

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

**Emergency Broadband Connectivity Fund
Assistance**

)
) **WC Docket No. 20-445**
)
)

**Opening Comments of the National Consumer Law Center and
the United Church of Christ OC, Inc.**

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Table of Contents

Summary	i
I. Introduction	1
II. Background	2
III. Participating Providers	3
Provider participation in EBB.....	3
Standard Rate	4
Rolling Provider Elections	5
Use of the Lifeline National Verifier and Duplicates Database (NLAD) for the EBB.....	5
Parallel tracks to facilitate faster rollout of EBB	6
Delegate Non-ETC Applications to Wireline Competition Bureau.....	7
IV. Eligible Households	7
Definition of Eligible Household	7
Verification of Household Eligibility for the EBB.	7
V. Reimbursement Processes	10
Covered Services.....	10
Covered Devices	10
Reimbursement.....	10
VI. Outreach and Education Campaign	11
Promoting Awareness	11
Consumer Protection, Facilitating Choice and Transition	12
VII. Program Integrity Assurances	14
Audits	14
Enforcement	14
Part 54 Rules	15
Reporting.....	15
VIII. Conclusion	15

Summary

Participating providers.

NCLC and UCC generally support the FCC's proposals with respect to company intent to participate. We urge simple processes wherever possible. The FCC may wish to require submission of product offerings via a form that would facilitate the easy digital sharing of that information by the FCC and others. Product offers that are temporary or short-term but were in effect on December 1, 2020 should be clearly labelled to assist consumers. The FCC should permit providers to offer products at lower rates or at higher quality. NCLC and UCC support the requirement for agents enrolling customers in the EBB to register as a program integrity measure to minimize waste, fraud and abuse and to protect the personal information of consumers participating in the EBB and Lifeline programs.

The FCC should delegate to the Wireline Competition Bureau authority to review and approve or deny applications of non-eligible telecommunications carriers.

Eligible Households

The FCC must be careful to ensure that rules are clear that each eligible economic household may receive both a Lifeline benefit and an EBB benefit and also to not confuse a U.S. Postal address and an economic household, since multiple low-income households often share physical addresses. The FCC should adopt the Lifeline definition of “household.” We urge the Commission to start now to make available to non-ETCs, and digital equity organizations USAC introductions to the National Lifeline Accountability Database and Lifeline National Eligibility Verifier processes. We support the FCC's proposal to use the Lifeline eligible verification process for the EBB and therefore note that existing Lifeline households do not need to re-demonstrate their eligibility for the EBB. The FCC should expand and utilize the Lifeline Support Center to assist EBB participants.

The FCC should not require submission of the last four digits of a Social Security number for the EBB and, at a minimum, should permit use of an Individual Taxpayer Identification Number (ITIN) instead. The Commission and USAC should add HUD-assisted housing programs with comparable income criteria as HUD Public Housing to the EBB eligibility verification process—these users are currently not included in the databases used to verify eligibility.

Reimbursement

“Associated equipment” should include equipment that is tied to the ability of a household to use the broadband service, *e.g.*, modems and routers. Providers should certify that devices receiving reimbursement must be capable for supporting video conferencing platforms for online schooling or telemedicine. The FCC should use the Lifeline Claims System to handle EBB reimbursements.

We support requiring certification that the household receiving the connected device has received the emergency broadband benefit from the provider and made a financial contribution capped at an amount between \$10 to \$50 for the device. We also recommend that providers must certify that it has notified participating households of how to file a complaint with the ombudsman/complaint hotline. The number of complaints and the nature of the complaints should be reported to the FCC and made available to the public to help track the performance of the program.

Outreach

The FCC and USAC should develop outward-facing consumer friendly simple branding and descriptions of the program that can be used by a wide variety of stakeholders. Information should be simple, easily translatable and available via many distribution mechanisms, including the mass media and the telephone. The FCC should allocate some funds for advertising and publicity and work with public relations experts in the media and the philanthropic community to develop materials that can be pushed out via multiple platforms. The FCC should start holding roundtable discussions with relevant stakeholders now to develop these materials—before reply comments are filed.

The Commission should make clear that providers should not upsell or otherwise encourage eligible households participating in the program to purchase products that are not appropriate for their needs. Participating providers should be required to clearly and conspicuously describe to the consumer that the Emergency Broadband program is a federal program, and to include a brief standard Commission description of the program. The FCC should issue consumer advice materials to assist EBB consumers in selecting appropriate services at appropriate prices.

Given that the EBB's length will be of uncertain duration, the Commission should ensure participants receive timely and accurate information about the program's end and about exactly how much they will be required to pay for the service during the program.

Program Integrity

We support audits and emphasize that easy-to-use and understand program rules will go a long way to insulating consumers against fraud. Enforcement should focus on the fraud impacting the greatest number of consumers and dollars. Providers seeking to rely on alternate eligibility verification mechanisms should propose parameters for their alternate mechanisms that will fall within the safe harbor allowed by the statute.

The Commission should apply many of its Part 54 Lifeline rules, but not all of them. The following rules should *not* apply: annual recertification; de-enrollment for non-usage or failure to re-certify. Consumer usage of covered products and services should not be monitored to ensure the benefit is being used as that is invasive, intrusive and administratively burdensome.

The FCC should collect data to evaluate the success of the program. The following data would be useful: which services consumers choose, the prices they pay, why consumers leave the program, whether they choose the same provider for both Lifeline and EBB, the eligibility criteria consumers use to enter the program, geographic distribution of providers and the percentage and number of consumers who are able to choose among providers.

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I. Introduction

The National Consumer Law Center (NCLC) and the United Church of Christ (UCC) provide these Opening Comments to the Federal Communications Commission (Commission) in response to the January 4, 2021 Public Notice¹ seeking comments on the Emergency Broadband Benefit (EBB) program established in the Consolidated Appropriations Act, 2021 that was signed into law on December 27, 2020.² The United States is facing an unprecedented emergency, with nearly all people in the nation – from seniors to children – required to work, learn, and meet daily needs while staying at home. The need for connectivity across the country has never been greater, exacerbating the consequences of the existing digital divide, even as fewer people will be able to afford broadband during the crisis. For this reason, we strongly support a robust and rapid implementation of this federal program that maximizes participation by eligible low-income households and by competing broadband providers.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain

¹ Public Notice, Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance, DA 21-6 (Rel. Jan. 4, 2021) (PN).

² Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX, §904(2020).

wealth, and advance economic fairness. NCLC files these comments on behalf of its low-income clients.

The United Church of Christ is a faith community rooted in justice that recognizes the unique power of the media to shape public understanding and thus society. For this reason, UCC's Office of Communication, Inc. (OC Inc.) works to create just and equitable media structures that give meaningful voice to diverse peoples, cultures and ideas. Established in 1959, OC Inc. ultimately established the right of all citizens to participate at the Federal Communications Commission as part of its efforts to ensure a television broadcaster in Jackson, MS served its African-American viewers during the civil rights movement. The Cleveland-based United Church of Christ has thousands of local congregations across the United States; it was formed by the 1957 union of the Congregational Christian Churches and the Evangelical and Reformed Church.

UCC OC Inc. and NCLC have long advocated on behalf of the most vulnerable people in the U.S. to ensure they receive appropriate and affordable access to communications services that will enable them to fully participate in society. The EBB is an emergency program to help households afford essential broadband service and to stem the spread of COVID by enabling families to access healthcare, education, work and access benefits remotely. We strongly support the existing Lifeline program and believe the emergency broadband benefit program will be able to rapidly respond to the existing need for affordable broadband by using, but improving, the features of the existing Lifeline program.

II. Background

The Emergency Broadband Connectivity Fund Assistance program (Emergency Broadband Benefit or EBB) is intended by Congress to provide eligible households with up to a \$50 (\$75 for households on Tribal lands) monthly discount off the cost of broadband service and up to \$100 towards a connective device ("laptop or desktop computer or a tablet") as long as the household pays \$10 to \$50 towards the cost of the device.³ There is a limit of one connected device subsidy per household.⁴ The EBB program runs during the emergency period related to the COVID-19 pandemic.⁵ Providers participating in the EBB program will be reimbursed for providing the discounted service and, if applicable, connected devices to eligible households.⁶ Provider participation in the EBB is voluntary⁷ and eligible providers must either be an eligible telecommunications carrier (ETC) or be approved by the Commission.⁸ As discussed in greater

³ H.R. 133, div. N, tit. IX, §904(a)(7) and (b)(5).

⁴ H.R. 133, div. N, tit. IX, §904(b)(5).

⁵ H.R. 133, div. N, tit. IX, §904(b)(1) and (a)(8).

⁶ H.R. 133, div. N, tit. IX, §904(b)(1).

⁷ H.R. 133, div. N, tit. IX, §904(a)(12)(B).

⁸ H.R. 133, div. N, tit. IX, §904(a)(12),(d)(2).

detail below, we support the Commission’s proposal to use many of the Lifeline⁹ processes to administer the EBB. Consumers are able to participate in the EBB and the Lifeline program concurrently, and Lifeline eligibility is one of the means of qualifying for the EBB.

III. Participating Providers

Provider participation in EBB

Congress set forth two mechanisms for providers to participate in the EBB: (1) ETCs¹⁰ are eligible to participate in the EBB and do not need additional Commission permission, and (2) non-ETCs must receive Commission approval through an expedited process to participate in the EBB.¹¹ Furthermore, the Commission is directed to automatically approve 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.”¹²

For providers seeking to participate in the EBB, the Commission proposes:¹³

- (1) The Provider notify the Universal Services Administrative Company (USAC) that it elects to participate in the EBB, and indicate:
 - The states in which it plans to participate;
 - In each such state, it meets the Act’s definition of “broadband provider” as of December 1, 2020;
 - Whether it is an ETC or seeking Commission designation to participate (or both);
 - Whether it intends to distribute connected devices in each state;
 - A description of the Internet service offerings¹⁴ for which it plans to seek reimbursement in each state, and
 - Documentation of standard rates for the services¹⁵ for which it may claim reimbursement for the EBB.

⁹ 47 C.F.R. §54.400 et seq.

¹⁰ ETCs are designated according to 47 U.S.C. § 214(e) of the Communications Act (e.g., providers currently participating in the High Cost and Lifeline programs).

¹¹ H.R. 133, div. N, tit. IX, §904(a)(12) and (d)(2).

¹² H.R. 133, div. N, tit. IX, §904(d)(2).

¹³ PN at pp. 2-3.

¹⁴ The Act defines “internet service offerings” as a “broadband internet access service provided by[a broadband] 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.” See H.R. 133, div. N, tit. IX, §904(a)(9).

¹⁵ The Act defines “standard rate” as “the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020, excluding any taxes of governmental fees.” See H.R. 133, div. N, tit. IX, §904(a)(13).

NCLC and UCC generally support the Commission’s proposal for the process for providers to participate in the EBB although we are concerned that the requirement that all broadband providers must have been existence as of December 1, 2020 is unduly broad.

We recommend that the Commission keep the processes as simple as possible. For example, the last two items in the provider’s notice to participate—the description of the Internet service offerings and the documentation of standard rates for service—could be accomplished by providing documentation of existing offers from a provider’s website that contains the relevant information. The Commission or USAC should post the providers’ notices of their election to participate on an EBB webpage and the information contained in the notices of approved providers should be used to create consumer materials about the EBB offerings available in each state.

To facilitate the inclusion of offers on the Commission’s or other websites, the Commission should collect product offering data via a form that would enable information to be passed along digitally. This could then be used by various entities, such as digital inclusion organizations, to generate more targeted materials to assist consumers in comparing products. For example, the form could ask for price, minimum and maximum speeds, data caps, and other components of the offer. Such forms, however, should leave significant flexibility for providers to share information about their existing products. The onus should rest on the providers to ensure that the descriptions provided to the FCC and USAC are up to date.

Standard Rate

The Commission seeks comment on how to address promotional rates and contracts of varying lengths in its interpretation of standard rate.¹⁶ In recognition that the EBB is a temporary emergency program versus a permanent low-income broadband benefit program and that having a competitive choice of quality EBB service offerings will enhance the value of this program for consumers, the approval process should be streamlined.

Nevertheless, NCLC and UCC caution that streamlining should not come at the expense of consumer protection. Rates in effect on December 1, 2020 might be teaser rates or promotional offers, and low-income consumers could be at great risk of bill shock if they sign up for broadband service at these short-term rates which are available for varying lengths of time. The EBB was established in recognition that broadband service is a lifeline to essential services such as healthcare, education, the job market and benefits. The intent of the Act would be thwarted by rates that can quickly become unaffordable at the end of a promotional period or where the rates can change shortly into the start of service. It may be impractical to eliminate teaser rates and short-term offers but the Commission should require, in the description of the service offerings and consumer education and outreach materials and shopping tools, clear

¹⁶ PN at 3.

labeling of services where the rates will not change from month to month, and those services where the rates are subject to increase (and to what amount and when).

To incentivize a more competitive array of EBB service offerings, providers should be permitted to provide better services (e.g., faster upload and download speeds) or lower rates than their December 1, 2020 broadband service offerings (e.g., the extension of a three-month teaser rate to a 12-month teaser rate). The statute permits improved offerings: Section 904(a)(7)'s definition of the emergency benefit states the "actual amount" offered to households should be "no more than" the standard rate.¹⁷ Consumers must be able to shop with their feet and the EBB should not include a freeze on the ability of consumers to port their monthly service benefit to another provider.

Rolling Provider Elections

The Commission proposes to accept provider elections to participate in the EBB on a rolling basis.¹⁸ This would allow consumers to quickly begin enrolling in EBB services. We note that the rolling basis for elections favor providers with existing relationships with eligible households, *i.e.*, ETCs currently participating in the Lifeline programs and non-ETCs with low-income broadband programs currently in place (provided the non-ETCs are able to quickly become a participating EBB provider). To ensure that eligible low-income households are able to enroll in a broadband service that best meets their household's needs, the Commission must plan for a multi-pronged, concerted outreach and education campaign about the EBB program and ensure consumers can switch EBB providers as discussed below. The Commission may want to consider a soft launch date in early to mid-March that would signify to the public the earliest date at which the program will be in effect.

Use of the Lifeline National Verifier and Duplicates Database (NLAD) for the EBB

The Act sets forth three methods for verifying that a household is eligible for participation in the EBB: (1) through use of the Lifeline National Verifier and National Lifeline Accountability Database (NLAD); (2) an alternative, Commission-approved verification process of the participating provider, or (3) reliance on a school to verify the eligibility of a household based on participation in the free and reduced lunch/breakfast program.¹⁹ The Act requires that the Commission expedite the availability of participating providers to access the National Verifier and the NLAD.²⁰ The Commission proposes requiring participating providers to register their agents and other enrollment representatives with the Representative Accountability Database (RAD).²¹ NCLC and UCC support this requirement as a program integrity measure to

¹⁷ See H.R. 133, div. N, tit. IX, §904(a)(7).

¹⁸ PN at 3.

¹⁹ H.R. 133, div. N, tit. IX, §904(b)(2).

²⁰ H.R. 133, div. N, tit. IX, §904(b)(3).

²¹ PN at 4.

minimize waste, fraud and abuse and to protect the personal information of consumers participating in the EBB and Lifeline programs.

The Commission proposes to use the NLAD to track enrollments to avoid duplicative support and proposes that the NLAD associate eligible subscribers with up to two providers (Lifeline and EBB).²² Given that the statute explicitly permits a Lifeline benefit to be offered in addition to the EBB benefit and that households may require a wireless as well as wired broadband service, the monthly broadband subsidy should not be blocked if a household is receiving a Lifeline benefit. We recommend, further, as in the Lifeline program to distinguish between a U.S. Postal Service address and an economic household: often more than one low-income household lives at a single physical address. Furthermore, two households sharing a single address might each sign up for a different EBB benefit—one for a wireless benefit and one for a wired benefit. Both households would be eligible. Using the Lifeline process to certify independent economic households is appropriate if more than one subscriber applies from the same address. The Act limits the connected device to one-per-household,²³ and the Lifeline-process to also certify independent economic household is also appropriate if more than one subscriber applies for the connected device from the same address.

Parallel tracks to facilitate faster rollout of EBB

On January 31, 2020 (and every three months since that date) the U.S. Secretary of Health and Human Services has declared a public health emergency due to COVID-19.²⁴ Since the spring of 2020, the public interest community and industry have been urging the FCC and Congress to establish an emergency broadband benefit during the pandemic in order for low-income households to protect the health and well-being of their household members and their community by sheltering at home.²⁵ The Commission is required by the Act to provide an expedited comment period and rapid deadline to establishment rules for the EBB.²⁶ Yet, time is of the essence to ensure that consumers will be able to benefit from a robust EBB as soon as possible. We urge the Commission to start now to introduce non-ETCs, and digital equity organizations to the National Lifeline Accountability Database and Lifeline National Eligibility Verifier processes. The existing training modules and webinars on these processes should be promoted in informational notices that can be easily shared through stakeholder associations and

²² PN at 6.

²³ H.R. 133, div. N, tit. IX, §904(b)(5).

²⁴ See US HHS, Determination of a Public Health Emergency (Jan. 31, 2020; April 21, 2020; July 23, 2020; October 2, 2020, and Jan. 7, 2021) available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>.

²⁵ See e.g., Letter to the FCC, re: Emergency Request for Increased Support During the COVID-19 Crisis, Dkt. Nos. 11-42, 09-197, 96-45, 17-287 (Mar. 23, 2020) (250 groups signed on to this letter asking for a \$50/month emergency broadband benefit) and Leadership Conference sign-on letter to Congressional Leadership signed by over 80 civil rights groups asking for a \$50/month emergency broadband benefit (Apr. 14, 2020). Available at <https://civilrights.org/resource/leadership-conference-letter-affordable-broadband-needed-for-public-health-economic-security/#>

²⁶ H.R. 133, div. N, tit. IX, §904(c)(2).

networks. In addition, the Commission should arrange for USAC office hours for these stakeholders to answer questions about existing Lifeline systems. The Commission and USAC (assuming the proposed program design set forth in the PN is adopted) should also consider, for non-ETCs, a soft launch or an experimental period to learn the technological interfaces prior to program launch and interaction with program participants in order to help expedite provider participation with the EBB.

Delegate Non-ETC Applications to Wireline Competition Bureau

In order to expedite the review process for participating providers' applications that are not already designated Eligible Telecommunications Carriers, the Commission should delegate to the Wireline Competition Bureau authority to review and approve/deny such applications.²⁷ The outcome of such reviews should be posted on a central Emergency Broadband Benefit webpage maintained by the FCC.

IV. Eligible Households

Definition of Eligible Household

The EBB is defined as a monthly discount for broadband service for an eligible household and the participating provider is reimbursed for the discount provided to the eligible household.²⁸ The connected device benefit in the EBB program is limited to one-per-household.²⁹ The Act does not define "household" and the Commission proposes to use the same definition of "household" as the Lifeline program.³⁰ We support the use of the Lifeline definition of household.³¹ This definition recognizes the plight of many low-income households who have doubled-up, or live in congregant living situations, enabling them to afford housing. Tying the EBB to a unique address would leave out the most vulnerable households in our society simply because they cannot afford single-family living situations.

Verification of Household Eligibility for the EBB.

Congress set forth five means by which a household qualifies for the EBB. A household is eligible for the EBB if the household or any member of the household:

- (1) meets the qualifications for Lifeline;
- (2) has been approved to receive benefits under the federal free and reduced lunch or school breakfast program;
- (3) has experienced a substantial loss of income since February 29, 2020;
- (4) has received a Pell Grant in the current award year; or

²⁷ PN at 5.

²⁸ H.R. 133, div. N, tit. IX, §904(a)(7) and (b)(1).

²⁹ H.R. 133, div. N, tit. IX, §904(b)(5).

³⁰ PN at 6.

³¹ Lifeline defines "household" as an independent economic unit consisting of "all adult individuals contributing to and sharing in the income and expenses of the household." See 47 C.F.R. §54.400(h). The federal Low Income Home Energy Assistance Program (LIHEAP). See 42 U.S.C. §8622 (5).

(5) meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to Commission's approval.³²

Furthermore, households cannot be disqualified from eligibility due to a past or present arrearage with a broadband provider.³³

Congress set forth three ways to verify a household is eligible for the EBB:

- (1) use the Lifeline National Eligibility Verifier (National Verifier) or National Lifeline Accountability Database (NLAD)
- (2) rely on an alternative participating provider verification process, subject to Commission approval; or
- (3) rely on a school to verify a household's participation in the federal free and reduced lunch or school breakfast program.³⁴

For the providers seeking to use the National Verifier and NLAD, the Commission is proposing to use the current Lifeline process, which is to require households to interact with the National Verifier to determine their eligibility for the EBB. The National Verifier is both an automated and manual process that relies on, to the extent possible, computer database matching. Currently the databases for Medicaid and HUD public housing in all the states are automatically matched. Some states have permitted computer matching with SNAP and SSI databases. Where households seek to prove eligibility for Lifeline in programs without a database connection with USAC, households are asked to provide documentation demonstrating participating in another qualifying program or by providing income documentation to prove income-eligibility.

USAC also provides a Lifeline Support Center which is available seven days a week from 9 am to 9 pm eastern to help customers with questions about the processes for enrolling in Lifeline and basic questions about the Lifeline program (but not detailed provider or service offering questions).³⁵ In addition to the National Verifier and NLAD, we recommend the use of the Lifeline Support Center to help consumers applying for EBB. Consumers, particularly those who have never heard of the Lifeline program will need additional help and resources to apply for EBB through the National Verifier. We discuss further below outreach and education recommendations to help consumers successfully navigate the application process.

Consumers already enrolled in Lifeline, should not have to reapply through the National Verifier for the EBB. These consumers should just sign up for eligible broadband service with the eligible provider of their choice. That provider will then engage with the USAC systems to record the customer and service selection. EBB customers should receive timely notice of their enrollment

³² H.R. 133, div. N, tit. IX, §904(a)(6).

³³ H.R. 133, div. N, tit. IX, §904(a)(6).

³⁴ H.R. 133, div. N, tit. IX, §904(b)(2).

³⁵ See <https://www.lifelinesupport.org/help/>.

into the EBB and the application of the broadband benefit to the cost of the service the customer has selected.

Consumers who are not in the current USAC Lifeline National Verifier and NLAD systems, to the extent those consumers are relying on the additional program eligibility criteria outside of Lifeline, we expect the eligibility determinations will require more manual processes (e.g., uploading of eligibility documentation) because computer matching agreements will take time to establish.³⁶ The Commission should ensure that the full range of EBB-eligible households can easily apply for this critical benefit.

The Commission should permit for documentation other than the social security number, such as an Individual Taxpayer Identification Number (ITIN), for the identity authentication check.

We also recommend that the Commission and USAC work with the subsidized affordable multi-family owners and operators who run HUD-assisted housing programs with comparable income criteria as HUD Public Housing, but are in the HUD Tenant Rental Assistance Certification System (TRACs). The affordable housing providers own and operate buildings where all or substantially all the residents are receiving project based Section 8 and Section 202 but are not currently included in the computer matching agreements used by the Lifeline program.³⁷ We agree with the affordable multifamily housing advocates who recommend that the FCC work with HUD to publish a list of all the assisted multifamily properties where all or substantially all the units are assisted under project-based Section 8 or Section 202 (the annual average income of their tenants is \$12,897³⁸), so that households applying to EBB based on participation in federally assisted housing can be quickly verified by checking that their address appears on one of these lists.³⁹ The Commission should ensure that federally assisted multifamily housing advocates also seek help in ensuring their ability to batch verify their tenants in the National Verifier.⁴⁰ Ensuring that these project-based Section 8 and Section 202 housing tenants have a streamlined process for accessing the EBB will help some of the most vulnerable households obtain broadband service.

³⁶ Should the opportunity arise for a more permanent or longer EBB program due to future actions by Congress or the FCC, we would recommend that resources be directed to aggressive steps towards the establishment of computer matching agreements be established promptly.

³⁷ Stewards of Affordable Housing for the Future Comments (Jan. 25, 2021) at p.3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

V. Reimbursement Processes

Covered Services

The Commission seeks comment on whether “associated equipment,” included within the broadband benefit definition, should be clarified to include monthly rental costs for modems and/or routers that are offered as part of an Internet service offering and if other customer-premises equipment should be eligible.⁴¹ NCLC and UCC encourage the Commission to prioritize administrative simplicity where possible and to facilitate the availability of competitive offerings for consumers. For a temporary program, where speed is of the essence, associated equipment should be limited to equipment tied to the ability of a household to use the broadband service, *e.g.*, modems and routers. Low-income, struggling households are not likely to have the discretionary income to pay for this equipment out of pocket. We recommend that households must affirmatively consent to the inclusion of associated equipment, and the costs or monthly charges must not be more than the costs or monthly charges to non-participating customers, but may be less. NCLC and UCC recommend that the FCC permit providers some flexibility to spread the cost of the associated equipment over several months to ensure that low-income households can afford the cost of the equipment.

Covered Devices

To the extent participating providers are offering connected devices eligible for reimbursement under the EBB, we expect that these devices will be capable of supporting video conferencing platforms suitable for online schooling and telemedicine. We are also mindful of the need for a streamlined program that can be quickly stood up so that consumers can connect to essential broadband service during this pandemic. For this emergency benefit, providers should certify that the covered devices will be able to support the common video conferencing platforms and the FCC and USAC should have an ombudsman/complaint hotline to address consumer concerns regarding covered devices as well as other aspects of the EBB program.

Reimbursement

We support the Commission’s proposal to use the Lifeline Claims System to handle the EBB reimbursements to the participating provider⁴² because it will provide the program integrity to ensure that the program funds are directed to eligible providers and consumers for eligible services and devices in accordance with the requirements of the statute.

The Commission seeks comment on whether additional provider certifications should be submitted when seeking reimbursement.⁴³ The statute requires providers to certify:

- (1) that the reimbursement amounts are not more than the standard rate;

⁴¹ PN at 8 (citing Section 904(a)(7)).

⁴² PN at 9, fn 57. See also H.R. 133, div. N, tit. IX, §904(b)(4)-(5).

⁴³ PN at 9.

- (2) that each household will not be charged for a broadband offering if the standard rate is less than or equal to the broadband benefit or will not be charged more than the difference between the standard rate and the benefit;
- (3) that the household will not be charged an early termination fee;
- (4) that the household was not subject to a mandatory waiting period before receipt of the benefit; and
- (5) that each household is subject to the provider's generally applicable terms and conditions.⁴⁴

We recommend the inclusion of a certification that, to the extent that the provider is seeking reimbursement for covered devices, the covered devices are able to support the common video conferencing platforms used for online schooling and telemedicine. We support requiring certification that the household receiving the connected device has received the emergency broadband benefit from the provider and made a financial contribution capped at an amount between \$10 to \$50 for the device.⁴⁵ We also recommend the inclusion of a certification that the provider has notified participating households of how to file a complaint with the ombudsman/complaint hotline. The number of complaints and the nature of the complaints should be reported to the FCC and made available to the public to help track the performance of the program.

VI. Outreach and Education Campaign

Promoting Awareness

Promoting awareness of the program is perhaps the most important element of its implementation upon which its success depends.⁴⁶ Currently Lifeline suffers from a lack of participation, often because eligible consumers are unaware of the benefit. NCLC and UCC recommend the following steps to promote the program.

The FCC and USAC should develop outward-facing consumer-friendly and simple branding as well as descriptions of the program that can be used by a wide variety of stakeholders. These stakeholders include: consumers, digital inclusion experts, other intermediaries such as social service agencies and unemployment offices that interact with eligible populations, large and small broadband providers who want to publicize the program, civil rights organizations, faith communities and non-profits, members of Congress, governors, mayors, local elected officials, state and local broadband offices, school officials and more. As such, the basic information should be extremely simple, easily translatable, and recognizable. It should include basic information which then can be used to direct consumers to more detailed information should they require it. At all times, the FCC must remember that the target populations for this program often do not have Internet access, so this information must also be

⁴⁴ See PN at 9 citing provisions of the statute.

⁴⁵ PN at 10.

⁴⁶ PN at 10.

available via phone or other means. The Commission should translate the materials or work with community organizations to ensure they are translated.

The FCC should allocate some of the funds earmarked for implementing the program for advertising and publicity and work with public relations experts in the media and the philanthropic community to develop materials that can be pushed out via multiple platforms. Examples include: model articles for newsletters, visuals for posters, audio spots, and video shorts that can be shared on social media or cable access channels.

In order to best develop these materials, we recommend the FCC host a roundtable and invite experts in this kind of communication to collaborate on ideas and also share best practices. This roundtable should begin before the reply comments are filed to jump-start publicity activities. The earliest information resources will not require all the details about the program, but the basics and sources where further information can be obtained at a later date. Information of this nature will take significant time to be transmitted within the relevant communities. Experience with other philanthropic programs demonstrates that often relevant communities are not aware of a program, or, are concerned that it is not a legitimate deal. Eligible households will have to receive multiple touches from multiple sources to hear about the program and will need information to come from their own trusted validation networks. The FCC must remember that the target populations for this program often do not have Internet access, so this information must also be available via phone or other means.

The FCC should collaborate with other governmental stakeholders to publicize the program and draw on their information networks and expertise. NTIA, HHS, SSA, the VA and others should be aware of the program and equipped to share information about the program easily using the materials described above.

Consumer Protection, Facilitating Choice and Transition

While the commission did not seek comment explicitly on consumer protection measures, these are particularly important in a program that focuses on the needs of individuals who are likely to have less sophistication about broadband offerings. The Commission should make clear that providers are not intended to upsell or otherwise encourage eligible households participating in the program to purchase products that are not appropriate for their needs.⁴⁷ Participating providers should be required to clearly and conspicuously describe to the consumer that the Emergency Broadband program is a federal program, and to include a brief standard

⁴⁷ Kelcee Griffis, "ISPs Say They Kept Virus Pledge, But Customers Disagree," *Law360* (Dec. 7, 2020), available at <https://www.law360.com/articles/1335121/isps-say-they-kept-virus-pledge-but-customers-disagree>. In other instances reports have surfaced of households that were required to cancel their COVID plan or automatically be charged for continued service. Jessica Snouwaert, "You can get free Spectrum internet for 60 days," *Business Insider* (Mar 16, 2020); Brenda Wintrode and Sean McGoey, "Disconnected: Students struggle with e-learning obstacles, lawmakers earmark solutions," *Capitol News Service* (Nov. 20, 2020) available at <https://cnsmaryland.org/2020/11/20/disconnected-students-struggle-with-e-learning-obstacles-lawmakers-earmark-solutions/>.

Commission description of the program and how to report a problem or seek help from the FCC. Consumers need transparent pricing in order to successfully benefit from the Emergency Broadband program. Low-income people are unlikely to participate in the program if they are unsure about the price they will pay for a product.⁴⁸ They will be reluctant to commit if they believe the pricing information is not reliable, because they are unlikely to be able to absorb unexpected costs. In particular, the FCC should require that all taxes and fees be disclosed and that the broadband benefit must be available to offset taxes and fees. The goal of the emergency broadband benefit will be thwarted if affordability and predictability are hampered or destroyed by unpredictable taxes or other fees.

The FCC should increase its capacity in its Lifeline Support Center to ensure individuals participating in the program can reach someone to answer questions or take a complaint. The FCC should offer very clear advice to program participants with respect to the Internet speeds necessary for various uses. It would also be useful for the FCC to publish, for example, a list of average prices so that consumers could review their prices against typical prices. The FCC might partner with consumer advocates to offer eligible households a worksheet to identify what kind of service they need.

A key challenge of the program is its unpredictable duration because of the limited appropriated funds. The FCC must require participating companies to be fully transparent with consumers, at the time of sign-up, about these factors. The Commission should adopt rules to ensure that participants receive timely and accurate information about the program's end and about exactly how much they will be required to pay for the service during the program (including any promotional rates, equipment and installation fees, and fees associated with exceeding the data cap). The Commission should also address what happens to the Emergency Broadband program after the benefit runs out. At a minimum, providers must receive the affirmative, informed consent from the consumer before continuing service with the participating provider when the Emergency Broadband program funds have run out, in order to protect consumers from bill shock at the end of the program.

⁴⁸ Dharma Dailey, Amelia Bryne, Alison Powell, Joe Karaganis and Jaewon Chung, *Broadband Adoption in Low-Income Communities* (Social Science Research Council, 2010) <https://www.ssrc.org/publications/view/broadband-adoption-in-low-income-communities/>; *Federal Communications Commission Consumer and Governmental Affairs Bureau White Paper on Bill Shock* (October 13, 2010) <https://transition.fcc.gov/stage/Bill-Shock-White-Paper.pdf>; *Truth-In-Billing Policy*, Federal Communications Commission, <https://www.fcc.gov/general/truth-billing-policy>; *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, 47 CFR 64 (2010) <https://www.federalregister.gov/documents/2010/11/26/2010-29669/empowering-consumers-to-avoid-bill-shock-consumer-information-and-disclosure>.

VII. Program Integrity Assurances

Audits

We support the FCC's proposals with respect to auditing procedures.⁴⁹ We urge the Commission to enable providers to rely on the FCC's eligibility verification systems in order to ease their participation in the program. Moreover, we urge the Commission to focus its audit and fraud-prevention efforts on rule violations that occur at scale and that impact the largest number of consumers.

In particular, we emphasize that a successful public education program will assist in ensuring that consumers are not victims of fraud from unscrupulous providers. If consumers can easily understand how they are eligible for the program and what they must do to demonstrate eligibility, it will produce more streamlined administration and they are less likely to be misled by misleading commercial marketing. If consumers can obtain reliable information and have access to dispute resolution resources, they will be able to more easily advocate for their own solutions and avoid harm.

Enforcement

We support the Commission's proposals to apply its existing enforcement authority to the emergency broadband program.⁵⁰ The Commission should be sure that it does not implement enforcement proceedings in a manner that would negatively impact innocent program participants. For example, a provider that is prohibited from receiving reimbursements should not be permitted to collect revenue from otherwise eligible households. With respect to good faith reliance on eligibility verification, good faith reliance on the USAC national verifier and duplicates databases, as long as the company complies with the Commission's rules, should meet that criterion.

We recommend that providers seeking to rely on alternate eligibility verification mechanisms propose parameters for the safe harbor allowed by the statute.⁵¹ The Commission could then approve the safe harbor along with the verification mechanism. In particular, the Commission has experience in the past with providers who seek to maximize program participation at the expense of ensuring eligibility verification. The Commission should look closely at mechanisms that provide inappropriate incentives without checks (such as bonuses or compensation that incentivize employees to ignore program rules or that push consumers into products that are less favorable to consumers). To prevent fraud, the Commission should enable whistleblowers or other advocates to report problematic provider practices to the Commission for investigation.

⁴⁹ PN at 11.

⁵⁰ *Id.*

⁵¹ H.R. 133, div. N, tit. IX, §904(j).

Part 54 Rules

The Commission should apply many of its Part 54 Lifeline rules, but not all of them.⁵² For example, the rules requiring a social security number for the NLAD⁵³ should be expanded to allow for ITINs and other such forms of government issued identification. The Part 54 rules regarding the annual recertification process⁵⁴ are not applicable for the EBB. Some of the Lifeline de-enrollment rules are not appropriate for the EBB such as the rules regarding de-enrollment for non-usage and de-enrollment for failure to re-certify.⁵⁵ The PN asks if consumers who do not pay an end-user fee for supported service should be monitored to measure data usage to ensure the benefit is being used. As discussed above regarding the non-applicability of the Lifeline non-usage rule, requiring proof of use is not necessary for the EBB. This is invasive and intrusive and would add unnecessary burden on providers and the administrators of the program. It is clear from the structure and provisions of the EBB authorizing statute that Congress wanted to increase access to benefits and these rules are inconsistent with Congressional intent.

Reporting

It would be useful for the Commission to collect data to evaluate the success of the program and inform program design elements helpful for a successful permanent program.⁵⁶ Collect data about which services consumers choose, what prices they pay, whether benefits are ported and the duration of the EBB for participants will be helpful. Geographic distribution of the benefit and the number of consumer choices can identify underserved areas. The Commission should also collect and report the eligibility criteria used and whether consumers received EBB from their Lifeline provider or used different providers for both programs. Collecting data about what causes people to drop off the program and the total number and nature of complaints will also be critical for developing future programs.

VIII. Conclusion

NCLC and UCC respectfully submit these opening comments and look forward to working closely with the Commission, USAC and a wide array of stakeholders to get low-income households connected to much-needed broadband service during this pandemic and to keep households safe and connected to essential activities such as education, work and healthcare.

⁵² PN at 12-13.

⁵³ See 54.404(c)(4)(re NLAD fields) and 54.410(d)(2)(vi)(eligibility certification form).

⁵⁴ 54.410(f).

⁵⁵ See 54.405(e)(3) and (4).

⁵⁶ PN at 13.