet access service and associated equipment, as well as connected devices, with historical data remaining so that the public can monitor any trends in the disbursement rates between updates. We direct USAC, subject to the oversight of the Bureau and the Office of Managing Director, to develop this tracker and make it available on USAC's website as well as the Commission's website. The posted information shall be updated at least every two weeks by USAC, with the goal of weekly updates as the EBB Program ramps up.

113. We decline at this time to require that USAC post detailed information about EBB Program activities by geographic region, finding that such information would not be essential for informing providers and the public about the status of the program, which is our more immediate goal. USAC should focus its resources on what is necessary to successfully administer the implementation of the Program and its wind-down. However, we agree that more information about the communities the EBB Program serves could help the Commission evaluate the success of this program and could inform future broadband-related initiatives. Therefore, to be transparent about participation in the EBB Program, we direct USAC to submit a report to the Commission that provides information about how households qualified for the EBB Program, the claimed support amounts for connected devices and services, the geographic locations of consumers at the county level, and other information that the Bureau, in consultation with USAC, believes would be essential for evaluating the program. This report shall be filed with the Bureau no more than six months after the initiation of the EBB Program, with updates submitted as necessary to capture additional information about the EBB Program and participating households obtained after the submission of the report.

6. Program Sunsetting

114. Our goal is to provide an informed projection of the exhaustion of funds for the EBB Program so USAC and the Commission can effectively manage the disbursement of the remaining funds and ample notice is provided to households, providers and other stakeholders. We are especially concerned about the elimination of the benefit and the impact it could have on households, including unexpected or larger bills, and disruption or even termination of the broadband service. Accordingly, we adopt procedures designed to ensure that households are informed that the program is temporary and the benefit will terminate at the end of the program, to provide notice to all stakeholders of the forecasted end of the program, and to manage the program to ensure that the remaining funds are disbursed equally to providers and allow for a transition for households off the EBB Program.

115. The first step in administering the end of the EBB Program is to predict fund exhaustion based on enrollment activity, disbursement levels, and other relevant information. Commenters argue that stakeholders will require advanced notice of the end of the program, in addition to the EBB Program activity posted on a tracker, to prepare their customer service representatives, billing systems, and customers for the elimination of the subsidy.³⁴⁷ We cannot predict at this time when the Emergency Broadband Connectivity Fund will be depleted, but as households enroll in the EBB Program and providers begin to submit claims for reimbursement, we anticipate a clearer picture of the interest in the program and the rate at which funds will be withdrawn.³⁴⁸ We recognize that a greater understanding of

³⁴⁷ NaLA Comments at 21-22; INCOMPAS Comments at 22; Altice Comments at 10; and ACA Connects Comments at 27.

³⁴⁸ See USTelecom Comments at 14 (“Congress has appropriated a set amount of funding and it is unclear how long these funds, and thus the Program, will be available to customers—it will be a function of eligibility, take rate, service offerings, and time that is impossible to predict.”).

(continued....)

the timing of the end of the EBB Program and the procedures the Commission and USAC will employ to manage the remaining funds and reimbursement claims will create greater confidence in the Program and help households navigate the end of the subsidy.³⁴⁹

116. First, we direct USAC to develop a method, subject to the oversight of the Office of Managing Director, the Office of Economics and Analytics, and the Bureau, to forecast when the Fund will be able to pay out reimbursement claims only for another 75 to 90 days. The forecast shall take into account our commitment that in the final month of disbursements, the remaining balance in the Fund will be able to provide at least 50% of each claim for service or connected devices to assist households and providers with the transition. Once USAC has identified when the Fund will be depleted using submitted claims and other relevant information, USAC will notify providers and the public of the expected exhaustion of the Fund and the month in which USAC expects to pay out final claims. Administering this finite Fund presents administrative challenges, particularly given that we are unable to predict at this time the demand in the EBB Program and the rate of at which households will enroll in the program in the beginning weeks of the program. Given these challenges, we will endeavor to provide at least 60 days' notice before the end of the Program. This notice will be posted on the USAC and Commission websites at least 60 days prior to the final snapshot date that coincides with the forecasted final month of the Program.³⁵⁰ This notice should be sufficient to allow providers to make an informed decision about whether to plan to claim their EBB Program subscribers in the final month and possibly receive a partial reimbursement claim for the service provided, or to transition those subscribers off their service.

117. Some commenters suggested 30 days' notice of the end of the program would be adequate³⁵¹ whereas others argued that 90 days are needed to ensure that providers have ample time to provide notice to their customers.³⁵² CTIA suggests that providers have at least 60 days' notice to wind down their participation in the EBB Program.³⁵³ We find that 60 days' notice of the termination of the program strikes a balance between the need for USAC to have enough data to accurately forecast the end of the program with the need to offer enough time for providers to notify their customers and work with them on a post-program broadband solution. This is an emergency program and as such, requires all stakeholders to work expeditiously in ensuring that we are serving low-income households and helping to meet their broadband needs during the pandemic. Moreover, we find that 60 days' notice is reasonable given other existing Commission requirements for service providers to notify their subscribers in advance of a possible change or disruption in their service, and we expect that providers will be able to adjust their systems as necessary to provide such notice just as they would need to in these other contexts.³⁵⁴

³⁴⁹ See CCA Comments at 9-10 (stating that “the possibility of an abrupt end to the subsidy may even deter eligible consumers from taking advantage of the Program at the outset”).

³⁵⁰ For example, if USAC forecasts that the last month that funds can be disbursed is for claims based on the October 1, 2021 snapshot report, USAC will endeavor to announce on or before August 1st that the last month providers can expect reimbursement, either full or partial, for service to eligible households served as of the October 1 snapshot date.

³⁵¹ See NCTA Comments at 18 (stating that at least 30 days' notice of the end of the program is needed so that providers can notify their customers).

³⁵² AT&T Comments at 6; Benton Institute Comments at 43; LeadingAge Comments at 4; Comcast Comments at 21; Emergency Broadband Benefit Carriers at 16; National Affordable Housing Management at 3; Stewards of Affordable Housing for the Future Comments at 5; Verizon Comments at 13-14 (stating that it needs 90 days' notice of the end of the program so that it can prepare its systems in order to provide its customers 60 days' notice of the end of the benefit.). Verizon adds that if the Commission cannot provide 90 days' notice of the end of the benefit, it can only suggest but not require providers to give advance notice to its customers. Verizon Comments at 14.

³⁵³ CTIA Comments at 13.

³⁵⁴ See 47 CFR § 54.405(e)(3) (providing that when a Lifeline subscriber receiving a service for which a fee is not assessed or collected fails to use their service as required by the Lifeline usage requirements, the Lifeline provider “must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to

(continued....)

118. Second, in the event that reimbursement claims in the final month exceed the amount of remaining funds, reimbursements for both service and connected device claims will be paid out on a reduced, pro-rata basis, but in no circumstances will the reimbursement be less than 50% of the provider's claim for that final month. For example, if the remaining balance in the Fund is sufficient to pay 80% of each reimbursement claim submitted in that final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund and ending the EBB Program. In this scenario, a provider can expect to receive a \$40 disbursement if they would otherwise submit a service claim for \$50, and the subscriber would be responsible for payment of the additional \$10 for that service month. While we take steps in this Order to ensure that USAC has the most up-to-date claims information available to support its projection analysis and to avoid a scenario where the amount in the Fund will be insufficient to offer a reimbursement of at least 50% on claims in that final month, we recognize that in order to responsibly manage the Fund, we must prepare for this scenario. In the final months of the Program, after the end date has been forecast, we direct USAC to continue to monitor Program activity to determine whether the Fund will be able to support at least 50% of the claims, paid out on a pro-rata basis, in the expected final month of the Program. If USAC's analysis indicates that the Fund will not be able to meet this 50% threshold, USAC shall immediately notify the Bureau, the Office of Economics and Analytics, and the Office of Managing Director. If Commission staff agree with USAC's analysis, the Bureau will direct USAC to pause the reimbursement process for that final month. For example, in the event that the remaining balance in the Fund could only pay 30% of each anticipated claim for support, the Fund will not issue any disbursements in that month. In that situation where the remaining funds cannot guarantee at least a 50% disbursement on claims in that final month, the Commission will determine how best to use the remaining funds consistent with the Consolidated Appropriations Act.

119. We recognize that uncertainty in the subsidy amount for the final month presents challenges for households and for providers as they manage their participation in the program and as providers communicate to households regarding expectations for the final month. By establishing a 50% floor for the final month of reimbursement, we balance the compelling interest in avoiding extreme price increases for eligible households while transitioning households off the subsidy, with our obligation to maximize the effectiveness of EBB Program funds by ensuring that as much of the Fund supports services to the greatest number of low-income households. Reimbursing each claim on a pro-rata basis in the final month of the program, regardless of the amount the provider would be entitled to, helps us fulfill that mandate. We recognize the 50% floor could result in some funds being left unspent for a short while, and would require additional Commission direction on the use of the remaining funds, but by implementing this approach we are ensuring that the final month of the program provides a substantial subsidy to help households transition off the program. We also anticipate that USAC's projections will provide enough advance notice of this possibility to allow both households and providers to plan accordingly.

120. We decline to adopt a policy suggested by commenters that would structure the subsidy so eligible households would receive the benefit for a determined time period.³⁵⁵ We find that such a mechanism would restrict household participation in the EBB Program in order to guarantee benefits to a more limited number of households for the set period, and would also require USAC to deny enrollment to otherwise eligible households. Given our obligation to maximize the effectiveness of the Program, we

use the Lifeline service within the 15-day notice period will result in service termination for non-usage"); 47 CFR § 76.1603(b) (providing that "cable operators shall provide written notice to subscribers of any changes in rates or services. Notice shall be provided to subscribers at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible using any reasonable written means at the operator's sole discretion, including Channel Slates.").

³⁵⁵ See Lumen Reply at 1-4; California PUC Reply at 3; DigitalC Comments at 15; Altice Comments at 9; The Cities of Los Angeles, California; Chicago, Illinois; Portland, Oregon; Boston, Massachusetts; Washington, DC, and the Texas Coalition of Cities for Utility Issues Reply Comments at 15-16. (Local Governments Reply Comments).

(continued....)

cannot adopt a regime that would limit the low-income households benefitting from this program. Maximizing the number of households while guaranteeing at least a 50% benefit in the final month balances the need to serve as many households as possible while ensuring that households can rely on a substantial benefit in the final month of the EBB Program.

121. Relatedly, several commenters suggested that the Commission reserve a portion of the funding for households that do not already have broadband service connections.³⁵⁶ EducationSuperHighway notes that funding is unlikely to meet the demand for the Program, and that those without a broadband connection may have a more difficult path and be at a disadvantage in applying for the program given the provider-centric design of the Program.³⁵⁷ While we understand these concerns, we decline to set aside any portion of the funding for unconnected households. The Consolidated Appropriations Act does not include any prioritization for how funding should be distributed to eligible households, and we find that it is appropriate to provide the benefit to eligible households without regard to their current level of broadband service. Moreover, we expect the outreach efforts discussed below will help unconnected households to enroll in the Program.

122. Because of the uncertainty in the reimbursement amount for the final month, once notice of the projected end date has been issued, we must limit volatility in the program claims that could materially change the projected end date. As a result, we will freeze enrollments of new households at the time the notice is issued.³⁵⁸ To more smoothly administer the end of the program, providers and households must have confidence that the Fund can support claims made up until the forecasted end date. We recognize that this enrollment freeze will restrict access to the program for households wishing to enroll in the program's waning weeks, but we note that the EBB Program will operate without any cap on the number of eligible households that will be able to enroll before that time. We find that an enrollment freeze at the end of the program allows us to serve the greatest number of eligible low-income households while responsibly managing the remaining funds in the final weeks of the program. Therefore, we direct USAC, under the oversight of the Office of Managing Director and the Bureau, to develop procedures for implementing this enrollment freeze.

123. *Notice to consumers.* In the *Public Notice*, the Bureau acknowledged that customers will need to be notified prior to or upon enrollment in the EBB Program of the temporary nature of the program and that they will be subject to the general terms and conditions of the broadband service they receive through the EBB Program if they continue to take that service after the program's conclusion.³⁵⁹

124. Commenters agree that notice at the time of enrollment is essential especially given that no one can state with confidence at the outset how long the program will last. Public Knowledge states that providers must be "fully transparent with consumers, at the time of sign-up, about these factors."³⁶⁰ Hughes Network Systems agrees that providers must have a responsibility in notifying subscribers at the time of enrollment that the program will end when the funds are depleted or when the emergency period

³⁵⁶ EducationSuperHighway Comments at 3-5 (the Commission must set aside 50% of funding for unserved households); Alaska State Library Reply at 3 (same); CETF Comments at 3 (same); Wisconsin Department of Public Instruction Reply at 3 (same); LaunchLearn Reply at 1 (same); Funds for Learning Reply at 7 (Commission should reserve a portion of the funds).

³⁵⁷ EducationSuperHighway Comments at 3-4.

³⁵⁸ This limit on new enrollments and device claims does not limit a household's ability to remove itself from the Program if they so choose.

³⁵⁹ *Public Notice* at 12-13. As discussed further below, the provider shall not provide any broadband service to the households at the conclusion of the EBB Program if the household has not agreed to continue to receive broadband service after the EBB Program ends and the benefit has been fully eliminated.

³⁶⁰ Public Knowledge Comments at 13; *see also* National League of Cities Comments at 2; LeadingAge Comments at 4; San Francisco Department of Technology Comments at 4 (noting that the temporary nature of the subsidy must be clearly described in the providers' billing).

ends.³⁶¹ To ensure that customers are given notice at or before initial enrollment that the EBB Program benefit provides a temporary discount on their broadband service bill, that discount will not be applied to their bill, we direct USAC, in consultation with the Bureau, to publish language describing the limited duration of the benefit and the potential impact on the customer's bill at the end of the program on USAC's relevant consumer-facing websites, any USAC-provided application and the National Verifier, and other educational materials.

125. Providers also play an important role in ensuring that their customers are informed about the temporary nature of the EBB Program. Providers will have a direct relationship with their customers, and as such, have a responsibility to ensure that these customers have the information they need to make an informed decision about the broadband service product they subscribe to supported by the EBB Program. Accordingly, we direct USAC and providers to include on their EBB Program consumer applications a certification for the household to affirm that they understand that the EBB Program is a temporary federal government subsidy that reduces the customer's broadband Internet access service bill and at the conclusion of the Program, the household will be subject to the provider's undiscounted general rates, terms, and conditions if the household continues to subscribe to the service.³⁶²

126. We also require providers to include information about the limited duration of the Program and the impact of its termination on any EBB Program advertising materials, including, but not limited to billing inserts; websites; flyers; television, radio, and newspaper advertising; mailers; and posters. We direct providers to use their best judgment in developing language that will clearly communicate the duration and impact of the program's end to the prospective low-income households, but at a minimum that language should comply with the relevant EBB Program rules we adopt herein. Providers have an interest in communicating the terms of the Program clearly to their customers to manage expectations and to preserve the relationship. It is important as both a consumer protection measure and to ensure that low-income consumers continue to have access to broadband services during this pandemic, that providers assist customers by transitioning them to other available products in the event that the broadband service plan they were subscribing to becomes unaffordable after the EBB Program ends and the benefit is eliminated.

127. We are persuaded by commenters' arguments that customer bills offer an opportunity to communicate the limited duration of the EBB Program and the impact on the monthly bill when the subsidy ends. Commenters representing aging and public housing advocacy groups recommend that providers submit notices on consumer bills that provides "information on billing after the conclusion of the program, when the first bill at a higher rate will be due, an explanation of any partial month charges and information on any additional resources."³⁶³ The San Francisco Department of Technology contends that the temporary discount should be clearly characterized as such on consumer bills,³⁶⁴ and the Benton Institute for Broadband and Society urges the Commission to adopt requirements that providers be in clear communication with consumers about the end of the subsidy and the amount of the monthly bill that a customer is responsible for.³⁶⁵ MMTc NUL recommends that providers should inform customers that "they will be eligible to transition to an alternative, lower-priced broadband plan at the conclusion of the emergency program, making clear the price, service levels, and other terms and conditions that will apply."³⁶⁶

³⁶¹ Hughes Network Systems Comments at 9.

³⁶² See *supra* para. 38.

³⁶³ LeadingAge Comments at 4; Stewards of Affordable Housing Comments at 5; National Affordable Housing Management Association Comments at 3; Baltimore Regional Housing Partnership Comments at 3; American Association of Service Coordinators at 4.

³⁶⁴ San Francisco Dept. of Technology Comments at 3.

³⁶⁵ Benton Institute Comments at 11.

³⁶⁶ MMTc NUL Comments at 11.

128. We agree that provider-supplied communication is important and will help guard against unexpected bill-shock and confusion throughout the EBB Program. Therefore, we require providers participating in the EBB Program to deliver at the time of enrollment and on a monthly basis, either in the form of a monthly bill, or other monthly communication if the benefit covers the entire rate of the qualified plan, to its EBB Program household, documentation that prominently and clearly states in easy to understand terms that the EBB Program is a temporary subsidy that reduces the customer's broadband Internet access service bill and at the conclusion of the benefit, the customer will be subject to the provider's general rates, terms, and conditions if the customer continues to subscribe to that broadband service. This initial disclosure, monthly bill or communication must also prominently and clearly set forth the rate that the customer should be expected to pay, including fees, taxes, and equipment rental charges once the EBB Program ends and the benefit expires. Once USAC and the Bureau announce a forecasted end of the Program, the provider must provide notice to its customer in a prominent manner on the customer's bill, or other monthly communication if the benefit covers the entire rate of the qualified plan, about the last date or service month that the full benefit will apply to their bill, the last date or service month that the partial, final-month benefit will apply to their bill, and the expected rate of the broadband service once the benefit expires.

129. We recognize that providers will need some time to adjust their billing and other systems in order to communicate the program end date to their customers. Therefore, providers should send this notice to their customers as soon as practicable after the notice is posted on USAC and the Commission websites, but no less than 15 days after the notice from USAC and the Commission is posted. We encourage providers to send this notification to households electronically, consistent with any consumer expressed preferences for receiving electronic notices and other communications and to the same email or phone number that bills or other monthly communications are sent, in addition to a mailed notice to ensure that customers have multiple opportunities to receive information regarding the end of the program and alternative broadband plans if it will be unaffordable without the benefit. Commenters recognize that advance notice to households is important so they can make informed choices regarding broadband service for their household.³⁶⁷ We find that providers are in the best position to explain to their customers what will happen to their bill once the benefit is exhausted.

130. *Household transition to other services or discounts.* We recognize that the end of the EBB Program means that households will need to evaluate available options to determine how their household can continue to subscribe to broadband services. Rather than limit participation in the program to a predetermined number of customers, as some commenters suggest,³⁶⁸ we have structured the EBB Program to ensure that it serves the greatest number of households possible. But this more inclusive approach presents some administrative challenges. For example, we cannot predict at this time how long the EBB Program will last and when a customer's last month of EBB Program-discounted service will be. We are committed to ensuring that we are transparent about the enrollment and disbursement activity in the Program. We know that there is a connection between a household's income level and whether they have a home broadband connection,³⁶⁹ and EBB Program customers will need a smooth transition to

³⁶⁷ See CETF Comments at 21-22 (recommending that providers send at least two notices to costumers at least 30 days before the end of the Program so that customers are not unexpectedly hit with a bill for the full retail rate); MMTc NUL Comments at 11; Next Century Cities Reply at 15 (“[EBB Program] participants need adequate notice of the program's expiration and explicit disclosure of their eligibility for, and the cost of, alternative low-income service programs.”).

³⁶⁸ EducationSuperHighway Comments at 9-10 (suggesting that the Commission either establish a standard end date for the EBB Program or commit to 12 months of service for each household that enrolls in the EBB Program); Connected DMV Reply at 3 (recommending that the Commission define a minimum benefit period for participating households).

³⁶⁹ Home broadband adoption rates among households making \$20,000 or less trails behind those making \$75,000 or more. Broadband Development Advisory Committee, Increasing Broadband Investment in Low-Income Communities Working Group, Progress Report (July 29, 2020) at 19, *available at*

affordable broadband options at the conclusion of the Program if they wish to maintain broadband service. Commenters note that it is vital that consumers be transitioned to affordable broadband services at the conclusion of the EBB Program.³⁷⁰ Ensuring that these households can continue accessing the broadband they need to participate in virtual learning, complete their homework, and communicate with employers and healthcare providers will be a group effort. We encourage providers and community groups to communicate the availability of affordable broadband options, including any broadband adoption initiatives in their communities.³⁷¹

131. We also hope that providers consider ways in which they can financially support their customers as the benefit ends and the households look to transition to comparable broadband services or continue with the same broadband service offered at a discounted rate subsidized by the provider. We also recognize that requiring providers to directly subsidize a household's broadband service, either fully or partially, once the Emergency Broadband Connectivity Fund is depleted would likely be considered to be to an unfunded mandate. While we cannot and do not require that providers offer a discount to households at that time, we hope that providers are able to identify the ways in which they can use their experience with the EBB Program and the federal support they received to help households continue to access high quality, low-cost broadband service during the course of this public health emergency. At a minimum, providers with existing low-cost and income restricted programs should not preclude EBB recipients from enrolling in those programs based on current or recent customer (for example, service within the last 90 days) eligibility restrictions.³⁷² Consumers previously in an existing low-cost program and using the EBB Program benefit to receive a higher tier of service should be allowed to transition back to the low-cost offering at the conclusion of the benefit program.

132. Due to their relationship with their EBB Program customers, providers play an essential role in helping to protect households from bill shock and to ensure that households understand that they "shall be subject to a participating provider's generally applicable terms and conditions" after the expiration of the Program.³⁷³ Therefore, we require that providers obtain an affirmative opt-in from households at any time while the household is participating in the Program and before they can be

<https://www.fcc.gov/sites/default/files/bdac-low-income-communities-07292020.pdf> (citing the 2018 American Community Survey results; Adie Tomer, Lara Fishbane, Angela Siefer and Bill Callahan, *Digital prosperity: How broadband can deliver health and equity to all communities*, Brookings Institution (Feb. 27, 2020), <https://www.brookings.edu/research/digital-prosperity-how-broadband-can-deliver-health-and-equity-to-all-communities/>).

³⁷⁰ MMTc NUL Comments at 11 (recommending that "Providers ... should inform customers that they will be eligible to transition to an alternative, lower-priced broadband plan at the conclusion of the emergency program, making clear the price, service levels, and other terms and conditions that will apply"); ACA Connects Comments at 26-7 (noting that "we expect that our members that participate in the program will try to find ways of keeping their customers connected after the program ends that are affordable for the customer and meet their needs"); Letter from Yosef Getachew and Jonathan Walter, Common Cause, et al., WC Docket No. 20-445, at 9-10 (filed Jan. 21, 2021) (Civil Rights Advocates *Ex Parte*) (stating that consumers should be given notice about how to reapply or continue on a low-income plan).

³⁷¹ See Nebraska Public Service Commission Comments at 4 (requesting information about the EBB Program end date and information regarding the households served and service offerings consumers received so that the PSC can assist consumers in transitioning off the program and finding alternatives). In response to the pandemic cities partnered with local broadband providers to subsidize broadband service to households with remote-learning students. Colleen Grablick, *D.C. to Provide 25,000 Low-Income Households with Free Internet for School*, DCist (Sept. 8, 2020), <https://dcist.com/story/20/09/08/dc-free-internet-online-learning/>; Allie Miller, *Philly students to receive free internet access via new PHLConnectED program*, Philly Voice (Aug. 6, 2020), <https://www.phillyvoice.com/philly-students-free-internet-access-phlconnected-comcast-internet-essentials/>.

³⁷² See Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(6)(B)(iii).

³⁷³ See *id.* § 904(b)(10).

(continued....)

charged an amount higher than they would pay under the full EBB Program reimbursement amount permitted by our rules, including any potential increased payment as a result of a partial reimbursement during the Program's final month. We agree with commenters that an opt-in from households will help guard against unexpected charges by reducing the likelihood that households will receive broadband service absent the EBB Program benefit without their permission.³⁷⁴ To that end, consistent with the notice requirements we adopt above with respect to provider communications to households, the provider shall clearly state that it will stop providing broadband service to the household at the conclusion of the EBB Program unless the household agrees to continue to receive broadband service. At least 30 days before the end of the EBB Program, the provider must also notify households of the upcoming increase to their monthly bills (or as soon as practicable if there is a scenario in which providers do not have 30 days' notice prior to the expiration of the program). We encourage providers to ensure that households have the opportunity to make an informed decision about the continuation of broadband service absent the EBB Program benefit. EBB Program households that subscribed to the provider's broadband service before the commencement of the EBB Program must also opt-in to the continuation of broadband service. We find that requiring providers to obtain permission from households before continuing to provide broadband service after the end of the Program is another tool that helps ensure that households have the information they need to make decisions about their broadband services and to ensure that the same households are protected from unexpected bills related to their broadband services.

F. Promoting Awareness

133. We recognize that for the EBB Program to achieve its full potential and serve as many eligible households as possible during the COVID-19 pandemic, low-income households must be clearly informed of the program's existence, benefits, eligibility qualifications, and how to apply. Participating providers, some of whom may not have experience with the Lifeline program, USAC, and USAC's processes, will also require information both on how to participate in the program and on how to educate consumers. The record overwhelmingly reflects the importance of publicizing the program to new and existing consumers through national and local campaigns that use diverse spokespeople and languages.³⁷⁵

³⁷⁴ See National League of Cities Comments at 2 (customers should not be shifted automatically to full-priced broadband service at the end of the EBB Program); EducationSuperHighway Comments at 9-10 (suggesting that providers continue to provide broadband service to new customers enrolled during the EBB Program only after the household has agreed to continuing broadband service from the provider); City of Seattle, Washington State Broadband Office, et al. Comments at 16 ("ISPs should not be allowed to have participants continue to incur high service plan costs once EBBP ends, without having a proactive OPT-IN option for participant."); Funds for Learning Reply at 8 ("[T]he Commission should require an 'opt-in' to continue service upon the expiration of the EBB benefit. According to schools and school districts with whom we work, low-income K-12 households routinely decline free broadband service for fear of having to pay for a service they cannot afford. To alleviate this concern, the Commission should require an opt-in to continue service when the benefit expires."); Wisconsin Dept. of Public Instruction Reply at 3 ("No service agreement or contract should allow providers to automatically extend service after the EBB discount expires. Program rules must require an 'opt-in' provision."). Verizon argues that an opt-in requirement is inconsistent with the language of the Consolidated Appropriations Act that provides that after the EBB Program ends, the household will be subject to the provider's "generally applicable terms and conditions." Verizon contends that ample notice can mitigate the threat of unexpected charges. Verizon Reply at 14-15 *citing* § 904(b)(10). We disagree, and find that the Consolidated Appropriations Act was not intended to subject low-income households to unexpected bills at the termination of the Program. While we require providers to notify households about the temporary nature of the program and the rate of the broadband service absent the Emergency Broadband Benefit, we recognize that additional safeguards are necessary help protect households from unexpected charges, particularly during this pandemic.

³⁷⁵ See, e.g., Altice Comments at 9; CCA Comments at 10-11; CETF Comments at 24; City of Austin, TX Comments at 3; City of Madison Comments at 2; Common Sense Comments at 5; Hughes Network Systems Comments at 7; INCOMPAS Comments 18-20; LeadingAge Comments at 4; Michigan PSC Comments at 9; MMTc NUL Comments at 9-10; NDIA Comments at 4-5; NYSPSC Comments at 3; New America's Open Technology Institute Comments at 8; Public Knowledge Comments at 6; City of Seattle, Washington State

(continued....)

For the EBB Program to reach as many eligible consumers as possible, including disconnected low-income consumers, individuals with disabilities, and households of color, it is important to implement a broad, collaborative outreach, including the federal government, state, local, and Tribal governments, broadband Internet access providers, community groups, trade associations, Tribal communities, philanthropists, educators, and other trusted institutions. The record also recognizes the importance of educating participating providers on the EBB Program.³⁷⁶ To this end, we encourage EBB Program participating providers to engage in consumer marketing with basic requirements and encourage them to consider communications strategies proposed in the record. We also direct the Commission staff and USAC to develop comprehensive provider education and training programs, as well as consumer outreach plans. Finally, we strongly encourage other civic entities to publicize the EBB Program to eligible households.

134. We next encourage providers that file an election notice with USAC to publicize the availability of the EBB Program service in a manner reasonably designed to reach those consumers likely to qualify and in a manner that is accessible to individuals with disabilities. The record overwhelmingly confirms that participating providers should publicize, including in languages other than English, the availability of the EBB Program.³⁷⁷ To ensure that consumers receive comprehensive information explaining the EBB Program, we recommend that provider marketing materials describe in clear, easily-understandable language in, if feasible, the dominant languages of the communities that the provider serves: (1) the eligibility requirements for consumer participation; (2) the monetary charges to the customer; (3) the available upload/download speeds, data caps, and connected devices, if any, with descriptions; (4) a provider customer service number, prominently displayed on all promotional materials, that is associated with an adequately staffed phone line; and (5) that the EBB Program is a temporary emergency federal government benefit program operated by the FCC and, upon its conclusion, customers will be subject to the provider's regular rates, terms, and conditions.³⁷⁸

135. We decline to mandate that providers engage in more prescriptive forms of EBB Program promotion.³⁷⁹ Instead, we grant providers the flexibility to develop their own marketing plans.³⁸⁰ We find that providers are in the best position to understand how to market a new program to the communities

Broadband Office, et al. Comments at 14; City and County of San Francisco Comments at 3; Verizon Comments at 12-13; Vermont PUC et al. Comments at 7-9; NCTA *Ex Parte* at 2.

³⁷⁶ See, e.g., National League of Cities Comments at 2; NDIA Comments at 4; Public Knowledge Comments at 6-7.

³⁷⁷ See, e.g., CETF Comments at 24; City of Austin, TX Comments at 3; INCOMAS Comments at 19; LeadingAge Comments at 4; Michigan PSC Comments at 9; MMTc NUL Comments at 10; NYSPSC Comments at 3; New America's Open Technology Institute Comments at 8; Public Knowledge Comments at 6; City and County of San Francisco Comments at 3; Verizon Comments at 12-13; Vermont PUC et al. Comments at 7; AARP Reply at 8; ALA Reply at 4; Bethlehem Area School District Reply at 1; LGBT Technology Partnership Reply at 3; Vermont PUC et al. Reply at 4; *but see* T-Mobile Comments at 17 (arguing that a promotion requirement for providers is unnecessary because participating providers already have an incentive to promote the EBB Program and encourage households to enroll and promotion requirements impose burdens and costs on providers).

³⁷⁸ See MMTc NUL Comments at 10; Public Knowledge Comments at 6-7.

³⁷⁹ See, e.g., City of Austin, TX Comments at 4 (stating that “[p]roviders should be required to disclose the dollar value of direct and indirect marketing of low- cost and discounted offers to low-income and marginalized communities.”); New America's Open Technology Institute Comments at 8 (stating that the Commission's provider requirement “should include a commitment to market the program to individuals and households with prior unpaid bills or disconnections”).

³⁸⁰ See, e.g., Altice Comments at 9 (“[T]he Commission's rules should eschew prescriptive marketing mandates other than minimum obligations, such as a link on their consumer-facing websites about the Program. Altice's experience in marketing *Altice Advantage Internet* to populations including those eligible for the Program supports a flexible approach.”); CCA Comments at 11; T-Mobile Comments at 17; WISPA Comments at 15; CCA Reply at 11; CTIA Reply at 12; Verizon Reply at 16-17.

(continued....)

they serve. However, we encourage participating providers to consider and implement some of the numerous consumer outreach strategies described in the record. For instance, many commenters urge providers to engage in outreach and partner with local government agencies, through institutions providing basic needs to eligible populations, such as housing, food and transportation and healthcare, schools eligible for free or reduced lunch, school breakfast, and E-Rate, libraries, and Tribal organizations.³⁸¹ The City of Seattle, Washington State Broadband Office, Seattle Public Schools District and Seattle Housing Authority recommend that providers without retail locations where they serve low-income customers partner with a commercial, nonprofit, or other community organizations to offer site-based information about low-cost offers for low-income communities.³⁸² Additionally, some commenters, recognizing that eligible households may not currently have access to broadband, encourage providers to use a variety of media outlets that target minority and low-income populations—including newspapers, television and radio stations, billboards, and Internet advertisements—to promote the EBB Program through Public Service Announcements and crawls that direct listeners and viewers specifically to where they can find local information on the program, learn which local providers are participating, and ways to contact those providers.³⁸³ Partnerships with disability organizations and other entities that frequently provide Internet access and technical assistance to people with disabilities are further encouraged by other commenters to publicize the EBB program.³⁸⁴

136. We also direct the Consumer and Governmental Affairs Bureau (CGB) to both to educate service providers on the EBB Program and to engage in consumer outreach to the largest possible number of eligible consumer participants. We further direct CGB and the Office of Native Affairs and Policy (ONAP) to coordinate to develop educational and informational communications and materials to advertise the EBB Program, such as a webpage and digital toolkit, in a printable format and translated into other languages, that can easily be accessed by service providers, organizations, and the public. The record demonstrates support for Commission-developed marketing materials—including charts, posters, flyers and messaging—that providers and other organizations can customize and share through email, social media and other channels.³⁸⁵ We also support the idea raised by commenters that to promote the EBB Program, the Commission should work closely with, among others, Congressional offices, other federal agencies, state and local governments, community organizations, schools, and libraries.³⁸⁶

³⁸¹ See, e.g., CCUA Comments at 7 (“CCUA asks the Commission and USAC to collaborate with local governments to assist in this effort by providing information and materials that local governments and PEG channels can distribute or rely on in creating their own programming and informational campaigns. The Commission should also encourage private sector providers who are participating in the Program to work with local governments and PEG channels in raising awareness of the Program.”); City of Austin, TX Comments at 4; Microsoft Comments at 8; City and County of San Francisco Comments at 3; City of Seattle, Washington State Broadband Office, et al. Comments at 14; Verizon Comments at 12-13; Native American YesWeCan Reply at 4-5.

³⁸² City of Seattle, Washington State Broadband Office, et al. Comments at 14.

³⁸³ Microsoft Comments at 7-8; MMTC NUL Comments at 10; Public Knowledge Comments at 6; NAB Reply at 1-4. A “crawl” is a “text that advances very slowly across the bottom or top of the screen.” See *Review of the Emergency Alert System*, 20 FCC Rcd 18625, 18657 & n.222 (rel. Nov. 10, 2005).

³⁸⁴ AAPD Comments at 3.

³⁸⁵ See CETF Comments at 15, 24; Hughes Network Systems Comments at 7; MMTC NUL Comments at 10; National League of Cities Comments at 1-2; NCTA Comments at 20; NCLC & UCC Comments at 11-12; NRECA Comments at 8; Public Knowledge Comments at 7; City of Seattle, Washington State Broadband Office, et al. Comments at 15; Verizon Comments at 12; Vermont PUC et al. Comments at 8; Wisconsin Department of Public Instruction Reply at 1-2.

³⁸⁶ CETF Comments at 25-26; The Community Education Center of Elk & Cameron Counties Comments at 1; Common Sense Comments at 5; Greater DC ISOC Comments at 4-5; Hughes Network Systems Comments at 7; HTTP Comments at 3; Maine Department of Economic and Community Development/Connect Maine Authority Comments at 2; NATOA Comments at 6; NCTA Comments at 20; NCLC & UCC Comments at 11-12; Public

(continued....)

137. We also direct USAC to develop and implement a communications strategy, under the oversight of the Bureau and CGB, to provide training and information necessary to successfully participate in the EBB Program to service providers—both ETCs and non-ETCs, Tribal communities and organizations, associations and consumer advocates, the E-Rate community, potential eligible consumers, and the public at large. The objective for the communications plan should be to ensure that both current and new stakeholders can learn about and successfully participate in the EBB Program and ensure discounts on broadband service and connected devices are efficiently and effectively provided to eligible consumers. We anticipate that USAC’s communications strategy will include a dedicated, regularly updated webpage and other outreach methods including webinars, bulletins, email campaigns, and direct outreach to providers, eligible consumers, Tribal communities, schools, libraries, and other organizations that serve EBB Program eligible populations. The record overwhelmingly supports such wide-ranging communications efforts.³⁸⁷ To help ensure that households are aware of affordable broadband services for which they may likely qualify, we direct USAC to coordinate with state and federal partners, and community support organizations such as food banks to promote the availability of Lifeline as a supplement to the EBB Program or as an option when the benefit is eliminated. Indeed, commenters urge the Commission and USAC to work closely with congressional offices, coordinate with other federal agencies, state and local organization, Tribes, consumer-facing agencies, trade associations, schools, libraries, and hospitals that could assist with educating low-income consumers about the program and the provider options that are available as a result.³⁸⁸ We strongly encourage CGB, WCB, and USAC to incorporate these recommendations into their outreach efforts.

138. Lastly, we strongly encourage other federal agencies, state and local governments, groups, and broadband offices, youth groups and organizations, schools and libraries to promote the EBB Program to eligible households. The Colorado Communications and Utility Alliance (CCUA) emphasizes that “local governments have ability to promote the EBBP through bill inserts, electronic notification to customers, company websites and social media.”³⁸⁹ The CCUA, as well as the National Association of Telecommunications Officers and Advisors, point to the recent success of local governments and community organizations to provide a wide range of pandemic related information to citizens.³⁹⁰ Similarly, the City of Longmont, Colorado reports that it “has an arsenal of tools at its disposal to promote the availability of the EBBP, and is prepared to utilize them to the fullest extent.”³⁹¹ Therefore, we agree with commenters that these entities that work with program eligible populations

Knowledge Comments at 7; SETDA et al. Comments at 2; Verizon Comments at 12-13; AARP Reply at 9; ALA Reply at 3; Broadband Infrastructure Office of NC Dep’t of Information Technology Reply at 1-2; Internet Society Reply at 9; LGBT Technology Partnership Reply at 3; Public Knowledge Reply at 10; SHLB Reply at 4; Wisconsin Department of Public Instruction Reply at 1-2.

³⁸⁷ See CCUA Comments at 7; CETF Comments at 25; INCOMPAS Comments at 18-20; Microsoft Comments at 7; Michigan PSC Comments at 9; MMTC NUL Comments at 10-11; National League of Cities Comments at 1-2; NDIA Comments at 4; R Street comments at 6; City of Seattle, Washington State Broadband Office et al. Comments at 14; City and County of San Francisco Comment at 3; Vermont PUC et al. Comments at 8-9.

³⁸⁸ See Benton Institute Comments at 39-40; CCUA Comments at 7 (“CCUA asks the Commission and USAC to collaborate with local governments to assist in this effort by providing information and materials that local governments and PEG channels can distribute or rely on in creating their own programming and informational campaigns.”); CETF Comments at 25; INCOMPAS Comments at 18; MMTC NUL Comments at 10-11; NDIA Comments at 4-5; City and County of San Francisco Comments at 3.

³⁸⁹ CCUA Comments at 6.

³⁹⁰ CCUA Comments at 6; NATOA Comments at 4.

³⁹¹ City of Longmont, CO Comments at 9; *see also* NATOA Comments at 5 (“[L]ocal governments already work with the communities most in need of the Program. They know how to reach these communities and have the tools to provide information in the most accessible format, including various languages and over a variety of mediums likely to be available to eligible households.”).

(continued....)

would be highly effective in raising awareness about the EBB Program.³⁹²

G. Audits

139. The Consolidated Appropriations Act requires the Commission to adopt audit requirements to ensure that participating providers are in compliance with the program rules and to prevent waste, fraud, and abuse in the EBB Program.³⁹³ A finding of waste, fraud, or abuse or an improper payment identified by the Commission or the Inspector General of the Commission must include (1) the name of the participating provider; (2) the amount of funding made available from the EBB Program to the provider; (3) the amount of funding determined to be an improper payment to the provider; (4) a description of to what extent funding made available from the EBB Program that was an improper payment was used for a reimbursement for a connected device or a reimbursement for an internet service offering; (5) whether, in the case of a connected device, such device, or the value thereof, has been recovered; (6) whether any funding from the EBB Program was made available to a participating provider for an emergency broadband benefit for a person outside the eligible household; and (7) whether any funding from the EBB Program was made available to reimburse a participating provider for an emergency broadband benefit made available to an eligible household in which all members of such household necessary to satisfy the eligibility requirements were deceased.³⁹⁴ Within one year of the date of the enactment of the Consolidated Appropriations Act, the Commission's Office of Inspector General must conduct an audit of the disbursements made to a representative sample of participating providers.³⁹⁵ The record generally supports the use of audits to ensure compliance and accountability in the EBB Program.³⁹⁶ Multiple commenters urge the Commission to adopt audit requirements similar to those procedures used in the Lifeline program "to ensure compliance and to prevent waste, fraud, and abuse,"³⁹⁷ and to focus our audit and fraud-prevention efforts on rule violations that occur at scale and that impact the largest number of consumers.³⁹⁸ Others contend that the current Lifeline audit process requires substantial reform³⁹⁹ or support a more simplified version of the process that does not impede participation by households and providers⁴⁰⁰ or have an adverse impact on customer privacy and data security.⁴⁰¹ Commenters agree that participating providers should be required to collect and retain documentation sufficient to support compliance with any certifications and that such record keeping requirements should be clearly defined.⁴⁰²

³⁹² CETF Comments at 26-27; CCUA Comments at 6; City of Longmont, CO Comments at 9; City of Madison Comments at 2; Illinois Office of Broadband Comments at 4-6; Ohio Poverty Law Center Comments at 1; NATOA Comments at 4-5; NDIA Comments at 4-5; City of Seattle, Washington State Broadband Office, et al. Comments at 14; City and County of San Francisco Comments at 3; ALA Reply at 2-3; NATOA Reply at 2.

³⁹³ Consolidated Appropriations Act, div. N, tit. IX, § 904 (b)(7).

³⁹⁴ *Id.*

³⁹⁵ *Id.* § 904 (b)(8).

³⁹⁶ CETF Comments at 26; 98 Small Broadband Providers Comments at 2; NaLA Comments at 21; NCLC & UCC Comments at 14; IL Office of Broadband Reply at 5-6.

³⁹⁷ INCOMPAS Comments at 20; *see also* City of Longmont, CO Comments at 11; Hughes Network Systems Comments at 8; WISPA Comments at 14.

³⁹⁸ NCLC & UCC Comments at 14.

³⁹⁹ NaLA Comments at 20.

⁴⁰⁰ ACA Connects Comments at 25-26; EBBC Comments at 15; Hughes Network Systems Comments at 8; MMTCC NUL Comments at 14; ITIF Comments at 3; Mobile Comments at 18.

⁴⁰¹ ACA Connects Comments at 25-26.

⁴⁰² AT&T Comments at 5; ACA Connects Comments at 25-26; FastMesh Comments at 3; WISPA Comments at 14; IL Office of Broadband Reply at 5-6.

140. We agree with the commenters that it is imperative to require audits to confirm the integrity of the EBB Program and prevent fraud, waste, and abuse in the program. To that end, we delegate authority to the Office of the Managing Director (OMD) to develop and implement an audit process of participating providers that complies with all requirements in sections 904(b)(7) and (8) of the Consolidated Appropriations Act.⁴⁰³ OMD may obtain the assistance of third parties, including but not limited to USAC, in carrying out this effort. Consistent with our experience regarding the Universal Service Fund, we find that audits are the most effective way to ensure compliance with our rule requirements.⁴⁰⁴

H. Enforcement

141. The Consolidated Appropriations Act provides that a violation of its section 904, which establishes the EBB Program, or any regulation promulgated under that section “shall be treated as a violation of the Communications Act of 1934 or a regulation promulgated under such Act.”⁴⁰⁵ The Commission is compelled to enforce this section and the associated regulations “in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications act of 1934 were incorporated into and made a part of this section.”⁴⁰⁶ In the *Public Notice*, the Bureau sought comment on the authority of the Commission to impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements.⁴⁰⁷ The record largely supports the application of our existing enforcement powers, including imposing administrative forfeitures and other penalties on participating providers that violate the program rules and requirements, to protect the integrity of the EBB Program.⁴⁰⁸ The National Lifeline Association urges that “[a]ny proposed forfeitures under the [EBB Program] rules should be based on reasonable recoveries for rule violations and three times the amount of harm to the [EBB Program] (treble damages) for cases of actual fraud.”⁴⁰⁹ T-Mobile argues that in order to avoid discouraging providers from participating in the EBB Program, the Commission should not treat a violation of its other rules as a basis for withholding EBB Program funding from participants.⁴¹⁰ Consistent with this statutory direction and the record, we will use the Commission’s existing, statutorily permitted enforcement powers to initiate investigations and impose administrative forfeitures. In addition, we will apply the Commission’s suspension and debarment rules currently applicable to the USF program to EBB Program participating providers.⁴¹¹ We will also withhold EBB Program funds from participants found to be in violation of the EBB Program rules, if appropriate, and will also seek to recoup

⁴⁰³ Consolidated Appropriations Act, div. N, tit. IX, §§ 904(b)(7)-(8).

⁴⁰⁴ See Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158, § 4(e)(3)(A) (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure Networks Act); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11454, para. 80 (2019) (2019 Supply Chain Order and Further Notice).

⁴⁰⁵ Consolidated Appropriations Act, div. N, tit. IX, § 904(g).

⁴⁰⁶ *Id.*

⁴⁰⁷ *Public Notice* at 11.

⁴⁰⁸ See Altice Comments at 11; California Emergency Technology Fund Comments at 27; City of Longmont, CO Comments at 11; NCLC and UCC Comments at 14; 98 Small Broadband Providers Comments at 2; WISPA Comments at 14.

⁴⁰⁹ NaLA Comments at 19.

⁴¹⁰ T-Mobile Comments at 21-22. *But see* CETF Comments at 27 (recommending that providers who have previously been found to violate state and federal Lifeline program rules be made ineligible for [EBBP] participation”).

⁴¹¹ 47 CFR § 54.8.

(continued....)

improperly disbursed funds, in addition to appropriate enforcement penalties.⁴¹² We find that these enforcement mechanisms sufficiently balance the need for widespread participation in the EBB Program with the importance of maintaining the program's integrity.

I. Application of Other Part 54 Regulations

142. We use the authority granted by the Consolidated Appropriations Act to apply portions of part 54 of title 47, Code of Federal Regulations—pertaining to definitions, de-enrollment, program integrity, and the use of USAC—to the EBB Program.⁴¹³

143. *Subpart E.* Due to similarities between the programs and the use of certain USAC Lifeline systems to administer the EBB Program, we elect to apply select portions of the regulations that control the Lifeline program to the EBB Program. Specifically, we apply the following definitions in section 54.400 to the EBB Program, subject to the further interpretations expounded upon in this Order: (f) income; (g) duplicative support; (h) household; (i) National Lifeline Accountability Database of Database; (j) Qualifying assistance program; (k) Direct service; (l) Broadband Internet access service; (o) National Lifeline Eligibility Verifier; and (p) Enrollment representatives.⁴¹⁴ Maintaining uniform definitions across the two programs will facilitate a quick launch and efficient administration for the Commission, USAC, and participating providers. What is more, we limit application of the Lifeline rules to those specifically enumerated in this Order to balance the need of ensuring that the EBB Program has adequate guidelines and parameters with the concern of chilling participation by providing a complex framework that may be unfamiliar to new providers or serve as a bar to participation in this temporary program.

144. We also elect to apply relevant subsections of section 54.404, outlining carrier interactions with the NLAD, and portions of section 54.405 of the Commission's rules to the EBB Program concerning carrier obligations and de-enrollment. Specifically, we apply rule 54.405(e)(1), (2), and (5), for de-enrollments generally, de-enrollments for duplicative support, and de-enrollments requested by the subscriber, respectively.⁴¹⁵ In the definition for de-enrollment requested by the subscriber, we direct USAC to accept and process de-enrollment requests directly from EBB Program subscribers, and to notify the subscriber's provider when such a de-enrollment occurs. This additional method for de-enrollment by subscribers will assist in administering funds efficiently and provide further certainty to participants regarding their ability to transition out of this temporary program.⁴¹⁶

145. For de-enrollment for non-usage, however, we adopt a modified requirement—as permitted by the Consolidated Appropriations Act⁴¹⁷—to adapt to the unique circumstances provided by the pandemic, the limited duration of the EBB Program, and the participation of non-ETC providers that may not have already designed processes to comport with the specific Lifeline usage requirements. Accordingly, we require that providers submit a certification in their reimbursement claim that every subscriber claimed has used their supported service, as defined in section 54.407(c)(2) of the Lifeline

⁴¹² See also 47 CFR Part 1, Subpart O (Collection of Claims Owed the United States).

⁴¹³ See Consolidated Appropriations Act, div. N, tit. IX, § 904(f).

⁴¹⁴ 47 CFR §§ 54.400(f), (g), (h), (i), (j), (k), (l), (o), and (p).

⁴¹⁵ 47 CFR §§ 54.405(e)(1), (2), and (5).

⁴¹⁶ Several comments raise consumer concerns of distrust in government programs and a fear of hidden fees and commitments. See, e.g., State E-rate Coordinators Alliance Comments at 3; Colorado Communications and Utility Alliance Comments at 6; Greater Washington DC Chapter of the Internet Society Comments at 4-5. By permitting subscribers to directly communicate with USAC to de-enroll at any time, we aim to remove a layer of concern about participating in this temporary program.

⁴¹⁷ See Consolidated Appropriations Act, div. N, tit. IX, § 904(f).

rules, at least once during the service month being claimed.⁴¹⁸ Providers must retain documentation demonstrating the subscriber monthly usage amounts to support this certification. We do not adopt for the EBB Program the notice and de-enrollment process required in the Lifeline program rules, but participating providers that fail to resolve non-usage by households enrolled in the EBB Program will be unable to claim the program benefit for those households. This modification ensures that the limited funds provided by the Consolidated Appropriations Act will reach those whose needs are greatest by protecting against supporting unused service.

146. Additionally, we adopt for the EBB Program a modification of the subscriber eligibility determination and certification found in section 54.410 of the Lifeline rules, and require all participating providers to implement policies and procedures for ensuring that their EBB Program households are eligible to receive the Emergency Broadband Benefit.⁴¹⁹ Accordingly, a provider may not provide a consumer with an activated device that it represents enables use of Emergency Broadband Benefit-supported service, nor may it activate service that it represents to be Emergency Broadband Benefit-supported service, unless and until it has: (1) Confirmed that the household is an eligible household pursuant to section III(B) of this Order, and; (2) Completed the eligibility determination and certification required by section III(B), and any other necessary enrollment steps expounded upon in this Order. We find that these preventative measures provide a front-end guard against the improper use of the limited funds provided by the Consolidated Appropriations Act, and protect against waste, fraud, and abuse.

147. To further ensure program integrity, we apply the following sections of the Lifeline rules to the EBB Program: section 54.407(a), (c)(2)(i)-(v), (d) and (e), pertaining to the number of participants as of the first of the month (snapshot),⁴²⁰ the definition of service usage, reimbursement certifications, and records; section 54.417, pertaining to recordkeeping requirements; and, section 54.419, pertaining to the validity of e-signatures.⁴²¹ We note that these rule sections, as applied to the EBB Program, are the subject of more detailed discussions in this Order.⁴²² We also require participating providers that use enrollment representatives to comply with the Representative Accountability Database registration requirement established in sections 54.400(p) and 54.406(a) of the Commission's Lifeline program rules.⁴²³ Requiring registration for employees, agents, contractors, or subcontractors of participating providers or their third-party entities prior to those personnel providing information to the USAC systems will bolster the security of the system and help monitor for suspected non-compliance in program activity. However, we decline to apply section 54.406(b) to avoid discouraging provider participation and diminishing consumer choice in the Program.⁴²⁴

148. The record supports the use of these Lifeline rules in implementing the EBB Program, including the use of the National Verifier, NLAD, RAD, snapshot dates and process, and de-enrollment requirements and deadlines.⁴²⁵ We agree with commenters that these established processes will assist in

⁴¹⁸ See also *supra* Section III(E).

⁴¹⁹ See 47 CFR § 54.410.

⁴²⁰ The clauses in 47 CFR § 54.407(a) pertaining to NLAD opt-out states will not apply in the EBB Program because states do not have the option of opting out of the EBB Program duplicate check.

⁴²¹ 47 CFR §§ 54.407(a), 54.417, and 54.419.

⁴²² See, e.g., *supra* Section III(E).

⁴²³ 47 CFR §§ 54.400(p), 54.406(a).

⁴²⁴ See 47 CFR § 54.406(b).

⁴²⁵ See, e.g., NaLA Comments at 14-15 (supporting use of Lifeline rules to support use of the National Verifier, National Lifeline Accountability Database, Representative Accountability Database, snapshot dates and process, and de-enrollment requirements and deadlines); NTCA – The Rural Broadband Association Comments at 5 (recommending adoption of “EBB rules that mirror those in effect for the Lifeline program to the greatest extent possible”); Q Link and NaLA Ex Parte Letter at 2 (supporting use of the National Verifier—with verification

(continued....)

the quick and efficient implementation of the EBB Program while protecting against waste, fraud, and abuse.

149. *Use of USAC.* We also use the authority granted by the Consolidated Appropriations Act to avail ourselves of USAC's services to implement the EBB Program, including administering approvals and elections of participating providers⁴²⁶ and determinations of household eligibility, including whether a household resides on Tribal lands, by relying upon USAC-administrated processes and systems, including the National Verifier, NLAD, RAD, and LCS for the provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews. The record supports using USAC and its processes for the efficient and effective administration of the program, and we believe USAC's experience administering the Lifeline program makes USAC uniquely situated to be the administrator of the EBB Program.⁴²⁷

150. *Subpart H.* We next apply section 54.702(c) of the Commission's rules to the EBB Program as well, preventing USAC from making policy, interpreting unclear statutes or rules relied upon to implement the EBB Program, or interpreting the intent of Congress.⁴²⁸ Additionally, we grant USAC the authority to conduct program audits of contributors and providers, as provided in section 54.707.⁴²⁹ This grant, however, is subject to our further direction as set forth in section III(G) of this Order.

151. *Subpart I.* Lastly, we provide a path for recourse to parties aggrieved by decisions issued by USAC. Specifically, we require review of decisions issued by USAC to follow the requirements set forth in Subpart I.⁴³⁰ We find these existing processes sufficient to provide meaningful review of decisions issued by USAC during the EBB Program.

J. Delegations to the Bureau and Office of Managing Director

152. We delegate authority to the Bureau and OMD to make necessary adjustments to the program administration and to provide additional detail and specificity to the requirements of the EBB Program to conform with the intent of this Order and ensure the efficient functioning of the program.

153. In addition, we delegate financial oversight of this program to the Commission's Managing Director and direct the Office of the Managing Director (OMD) to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. These

changes, National Lifeline Accountability Database, and Lifeline Claims System; commenting against non-usage rules); T-Mobile Comments at 17 (supporting provider option to use existing databases for the Lifeline program, but not requiring use, and supporting use of the snapshot rule); Center for Democracy & Technology Comments at 10 (supporting non-usage rules that do not require deriving data about specific site content); NCLC and United Church of Christ Comments at ii (supporting program integrity measures and many Lifeline rules, except non-usage rules); *see also* NTCA – The Internet & Television Association Comments at 21-22 (suggesting non-usage rules are unnecessary given the short-term nature of the program); DigitalC Comments at 14 (suggesting non-usage rules would be burdensome); City and County of San Francisco Comments at 3 (suggesting rules on measuring data usage unnecessary for short-term program); American Association of People with Disabilities comments at 3 (supporting non-usage period of 180 days); Verizon Reply at 11 (suggesting non-usage not apply because of the temporary nature of the program); TracFone Reply at 18-20 (conveying general support for application of Lifeline rules to administer the EBB Program, and suggesting extension of the non-usage period from 30 to 180 days to ensure funds are used on services actually utilized).

⁴²⁶ *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(i)(5).

⁴²⁷ CETF Comments at 27; *see also* Cherokee Comments at 1; INCOMPAS Comments at 20; NARUC Comment at 7; NDIA Comments at 3-4; NaLA Comments at 15; NTCA Comments at 10, Oregon State Treasury Comments at 1-2; State E-rate Coordinators Alliance Comments at 6; CETF Comments at 27.

⁴²⁸ 47 CFR § 54.702(c).

⁴²⁹ 47 CFR § 54.707.

⁴³⁰ 47 CFR § 54.719-25.

duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.⁴³¹ Such financial oversight must be consistent with the rules adopted in this order. OMD performs this role with respect to USAC's administration of the Commission's Universal Service programs,⁴³² and the Covid-19 Telehealth program,⁴³³ and we anticipate that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 904,⁴³⁴ to ensure the efficient and effective management of the program. Finally, we note that OMD is required to consult with the Bureau on any policy matters affecting the program, consistent with section 0.91(a) of the Commission's rules. OMD, in coordination with the Bureau, may issue additional directions to USAC and program participants in furtherance of its responsibilities.

154. In its administration of the Program, USAC is directed to comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security standards and requirements, such as the Privacy Act,⁴³⁵ relevant provisions in the Federal Information Security Modernization Act of 2014,⁴³⁶ National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

155. We recognize that, once implementation of the EBB Program begins, the Commission or USAC may encounter unforeseen issues or problems with the administration that will need to be resolved. To achieve widespread participation by eligible households in the EBB Program, we delegate this authority to Commission staff to address and resolve such issues.

IV. PROCEDURAL MATTERS

156. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis "whenever an agency promulgates a

⁴³¹ 47 CFR § 0.11(a)(3)-(4) (stating that OMD will "[a]ssist the Chairman in carrying out the administrative and executive responsibilities" and "[a]dvice the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest"); 47 CFR § 0.11(a)(8) (stating that OMD's current responsibility is to "[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management"); 47 CFR § 0.5(e) (requiring Bureau and Office coordination with OMD on recommendations "that may affect agency compliance with Federal financial management requirements").

⁴³² See, e.g., Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Dec. 19, 2018) <https://www.fcc.gov/sites/default/files/usac-mou.pdf> (stating that the Commission is responsible for the effective and efficient management and oversight of the USF, including USF policy decisions, and USAC is responsible for the effective administration of the programs).

⁴³³ *COVID-19 Telehealth Program*, WC Docket No. 20-89, Report and Order, FCC 21-24, para. 8 (rel. February 2, 2021).

⁴³⁴ Examples of differences between the programs with respect to fiscal matters include the fact that while the Universal Service Fund is a permanent indefinite appropriation and has a temporary exemption from the Antideficiency Act, the funds appropriated for the EBB Program are definite in amount and are subject to the Antideficiency Act, which is codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. In addition, the CARES Act oversight provisions have been incorporated by reference in the Consolidated Appropriations Act and would apply to this program. Consolidated Appropriations Act, 2021, H.R. 133, div. O, tit. VIII—Pandemic Response Accountability Committee Amendments § 801, Amendment to the Pandemic Response Accountability Committee (2020).

⁴³⁵ 5 U.S.C. § 552a.

⁴³⁶ The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002), was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. §§ 3551 *et seq.*

(continued....)

final rule under [5 U.S.C. § 553], after being required by that section or any other law to publish a general notice of proposed rulemaking.”⁴³⁷ Pursuant to the Consolidated Appropriations Act, section 553 does not apply to the rulemaking proceeding implementing the EBB Program.⁴³⁸ Accordingly, no Final Regulatory Flexibility Analysis is required for this Report and Order.

157. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the EBB Program are a “major rule” under the Congressional Review Act, 5 U.S.C. § 804(2). By exempting this rulemaking proceeding from the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. § 553(b), we conclude that Congress has determined notice and public procedure under the Administrative Procedure Act to be impracticable, unnecessary, or contrary to the public interest. In addition, the exemption of this proceeding from the Administrative Procedure Act requirement that rules cannot become effective until 30 days after publication in the Federal Register, 5 U.S.C. § 553(d), demonstrates Congressional intent that the rules we adopt shall become effective without delay. Accordingly, the Commission finds for good cause that notice and public procedure on the rules adopted herein are impracticable, unnecessary, or contrary to the public interest, and therefore this Report and Order will become effective immediately upon release pursuant to 5 U.S.C. § 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

158. *Paperwork Reduction Act.* Pursuant to section 904(h)(2) of the Consolidated Appropriations Act, the collection of information sponsored or conducted under the regulations promulgated in this Report and Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.⁴³⁹

V. ORDERING CLAUSES

159. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, this Report and Order IS ADOPTED and SHALL BECOME EFFECTIVE upon release.

160. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴³⁷ 5 U.S.C. § 604(a).

⁴³⁸ *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(h)(1).

⁴³⁹ *See id.* § 904(h)(2).

APPENDIX A**Final Rules**

For the reasons set forth above, Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

1. Add new Subpart P to part 54 to read as follows:

Subpart P—Emergency Broadband Benefit Program**Sec.**

54.1600 Definitions

54.1601 Participating providers

54.1602 Emergency Broadband Benefit

54.1603 Emergency Broadband Benefit Program support amount

54.1604 Participating provider obligation to offer Emergency Broadband Benefit Program

54.1605 Household qualification for Emergency Broadband Benefit Program

54.1606 Household eligibility determinations

54.1607 Enrollment representative registration

54.1608 Reimbursement for providing Emergency Broadband Benefit Program discount

54.1609 De-enrollment from the Emergency Broadband Benefit Program

54.1610 Expiration of Emergency Broadband Benefit Program

54.1611 Recordkeeping requirements

54.1612 Validity of electronic signatures

§ 54.1600 Definitions.

(a) *Broadband Internet access service.* The term “broadband Internet access service” has the meaning given such term in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.

(b) *Broadband provider.* The term “broadband provider” means a provider of broadband Internet access service.

(c) *Commission.* The term “Commission” means the Federal Communications Commission.

(d) *Connected device.* The term “connected device” means a laptop or desktop computer or a tablet.

(e) *Designated as an eligible telecommunications carrier.* The term “designated as an eligible telecommunications carrier”, with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. § 214(e)).

(f) *Direct service.* As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(g) *Duplicative support.* “Duplicative support” exists when an Emergency Broadband Benefit subscriber is receiving two or more Emergency Broadband Benefit services concurrently or two or more subscribers in a household have received a connected device with an Emergency Broadband Benefit discount.

(h) *Eligible household.* The term “eligible household” means, regardless of whether the household or any member of the household receives support under subpart E of part 54 of title 47, Code of Federal Regulations (or any successor regulation), and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(1) at least one member of the household meets the qualifications in subsection (a) or (b) of section 54.409 of title 47, Code of Federal Regulations (or any successor regulation);

(2) at least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. § 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773);

(3) at least one member of the household has experienced a substantial loss of income since February 29, 2020, that is documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable through the National Verifier or National Lifeline Accountability Database;

(4) at least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. § 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under section 54.1606(a)(2) of title 47, Code of Federal Regulations; or

(5) at least one member of the household meets the eligibility criteria for a participating provider’s existing low-income or COVID–19 program, subject to the requirements of section 54.1606(a)(2) of title 47, Code of Federal Regulations.

(i) *Emergency broadband benefit.* The term “emergency broadband benefit” means a monthly discount for an eligible household applied to the actual amount charged to such household, which shall be no more than the standard rate for an Internet service offering and associated equipment, in an amount equal to such amount charged, but not more than \$50, or, if an Internet service offering is provided to an eligible household on Tribal land, not more than \$75.

(j) *Emergency period.* The term “emergency period” means the period that—

(1) begins on the date of the enactment of this Act; and

(2) ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates.

(k) *Enrollment representative*. An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment.

(l) *Household*. A “household” is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(m) *Income*. “Income” means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 et seq.

(n) *Internet service offering*. The term “Internet service offering” means, with respect to a broadband provider, broadband Internet access service provided by such provider to a household, offered in the same manner, and on the same terms, as described in any of such provider’s offerings for broadband Internet access service to such household, as on December 1, 2020.

(o) *Lifeline qualifying assistance program*. A “Lifeline qualifying assistance program” means any of the federal or Tribal assistance programs the participation in which, pursuant to 47 CFR § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

(p) *National Lifeline Accountability Database*. The “National Lifeline Accountability Database” is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(q) *National Lifeline Eligibility Verifier or National Verifier*. The “National Lifeline Eligibility Verifier” or “National Verifier” is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and Emergency Broadband Benefit Program, as directed by the Commission.

(r) *Participating provider*. The term “participating provider” means a broadband provider that—

(1)

(A) is designated as an eligible telecommunications carrier; or

(B) meets requirements established by the Commission for participation in the Emergency Broadband Benefit Program and is approved by the Commission under section 54.1601(b) of title 47, Code of Federal Regulations; and

(2) elects to participate in the Emergency Broadband Benefit Program.

(s) *Standard rate.* The term “standard rate” means the monthly retail rate for the applicable tier of broadband Internet access service as of December 1, 2020, excluding any taxes or other governmental fees.

(t) *Tribal lands.* For purposes of this subpart, “Tribal lands” include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands - areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of subpart E of part 54 of title 47, Code of Federal Regulations (or any successor regulation) pursuant to the designation process in 47 CFR § 54.412.

§ 54.1601 Participating providers.

(a) *Eligible telecommunications carriers.* A broadband provider that is designated as an eligible telecommunications carrier may participate in the Emergency Benefit Broadband Program as a participating provider.

(b) *Other broadband providers.* A broadband provider that is not designated as an eligible telecommunications carrier may seek approval from the Wireline Competition Bureau to participate in the Emergency Broadband Benefit Program as a participating provider.

(1) The Wireline Competition Bureau shall review and act on applications to be designated as a participating provider on an expedited basis. Such applications shall contain:

(A) the states or territories in which the provider plans to participate;

(B) the service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an eligible telecommunications carrier; and,

(C) certifications and documentation of the provider's plan to combat waste, fraud, and abuse.

(2) Notwithstanding subparagraph (1), the Wireline Competition Bureau shall automatically approve as a participating provider 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. Such applications seeking automatic approval shall contain:

(A) the states or territories in which the provider plans to participate;

(B) the service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an Eligible Telecommunications Carrier; and,

(C) a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Emergency Broadband Benefit Program.

(c) Election notice. All participating providers must file an election notice with the Administrator. The election notice must be submitted in a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator. At a minimum the election notice should contain:

(1) the states or territories in which the provider plans to participate in the Emergency Broadband Benefit Program;

(2) a statement that, in each state or territory, the provider was a “broadband provider” as of December 1, 2020;

(3) a list of states or territories where the provider is an existing Eligible Telecommunications Carrier, if any;

(4) a list of states or territories where the provider received Wireline Competition Bureau approval, whether automatic or expedited, to participate, if any;

(5) whether the provider intends to distribute connected devices;

(6) a description of the Internet service offerings for which the provider plans to seek reimbursement in each state or territory; and,

(7) documentation demonstrating the standard rates for those services in each state; and any other information necessary to establish participating providers in the Administrator’s systems.

(d) Suspension and debarment. The prohibition on participation and suspension and debarment rules established in section 54.8 of this Part shall apply to activities associated with or related to the Emergency Broadband Benefit Program.

§ 54.1602 Emergency Broadband Benefit.

(a) The Emergency Broadband Benefit Program shall provide reimbursement to a participating provider for providing a discount on the price of broadband Internet access service (and associated equipment), a connected device, or both, to an eligible household during the emergency period.

(b) Participating providers may allow consumers whose households qualify for the Emergency Broadband Benefit Program pursuant to § 54.1605 to apply the Emergency Broadband Benefit to any residential service plan that includes broadband Internet access service or a bundle of broadband Internet access service along with fixed or mobile voice telephony service, text messaging service, or both.

§ 54.1603 Emergency Broadband Benefit Program support amount.

(a) The Emergency Broadband Benefit Program support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household, which shall be no more than the standard rate for an Internet service offering and associated equipment, but not more than \$50.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than \$75.00 per month, if that provider certifies that it will

pass through the full amount of support to the eligible household on Tribal lands, as defined in 47 CFR § 54.1600(t).

(b) A participating provider that, in addition to providing the Emergency Broadband Benefit Program to an eligible household, supplies such household with a connected device may be reimbursed up to \$100.00 for such connected device, if the charge to such eligible household is more than \$10.00 but less than \$50.00 for such connected device, except that a participating provider may receive reimbursement for no more than one (1) connected device per eligible household.

(c) If the amount of funding remaining in the Emergency Broadband Connectivity Fund is less than the total amount of valid reimbursement claims in the Emergency Broadband Benefit Program, the support amount for all participating providers submitting valid reimbursement claims for a month may be less than the full support amount permitted under this subsection.

§ 54.1604 Participating provider obligation to offer Emergency Broadband Benefit Program.

All participating providers in the Emergency Broadband Benefit Program must:

(a) Make available the Emergency Broadband Benefit Program to qualifying low-income consumers.

(b) Publicize the availability of the Emergency Broadband Benefit Program in a manner reasonably designed to reach those likely to qualify for the service.

(c) Indicate on all materials describing the Emergency Broadband Benefit Program, using easily understood language in the dominant languages of the communities the provider serves:

(1) the eligibility requirements for consumer participation;

(2) that the Emergency Broadband Benefit is non-transferable and is limited to one discount per household;

(3) the monetary charges to the customer;

(4) the available upload/download speeds and data caps for the covered services, and a list of connected devices, if any, with descriptions;

(5) the provider's customer service telephone number, which must be prominently displayed on all promotional materials and adequately staffed by customer service representatives; and

(6) that the Emergency Broadband Benefit Program is a temporary emergency federal government benefit program operated by the Federal Communications Commission and, upon its conclusion, customers will be subject to the provider's regular rates, terms, and conditions;

(d) Disclose the name of the provider on all materials describing the Emergency Broadband Benefit Program, including all print, audio, video, and web materials used to describe or enroll in the Emergency Broadband Benefit Program.

§ 54.1605 Household qualification for Emergency Broadband Benefit Program.

(a) To constitute an eligible household:

(1) The household income as defined in § 54.1600(m) must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or

(2) at least one member of the household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit; or

(3) at least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. § 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773); or

(4) at least one member of the household has experienced a substantial loss of income since February 29, 2020, that is documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable through the National Verifier; or

(5) at least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. § 1070a) in the current award year, if such award is verifiable through the National Verifier or the participating provider verifies eligibility under section 54.1606(a)(2) of title 47, Code of Federal Regulations; or

(6) at least one member of the household meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to the requirements of section 54.1606(a)(2) of title 47, Code of Federal Regulations; or

(7) if the household is located on Tribal lands, at least one member of the household participates in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

(b) In addition to meeting the qualifications provided in paragraph (a) of this section, in order to constitute an eligible household, no member of the household may already be receiving an Emergency Broadband Benefit Program discount.

§ 54.1606 Household eligibility determinations.

(a) *Eligibility verification processes.* To verify whether a household is an eligible household, a participating provider shall—

(1) use the National Verifier; or

(2) rely upon an alternative verification process of the participating provider, if—

(A) the participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(B) not later than 7 days after receiving the information required under clause (a)(2)(A), the Wireline Competition Bureau—

(i) determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(ii) notifies the participating provider of the determination under subclause (a)(2)(B)(i); or

(3) rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program as described in 47 CFR § 54.1600(h)(2). The participating provider must retain documentation demonstrating the school verifying eligibility, the program(s) that the school participates in, the qualifying household, and the program(s) the household participates in.

(b) All participating providers must implement policies and procedures for ensuring that their Emergency Broadband Benefit Program households are eligible to receive the Emergency Broadband Benefit. A provider may not provide a consumer with service that it represents to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it has:

(1) Confirmed that the household is an eligible household pursuant to § 54.1605;

(2) Completed any other necessary enrollment steps, and;

(3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with § 54.1611.

(c) *One-Per-Household Worksheet*. If the prospective household shares an address with one or more existing Emergency Broadband Benefit Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule prior to initial enrollment.

(d) *The National Lifeline Accountability Database*. In order to receive Emergency Broadband Benefit Program support, participating providers must comply with the following requirements:

(1) All participating providers must query the National Lifeline Accountability Database to determine whether a prospective subscriber is currently receiving an Emergency Broadband Benefit-supported service from another participating provider; and whether anyone else living at the prospective subscriber's residential address is currently receiving an Emergency Broadband Benefit-supported service.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber who is not seeking to transfer his or her Emergency Broadband Benefit, is currently receiving an Emergency Broadband Benefit-supported service, the participating provider must not provide and shall not seek or receive Emergency Broadband Benefit reimbursement for that subscriber.

(3) Participating providers may query the National Lifeline Accountability Database only for the purposes provided in paragraphs (e)(1) and (e)(2) of this section, and to determine whether information

with respect to its subscribers already in the National Lifeline Accountability Database is correct and complete.

(4) Participating providers must transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Emergency Broadband Benefit Program subscriber's full name; full residential address; date of birth; the telephone number associated with the Emergency Broadband Benefit Program service; the date on which the Emergency Broadband Benefit Program discount was initiated; the date on which the Emergency Broadband Benefit Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Emergency Broadband Benefit Program.

(5) All participating providers must update an existing Emergency Broadband Benefit Program subscriber's information in the National Lifeline Accountability Database within ten business days of receiving any change to that information, except as described in paragraph (e)(7) of this section.

(6) All participating providers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Emergency Broadband Benefit Program, and that failure to provide consent will result in subscriber being denied the Emergency Broadband Benefit.

(7) When a participating provider de-enrolls a subscriber from the Emergency Broadband Benefit Program, it must transmit to the National Lifeline Accountability Database the date of Emergency Broadband Benefit Program de-enrollment within one business day of de-enrollment.

(8) All participating providers must securely retain subscriber documentation that the participating provider reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by National Lifeline Accountability Database or National Verifier processes, which require, inter alia, verification of eligibility, identity, address, and age.

(9) A participating provider must not enroll or claim for reimbursement a prospective subscriber in the Emergency Broadband Benefit Program if the National Lifeline Accountability Database or National Verifier cannot verify the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(e) *Connected device reimbursement and the National Lifeline Accountability Database.* In order to receive Emergency Broadband Benefit Program reimbursement for a connected device, participating providers must comply with the following requirements:

(1) Such participating provider must query the National Lifeline Accountability Database to determine whether a prospective connected device benefit recipient has previously received a connected device benefit.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber has received a connected device benefit, the participating provider must not seek a connected device reimbursement for that subscriber.

(3) Such participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the Emergency Broadband Benefit for service provided by the same participating provider.

(4) Where two or more participating providers file a claim for a connected device reimbursement for the same subscriber, only the participating provider whose information was received and processed by the National Lifeline Accountability Database or Lifeline Claims System first, as determined by the Administrator, will be entitled to a connected device reimbursement for that subscriber.

(5) All participating providers must obtain from each subscriber consent to transmit the information required under paragraph (e)(1) of this section. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Emergency Broadband Benefit Program connected device benefit, and that failure to provide consent will result in the subscriber being denied the Emergency Broadband Benefit Program connected device benefit.

§ 54.1607 Enrollment representative registration.

Enrollment representative registration. A participating provider must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(a) As part of the registration process, participating providers must require that all enrollment representatives provide the Administrator with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

- (1) Accessing the National Lifeline Accountability Database;
- (2) Accessing the National Verifier;
- (3) Accessing any eligibility database; and
- (4) Completing any Emergency Broadband Benefit Program enrollment or verification forms.

(b) Participating providers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Emergency Broadband Benefit Program subscribers, recertify Emergency Broadband Benefit Program subscribers, or access the National Lifeline Accountability Database or National Verifier.

(c) Participating providers must ensure that enrollment representatives shall regularly recertify their status with the Administrator to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Participating providers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

§ 54.1608 Reimbursement for providing Emergency Broadband Benefit Program discount.

(a) Emergency Broadband Benefit Program support for providing a qualifying broadband Internet access service shall be provided directly to a participating provider based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first of the month.

(b) For each eligible household receiving Emergency Broadband Benefit-supported service, the reimbursement amount shall equal the appropriate support amount as described in 47 CFR § 54.1603, except as otherwise provided by 47 CFR § 54.1603(c). The participating provider's Emergency Broadband Benefit Program reimbursement shall not exceed the participating provider's standard rate for that offering.

(c) A participating provider offering an Emergency Broadband Benefit Program service with a standard rate that does not require the participating provider to assess and collect a monthly fee from its subscribers must certify that every subscriber claimed has used their supported service, as defined by 47 CFR § 54.407(c)(2), at least once during the service month being claimed prior in order to claim that subscriber for reimbursement in that month.

(d) A participating provider that, in addition to providing the Emergency Broadband Benefit to an eligible household, provides such household with a connected device may be reimbursed up to \$100.00 for such connected device, if the charge to such eligible household is more than \$10.00 but less than \$50.00 for such connected device, except that a participating provider may receive reimbursement for no more than one (1) connected device per eligible household.

(e) In order to receive Emergency Broadband Benefit Program reimbursement, an officer of the participating provider must certify, as part of each request for reimbursement, that:

(1) The officer is authorized to submit the request on behalf of the participating provider;

(2) The officer has read the instructions relating to reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the Emergency Broadband Benefit Program rules and requirements;

(3) The participating provider is in compliance with all of the rules in this subpart;

(4) The participating provider has obtained valid certification and application forms as required by the rules in this subpart for each of the subscribers for whom it is seeking reimbursement;

(5) the amount for which the participating provider is seeking reimbursement from the Emergency Broadband Connectivity Fund is not more than the standard rate;

(6) each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering—

(A) has not been and will not be charged—

(i) for such offering, if the standard rate for such offering is less than or equal to the amount of the emergency broadband benefit for such household; or

(ii) more for such offering than the difference between the standard rate for such offering and the amount of the emergency broadband benefit for such household;

(B) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract;

(C) was not, after the date of the enactment of this Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and

(D) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers.

(7) each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider more than \$10.00 but less than \$50.00 for such connected device;

(8) that the connected device claimed meets the Commission's requirements, that the reimbursement claim amount reflects the market value of the device, and that the connected device has been delivered to the household;

(9) the process used by the participating provider to verify that a household is eligible for the Emergency Broadband Benefit Program, if the provider elects an alternative verification process and that such verification process was designed to avoid waste, fraud, and abuse.

(10) the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement;

(11) all documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Emergency Broadband Benefit Program, and are subject to audit;

(12) the provider neither received nor paid kickbacks, as defined by 41 U.S.C. § 8701, in connection with the Emergency Broadband Benefit Program;

(13) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

(14) the officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the officer to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 286-287, 1001, 1341, 31 U.S.C. §§ 3729-3730, 3801-3812.); and

(15) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal program.

(f) In order to receive Emergency Broadband Benefit Program reimbursement, a participating provider must keep accurate records of the revenues it forgoes in providing Emergency Broadband Benefit-supported services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart.

(g) In order to receive reimbursement, participating providers shall submit certified reimbursement claims through Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend. If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.

§ 54.1609 De-enrollment from the Emergency Broadband Benefit Program.

(a) *De-enrollment generally.* If a participating provider has a reasonable basis to believe that an Emergency Broadband Benefit Program subscriber does not meet or no longer meets the criteria to be considered an eligible household under 47 CFR § 54.1605, the participating provider must notify the subscriber of impending termination of his or her Emergency Broadband Benefit discount. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. The participating provider must allow a subscriber 30 days following the date of the impending termination letter to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the National Verifier or the participating provider consistent with the participating provider's approved alternative verification process. A participating provider must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's deadline to respond.

(b) *De-enrollment for duplicative support.* Notwithstanding paragraph (a) of this section, upon notification by the Administrator to any participating provider that a subscriber is receiving the Emergency Broadband Benefit discount from another participating provider, or that more than one member of a subscriber's household is receiving the Emergency Broadband Benefit discount and that the subscriber should be de-enrolled from participation in that provider's Emergency Broadband Benefit program, the participating provider must de-enroll the subscriber from participation in that provider's Emergency Broadband Benefit discount within five business days. A participating provider shall not claim any de-enrolled subscriber for Emergency Broadband Benefit reimbursement following the date of that subscriber's de-enrollment.

(c) *De-enrollment requested by subscriber.* If a participating provider receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

§ 54.1610 Expiration of Emergency Broadband Benefit Program.

(a) Prior to the conclusion of the Emergency Broadband Benefit Program, the Administrator will notify participating providers of the projected final service month for which participating providers will be eligible to receive reimbursement for valid reimbursement claims submitted pursuant to 47 CFR § 54.1608. In that final month when valid reimbursement claims exceed remaining funds, the amount disbursed for both service and connected device claims to participating providers will be reduced on a pro-rata basis but will be no less than 50% of the total support amount for timely filed claims for service and connected devices provided to households.

(b) Concurrent with release of the notice by the Administrator pursuant to paragraph (a) of this section, no new households shall be enrolled in the Emergency Broadband Benefit Program.

(c) No later than 15 days after the Administrator provides notice pursuant to paragraph (a), participating providers shall give notice to subscribers receiving the Emergency Broadband Benefit of the last date or service month that the full benefit will apply to the household's bill, the last date or service month that the partial, final-month benefit will apply to their bill, and the expected rate of the broadband service once the benefit expires.

(d) At least 30 days before the end of the Emergency Broadband Benefit Program, as indicated in the notice sent by the Administrator pursuant to paragraph (a) of this section, participating providers must notify households about the upcoming end to the Emergency Broadband Benefit Program and clearly state that the household will be subject to the participating provider's generally applicable terms and conditions at the conclusion of the Emergency Broadband Benefit Program if the household elects to continue receiving broadband service from the participating provider.

§ 54.1611 Recordkeeping requirements.

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. Participating providers must maintain the documentation related to the eligibility determination and reimbursement claims for an Emergency Broadband Benefit Program subscriber for as long as the subscriber receives the Emergency Broadband Benefit discount from that participating provider, but for no less than the six full preceding calendar years.

§ 54.1612 Validity of electronic signatures.

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

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

Today the Federal Communications Commission makes history. It adopts rules for the nation's largest-ever program to help households nationwide afford broadband service. This is a big deal.

We do this now because late last year Congress charged this agency with building a new Emergency Broadband Benefit Program. This \$3.2 billion program was designed to offset the cost of high-speed internet service for those struggling to get the connectivity they need during the ongoing pandemic.

It's a challenge that is all too real for too many families. The Pew Research Center reports that one-third of broadband users fear not being able to afford service during this time. They worry because a cruel virus has upended so much in our economy and so much in our day-to-day life. Work, education, healthcare, and more have all migrated online. As a result, it's more apparent than ever before that broadband is no longer nice-to-have, it's need-to-have, for everyone, everywhere.

This is a program that will help those at risk of digital disconnection. It will help those sitting in cars in parking lots just to catch a Wi-Fi signal to go online for work. It will help those lingering outside the library with a laptop just to get a wireless signal for remote learning. It will help those who worry about choosing between paying a broadband bill and paying rent or buying groceries. This is good stuff. It can make a meaningful difference in the lives of people across the country.

Now for the details. The Emergency Broadband Benefit Program will provide eligible households with discounts of up to \$50 a month for broadband service, and up to \$75 a month if the household is on Tribal lands. It also will provide a one-time discount of up to \$100 on a computer or tablet for eligible households, as was directed under the law.

Congress provided several ways for households to qualify for the Emergency Broadband Benefit Program—all equally under the law. Pursuant to the statute, households that participate in an existing low-income or pandemic relief program offered by a broadband provider are eligible, as are Lifeline subscribers, including those that are on Medicaid or accept SNAP benefits. Households with kids receiving free and reduced-price lunch or school breakfast are also eligible, as are those with Pell grant recipients. In addition, so are households members who have lost jobs and seen their income reduced in the last year.

Of course, adopting these rules today is just the first step. So what happens next?

First, for this program to be a success, we need the assistance of local organizations, national organizations, schools, faith-based institutions, and others who are trusted voices in their communities, to help get the word out and encourage those in need to enroll. To make it easy for those who are interested in helping, we have a website dedicated to this program that includes a place for outreach partners to learn how they can get the word out. Check it out at <https://www.fcc.gov/broadbandbenefit>.

Second, we need to encourage broadband providers of every stripe to help by participating in the program and offering service to eligible households. To get these providers ready to go, Congress tasked the agency with reviewing and accepting applications from those who want to be a part of this program. That is just what we will do in the coming weeks—work with them and help them to get ready.

Third, we must build an IT system for this program that is easy to use and ready to go. We have to get this right because this system will need to enroll millions of households who will benefit from the program. But we also need to be respectful of the data we receive and protect the privacy of the information entrusted to us by these households and by other agencies on whom we need to rely. Our work on this is already underway, but across the board we need to do this the right way.

Finally, let me thank those at the FCC. My colleagues reviewed this program and provided their input on an especially fast schedule. We have incorporated their ideas when the law permitted, and recognize they had some ideas that may yet inform other programs and legislative initiatives down the road. In particular, I want to thank Commissioner Carr for his careful review and attention to detail to help make the program a success. I want to thank Commissioner Starks for his thoughtful focus on the beneficiaries who are at the heart of this effort, and especially his ideas to ensure that those households served by the free and reduced-price lunch program can easily and quickly participate in this program. I want to thank Commissioner Simington for his recognition of the importance of this program and his commitment to get this decision across the finish line. Likewise, I am grateful that the expert staff of the agency was able to pull together the rules for this program under such tight statutory deadlines. I am especially grateful for their continuing commitment to this initiative. I know that they will work hard to finish the tasks required to get this program up and running with providers and then ensure it is available to all those in need.

**STATEMENT OF
COMMISSIONER BRENDAN CARR
APPROVING IN PART AND CONCURRING IN PART**

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

Last year, this country was seized by a pandemic that seriously altered the lives of millions of Americans. In an instant, everyday tasks that used to be carried out in person moved online—from school, to work, to accessing health care. At the same moment, job losses mounted as waves of financial stress hit families across the country as so much of our nation’s economic activity slowed down or ground to a halt.

The FCC recognized the sudden shifts that the pandemic caused and immediately went to work to ensure that Americans stayed connected during the crisis. The Commission cleared the way for providers to donate computers and tablets so kids could learn from home, waived Lifeline rules so that under-resourced families wouldn’t lose wireless service, and worked closely with providers that launched new programs to connect low-income families with high-speed services. These actions made a very real difference, but they could not be sustained without additional support from Congress given the enormous capital it takes to build, maintain, and extend those vital connections.

At the end of last year, Congress came together and addressed this on a bipartisan basis by passing an unprecedented, \$3.2 billion Emergency Broadband Connectivity Fund. Under this law, Congress directed the FCC to use these appropriated dollars to establish an Emergency Broadband Benefit Program to help connect families that could otherwise not afford broadband, including families with school-aged children.

Due to the emergency need for this funding, Congress directed the FCC to stand up this program in record time, requiring that we promulgate regulations in less than 60 days. Getting a program of this size and complexity up and running in such a short time was never going to be an easy task. And since last December, FCC staff have worked through holidays and weekends to meet our statutory deadline and deliver for Americans that are in need. I want to express my sincere thanks and appreciation to them. I also want to commend Acting Chairwoman Rosenworcel and her staff who picked up the baton on this initiative after the starting gun had already gone off. Not the easiest of tasks to inherit.

For my part, I am pleased that our decision includes a number of my top priorities. For instance, we are moving forward with a unified start date for all eligible providers. This decision will help maximize consumer choice, encourage more robust participation in the program, and avoid the consumer confusion that could have resulted from staggered start dates.

I also want to thank my colleagues for agreeing to make some significant changes to the draft that circulated earlier this week. For one, rather than containing no guidance on when the FCC will stand up this emergency program, our decision now includes a timeline for beginning enrollment, specifying that we expect to open that process no later than 60 days from now. For another, we have now increased flexibility and reduced the burdens on providers that choose to participate in the program, thus creating stronger incentives for robust participation. We have also eliminated some disincentives by clarifying the rules that will govern the sunset of this initiative. We made progress on strengthening protections against waste, fraud, and abuse. And my colleagues agreed to additional changes, including bolstering the role that the Office of Economics and Analytics will play, improving the reliability of our forecast for how long the appropriated funding will last, and adding new guardrails on administrative expenses.

At the same time, I differ from my colleagues on a few of the issues we address today. But it is imperative that we come together, compromise, and find common ground so that we can stand up this program. For instance, while I would have preferred that we prioritize the needs of students, I remain pleased that the program we stand up today will benefit school kids. Indeed, we include several paths to participation for families with school-aged children, thus ensuring that we have stood up a program that

will put dollars directly towards the monthly Internet bills of families with children. I also would have preferred that we make more of the necessary decisions up front through this document, rather than delegating those choices to the Wireline Competition Bureau or to USAC. I think that doing so could have provided the public and providers with greater certainty about the path forward. And there remains significant work to ensure that this program will succeed.

I want to express my thanks once again to the FCC staff that have done yeoman's work to reach this point. And it's a long list.

From the Wireline Competition Bureau: Jodie Griffin, Christian Hoefly, Eric Wu, Celia Lewis, Micah Caldwell, John Lockwood, Jessica Campbell, Annick Banoun, Sherry Ross, Ryan Palmer, Allison Baker, Kris Monteith, and Jesse Jachman. From the Office of the Managing Director: Dan Daley, Tom Buckley, Jae Seong, and Mark Stephens. From the Office of the General Counsel: Malena Barzilai, Linda Oliver, Richard Mallen, William Richardson, Chin Yoo, Margaret Drake, Andrea Kelly, Jeffrey Steinberg, Bahareh Moradi, Paula Silberthau, and Elliot Tarloff. From the Consumer and Governmental Affairs Bureau: Eduard Bartholme, Zac Champ, Lyle Ishida, Keyla Hernandez-Ulloa, Matthew Duchesne, Sayuri Rajapakse, Barbara Esbin, Kimberly Wild, and Patrick Webre. And, finally, from the Enforcement Bureau: Kalun Lee, Keith Morgan, Pamela Gallant, Jeffrey Gee, Mindy Littell, Georgina Feigen, Rizwan Chowdhry, Victoria Randazzo, and Pam Slipakoff.

I welcomed the chance to work with my colleagues and staff to improve our decision today. I will be voting to approve in part and concur in part.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

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

In June of 2020, I co-authored an op-ed with leaders Reverend Al Sharpton, Vanita Gupta, Marc Morial, and Maurita Coley entitled, *Broadband Access Is a Civil Right We Can't Afford to Lose—But Many Can't Afford to Have*.¹ The first line in that piece reads: “There is a broadband emergency in America.” I am deeply proud of today’s action that follows through with that fierce urgency of now. If we are successful—and we must be—the Emergency Broadband Benefit (EBB) will reach more disconnected low-income households and people of color than any previous FCC effort to close the digital divide.

For the past year, Americans have banded together to fight the novel coronavirus. Together we have cared for loved ones, supported local businesses, and helped children continue their educations virtually. While many of us migrated our lives online to keep our communities safe and healthy, tens of millions of Americans without access to high-quality, affordable broadband have been left out of that digital shift. Our long-standing digital divide has morphed into a monstrous COVID-19 divide.

While the FCC has focused on expanding rural access, we have yet to take up the central reason that 77 million Americans lack access to an adequate home broadband connection: affordability. No family should have to decide between keeping the lights on or getting the household connected. Even now, Black Americans and other people of color are significantly less likely to have a home broadband connection than their counterparts. This cannot stand. We can no longer defer the hard work on digital equity and believe that a future group and time will solve this issue. This is the time, and now is the moment. When we focus on broadband in America, we must focus on the smoldering front that communities of color constitute in our battle for internet equality. As we look to our shared future, we have an unparalleled opportunity to rebuild our economy by connecting the unconnected, keep Americans safe by advancing telemedicine, and broaden the horizons of young learners everywhere by supporting remote education.

That brings us to today. I am proud to approve the rules implementing the Emergency Broadband Benefit Program—the largest COVID-emergency broadband program to date. As I have said many times over the last few weeks, I have great expectations for this program. Importantly, the EBB not only supports people who are eligible for the FCC’s existing Lifeline program (generally households at or below 135 percent of the Federal Poverty Guidelines), but it also extends to families with students enrolled in free or reduced-price school lunch or breakfast programs, people who have received a Federal Pell Grant, and those who have experienced a COVID-related loss of income. Greater support and more expansive eligibility ensure the program reaches those most in need during this coronavirus crisis.

There are a number of important features in today’s Order, and I want to highlight just a few. First, in accord with the Consolidated Appropriations Act of 2021, I am glad that we are expanding the capabilities of the National Verifier to allow verification of eligibility based on substantial loss of income, Federal Pell Grant participation, and participation in the Richard B. Russell National School Lunch Act or the school breakfast program under section 4 of the Child Nutrition Act. The Order directs the Universal Service Administrative Company (USAC) to enter database agreements to make verifying these new categories through the National Verifier automatic to the extent possible and to accept a wide variety of documentation if manual review is required. For laudable privacy and security reasons, setting up new

¹ Reverend Al Sharpton, Commissioner Geoffrey Starks, Vanita Gupta, Marc Morial, & Maurita Coley, *Broadband Access is a Civil Right We Can't Afford to Lose – But Many Can't Afford to Have*, ESSENCE (June 17, 2020), <https://www.essence.com/news/broadband-access-is-a-civil-right-we-cant-afford-to-lose-but-many-cant-afford-to-have/>.

(continued....)

database connections can be a burdensome and time-consuming process. It's well worth the effort. A recent GAO report on the National Verifier documents that the manual review process has not worked well for many people applying to the FCC's Lifeline program. In fact, two-thirds of applicants who underwent manual review between June 2018 and June 2020 did not get across the finish line and complete their applications.²

We heard from many broadband providers that they hoped to simplify their participation by relying on the National Verifier exclusively, rather than alternative verification means. These important changes will ensure that more eligible families have more provider options in the program—especially Pell Grant recipients. Just last week, I held my second annual HBCU Presidents' Roundtable where I heard an update about the pressing internet access issues HBCU students have faced during the pandemic period. HBCUs graduate about 20 percent of all Black undergrads, and more than half of HBCU students are the first in their families to attend college. Moreover, 75 percent of HBCU students qualify for Pell Grants. I will closely monitor the development of verification systems for Pell Grant recipients to ensure student-onboarding systems are efficient and effective, so that the EBB properly serves the next generation of leaders.

Second, I am pleased the Order removes roadblocks to getting families with children connected. When designing this benefit, Congress specifically targeted support for families with children participating in free and reduced-price lunch and breakfast programs. We have learned, however, that relying on those nutrition programs for eligibility presents logistical and privacy challenges. Many students who receive these meals do not have individual documentation of their participation, and schools need specific authorization under state and federal laws to release it. For many parents, the pandemic has surely made getting this kind of documentation harder. In order to reduce enrollment barriers, I called for the Commission to consider all households with students enrolled in USDA Community Eligibility Provision (CEP) schools eligible for the EBB. CEP "allows the nation's highest poverty schools and districts to serve breakfast and lunch at no cost to all enrolled students without collecting household applications."³ These low-income communities constitute some of the most persistently disconnected households in our country.

Quite clearly, we must connect these households as quickly as possible, with as few burdens as practicable. To that end, I proposed that in order to enroll these CEP households into the program, a household need only provide the name of their child's school.⁴ I also pushed for an expedited verification process for CEP households enrolling in EBB, so they can be verified automatically without the need for follow-up interactions or documentation. I thank the Acting Chair and my colleagues for agreeing to implement this fast action with a high impact. Approving eligibility based on CEP will make broadband more accessible for the 14.9 million students attending some of the nation's highest-poverty schools, a victory that will help to ensure that they do not lag behind their peers during the ongoing public health emergency.

I thank my colleagues for working with me to ease administrative burdens on these families. This week, I met with students and Principal Willie Brewster from Brenda Scott Academy in Detroit, Michigan, a performing arts school at which 88% of students are Black and 80% of students qualify for free or reduced-price lunch. These young middle school students talked about their dreams of one day

² U.S. Gov't Accountability Off., GAO-21-235, FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience 16 (2021).

³ *Community Eligibility Provision*, U.S. Dep't of Agric., <https://www.fns.usda.gov/cn/community-eligibility-provision> (last visited Feb. 25, 2021).

⁴ This is important because one of CEP's many benefits is reducing stigma by treating all students the same at mealtimes, and many parents may not even realize that CEP is the reason their child is receiving meals at school. This list of CEP schools is public information.

working in digital animation, film, and civil rights law. Beyond their dreams, they shared their reality with me as well. They spoke candidly about both the successes and challenges of their experiences with online learning during the COVID-19 pandemic. They talked about their needs for faster, more reliable broadband, so they can engage in synchronous learning, as well as upgraded devices so they are not as dependent on their cell phones to learn. What struck me most was one eighth grader who said plainly that she “needed a better internet.” I agree. It is clear that EBB can be the start to transforming the lives of our next generation of leaders.

Reducing administrative burdens is especially important to me because we know that some households will have to transition to a different broadband provider or program to take advantage of EBB. The Order we adopt today acknowledges the critical efforts of local governments, community institutions, housing providers, schools, state departments of education, and other organizations that have created their own broadband programs. Many of these organizations connected thousands of households in senior and student residences, mobile home parks, apartment buildings, and federal housing units using bulk or sponsored billing arrangements, in which households receive service through an intermediary. We will need to work with these organizations—frequently serving at the local level—to make sure that we don’t lose eligible families that can and want to move to EBB.

Finally, I am pleased my colleagues and I have reached a solution that prioritizes transparency and consumer protection as we plan for the time when the program begins to wind down. The EBB structure—a fixed pot of funds for an uncertain number of households—presents a difficult challenge. The Order we adopt today balances the risk of leaving a significant amount of unspent money in the fund with the need to minimize bill shock in the final month of the program. Promising in advance that the final month’s subsidy would be no less than 50% of the standard amount was a fine start for the draft Order, but I could not help but worry that without better protections, millions of low-income families might owe up to \$25 dollars above their EBB-discounted payment in the program’s last month. For millions of struggling families, an unexpected \$25 bill can be a lot. To that end, I take note that many carrier-sponsored low-income broadband programs price their service at around \$10 per month. With those concerns in mind, I requested an opt-in approach for partial discounts, in which households would need to affirmatively consent to continue service during the final month of the program if they are to receive a partial subsidy. That is to say, in the final month of the EBB, I want to make sure that no families will have to pay out of pocket for broadband service unless they choose to do so. Requiring providers to seek an opt-in ensures families will not be forced to make big sacrifices to pay for an unwelcome bill or end up with an unpaid balance to a provider that potentially locks them out of future broadband opportunities. Thank you to the Acting Chair for working with me and to my colleagues for agreeing to this change.

* * * * *

Diligent administration of this benefit will significantly impact families across the country, but I am mindful that this is a temporary solution to a long-term problem. Tens of millions of Americans lacked access to broadband services long before COVID-19. They need a permanent solution. I am hopeful that the EBB will serve as a substantial step toward a future where all Americans have access to high-quality, affordable broadband.

Organizing a program of this size and urgency has taken an enormous commitment from the Commission’s staff. Your unwavering dedication will ensure members of our most vulnerable communities experience the transformative impact of broadband connectivity. Thank you for preparing this Order and for the hard work yet to come.

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

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

The pandemic has cost hundreds of thousands of American lives and millions of American jobs. It has isolated people from one another and dramatically disrupted the flow of everyday life. And, for too many American families who have been impacted financially by the pandemic, it has forced difficult choices regarding which bills to pay.

For the most vulnerable Americans who rely more than ever on broadband to connect to family, to school, to doctors, and to services, the need to stay connected during this pandemic is non-negotiable. And if we are able to help those Americans stay connected, we should. Fortunately, Congress directed us to do just that.

With today's vote, the Commission acts swiftly to implement a program that will help those most affected by the pandemic to stay connected to the those who mean the most to them. Yet while the Commission has acted quickly, today's order creates thoughtful, fair, and sensible policies. I could not be prouder of, or more humbled by, the diligent work of the employees across the agency, particularly those in the Wireline Competition Bureau. I am further thankful to my dedicated staff for their contributions leading up to this vote. Lastly, I am thankful to my fellow Commissioners and their staffs for their critical, and down-to-the-wire, work in negotiating and drafting the order. Positive aspects that I'd like to particularly like to highlight include the common start date, which helps all broadband providers to ramp up and enter the program on level footing; flexible eligibility verification for those providers who need it; and sensible guardrails to prevent waste, fraud, and abuse.

While the focus today must be on serving those hurt by the pandemic, it bears mentioning that this item was shepherded for a prompt vote by Acting Chairwoman Rosenworcel. I deeply appreciate her leadership and the contributions of her staff in creating a comprehensive and balanced order.

I am proud to vote to approve this item.

FCC Emergency Broadband Benefit Program Fact Sheet

On February 25th, the FCC unanimously adopted a Report and Order that established the Emergency Broadband Benefit Program, a \$3.2 billion federal initiative to help lower the cost of high-speed internet for eligible households during the on-going COVID-19 pandemic. The Emergency Broadband Benefit Program was created by Congress in the Consolidated Appropriations Act of 2021.

The Report and Order along with the rules governing this program can be [found here](#), but below are a few important facts:

What Is the Benefit?

- Up to \$50/month discount for broadband services;
- Up to \$75/month discount for broadband services for households on Tribal lands; and
- A one-time discount of up to \$100 for a laptop, desktop computer, or tablet purchased through a participating provider.
- The Emergency Broadband Benefit is limited to one monthly service discount and one device discount per eligible household.

Who Is Eligible for the Emergency Broadband Benefit?

A household is eligible if one member of the household:

- Qualifies for the [Lifeline](#) program, including those who are on Medicaid or receive SNAP benefits;
- Receives benefits under the free and reduced-price school lunch program or the school breakfast program, including through the USDA Community Eligibility Provision, or did so in the 2019-2020 school year;
- Experienced a substantial loss of income since February 29, 2020, and the household had a total income in 2020 below \$99,000 for single filers and \$198,000 for joint filers;
- Received a Federal Pell Grant in the current award year; or
- Meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program.

When Can Eligible Households Sign Up?

- The FCC expects the Emergency Broadband Benefit program to be open to eligible households before the end of April, 2021. Please check the FCC's website, www.fcc.gov/broadbandbenefit, regularly for the latest information.

How Will Eligible Households Sign Up?

- Eligible households will enroll through participating broadband providers or directly with the Universal Service Administrative Company (USAC). Please check the FCC's website, www.fcc.gov/broadbandbenefit, regularly for the latest information on the enrollment process.

What Broadband Providers Will Be Offering the Emergency Broadband Benefit?

- Many types of broadband providers can qualify to provide service in this program.

- The FCC is currently setting up the systems needed for providers to participate.
- Contact information for the providers participating in the program will be posted on USAC's website: <https://www.usac.org/>.

Outreach

- The FCC is excited to partner with those who want to help get the word out about this critical program. Please visit www.fcc.gov/broadbandbenefit to sign up to receive important updates and information about the Emergency Broadband Benefit program.



LORMAN[®]

📍 2510 Alpine Road Eau Claire, WI 54703

💻 www.lorman.com ☎ 866-352-9539 ✉ customerservice@lorman.com



©2021 Lorman Education Services. All Rights Reserved.

All Rights Reserved. Lorman training programs are copyrighted and may not be recorded or transcribed in whole or part without its express prior written permission. Your attendance at or viewing of a Lorman training program constitutes your agreement not to record or transcribe all or any part of it. Full terms and conditions available at www.lorman.com/terms.php.

This manual was created for online viewing. State specific information in this manual is used for illustration and is an example only. This publication is designed to provide general information on the topic presented. It is sold with the understanding that the publisher is not engaged in rendering any legal or professional services. The opinions or viewpoints expressed by faculty members do not necessarily reflect those of Lorman Education Services. These materials were prepared by the faculty who are solely responsible for the correctness and appropriateness of the content. Although this manual is prepared by professionals, the content and information provided should not be used as a substitute for professional services, and such content and information does not constitute legal or other professional advice. If legal or other professional advice is required, the services of a professional should be sought. Lorman Education Services is in no way responsible or liable for any advice or information provided by the faculty.

This disclosure may be required by the Circular 230 regulations of the U.S. Treasury and the Internal Revenue Service. We inform you that any federal tax advice contained in this written communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding federal tax penalties imposed by the federal government or (ii) promoting, marketing or recommending to another party any tax related matters addressed herein.