

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF PUBLIC KNOWLEDGE

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I. INTRODUCTION & SUMMARY

Public Knowledge (PK) submits these Comments in response to the Wireline Competition Bureau of the Federal Communications Commission's (FCC or Commission) Public Notice, "Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance" (Public Notice).¹ Congress included the establishment of the Emergency Broadband Connectivity Fund (EBCF) in the Consolidated Appropriations Act, 2021 (Act) to provide much needed assistance to families struggling to establish and maintain their broadband connection as a result of the economic hardship created by the ongoing COVID-19 pandemic.² Congress directed the FCC to manage the establishment of the EBCF by creating an Emergency Broadband Benefit (EBB) Program which will help Americans stay or get connected to the internet during the ongoing COVID-19 crisis.³

How the FCC manages the EBB Program will not only greatly affect the EBB Program's effectiveness at helping those in need get connected, it will help inform how to best implement potential future broadband subsidies to address broadband affordability, which Congress continues to contemplate. In order to facilitate an efficient program, PK urges the Commission to adopt policies that: (1) minimize burdens on participants; (2) ensure that those who qualify know about the EBB; (3) maximize the EBB Fund; (3) transparently operate the EBB Program and provide public access to data; and (4) set standards for eligible devices that will ensure users can access essential broadband services. By achieving these objectives, PK believes that the Commission can maximize the public benefit of the EBB Program.

¹ F.C.C., Public Notice: Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance, DA 21-6, WC Docket No. 20-445, 1 (released Jan. 4, 2021), <https://ecfsapi.fcc.gov/file/0104123109954/DA-21-6A1.pdf> [hereinafter Public Notice].

² *Id.*

³ *Id.*

II. THE FCC SHOULD ENCOURAGE PARTICIPATION IN THE EBB PROGRAM BY MINIMIZING THE BURDENS FOR POTENTIAL PARTICIPANTS.

As the coronavirus has continued to infect, sicken, and kill an astounding number of Americans, the burden on consumers has unfortunately also raged on. Because of this ongoing COVID-19 pandemic, it is essential that the Commission adopt policies for the EBB Program that will not place any additional unnecessary burdens on potential participants. With this in mind, PK flags two areas of concern that could unduly burden participants: (1) how providers will verify eligibility and (2) what will happen to participants when the EBB Fund runs out. With regard to both of these issues, PK asks the Commission to carefully consider its policies and adopt regulations that limit the burden on participants.

A. The FCC Should Adopt Policies That Will Minimize the Burden on Participants to Verify Their Eligibility.

The Commission seeks comment on the “verification of eligibility for households.”⁴ PK urges the Commission to adopt participant verification procedures that minimize their burden and ensure that all eligible individuals can enroll. With this in mind, PK urges the use of data matching between agencies to automatically verify participant eligibility whenever possible. In the event that data sharing is not possible within the short timeframe of this emergency benefit, PK urges the Commission to (1) require that providers accept as many forms of eligibility documentation as possible; (2) ensure that participants can submit verification documentation without needing access to the internet; (3) allow the use of multiple forms of identification; and (4) encourage schools to reach out to the families of children on free and reduced lunch to proactively receive parental consent to share their eligibility data with providers.

⁴ Public Notice, *supra* note 1 at 6.

1. *The Commission and USAC Should Work With Other Federal Agencies to Auto Verify Participant Eligibility by Data Sharing.*

While some data matching might require additional action by Congress, PK would like the Commission and USAC to work with the federal agencies that hold data on eligible populations (including the Department of Agriculture, and the Department of Education) to promptly enter into memorandums of understanding and begin sharing data if currently possible. The National Verifier already utilizes data matching to verify eligibility for the Lifeline program through participation in certain programs (like the Supplemental Nutrition Assistance Program), and could work with other agencies to add their data as well.⁵ Data matching will relieve consumers of the burden of uploading documentation they may not have easy access to, through a portal they may not understand. Data matching would also ease the burden on the internet service providers, who in many cases have no experience verifying Pell eligibility or layoff notices, and may feel uncomfortable determining eligibility.

2. *Alternatively, the FCC Should Require Providers to Accept As Wide a Variety of Eligibility Documentation as Possible and Provide Non-Internet Methods of Submitting Documentation.*

In instances where it is not possible to enter into data matching agreements in a timely fashion, PK urges the Commission to require providers and/or USAC (through the National Verifier) to (1) accept as many forms of eligibility evidence as possible and (2) ensure that households can submit eligibility documentation without needing the internet. The COVID-19 pandemic has already placed incredible burdens on those Americans who are most financially vulnerable. The EBB Program is intended to help alleviate some of the burden by getting people connected to broadband. As the FCC works out how to administer the EBB Program, it should

⁵ Universal Service Administrative Co., *Eligibility Decision Process*, (last accessed Jan. 25, 2021), <https://www.usac.org/lifeline/eligibility/national-verifier/eligibility-decision-process/>.

consider how it can prevent placing burdens on potential participants, particularly when it comes to verifying their eligibility.

First, PK urges the Commission to require providers to accept as many forms of eligibility documentation as possible. For example, with regard to Pell Grant recipients, providers and/or USAC should accept any documentation that demonstrates a student received a Pell Grant, including but not limited to an official financial aid award letter, a paid invoice that demonstrates receipt of a Pell Grant, a copy of a student's Student Aid Report that demonstrates the receipt of a Pell Grant, etc. Eliminating unnecessary burdens on consumers to verify their eligibility will help those who need the EBB the most. This is why PK urges the Commission to ensure that the documentation required to verify eligibility represents all of the ways in which a household can qualify and all types of documentation that will prove eligibility.

Second, PK is concerned that the methods by which a household can provide documentation of eligibility could deter participation if overly stringent. Unsurprisingly, many of those who are eligible for the EBB may not have access to the internet, and hence, are not likely to use an electronic means to verify eligibility. Thus, the Commission should require providers to offer a way to verify eligibility without needing to access the internet. Not doing so, would place an undue burden on those who do not have access to the internet and possibly prevent an eligible household from participating in the EBB Program.

3. *The FCC Should Use a Variety of Methods for Verifying Identity*

In addition to verifying eligibility, the FCC must also verify a consumers identity. Currently, the FCC requires a social security number (SSN) to verify identity for enrollment in the Lifeline program.⁶ However, this practice unnecessarily excludes eligible individuals who do not have a social security number, including immigrants. We suggest that the Commission accept

⁶ 47 CFR 54.404(c)(4) and 54.410(d)(2)(vi).

alternate methods of identity verification, including pictures, ITINs, passports, and drivers licenses.

4. *The FCC Should Ask Schools to Proactively Seek the Parental Consent of Free and Reduced Lunch Recipients to Share Information with Broadband Providers.*

Although the EBB Bill allows schools to verify participation in the free and reduced lunch program in order to determine eligibility for the EBB, it is PK's understanding that schools cannot do so without parental consent.⁷⁸ In order to avoid this barrier, the FCC should work with schools to proactively seek parental consent from eligible households. By doing so, schools can help verify participant eligibility with minimum burden to students that qualify. Additionally, proactively seeking parental consent can serve the dual purpose of helping publicize the EBB to those most likely in need.⁹ Thus, PK urges the Commission to work with schools to proactively reach out to students who receive free and reduced lunch and obtain parental consent to share student data in order to verify their eligibility in the EBB Program.

B. The FCC Should Not Allow Providers to Auto-Enroll Participants After the EBB Ends In Order to Prevent Burdening Participants With Broadband Plans They Cannot Afford.

In order to avoid financially burdening participants that are already vulnerable, the FCC should require providers to notify consumers before the EBB ends and prevent providers from automatically enrolling participants in a broadband plan when the program does end. Congress passed the EBB to provide relief to those who cannot afford internet access. The issue of affordability for individual households is unlikely to change when the benefit ends. Providing notification about the pending end of the benefit will help families who cannot afford broadband

⁷ 7 CFR Sec. 245.6(f)

⁸ 42 U.S. Code § 1758(b)(6)(B)

⁹ PK specifically addresses how the FCC can maximize its public outreach of the EBB Program in Section III, pages 6-7, of these comments.

service plan on how to exist in the digital world without the benefit of subsidized broadband service. Additionally, while providers should help any consumers who are interested enroll in a new plan, foisting unaffordable broadband plans on financially vulnerable families runs counter to the very purpose of why the EBB Fund was created in the first place. Thus, in order to prevent unduly burdening participants when the EBB Fund runs out, providers must give adequate notice before the benefit ends, and must not auto-enroll participants in a broadband plan.

III. TO ENSURE MAXIMUM REACH, THE FCC SHOULD WORK WITH A WIDE VARIETY OF STAKEHOLDERS TO ADVERTISE THE EBB.

The Commission asks whether providers should “have any obligation..to publicize the availability of the benefit?”¹⁰ Absolutely. Without knowledge of the benefit, the public is unlikely to enroll. In order to ensure that as many eligible households as possible have broadband during the pandemic, it is imperative that as many stakeholders as possible publicize the benefit. Providers are especially well positioned to publicize the EBB, as many already advertise. Eligible Telecommunications Carriers (ETC’s), in particular, are already required to publicize Lifeline benefits, which target many of the same populations that are eligible for the EBB.¹¹

Any outreach conducted by providers should include a variety of media outlets that target minority and low-income populations—including newspapers, television stations, billboards, and internet advertisements (particularly on mobile websites and apps). The FCC should also provide guidance about when providers should advertise in a language other than English, to ensure that all eligible individuals can learn about the benefit regardless of what language they speak.

In addition to providers publicizing the benefit, we urge the FCC to coordinate with federal, state, and local agencies and nonprofit organisations that work with eligible populations,

¹⁰ Public Notice, *supra* note 1 at 10.

¹¹ 47 CFR § 54.201(d)(2).

so those entities can inform eligible households of the benefit and how to enroll. To assist in this effort, the FCC should provide technical assistance to these entities explaining what the benefit is, who is eligible, and how to enroll. As a part of this effort, the FCC should create materials clearly describing the program and how to enroll in numerous languages because many of those eligible for this benefit may not speak fluent English. The FCC should also make these materials available to other agencies (including the Department of Agriculture, the Department of Education, the Department of the Interior, and the Department of Housing and Urban Development), Workforce Innovation and Opportunity Act one stop centers, community based organisations, and secondary and postsecondary schools. The FCC should make these materials available online, in an easily printed format, so that those entities seeking to provide this information are able to reach potential participants that lack internet access.

IV. THE FCC SHOULD ADOPT POLICIES THAT WILL HELP MAKE THE EBCF LAST AS LONG AS POSSIBLE.

As it stands, the EBB Program concludes at the end of the emergency period, or when the EBCF is exhausted, whichever comes first.¹² In order to ensure that the EBCF lasts as long as possible, and can benefit the maximum number of eligible consumers, the Commission should (1) base its definition of “standard rate” on a provider’s promotional rate for new customers; (2) require providers to show proof of the cost of the service and/or device for which they seek reimbursement from the EBB.

A. The Standard Rate Should Reflect a Provider’s Promotional Rates.

The FCC seeks comment on “how the Commission should interpret the ‘standard rate’ for supported offerings.”¹³ More specifically, the FCC asks how it should “address promotional rates.” Public Knowledge urges the Commission to use a Provider’s promotional rate

¹² Public Notice, *supra* note 1 at 13.

¹³ Public Notice, *supra* note 1 at 3.

information to determine the “standard rate” for EBB participants that the Provider does not currently serve. Providers should not receive EBB funds that exceed the amount of money they would have received from participants if they had signed up for service outside of the EBB Program.

A provider’s standard rate for new customers should include any promotional offers that a customer would have received had they signed up for service without the EBB. The Act defines the “standard rate” of broadband as “the monthly *retail rate* for the applicable tier of broadband internet access service as of December 1, 2020....”¹⁴ This definition relies on determining the “retail rate” but does not include any guidance on whether or when a promotional rate is actually the “retail rate.” Fortunately, the FCC has already grappled with this question with regard to retail rates for wholesale resale by incumbent LECs. In that context, the FCC determined that promotional rates that last more than 90 days are the “retail rate” for standard telecommunications services, while promotional rates that last for less than 90 days are not.¹⁵ PK urges the Commission to apply the same formula when calculating the standard rate for the purposes of the EBB.

Commonly, broadband providers offer promotional rates to new customers for the first 12 months of service. For example, in the D.C. Metro area, Xfinity currently offers introductory rates for up to 200 Mbps starting at \$39.99 per month for the first 12 months¹⁶ and RCN offers

¹⁴ § 904(a)(13) (emphasis added).

¹⁵ First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98 et al., 11 FCC Red 15499 ¶ 949 (1996) [hereinafter Local Competition Order] (although courts found that other parts of this R&O exceeded FCC Authority, *see Mich. Bell Tel. Co. v. Strand*, 26 F. Supp. 2d 993 (W.D. Mich. 1998) (summarizing the history of the FCC’s Local Competition Order), the part of the R&O regarding promotional rates remains in effect today); *see* 47 CFR § 51.613(a)(2).

¹⁶ Xfinity, *Xfinity Internet Deals*, <https://www.xfinity.com/learn/internet-service/deals> (last visited Jan. 25, 2021).

250 Mbps for \$29.99 per month for the first 12 months.¹⁷ For all practical purposes, these promotional rates reflect the standard rate offered to new customers in the D.C. area. The Commission should not allow Broadband providers to collect more money from the EBCF than they would have collected from customers had they signed up for broadband services outside of the EBB program. Doing so runs contrary to the purpose of the EBCF and the FCC's own practices regarding rate calculation.

Additionally, by taking into account a provider's promotional rates, the FCC can maximize the EBCF because these rates often fall below the \$50 maximum benefit a household can receive. It is a matter of simple math. If a provider can only collect the promotional rate for new participants and that rate falls below the maximum benefit allowed, then there will be more funds available to provide service to more participants for a longer period of time.

Additionally, the Commission should seek commitments from providers to offer then-available promotional rates to EBB participants when the program ends. The EBB benefit program was established to provide in-need families a means to connect to broadband service. Allowing participants to enroll in promotional rates should the program lapse, will help promote the intent of the EBB — connecting people unable to afford broadband service.

B. The FCC Should Require Providers to Prove the Retail Value of Service and/or Devices.

To decrease the risk of expending the EBCF before the pandemic ends, which would leave households without assistance and relief, the Commission should require providers to prove the value of the service and/or device for which they are seeking reimbursement from the EBB so that providers are not reimbursed for more than their product is worth. The EBB Program should simply make providers whole, not provide them with a windfall.

¹⁷ RCN, <https://www.rcn.com/dc-metro/> (last visited Jan. 25, 2021).

We recommend requiring providers to demonstrate the retail value or costs of connected devices and associated equipment in order to prevent waste. The EBB Program allows providers to be reimbursed up to \$50, \$75 for tribal lands, for the monthly discount applied to the standard rate of internet service offerings and associated equipment provided to households. In addition to this reimbursement, providers can also receive up to \$100 for any connected devices the provider distributes including laptops, desktop computers, or tablets as long as the household makes a financial contribution of more than \$10, but less \$50. It is important that providers report the exact amount spent to prevent being overcompensated, and prematurely depleting the EBCF.

V. THE FCC SHOULD OPERATE THE EBB PROGRAM WITH MAXIMUM TRANSPARENCY AND MAKE AS MUCH DATA AS POSSIBLE PUBLICLY AVAILABLE.

The FCC should collect the data necessary to ensure that stakeholders have the information they need to make decisions, and should operate transparently by making as much data available to the public as possible. The FCC should also continue collecting data and sharing it with the public moving forward.

PK strongly urges the FCC to enforce its existing Internet Service Providers (ISP) transparency rules regarding commercial terms of service and require ISPs to publicly disclose information on monthly Internet prices (including promotional rates, fees, and equipment rentals). In addition, the Commission should make information about participating providers and their offerings available to the public both online, and through other means for those who are not connected. Doing so will allow eligible consumers to make an informed decision about which provider to choose without the burden of copious research.

Additionally, in order to ensure that providers have the information they need to keep participants apprised of the exhaustion of funding—the FCC or USAC should offer resources to

help providers and the public know how much funding is left in the EBCF. Following the end of the EBB program, we hope that the Commission will continue to collect data about the cost of service, and make that information available to the public. Price data can help consumers make decisions, and help policymakers promote affordable access to broadband in the long term.

VI. THE FCC SHOULD ENSURE THAT ASSOCIATED EQUIPMENT AND ELIGIBLE DEVICES ACTUALLY MEET PARTICIPANTS' NEEDS.

Commission regulations about the definitions of associated equipment and devices should ensure that consumers needs are met. Any definition should enable a consumer to successfully work from home, take online classes, or access telehealth. This includes (1) adding products like modems and routers to the definition of associated equipment; and (2) ensuring that devices come with the programs and applications needed to engage in remote life.

First, the Commission seeks comment on whether it should provide further clarity regarding Internet service offerings and associated equipment that is eligible for reimbursement.¹⁸ PK recommends that the Commission include products that are typically associated with service, such as modems, routers and wireless adapters in the definition of associated equipment. These items are essential for connectivity.

Second, devices provided through the EBB Program should allow users to access services and tools needed to adapt to the pandemic. In times where the majority of students attend virtual school, doctors appointments are conducted via electronic devices, and people work from home, it is imperative they have the tools they need to be successful. Thus, the FCC should establish minimum system requirements for connected devices that allow consumers to succeed online. For example, students likely need word processing and other productivity software, a camera, and/or device applications in order to engage in online learning and submit assignments

¹⁸ Public Notice, *supra* note 1 at 8.

electronically, so any connected device should allow for these capabilities. In addition, if a consumer already has a device that doesn't meet these minimum system requirements, we suggest giving providers the flexibility to seek device reimbursement funding to offer the relevant programs and applications to ensure that a device meets minimum standards.

VI. CONCLUSION

Congress created the EBCF to provide necessary relief to those in need during the ongoing COVID-19 pandemic. As the Commission considers how to implement the EBB Program, PK urges the Commission to keep this purpose in mind and adopt policies that will provide the maximum public benefit. First, participants should face minimal burdens, which the FCC can achieve by adopting sound verification process policies and preventing providers from auto enrolling participants when the EBB Program ends. Second, the FCC must take active steps to work with as many stakeholders as possible to ensure that eligible households know about the EBB Program. Third, the FCC should adopt policies that will maximize the EBCF such as including promotional rates in the standard rate Providers can receive reimbursement for and requiring providers to document the true costs of devices provided to participants. Fourth, the FCC should provide the public with as much access to information as possible. Finally, the FCC should set standards for associated and eligible devices that will meet participants' needs. By adopting these policies, PK believes that the Commission can provide the greatest good to the greatest number of families in need of the internet during this crisis.

Respectfully submitted,

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