

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Emergency Broadband Connectivity Fund) WC Docket No. 20-445
Assistance)

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby comments in response to the Public Notice (*Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*), WC Docket No. 20-445, DA 21-6, released January 4, 2021.

WTA is a national trade association that represents more than 350 rural telecommunications carriers (“Rural LECs”) that either directly or via Internet service provider (“ISP”) subsidiaries furnish broadband services to areas that contain households that are likely to qualify for Emergency Broadband Connectivity Fund (“EBCF”) assistance (including some households that currently subscribe to voice and/or broadband services from them, and some households that currently participate in the Lifeline program). Virtually all WTA members participate in the Commission’s Lifeline program and are familiar with its mechanisms, regulations and compliance procedures. Many joined in the initial and/or extended Keep America Connected pledges, and virtually all have devoted substantial efforts during the COVID-19 pandemic to extend, upgrade and provide the broadband services needed by their customers to work and/or attend school from home and to assist those of their customers having difficulty paying their broadband bills.

WTA and its members support the goal of the EBCF program to help low-income American families facing severe financial difficulties to obtain discounts needed to afford essential broadband services during the remainder of the COVID-19 pandemic. Given the need to implement the EBCF program rapidly as well as its likely short duration, WTA believes that the rules and regulations adopted in this docket should follow those of the Lifeline program as closely as practicable except where the EBCF statutory language clearly and specifically requires otherwise. In light of the short time period available to design the EBCF program and distribute its support funds, it makes good sense to rely upon established and tested Lifeline mechanisms and regulations as much as possible rather than trying to “re-invent the wheel” with little or no time to consider potential problems and consequences.

Assuming that EBCF program can be structured in substantial part like the Lifeline program, the major concern of WTA members is with its length and scope. They are particularly interested in the steps that the Commission will take to provide sufficient advance notice that EBCF program funding is exhausted and its discounts are ending as well as to help participating service providers reduce customer dissatisfaction and disruptions if the program is of short duration and/or ends abruptly.

A. Nature and Scope of EBCF Program

Unless Congress makes additional funds available in future legislation, WTA recognizes that the Commission’s EBCF authority and budget are limited to the \$3.2 billion appropriated in the Consolidated Appropriations Act (“CAA”). At the present time, it is not clear to WTA how long the present appropriation will permit the EBCF program to continue, but there are reasonable concerns that its funding may last only two-to-four months and that the program and its discounts may have to be terminated abruptly with little or no advance notice. These circumstances can

result in major discontent among service providers and customers that spend significant time and money to establish eligibility and service arrangements that have a very short duration, and particularly if providers and customers learn after the fact that broadband services already provided during part or all of a month will not receive the expected \$50 or \$75 payment discount.

At \$50 per household per month, the initial \$3.2 billion appropriation permits a maximum of 64 million \$50 monthly discounts to be distributed to qualifying households before the EBCF program runs out of appropriated funds and terminates. This maximum number of monthly \$50 discount payments to households will be reduced by two (2) payments for each one-time \$100 reimbursement payment that is used to pay for connected devices.¹ The maximum number of monthly \$50 or \$75 discount payments to total households (Tribal and non-Tribal) will be reduced further by one payment for every two monthly \$75 discount payments distributed to eligible households on Tribal lands. In the Third Quarter of 2020, approximately 3.33 percent of Lifeline recipients were eligible Tribal households.² Hence, assuming that some EBCF discounts will be expended for connected devices and for households on Tribal lands, the current EBCF appropriation will run out after less – perhaps, significantly less -- than 64 million monthly \$50 or \$75 discounts are reimbursed.

Estimation of the likely length of the EBCF funding and program is also rendered unpredictable by the uncertainty as to the number of households that will ultimately be determined to be eligible. As of the Third Quarter of 2020, there were 7,714,175 households receiving Lifeline support (including 257,157 Tribal households).³ Whereas qualified Lifeline households are clearly

¹WTA recognizes that the one-time reimbursement for connected devices is for “up to” \$100, and that an eligible household must pay more than \$10 but less than \$50. However, given that there are few, if any, laptops, desktop computers or tablets of reasonable quality available at prices below the \$110-to-\$150 range, it is likely that the full \$100 reimbursement will be applicable in most cases.

² Universal Service Administrative Company, 2021 First Quarter Filings, LI08 – Lifeline Subscribers – by State – Jurisdiction – Jan–2020–through–Sept–2020.xlsx.

³ Ibid.

eligible for EBCF discounts, the CAA goes far beyond Lifeline recipients to include households where at least one member: (a) has been approved to receive benefits under the free or reduced price school lunch program or school breakfast program; (b) has experienced a substantial loss of income since February 29, 2020; (c) has received a Federal Pell Grant in the current award year; or (d) meets the eligibility criteria for a participating provider's own existing low-income or COVID-19 program.

WTA does not know how many eligible households these additional criteria will add beyond the existing 7.714 million eligible Lifeline recipients, but the number potentially can be very substantial. For example, it is unclear how many additional EBCF-eligible households will result from inclusion of the National School Lunch Program (an estimated 21.408 million participating children, 17.913 million receiving free or reduced-price lunches as of April 2020) and/or the School Breakfast Program (an estimated 13.147 million participating children, 12.139 million receiving free or reduced-price breakfasts as of April 2020).⁴ In fact, the Department of Agriculture's Community Eligibility Provision ("CEP") alone could well render tens of millions of households across a wide range of incomes eligible for EBCF discounts because it enables participating school districts, groups of schools, and individual schools that meet certain criteria to offer breakfast and lunch to ALL of their students at no charge without a household application (any indication or evidence that a student is from a low-income household). Also, many millions of households suffered substantial losses of income due to a variety of factors (including lay-offs, furloughs, reduced work hours, closure of their businesses, and decreased business revenues) during all or substantial portions of the period since February 29, 2020. One aspect of this is indicated by the 5.271 million continuing jobless claims for the week ending January 2, 2021, as

⁴ USDA Food and Nutrition Service, Program Data Overview, <https://www.fns.usda.gov/pd/overview> (visited Jan. 16, 2021), Summary of Major Food and Nutrition Programs (data as of July 10, 2020).

well as the fact that continuing jobless claims stood at a maximum of over 20 million in May 2020.⁵ The Pell Grant eligibility criterion can also expand the size of the EBCF program significantly. As recently as the 2019-20 school year, the federal government gave out Pell Grants to 6.7 million students.⁶ Finally, there is no ready or reliable way to evaluate the potential numbers of additional households that may be rendered eligible by the low-income or COVID-19 programs of various potential participating providers.

WTA is well aware that many households are likely to qualify under more than one of the five potential EBCF eligibility criteria, so that the actual number of eligible EBCF households will be significantly less than the mere sum of eligible households under the five criteria. However, it appears quite possible that the total number of eligible EBCF households will reach at least the 15-to-25 million range, which means that the program funding can be exhausted in less than three (3) months (64 million discount payments / 25 million eligible households = 2.56 months) and is very unlikely to last much more than four (4) months (64 million discount payments / 15 million eligible households = 4.26 months).⁷

WTA believes that the EBCF can be a very beneficial program, but urges that it be limited to low-income households that have a clear and pressing need for the EBCF subsidies in order to afford the broadband services that they require to find or retain employment and/or to enable their children to “attend” school. WTA members and other small rural carriers know their customers, and are generally aware of the households that are truly struggling and need the EBCF discounts. However, WTA understands that the Commission must follow the CAA statute, which contains

⁵ U.S. Department of Labor, News Release (*Unemployment Insurance Weekly Claims*), <https://www.dol.gov/ui/data.pdf> (visited January 16, 2021).

⁶ College Board, *Trends in College Pricing and Student Aid 2020*, p. 37.

⁷ NOTE: these are very basic “ballpark” numbers that do not factor in the impact of \$100 connected device discounts or \$75 Tribal discounts, and that only roughly estimate a reasonable range for the total number of actual households eligible under at least one of the five eligibility factors.

broad eligibility provisions that encompass many households that do not require the EBCF discounts and supported broadband services and equipment as urgently as others. For example, some of the school lunch and breakfast programs have been expanded to serve broad groups of students that include families that are not in such severe financial straits that they cannot obtain broadband service without the EBCF subsidy (and, in fact, may actually be accurately classified as middle income or upper income households).

WTA views the EBCF program as a classic “trade-off” between a subsidy program that serves a larger group of eligible beneficiaries for a short time versus one that serves a smaller group of more needy beneficiaries for a longer time. To the extent possible under the CAA statutory language, WTA urges the Commission to employ income and other relevant financial hardship criteria to reduce the number of potentially eligible EBCF beneficiaries to those households who need the discounts the most and to allow them to be available for a longer period (such as six-to-nine months).

Finally, WTA notes that its foregoing program length estimates (2.56 months and 4.26 months) contemplate a relatively brief EBCF program that may well exhaust its funding and end rather suddenly during the middle of a month. This, plus the Commission’s intent to accept participant applications on a rolling basis, would appear to increase the possibility that the Commission and its Universal Service Administrative Company (“USAC”) may be unable to provide sufficient notice to service provider participants that the EBCF appropriation is used up and the program is ending. This poses a very real danger of significant customer hardship and dissatisfaction if and when customers find out after the fact that they will not receive the discounts they expected to get for whole or partial months of broadband service for which they have already incurred charges. In addition to the loss of discount revenues, abrupt termination of EBCF

discounts on short notice is likely to create severe customer relations problems for innocent service providers, including angry interactions with customer service and maintenance personnel, loss of customer goodwill, and increases in the number and size of delinquent accounts. Even if minimally adequate notice of EBCF program termination can be provided, many customers and service providers are likely to be unhappy if they have had to spend significant time and expense to arrange for eligibility determinations and the installation/initiation of discounted service only to have the program end in a very short time such as two-to-four months.

In sum, WTA recognizes that the EBCF program comes with difficult trade-offs, and that the Commission's discretion is constrained by the statutory language of the CAA. However, to the extent permitted, WTA urges the Commission to limit eligibility as much as possible in order to provide the discounts for a longer period (such as six-to-nine months) to those low-income households that are in such dire financial straits that they otherwise cannot afford necessary broadband services. A longer and more limited program would also enable the Commission and USAC to monitor funding more closely and carefully, and increase the likelihood that more sufficient notice of funding exhaustion and program termination can be furnished.

B. Comments on Specific Program Rules

WTA supports the design and implementation of EBCF mechanisms and regulations that correspond as much as possible to established Lifeline mechanisms, procedures and regulations except where the EBCF statutory language clearly and specifically requires otherwise. This correspondence to existing and proven Lifeline features includes, among other things, administration by USAC; use of the National Verifier, National Lifeline Accountability Database, Representative Accountability Database and Lifeline Claims System; application of the existing

definition of Tribal Lands and process for identifying whether a household lives on Tribal lands; and Lifeline auditing and enforcement procedures and rules.

Participating providers. WTA is well aware that participation in the EBCF program is voluntary. However, WTA notes that some of its members that had voluntarily made the initial Keep America Connected pledge felt pressured to extend their pledge beyond the initial period. In order to encourage EBCF participation, WTA suggests that the Commission clarify that the program will terminate and that service provider obligations to furnish the subject discounts will end when the initial \$3.2 million appropriation runs out unless Congress extends the program and appropriates additional money before that time.

EBCF participants must be either Eligible Telecommunications Carriers (“ETCs”) or be approved by the Commission. All of WTA’s Rural LEC members are ETCs that receive federal high-cost and/or Lifeline support, but some of them provide broadband service via ISP subsidiaries or affiliates that are not presently ETCs. As the Commission is aware, WTA members and other Rural LECs are virtually all operated by small administrative staffs that are familiar with their telecommunications and non-telecommunications, regulated and non-regulated operations. Hence, even though a WTA member may provide broadband service via a non-ETC ISP affiliate, the common administrative staff that operates both the Rural LEC and its ISP are very likely to be familiar with applicable ETC and Lifeline procedures, obligations and regulations.

WTA notes that the CAA specifies an “expedited” process to approve non-ETC broadband providers, and indicates that the Commission should “automatically approve” a broadband provider that had an “established program” as of April 1, 2020 regarding “widely available” Internet service and verification processes sufficient to avoid fraud, waste and abuse. WTA proposes that the Commission recognize the critical and substantial difference between a non-ETC

that is a subsidiary or commonly-operated affiliate of an organization that is an ETC and Lifeline program participant with a good compliance record versus a non-ETC that has little or no organizational experience with ETC and/or Lifeline requirements. WTA proposes that a non-ETC receive “expedited” approval for EBCF participation if it can show that members of its administrative staff are familiar with ETC and Lifeline requirements via their duties with a parent, subsidiary or affiliate that has ETC status, participates in the Lifeline program and has a good compliance record. Non-ETCs lacking such organizational experience with ETC and Lifeline requirements should be required to make a substantial showing that they are familiar with ETC and Lifeline requirements, and that they have devised and will implement procedures sufficient to avoid fraud, waste and abuse.

WTA further notes that it can be difficult to prove that a potential EBCF participant had an “established program” as of April 1, 2020 regarding “widely available” Internet service and related verification procedures. One readily available approach would be to require every entity requesting EBCF participation to submit information from its most recently filed FCC Form 477 showing that it has previously certified that it has been providing the broadband speed and service for which it is requesting EBCF support within the service areas in which it is seeking such support. WTA is aware of the shortcomings of FCC Form 477 data, but in the EBCF context it has the advantages of: (a) being readily available; (b) being certified as correct under penalty of perjury; and (c) indicating that an applicant is already providing its proposed broadband service in the area for which it is seeking support (a critical factor where the EBCF discount is needed immediately and the program is likely to be of short duration).

Standard rate. WTA proposes that a participating service provider’s “standard rate” be defined as the rate that it was charging as of December 1, 2020, for the service tier on which an

eligible household elects to take EBCF-discounted service. This approach gives an eligible household the flexibility to choose the broadband service and speed that meets its economic and educational needs. If the rate for the selected service tier is less than the applicable maximum \$50 or \$75 per month discount, the household's discount will be capped at the actual rate. If the rate for the selected service tier is greater than the applicable discount, the \$50 or \$75 maximum discount will apply. Many ISPs list their service tiers and rates on their websites; certification that a rate listed on the website for a particular service tier went into effect on or before December 1, 2020 should be sufficient for EBCF purposes. Where a certification is questioned, pre-December 1, 2020 customer bills or contracts can be used to confirm the accuracy of a rate.

Respectfully submitted,
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