Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Wireline Competition Bureau Seeks	)	WC Docket No. 20-445
Comment on Emergency Broadband	)	
Connectivity Fund Assistance	)	
	)	

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EXECUTIVE SUMMARY

To carry out its statutorily mandated implementation of the Emergency Broadband Benefit ("EBB") program, the Commission must embrace overwhelming calls for ease of enrollment and program transparency, while rejecting misguided proposals to limit benefit utility, household eligibility, competition, or choice.

The docket demonstrates strong support for minimizing verification burdens for eligible households, including eliminating requirements for invasive personal information such as the last four digits of an individual's Social Security Number ("SSN"). There is also strong support for the Commission to provide regular reports on program uptake and disbursements, as well as lists of approved internet service providers and their available offerings and rates.

Several industry commenters urge the Commission to limit EBB program utility via various restrictions, such as allowing providers to discontinue promotional rates for eligible households in direct contravention of the "standard rate" definition, arbitrarily limiting the number of days per month that an EBB customer can switch services, and permitting providers to deny select categories of eligible households access to the benefit at the provider's discretion. Commenters provide minimal justification for these proposals, which plainly violate the statute.

Other commenters argue either for the Commission to exclude certain internet service tiers from the list of offerings to which an eligible household may choose to direct the EBB, or for the Commission to allow providers to exclude certain offerings at their discretion. Both sets of proposals would represent a harmful restriction of consumer choice for eligible households. Instead, the Commission should clarify that eligible households have the right to apply the EBB to <u>any</u> of an approved provider's qualifying broadband service offerings.

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INTRODUCTION

Throughout the docket, the vast majority of commenters call for the same core principles to guide the Commission's EBB rulemaking that Free Press and Access Now articulated in our initial comments: accessibility, transparency, and urgency. There exists broad support for measures to ensure that eligible households can easily participate in the program and receive maximum flexibility and choice when electing how to use the benefit. There is also widespread support for the Commission to ensure that information regarding program offerings, uptake, and disbursements is made regularly and publicly available. The Commission should heed these unified calls, while rejecting proposals that stand to undermine these core principles. Suggestions for limitations on promotional rates, eligible households, and available service tiers are not calls for flexibility so much as they are calls for discrimination that stands to limit the effectiveness of the EBB program and violate the Consolidated Appropriations Act.[1]

I. Commenters Support Low Barriers to Entry and Verification for Eligible Households.

Commenters overwhelmingly agree that the burdens of verifying household eligibility should be minimized in order to maximize participation in the program. In particular, it is important that the Commission acknowledge the unique challenges and resource limitations that people in marginalized communities and low-income families face. Since these communities are the target demographics the EBB program is intended to serve, alleviating those particular burdens should be central to the program's design.

[1] Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/133/text ("Consolidated Appropriations Act" or "Act").

First among these barriers to be removed must be any requirement that individuals provide their SSNs or the last four digits thereof in order to verify their household's eligibility. City of Los Angeles *et al*. argue that without this relief, "lack of a Social Security number is fatal to even the simplest of applications," and point to existing programs as models that allow other types of verification via "over 30 forms of identification."[2] MMTC and the National Urban League note in their comments that "[m]any undocumented families who cannot get a social security number nonetheless pay taxes via an Individual Taxpayer Identification Number (ITIN)."[3] The National Consumer Law Center and United Church of Christ also agree that the Commission should, "at a minimum, permit use of an Individual Taxpayer Identification Number (ITIN) instead" of the last four digits of an SSN.[4] Charter also raises concerns about requiring providers to collect "intrusive personal information," such as SSNs, noting that this is unnecessary "because other information—such as the subscriber's address—suffices to prevent each household from receiving duplicative benefits."[5] Offering alternative identity verification options, such as ITINs and more, allows eligible households much-needed flexibility. It will reduce privacy concerns that might otherwise prevent them from participating, and avoid establishing an additional non-statutory barrier for eligible households that do not have SSNs.

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[2] Comments of the Cities of Los Angeles, California; Chicago, Illinois; Portland, Oregon; Boston, Massachusetts; and the Texas Coalition of Cities for Utility Issues, WC Docket No. 20-445, at 14 (filed Jan. 25, 2021) ("Cities *et al*. Comments"). Unless otherwise indicated, all citations in these Reply Comments are to other parties' initial comments filed in this docket on the January 25, 2021 due date.

[3] Comments of the Multicultural Media, Telecom and Internet Council and National Urban League at 6.

[4] Comments of the National Consumer Law Center and the United Church of Christ OC, Inc. at i.

[5] Comments of Charter Communications at 7 ("Charter Comments").

II. Commenters Support Broad Program Transparency, Particularly Regarding Pricing and Standard Rates.

Commenters also urge the Commission to implement clear and broad rules governing program transparency, regarding both the status of the EBB fund and the offerings of participating providers. Benton urges the Commission to "encourage price transparency both for a) consumers, so they understand what services they are getting and what they are worth, and b) USAC and the Commission itself as a tool" to measure program effectiveness.[6] As the National Hispanic Media Coalition notes, pricing transparency is especially important for communities of color, as recent research has found that "54 percent of Latinx and 52 percent of low-income adults were 'especially worried' about paying their home broadband bills during the pandemic."[7] To that end, the National Digital Inclusion Alliance calls for a weekly updated dashboard on program participation, and argues that "the FCC should insist, as a condition of participation in the EBB program, that a provider has made current details of all of its Internet service offerings ... available to the public," in an easily accessible manner.[8] In the longer-term, New America's Open Technology Institute suggests that in addition to requiring providers to certify their standard rates, the Commission should collect pricing data via Form 477, which could eventually serve as an additional check on the validity of providers certifying "standard rates."[9] Regular communication detailing the total disbursed and remaining within the EBB fund would allow both providers and eligible households to plan ahead, and additionally would offer policymakers

[6] Comments of the Benton Institute for Broadband & Society at 20 ("Benton Comments").

[7] Comments of the National Hispanic Media Coalition at 4.

[8] Comments of National Digital Inclusion Alliance at 3 ("NDIA Comments").

[9] Comments of New America's Open Technology Institute at 7.

valuable data regarding the utility of the EBB program as they consider possible expansions or variations in light of the ongoing crisis.

Even several industry commenters echo the call for the Commission to provide a centralized resource laying out the available offerings from providers in the EBB program.[10] Such a resource would empower eligible households in identifying possible scams from entities falsely claiming to be participants in the EBB program, and would help to advertise the existence of the EBB program and the opportunities it presents to low-income families. There is also broad support for including the certified "standard rate" for each of these offerings within a central resource, which would similarly empower eligible households to identify any pricing discrepancies and provide valuable data to all stakeholders regarding program efficacy.[11]

III. The Commission Should Clarify that the "Standard Rate" Includes Promotional Rates as of December 1, 2020.

A few industry commenters have argued that a promotional rate either should not be considered as a "standard rate," or that providers should be allowed to discontinue the promotional rates they offered as of December 1, 2020.

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[10] Comments of ACA Connects at 7-8 ("[The] Commission should publish, before the program commences, a comprehensive list of providers that have been granted approval and have elected to participate in [the] EBBP in each State. This published list will help customers identify the options available to them and select the benefit that best meets their needs, and also avoid signing up for an ill-suited offering based on lack of knowledge of other options. Moreover, the official list could alert customers to potential scams from companies that are not offering a legitimate benefit."); Comments of Comcast at 17 ("In addition, to assist with outreach and foster greater informed choice, the Commission and/or USAC should consider launching a website for consumers that lists the participating providers in their area, much like USAC maintains for Lifeline today") ("Comcast Comments").

[11] *See, e.g.*, Comments of INCOMPAS at 18 ("INCOMPAS recommends that the FCC regularly update the USAC website either daily or weekly to serve as a clearinghouse so consumers can review the list of all providers available in their areas and see the types of options being offered including pricing, internet speeds, and devices.") ("INCOMPAS Comments").

As to the first argument, the Commission will find ample evidence to reject the idea of separating promotional rates from the "standard rate" within the docket.[12] Promotional rates are so ubiquitous throughout the broadband market as to occasionally be a source of stress for prospective customers, who have trouble predicting what their non-promotional rate will be, but who certainly pay at a promotional rate very often because it is "the actual amount charged"[13] by the provider. It would be deeply counter-intuitive to abandon this fairly standard industry practice when calculating the "standard rate" of a particular service offering.

Moreover, there is no reason why a customer whose service is being subsidized through the EBB program should be charged more than a customer whose service is not, assuming that both customers would meet whatever criteria the provider has established for offering the lower-priced promotion. Eliding promotional rates in the definition of the "standard rate" would calcify discrimination against eligible households who can least afford to bear the additional cost, and serve no statutory goal or benefit except to allow providers to increase their claimed reimbursement amounts at the expense of eligible households and limited government funds.

USTelecom, on the other hand, argues that while promotional rates should obviously be included within the "standard rate," providers should be allowed to discontinue those promotions at their discretion.[14] This argument is folly, and exactly the type of misguided proposal that the statute intended to prevent by establishing a "standard rate" pegged to a single specific date. The statute insists that EBB offerings adhere to the exact same terms and conditions in order to

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[12] *See* Comments of Public Knowledge at 7-9; Benton Comments at 13-23; NDIA Comments at 3; Comments of Free Press and Access Now at 3-5 ("Free Press & Access Now Comments").

[13] *See* Consolidated Appropriations Act § 904(a)(7).

[14] Comments of USTelecom – the Broadband Association, at 11 ("USTelecom Comments").

replicate "the actual amount charged" for any offering on December 1, 2020.[15] The purpose of this is to ensure that EBB customers are offered service "on the same terms"—meaning not only the same as non-EBB customers, but "in the same manner, and on the same terms" offered in December. That ensures that providers do not increase their prices and terms to reap undue windfalls at the expense of eligible households struggling to afford connectivity during a global health crisis, or at the expense of U.S. taxpayers funding this vital broadband benefit. The "standard rate" is intended to be a snapshot of the broadband market as it actually existed. The statutory definition contains certain exclusions for taxes and governmental fees, but does not exclude promotional pricing.[16] Discontinuing promotional rates that existed at the moment of that snapshot plainly violates the Act. Notably, USTelecom fails to offer even a passing justification for this proposal in its comments, so the Commission should have no difficulty dismissing it out of hand.

IV. The Commission Should Reject Efforts to Limit EBB Program Effectiveness.

A few commenters propose that the Commission limit the EBB program's usefulness by erecting barriers to competition, limiting household eligibility, and introducing arbitrary preferences for certain households over others. The Commission should reject these proposals as counter to its goal of implementing an effective emergency broadband program.

TracFone suggests that the Commission restrict the ability of eligible households to switch between participating providers such that households could only make the switch during

[15] *See* Consolidated Appropriations Act § 904(a)(7), (9), (13).

[16] *See id.* § 904(a)(13).

"a three-business-day change window," once a month.[17] Should eligible households decide on the fourth business day of a given month that they wish to switch to another offering advertised by a different EBB provider that would better suit their needs, TracFone's proposal would bar them from doing so until the beginning of the three-day window the month after. This suggestion, which is clearly intended to limit competition between EBB providers, is as unnecessarily burdensome as it is pointlessly complex. Tracking a confusing business-day window from month to month (arbitrarily starting on the second business day and ending on the fourth business day, and excluding weekends for no practical reason) could prove challenging for many eligible households. There are far simpler ways for the Commission to prevent a household from attempting to repeatedly switch services in order to receive multiple simultaneous benefits—namely, as Free Press and Access Now proposed in our initial comments,[18] by prorating the amount of the benefit in the event of a household discontinuing or switching its service. Nowhere in the statute has Congress directed the Commission to invent rules to limit competition between EBB providers—in fact, imposing additional structures to limit competition is likely to result in eligible households receiving less utility from their service offerings for the same (or even greater) dollar amount of government reimbursement, resulting in a less effective program.

Even more concerning, NCTA leads a despicable charge on behalf of a handful of industry commenters insisting that providers that have been approved by the Commission for participation in the EBB program should be able to cherry-pick the eligible households they wish

[17] Comments of TracFone Wireless, Inc. at 17-18.

[18] Free Press & Access Now Comments at 6.

to serve.[19] Specifically, NCTA insists that because "participation in the Program is voluntary for providers ... the Commission should allow the participating provider to determine which categories of eligible households and which of its Internet service offerings qualify for the emergency benefit."[20] This argument is flimsy and harmful. The statute provides that all qualifying internet providers have the option to apply to participate in the EBB program, but once they join, providers have to follow the law. The statute has defined the bounds of the program, including a clear definition of the scope of households eligible to participate.[21] This definition is not intended to be a menu of options for providers with existing programs to select between—a reality that is made plainly obvious by the fact that the definition includes households where "at least one member of the household meets the eligibility criteria for a participating provider's existing low-income or COVID–19 program."[22] Plainly then, the definition is meant to both include and expand beyond existing providers' eligibility determinations to encompass a broad range of EBB eligible households. Providers are given the option to participate, or to forgo receiving any EBB reimbursement. It would be unconscionable, and a clear violation of the statute too, for a household deemed eligible by Congress to be denied EBB support simply because the provider has decided to ignore one or more of these eligible categories of recipients.

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[19] *See* Comments of NCTA – The Internet & Television Association at 14 ("NCTA Comments"); *see also* Comments of CCA at 9 ("[A] carrier may wish to offer programs that address certain categories of eligibility but not others."); Charter Comments at 3 (endorsing NCTA's views).

[20] NCTA Comments at 14.

[21] *See* Consolidated Appropriations Act § 904(a)(6).

[22] *Id*. § 904(a)(6)(E).

NCTA demonstrates a fundamental misunderstanding of both the statute and the EBB program's purpose, which is not exclusively or even primarily to subsidize providers' existing low-income or emergency internet offerings. While Congress made clear efforts to align the EBB with such existing offerings by streamlining approval of providers with such programs, it also laid out a more expansive design than any existing provider-offered program has yet contemplated.[23] Fundamentally, Congress established the EBB program to provide immediate and badly-needed support to a wide variety of people and families struggling to afford internet connectivity – not merely to subsidize the low-income program offerings made available by some providers as of December 1, 2020.

Less plainly objectionable are the occasional proposals in the record that the Commission should somehow manage eligible household enrollment so as to prioritize particular communities, or to ensure a longer-lasting benefit. While this desire is understandable on its face, it should also be rejected. It is not inherently preferable for a smaller number of families to receive EBB support for a longer period of time than it is for a larger number of families to receive it for a shorter period. Indeed, arbitrarily capping the number of eligible households that may enroll finds no support in the statute, and would interfere with accurate assessment of program demand, uptake, and efficacy.

Even prioritizing particular eligible categories, such as setting aside funds specifically for eligible households that currently have no broadband service over those that already do, as City of Los Angeles *et al*. suggest, misunderstands the nature of the crisis and the necessity of internet

[23] *See id.* § 904(d)(2)(B).

connectivity.[24] During the COVID-19 pandemic, many households are choosing to forgo paying for other basic necessities such as groceries and utility bills in order to afford a broadband connection—thus, having an existing broadband service is not a reliable indicator of less urgent need for support. Disadvantaging these households in applying for the EBB would arbitrarily subvert the statute without ensuring more effective benefit targeting in return. The concerns that City of Los Angeles *et al*. raise regarding the possibility of providers simply signing up their existing eligible customers for EBB without publicizing the benefit to others should be addressed with a requirement that providers do indeed advertise and conduct broad outreach, as well as a requirement that eligible households affirmatively elect to use their benefit for a particular service and cannot be automatically enrolled by a provider without their express consent.

V. The Commission Should Ensure Maximum Choice by Clarifying that Providers Can and Must Accept the Benefit for All Available Service Tiers.

Perhaps the greatest benefit of the EBB program is the degree of choice it offers eligible households. Too often, low-income families seeking support are forced to accept lesser products and services in exchange for assistance—for example, in the broadband market, low-income families typically find themselves with few options outside of a means-tested, low-cost, less-robust tier of internet service that may or may not serve their particular needs, if they are even lucky enough to live in an area with a provider that offers such a tier. By contrast, the EBB program is explicitly designed to be expansive and to allow eligible households maximum choice among broadband service offerings when electing how and where to apply their benefit.

[24] *See* Cities *et al*. Comments at 13.

The Commission should affirm this abundance of choice by clarifying that approved providers must accept the benefit for all available service tiers.

Ensuring that eligible households may apply the EBB towards any broadband service offering that a provider made available in their area on December 1, 2020, will empower low-income families with the same degree of choice offered to customers who do not qualify for the EBB program. As NDIA rightly argues, "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. Providers should not be permitted to limit any household's EBB to particular plans or technologies in a manner which excludes any offerings that were available to it on that date, or steer applicant households toward or away from any such offerings."[25] Such clarification will encourage households to choose the service that offers them the greatest utility according to their different circumstances and needs. It will also benefit providers by encouraging greater uptake of the benefit: eligible households that might have chosen not to use the EBB because it could not be applied to a service offering that meets their needs are more likely to participate if all of the provider's service tiers are made available.

Many industry commenters say that the statutory definition should allow them to accept EBB reimbursement for any of their service offerings, but still request the right to exclude

[25] NDIA Comments at 7.

particular offerings at their discretion.[26] Importantly, none of the commenters provide any clear or understandable reason beyond vague complaints of administrative burdens as to why they should be allowed to exclude certain offerings, or why they believe the statute permits such arbitrary exclusion. At best, Comcast argues that in the interest of moving "as quickly as possible" with "administrative simplicity," it should be allowed to only offer its existing low-income offering to EBB eligible households.[27] This claim, however, is unsubstantiated—it should be no more or less burdensome for Comcast to verify the EBB eligibility of a customer already subscribing to its existing low-cost option than it is to verify the eligibility of a new customer subscribing either to that low-cost option or to a more robust tier. Allowing providers to pick and choose which plans are made available for eligible households runs the risk of low-income families being either boxed in to less robust offerings that may not meet their needs, or being upsold to higher tiers that cost more than they can afford even with the EBB discount. There is no legal or policy justification to allow providers to bar eligible households receiving the EBB from counting that benefit towards any of the providers' service offerings.

By the same turn, the Commission should also not exclude any broadband service offerings from EBB reimbursement. Here, we part ways with commenters such as Benton and INCOMPAS that argue for minimum service standards such as a 25/3 mbps benchmark, or other

[26] Comments of CTIA at 8-9 ("Consistent with a straightforward reading of the statutory language, the Commission should make clear that the EBB benefit could be applied to any service offering (or combination of service offerings) that the provider made available to consumers on December 1, 2020 which includes broadband Internet access service.... This approach will allow eligible households to remain on service plans that they already were receiving despite economic hardships, or to move to more robust service plans that they previously could not have afforded absent the benefit."); Comments of Altice USA, Inc. at 7; Comments of T-Mobile USA, Inc. at 10-11; USTelecom Comments at 9.

[27] Comcast Comments at 13.

performance criteria restrictions on the plans for which providers may seek reimbursement through the EBB program.[28] We understand that these commenters argue for minimum standards with the same desire to prevent low-income families from being relegated to second-class tiers of service, but if providers are required to make all their commercially available internet service offerings available to EBB eligible households, these protections become unnecessary and potentially harmful. An eligible household should not be forced into a less robust service offering by virtue of receiving the EBB, but it should be free to choose a plan that does not meet the 25/3 mbps standard. There are many reasons that households might elect to use the EBB for such a service. They may have determined that slower speeds and lower prices are sufficient to meet their needs, and they would rather have a free service than pay the difference between the EBB and the "standard rate" of a faster one; or it might be the only service offering available in their geographical area. But perhaps the most important potential reason is that a household may decide that a mobile offering is more suited to their needs. Mobile broadband is not a true substitute for a fixed home connection, but it can offer tremendous utility for households that still commute to work as essential workers, and for families that are unhoused or housing insecure. The Commission can best protect the interests of all eligible households by refraining from excluding any broadband service offerings, and also by clarifying that providers are not permitted to make such exclusions themselves.

CONCLUSION

To ensure effective implementation of the EBB program, the Commission should center and prioritize the needs of eligible households by lowering barriers to entry, clearly defining the

[28] *See* Benton Comments at 35-36; INCOMPAS Comments at 14-16.

"standard rate" to prevent discriminatory or increased pricing, and securing maximum choice and transparency in available internet service offerings. We thank the Commission for its consideration and urge it to move forward guided by these principles with all due haste.

Respectfully Submitted,

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