



February 12, 2021

Marlene H. Dortch  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

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

Dear Ms. Dortch,

Public Knowledge submits this letter to encourage the Commission to maximize self-certification of eligibility to ensure those who need assistance receive the Emergency Broadband Benefit (EBB). When Congress enacted the EBB, it expanded eligibility beyond those typically eligible for the Lifeline program. In doing so, Congress indicated that they wanted to help as many people as possible afford broadband, during a time when having it has never been more critical.<sup>1</sup> However, if verification is too burdensome, eligible households may not enroll in the program.<sup>2</sup> In order to support Congress's intent that a broad range of households in need access the benefit, the FCC must do what it can to reduce the burden of verification.

It has been almost 100 years since our nation has faced such a widespread public health crisis. It is not a stretch to say that we are living in extraordinary times. Before the pandemic, many activities were online, but the pandemic has pushed almost *all* daily activities online. Without the internet, households struggle to work, learn, and access medical care, news, or government services. In some cases, access to the internet makes the difference between life and death (like for those who rely on health monitoring devices automatically notifying their doctor of a problem). The Commission should take this into account when balancing its need to deter waste, fraud, and abuse with connecting people in desperate need of a critical service.

Given the extraordinary times we are in, we urge the Commission to do everything in its power to make sure that consumers are not deterred from accessing the EBB. The ideal way to

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<sup>1</sup> Ron Wyden. (2020 June 29). *Wyden, Blumenthal, Hirono and Schumer Introduce Bill To Ensure Americans Keep Broadband Access During the Pandemic* [Press Release] <https://www.wyden.senate.gov/news/press-releases/wyden-blumenthal-hirono-and-schumer-introduce-bill-to-ensure-americans-keep-broadband-access-during-the-pandemic>; Coronavirus Economic Stabilization Act 15 U.S. Code § 9005 (2020).

<sup>2</sup>See United States Government Accountability Office, *Report to Congressional Requesters*, (2021). <https://www.gao.gov/assets/720/712068.pdf>

minimize burden on consumers is to use the automated function of the National Verifier Database (NVD). Unfortunately, the NVD does not yet have the data sharing agreements it needs to automatically verify that consumers participate in Pell, free/reduced price school meals, or the unemployment insurance system. We understand that USAC will need to renegotiate the data sharing agreements it already has in place to ensure that non-Lifeline eligible consumers can be automatically verified for the EBB. Even after agreements are signed, which can take 9-12 months or longer, the Computer Matching and Privacy Protection Act would delay data sharing by at least 60 sixty days due to requirements in that law.<sup>3</sup> This means that, at least initially, most consumers who aren't eligible for Lifeline will need to undergo manual verification of eligibility through the NVD or their provider. This will require most applicants to gather sufficient documentation, find a way to upload it, fax it or mail it to USAC or their provider, and then wait for verification.

According to a recent Government Accountability Office report, “more than two-thirds of applicants who underwent manual review between June 2018 and June 2020 did not complete their applications.”<sup>4</sup> The incompleteness rate in the NVD process points to more systemic problems, but in the instant case its use with the EBB would prevent a large portion of eligible households from availing themselves of the support provided through the program. Additionally, it would make Lifeline subscribers, who are already in the system and who therefore can be automatically verified, more likely to avail themselves of the benefit than non-Lifeline recipients who would face a higher burden in applying. Congress did not intend for the EBB to advantage one group of participants over another, and the Commission should take the necessary steps to ensure all participants have an equal opportunity to access the EBB funding.

While Congress should ensure that all eligible households are able to enroll seamlessly in the EBB by mandating data matching agreements with the federal and state agencies holding relevant data, short of Congressional action, per the statute the Commission can take steps to reduce the number of eligible individuals who do not complete their applications by maximizing the opportunity for self-certification both within the NVD and within the internet service providers' own verification methods.<sup>5</sup>

Thus, we urge that the Commission permit applicants to self-certify, under penalty of perjury and with an understanding that benefits wrongfully claimed must be returned. The application through providers, or the NVD could include a short, easily understood list of the requirements for eligibility. The applicant household would check the applicable boxes, a box certifying that

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<sup>3</sup> *Id.* at 19; Computer Matching and Privacy Protection Act of 1988, S. 496, 100th Cong. § 552a (1988) <https://www.congress.gov/bill/100th-congress/senate-bill/496/text>.

<sup>4</sup> United States Government Accountability Office, *Report to Congressional Requesters*, at 3 (2021) <https://www.gao.gov/assets/720/712068.pdf>

<sup>5</sup> See Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. § 904 (2020)

they understand they are entitled only to one benefit per economic household, and a box certifying their understanding that their self-certification of eligibility could be audited. This will prevent mistaken applications by ineligible individuals or multiple individuals from one household, and will serve as a reasonable deterrent to fraud. Because the Commission will have the addresses of successful applicants receiving service, the Commission (through USAC) can audit the program and recover any fraudulent benefits. The Commission will be easily able to audit the program if data matching agreements with the relevant agencies are signed.

To incentivize providers to accept self-certification as a part of their verification methods, the Commission could offer ISPs a safe harbor. To earn a safe harbor from liability, ISPs should show that (1) that staff marketing the subsidy understand the criteria for eligibility and limitations of the program; (2) they have clearly and conspicuously explained the criteria for eligibility to consumers and the limitations of the program to consumers; and (3) the consumer understands the information set forth. This can be accomplished by ISPs providing copies of their training materials and marketing materials for applicants. They could also require applicants to sign a statement affirming that the ISP has explained the eligibility requirements for the program and certifying that they qualify, under penalty of perjury and with an understanding that benefits wrongfully claimed must be returned.

While we understand the Commission's need to limit the potential for waste, fraud, and abuse, the low likelihood of waste, fraud, and abuse from consumers, as well as the short term and emergency nature of this subsidy, makes self-certification an appropriate response. Many claims of waste, fraud, and abuse in the Lifeline program are not as a result of intentional wrongdoing on the part of consumers, but rather on the part of providers taking advantage of program participants.<sup>6</sup> Moreover, Congress noted that broadband is “a necessity for all and not a privilege for the few,” and is particularly important during the pandemic.<sup>7</sup> Maximizing self-certification will be essential for ensuring that Congressional intent is met, and that households in new categories of eligibility can enroll and participate in modern life. This would not necessarily be the appropriate response for other subsidies moving forward.

Thank you for your consideration of this matter. Please feel free to reach out to Jenna

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<sup>6</sup> See Federal Communications Commission, *Notice of Apparent Liability for Forfeiture and Order* (Arguing providers, such as TracFone, Inc., fabricate subscriber data and commit other acts in order to fraudulently seek reimbursement.) <https://docs.fcc.gov/public/attachments/FCC-20-45A1.pdf>; Commissioner Mignon Clyburn, *Speech at the Consumer Federation of America Consumer Assembly 2013*. Washington, DC, March 15, 2013 (pdf of transcript)

<https://www.fcc.gov/document/commissioner-clyburn-remarks-cfa-consumer-assembly-2013-washington-dc>

<sup>7</sup> House Committee on Energy & Commerce. (2021 Feb 10). *Energy and Commerce Committee Announces Hearing on Expanding Internet Access Amidst Pandemic* [Press Release].

<https://energycommerce.house.gov/newsroom/press-releases/energy-and-commerce-committee-announces-hearing-on-expanding-internet-access>



Leventoff, Senior Policy Counsel ([Jenna@publicknowledge.org](mailto:Jenna@publicknowledge.org)), with any questions.

Sincerely,

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