



February 16, 2021

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Emergency Broadband Benefit Program*, WC Docket No. 20-445

Dear Ms. Dortch,

New America's Open Technology Institute ("OTI") strongly supports the Emergency Broadband Benefit ("EBB") and submitted initial comments detailing our recommendations for the program.¹ OTI submits the following reply comments in response to the widespread comments in the record.² We submit the following responses and recommendations:

1. The Commission must prioritize establishing a sound verification system that ensures equal access for all eligibility groups
2. The Commission should adopt a streamlined approval process for non-ETC providers to ensure an easy-to-understand process for consumers
3. The Commission should broadly define eligible households
4. The Commission should use community-based procedures to determine eligibility in the EBB program
5. The Commission should prohibit data caps in the program
6. The Commission should ensure EBB services are sufficiently robust to support remote work and education
7. The Commission should prohibit providers from engaging in the harmful practice of upselling

¹ Comments of New America's Open Technology Institute, WC Docket No. 20-445 (Jan. 25, 2021) ("Comments of OTI"). Unless otherwise noted, all Comments referenced herein were filed in this docket on January 25, 2021.

² *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445 (Rel. Jan 4, 2021), ("Public Notice").

8. The Commission should prohibit auto-enrollment into non-EBB plans
9. The Commission should require pricing transparency by adopting a “broadband nutrition label”
10. The Commission should explicitly allow consumers the ability to switch between providers through the benefit
11. USAC should notify consumers and providers on a weekly basis the amount of funds dispersed
12. The Commission should conduct meaningful government-to-government consultation with Tribes to ensure all tribal communities have the opportunity to benefit from EBB
13. The Commission should ensure that providers and other stakeholders promote the program in a robust and concerted manner

1. The Commission must prioritize establishing a sound verification system that ensures equal access for all eligibility groups

Although many commenters support use of the National Verifier (“Verifier”) to verify consumer eligibility for the benefit, OTI urges the Commission to be wary of relying solely on the Verifier without systemic upgrades. The Navajo Nation Telecommunications Regulatory Commission argues that reliance on the Verifier in its current state might “spell disaster” for the EBB’s application processing.³ OTI is particularly concerned about states in which the Verifier lacks automated connections to other eligibility databases. According to a recent Government Accountability Office (GAO) report, 60 percent of Lifeline subscribers live in the 36 states where the Verifier has no automated connections to state benefits databases.⁴ Therefore, most EBB applicants are likely to be relegated to the Verifier’s manual process administered by the Universal Service Administrative Company (USAC), which has its own problems. The aforementioned GAO report also found that 68 percent of applications reviewed by USAC’s manual process are abandoned.

For the program to succeed in covering as many eligible people as possible, the Verifier and related manual processes must be strengthened. The GAO report includes several specific solutions for problems to the Verifier they identified, including improving consumer knowledge of the Lifeline program and its processes, ensuring that the Verifier online application and support website are accurate, facile, and contain a user feedback mechanism, and providing tribal organizations with targeted information and tools like direct access to the Verifier to assist residents of tribal lands with their Verifier applications. On the latter point, comments from the

³ Comments of the Navajo Nation Telecommunications Regulatory Commission. (“Comments of NNTRC”) at 5.

⁴ Government Accountability Office, “FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience” (Jan. 2021), <https://www.gao.gov/assets/720/712068.pdf> (“GAO Report”).

NNTRC confirm that falling Lifeline participation in Indian Country can be explained largely by strict verification requirements and the establishment of the Verifier. “If the FCC has already admitted that the National Verifier cannot work during the time of a pandemic, how can it expect to use the National Verifier to certify participation in a program precisely designed to offset the difficulties created by that same pandemic?” the Navajo Commission writes, suggesting that what the FCC should do is look to carriers who have worked in Indian Country and get their input on how the EBB can be administered. Additionally, they recommend that the FCC use all established programs that can help determine EBB eligibility. These programs include the Tribal Temporary Assistance for Needy Families and programs operated by Indian tribes or tribal organizations through self-determination contracts and self-governance compact authorized under P.L. 93-638. The Cherokee Nation further confirmed the need to utilize tribally administered, qualifying programs to determine EBB eligibility.⁵

Since manual verification will take more time and effort on the parts of consumers, providers, and USAC, the Commission must immediately begin the process of entering into data matching agreements with those relevant federal and state agencies that can help prove eligibility. Many education advocates, including Higher Learning Advocates, Institute for Higher Education Policy (IHEP), Breakthrough Central Texas (William Davies), LeadMN, OneGoal Chicago, as well as advocates like Public Knowledge, have noted that the Commission should immediately begin the process to enter into a data matching agreement with Department of Education that would permit the sharing of Pell Grant status between the two agencies for the purposes of verifying eligibility to participate in the EBB program. The National Lifeline Association (NaLA) also writes that by making the document transmission functionality of the Verifier’s service provider application programming interface (API) available, service providers will be able to help consumers identify and submit proper documentation while screening out improper documentation, which can lead to higher participation and lower error rates in the Verifier’s verification process. Additionally, the Commission should ensure that consumer and service provider APIs provide a means of accepting school verifications of household eligibility based on participation in the free and reduced price lunch program or the school breakfast program, which are new categories of eligibility in the EBB program.⁶

OTI is skeptical of calls for “self-certification” by applicants in lieu of automated or manual verification. The emergency nature of this program will likely demand less-than-perfect procedures in the interest of getting relief to people as quickly as possible, but the Commission must adopt sound verification procedures. If individuals are left to self-certify their eligibility, then, at the very least, the Commission should prioritize self-certifications that come from entities with a demonstrated strong showing of localized, community participation and direct relationships with applicants.⁷

⁵ Comments of the Cherokee Nation at 1.

⁶ Comments of NaLA at 10.

⁷ See, e.g., Comments of FastMesh at 2.

Whether the Commission chooses an automated method, manual review, self-certification, or something else, it must ensure that the applications of every eligible group—Pell, NSLP, unemployment, and Lifeline—are processed equitably. A chaotic enrollment system that expedites certain applications over others could produce a “lottery effect” for which applicants get to enroll in the program in a timely manner. OTI is particularly concerned about equal access for recipients of Pell grants, given that the Commission and providers have little history of working with this program. For example, a system that subjects Pell grant recipients to onerous paperwork submissions while allowing other categories to apply with relative ease could relegate low-income college students to the back of line. Equity in application processing is particularly important given the fiscal nature of this program; we do not know how quickly the program's \$3.2 billion appropriation will be drawn down, so timing matters.

2. The Commission should adopt a streamlined approval process for non-ETC providers to ensure an easy-to-understand process for consumers

To ensure that the program includes as many of those eligible as possible, the record agrees with the Commission that broadband providers looking to participate in the program who are not yet designated as eligible telecommunications carriers (ETC) should be approved as quickly as possible to expand EBB-applicable service to new areas and increase consumer choice. As Verizon notes in their comments, even large carriers that service over 100 million consumers nationwide are not designated as an ETC, so expediting approval of non-ETC applications is essential to the program's success. Verizon recommends in their comments that providers affiliated with an existing ETC and who commit to using the National Verifier to verify eligibility should automatically be approved.⁸ INCOMPAS, whose members include competitive, local providers offering facilities-based broadband service, also recommends that those providers who have shown a commitment to low-income consumers by establishing widely-available low-income programs during the pandemic, or have a demonstrated track record of serving consumers through ongoing relationships with the Commission, USAC, through participation in the Keep Americans Connected Pledge or USF programs like E-rate, should receive automatic approval subject to their ability to meet the additional requirements in the Notice.⁹ We agree with groups like the Multicultural Media, Telecom and Internet Council (MMTC), National Urban League (NUL), Hispanic Technology and Telecommunications Partnership, the Internet & Television Association (NCTA), Microsoft, the City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, Seattle Housing Authority, Information Technology and Innovation Foundation, and America's Communication Association (ACA) for an expedited approval of broadband providers who had low-income

⁸ Comments of Verizon at 2.

⁹ Comments of INCOMPAS at 8.

programs as of April 1, 2020.¹⁰ The ACA even suggests extending expedited approval to providers who established low-income programs later in the year, which might include providers who established programs during summer of 2020 to connect school children with broadband in time for the new school year.¹¹

Microsoft and Verizon also suggest that requiring providers to draw up compliance plans in order to be approved may be redundant to existing compliance requirements within Lifeline processes, and that these kinds of, “bureaucratic barriers to participation,” may discourage many non-ETCs from participating in the program, to the detriment of those residents in their service area.¹² In these cases, it might be easier, as the California Public Utilities Commission writes in their comments, to create a compliance plan template that non-ETC service providers can quickly fill out to be approved.¹³ At the least, ETCs should not be required to draw up additional compliance plans, per NaLA’s comments.¹⁴

A few filers asked that the Commission set a common start date for the program in order to give newly participating non-ETC providers and smaller providers an equal chance of participating in the program.¹⁵ Equalizing start dates, however, prioritizes companies over consumers, who are struggling to pay their bills and afford internet service now. Benefits should be rolled out as soon as possible, without forcing consumers to wait for providers to be approved.

3. The Commission should broadly define eligible households

There is strong support in the record for the Commission to adopt a broad definition of “household” for the purposes of the EBB program, and OTI strongly agrees with this recommendation.¹⁶ If the Commission were to adopt a restrictive definition for household, it would make this benefit unavailable to millions of individuals.

The troubles created by the Commission’s rigid definition of household is particularly problematic for Tribal areas, as the Navajo Nation Regulatory Commission warns with a cautionary tale about the Lifeline program: “One of the reasons for the significant drop-off in Tribal Lifeline participation has been the very narrow reading of the term ‘household’ coupled

¹⁰ Comments of the Multicultural Media, Telecom and Internet Council (MMTC) and National Urban League (NUL) at 9; Comments of the Hispanic Technology & Telecommunications Partnership at 2; Comments of NCTA —THE INTERNET & TELEVISION ASSOCIATION at 7 (“Comments of NCTA”); Comments of ACA Connects – America’s Communications Association at 13; Comments of Microsoft at 5.

¹¹ Comments of ACA Connects at 13.

¹² Comments of Verizon at 4; Comments of Microsoft at 4-5.

¹³ Comments of the California Public Utilities Commission at 2.

¹⁴ Comments of the National Lifeline Association at 6-7.

¹⁵ Comments of SPITwSPOTS Inc. et al at 2.

¹⁶ Comments of Free Press and Access Now; Comments of NNTRC; Comments of City of Los Angeles CA, City of Chicago IL, City of Portland OR, City of Boston MA, Texas Coalition of Cities For Utility Issues; Comments of MMTC and NUL.

with the lack of rural addresses in much of Indian Country.”¹⁷ The Navajo Nation Regulatory Commission highlights how the Commission’s adoption of a draconian set of obligations for claiming a household, which the Regulatory Commission notes are “contrary to Navajo culture” and has “resulted in many Navajos losing access to the Lifeline program.”¹⁸

OTI agrees with commenters representing cities and localities that highlight the harms posed on very vulnerable populations through restrictive definitions of “household,” as well as burdensome verification processes to ensure only one subscription goes to each address.¹⁹ The City and County of San Francisco urge the Commission not to mandate additional stringent verification processes for applicants from the same address, noting that even before the pandemic, individuals were increasingly living in shared housing and “many low-income seniors and people with disabilities reside in group homes or ‘board and care’ facilities under a single address.”²⁰ As the City and County of San Francisco argue, individuals who live in such group homes very well may be unable to jointly use one single broadband connection. OTI urges the Commission to heed the warning of the cities of Los Angeles, California; Chicago, Illinois; Portland, Oregon, Boston, Massachusetts and the Texas Coalition of Cities For Utility Issues who argue that the Commission must undertake a concerted effort to make sure the dependence on the “household test” does not “render ineligible those that might be in a family shelter, domestic violence shelter or other temporary shelter,” further calling on the Commission not to adopt draconian requirements restricting the number of subscribers at a particular address to account for potential subscribers in temporary housing.²¹

¹⁷ Comments of the NNTRC at 6.

¹⁸ *Id.*

¹⁹ Comments of Free Press and Access Now at 5; Comments of American Association of People with Disabilities at 2 (“Many households may consist of roommates or others who live together to provide each other with supports in order to live in the community. The Commission should not require the subscriber to certify that no other person in the subscriber’s economic household is receiving a benefit through the Emergency Broadband Benefit Program where two or more subscribers reside at the same address. The Commission should also not require additional more vigorous verification processes in households with multiple enrollments. Households may have multiple disabled people within who have different and/multiple access needs and each person may need to utilize the Emergency Broadband Benefit (EBB) Program in order to receive the type of connection and device they need to access the internet. Requiring more vigorous verification processes for households with multiple enrollments would impose an unnecessary administrative burden on those who have the most urgent need for this benefit.”); Comments of the National Association of State Directors of Adult Education at 1 (“We question, however, the Program’s plan to impose a limit of one device per household as several generations may be engaged in education and training at the same time. We know this to be occurring in our students’ homes and applaud those families for investing in skill development across generations. We know that many unemployed and underemployed youth and adult workers will be returning to an economy that has changed, to jobs that are reconfigured and credentialed, and to an economy, healthcare system, and government services that rely on and expect digital skills for participation.”).

²⁰ Comments of the City and County of San Francisco at 2.

²¹ Comments of the cities of Los Angeles, California; Chicago, Illinois; Portland, Oregon, Boston, Massachusetts and the Texas Coalition of Cities For Utility Issues at 18-19.

The record provides several compelling alternatives to the Commission's restrictive one-per-household rule and verification process. The City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, and the Seattle Housing Authority argue that the Commission should determine eligible households by "qualified persons, not a single residential address" to ensure low-income individuals living in shared housing are able to access the Emergency Broadband Benefit subsidized broadband connection.²² OTI agrees, and further argues that the Commission should lean heavily on locally-driven solutions to the determination of household eligibility. The City and County of San Francisco argue that the EBB should be accessible to "entities such as school districts, health care providers, assisted living or nursing facilities, and local governments who purchase service 'in bulk' for eligible households, provided that the serving entity is required to submit verification documentation for each service recipient."²³ The city's explanation for this is key: these institutions already engage with these groups of people and could therefore likely include the EBB program with other similar welfare services they provide to the same populations.²⁴ Similarly, the Commission should engage with specific groups of impacted individuals such as Tribal groups and organizations representing people with disabilities to determine the definition for household and verification processes that would ensure the largest number of eligible individuals are able to subscribe for the EBB program.²⁵

4. The Commission should use community-based procedures to determine eligibility in the EBB program

To include as many of those eligible as possible in the program, the Commission should allow households within eligible community organizations to receive the EBB without applying redundantly as individuals. For instance, the record supports using the U.S. Department of Agriculture's (USDA) Community Eligibility Provision (CEP) to prove individual household eligibility for any household attending the nation's highest poverty schools or that are within the nation's highest poverty school districts.²⁶ The CEP allows schools and local educational agencies (LEAs) located in low-income areas to provide free breakfast and lunch to all students. This community based eligibility has multiple benefits: for students, they experience no stigma about getting free meals, for parents and administrators, there's less time and effort spent on paperwork and no need to track meals or unpaid meal charges.²⁷

²² Comments of the City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, and the Seattle Housing Authority at 7-8.

²³ Comments of The City and County of San Francisco at 2.

²⁴ *Id.*

²⁵ Comments of the Navajo Nation Telecommunications Regulatory Commission at 6-7; Comments of the American Association of People with Disabilities at 2.

²⁶ United States Department of Agriculture, "The Community Eligibility Provision (CEP) What Does It Mean For Your School or Local Educational Agency?" (April 2015), <https://fns-prod.azureedge.net/sites/default/files/cn/CEPfactsheet.pdf>.

²⁷ *Id.*

The record shows strong support of utilizing this provision to extend benefits to all low-income families who need help paying for internet service. The Stewards of Affordable Housing for the Future, Aurora Institute, cities of Los Angeles, CA, Chicago IL, Portland, OR, and Boston, MA, the Texas Coalition of Cities For Utility Issues, the National League of Cities, and the Benton Institute for Broadband & Society all support making all households in schools and school districts participating in the USDA CEP also eligible for the EBB program.²⁸ The concern from the Rural Broadband Association (NTCA) that using the CEP would make the EBB program overly inclusive and include too many households is not only inappropriate in a context where the relevant program has limited funding and thereby limited opportunity to get low-income consumers connected, it also misunderstands how the CEP operates, and overlooks precedential USAC use of the CEP. The CEP is already used to help school districts determine their E-rate discounts.²⁹ Additionally, schools and LEAs must have a minimum of 40 percent of students directly certified for free meals based on existing data from needs-based programs such as the SNAP, and children who are homeless, runaways, or in other special circumstances.³⁰ As of 2020, the percentage of subscribers who qualified for Lifeline through SNAP was 22.3 percent.³¹ Schools and school districts participating in CEP, therefore, have already confirmed an eligible student population at double the percentage of people who were verified to be eligible for Lifeline last year. Using the CEP is therefore a more efficient and effective way of signing up those who are eligible for the EBB program.

5. The Commission should prohibit data caps in the program

The Commission should prohibit participating providers from imposing data caps on the services offered through the EBB program. This program is targeting low-income households that are going to rely on this connectivity to support work, education, information services, healthcare services, financial services, entertainment, communication with loved ones and friends they can no longer see in person, and every other facet of society that has moved to a remote status during the pandemic. The broadband connection purchased through the EBB will likely need to support the activities of several individuals at once throughout the day, especially when considering the connectivity needed for K-12 and higher education students. Providers that offer service through the EBB program should not be able to impose artificial

²⁸ Comments of Stewards of Affordable Housing for the Future at 3; Comments of Aurora Institute at 2; Comments of the cities of Los Angeles, California; Chicago, Illinois; Portland, Oregon, Boston, Massachusetts and the Texas Coalition of Cities For Utility Issues at 13; Comments of National League of Cities at 1; Comments of the Benton Institute for Broadband & Society at 31.

²⁹ United States Department of Agriculture, "Community Eligibility Provision: Title I and E-rate" (April 21, 2016), <https://www.fns.usda.gov/cn/community-eligibility-provision-title-i-and-e-rate>.

³⁰ United States Department of Agriculture, "Community Eligibility Provision: Perceived Barriers to CEP Implementation" (Aug. 2015), https://fns-prod.azureedge.net/sites/default/files/cn/CEP_perceivedbarriers.pdf.

³¹ Universal Service Administrative Company, "Program Data" (2021), <https://www.usac.org/lifeline/learn/program-data/>.

boundaries on the amount of data a household can consume for an subsidy program that is by its very name an emergency measure for the most vulnerable populations in the U.S.³²

OTI has previously detailed how data caps harm low-income consumers—the very population at issue in this proceeding and this upcoming program—but are also unnecessary and arbitrary measures imposed by companies.³³ Comcast demonstrated this recently when, after concerted pressure from lawmakers—who argued, “Network capacity is not an issue for Comcast or a valid excuse to charge customers more”—and grassroots organizations, the company decided to delay the imposition of their planned data caps.³⁴

The concern about the imposition of data caps is not trivial—Charter recently requested the Commission rescind its merger requirement it had placed on the major cable company after its purchase of Time Warner Cable to refrain from imposing data caps. The firm withdrew its request once the Commission changed leadership following the 2020 election, but the request demonstrates the willingness of at least one broadband provider—despite its reference to a couple of services the company offers without data caps in the record³⁵—to establish data cap restrictions on certain consumers, and lower-cost plans such as those covered by the EBB would likely be particularly susceptible to such data use restrictions.³⁶

The record demonstrates the need for the Commission to stipulate that services offered through the EBB program not be subject to data caps. A coalition of hearing impaired advocates highlight the fact that technologies that provide real-time interpretation for hearing impaired individuals are often data-intensive applications and that a requirement that services in the program *not* be subjected to data caps would ensure “deaf, hard of hearing, DeafBlind, or deaf with mobility issues – and who are otherwise eligible to participate in the Emergency

³² Danielle Kehl and Patrick Lucey, “Artificial Scarcity: How Data Caps Harm Consumers and Innovation,” New America’s Open Technology Institute Report (June 30, 2015), <https://www.newamerica.org/oti/policy-papers/artificial-scarcity/> (“... data caps can make it harder for consumers to make informed choices; decrease the adoption and use of existing and new online services; and undermine online security. It is also increasingly clear that data caps have a disproportionate impact on low-income and minority populations as well as groups like telecommuters and students.”).

³³ *Id.*

³⁴ Tony Romm, “Comcast suspends Internet data limits, fees for Northeast customers,” The Washington Post (Feb. 3, 2021), <https://www.washingtonpost.com/technology/2021/02/03/comcast-suspends-data-caps/>; Jon Brodtkin, “Comcast data cap blasted by lawmakers as it expands into 12 more states,” Ars Technica (January 5, 2021), <https://arstechnica.com/tech-policy/2021/01/comcast-data-cap-blasted-by-lawmakers-as-it-expands-in-to-12-more-states/>.

³⁵ Comments of Charter at 2.

³⁶ Jon Brodtkin, “As Ajit Pai exits FCC, Charter admits defeat on petition to impose data caps,” Ars Technica (January 19, 2021), <https://arstechnica.com/tech-policy/2021/01/charter-abandons-petition-seeking-fcc-approval-to-impose-data-caps-in-2021/>.

Broadband Benefit Program – can take advantage of modern communications services.”³⁷ Data caps also hinder the ability of students to engage with remote learning, as restrictive data limitations create problems for low-income students at all levels of education.³⁸

6. The Commission should ensure EBB services are sufficiently robust to support remote work and education

The Commission should adopt rules that ensure providers offer service at speeds sufficiently robust to support households transitioning to life fully-supported online. The EBB-funded connections for consumers nationwide will power a household’s ability to work, learn, research, keep healthy and safe, communicate with friends and family, and be afforded the luxury of staying at home to stop the spread of COVID-19. In particular, OTI urges the Commission to heed the problems identified by Next Century Cities, who identify the concerns local officials have voiced regarding the need for high-speed and robust broadband plans as a part of any emergency connectivity effort:

“In the wake of the pandemic, speed and affordability quickly became top concerns for local officials responding to residents’ needs. Increased reliance on video conferencing and a concentration of high-demand applications during work and school hours tested the capabilities of existing networks.”³⁹

7. The Commission should prohibit providers from engaging in the harmful practice of upselling

³⁷ Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Cerebral Palsy and Deaf Organization (CPADO), Association of Late-Deafened Adults (ALDA), National Cued Speech Association, Registry of Interpreters for the Deaf, Inc., Clear2Connect Coalition, and Hearing Loss Association of America (HLAA) at 3-4.

³⁸ Comments of The City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, and the Seattle Housing Authority at 11 (“The Seattle School District technical support staff have found in their work to resolve issues interfering with student access to remote learning that existing lowcost internet program data caps are insufficient.”); Comments of The State Educational Technology Directors Association (“SETDA”), the Consortium for School Networking (“CoSN”), and the Alliance for Excellent Education (“All4Ed”) at 4 (“Households reach data caps quickly when multiple users connect from home for work, learning, and other activities. When there is one mobile hotspot sent from the school to a family with more than one child accessing the Internet for learning, the data cap can be reached within the first few days of the month.”); Comments of the Nebraska Public Service Commission at 6-7.

³⁹ Comments of Next Century Cities at 13-14.

The Commission should ensure providers are not permitted to engage in upselling consumers enrolled in the EBB program and who receive their services through the program. This practice is deeply pernicious in the context of the EBB program, and many consumers who may not be fully informed about the specifics of the program could be misled into believing an upgrade in service tier is part of their EBB subsidy when instead they end up with an additional charge they are unable to afford. OTI agrees with FastMesh, an ISP in the Pacific Northwest:

“These ISP practices torment customers with an endless cycle of upselling. This culture is against the spirit of the EBBP, and the program should have stipulations for participant ISPs to be halted from contacting customers eligible for this funding to be persuaded to add or bundle additional services. In many cases, customers are mal-educated regarding the need for more bandwidth or services. Customers turn to their provider for honest technical advice, and this upsell culture influences the purchase of additional services where they may not be needed, driving up household costs significantly.”⁴⁰

OTI described the practice of ISP upselling in our 2014 report *Beyond Frustrated*, which documented the monthslong service outages experienced by millions of people as a result of interconnection disputes involving the nation’s biggest ISPs. Consumers, who were unaware that interconnection congestion was to blame their service outages, reported being upsold to higher speed tiers when they called their ISP to complain. However, the more expensive tiers they were sold did nothing to alleviate the interconnection congestion that was causing the outages.⁴¹

8. The Commission should prohibit auto-enrollment into non-EBB plans

The Commission should prohibit providers from automatically enrolling EBB subscribers into broadband contracts after the conclusion of the program. Households participating in the EBB program will all be low-income consumers who may be unable or unwilling to spend precious funds on broadband service they can no longer afford when the funding for this program ends.⁴² Of course, providers should work with households to enroll those who are interested in retaining a broadband connection upon the conclusion of the program, but that

⁴⁰ Comments of FastMesh at 3.

⁴¹ New America’s Open Technology Institute, “Beyond Frustrated: The Sweeping Consumer Harms as a Result of ISP Disputes” (Nov. 2014), https://static.newamerica.org/attachments/386-beyond-frustrated-the-sweeping-consumer-harms-as-a-result-of-isp-disputes/OTI_Beyond_Frustrated_Final.pdf.

⁴² Comments of Public Knowledge at 5-6.

process should be required to involve discussions and full transparency about the package for which the consumer is signing up.

A ban on auto-enrollment would promote consumer trust and program integrity. If low-income consumers enroll in a broadband benefit program that eventually leaves them with a costly broadband bill for which they did not sign up, they will likely not trust programs administered by the Commission—or maybe even from any government agency—again, and would have good reason not to do so.

9. The Commission should require pricing transparency by adopting a “broadband nutrition label”

Broadband Facts	
Fixed broadband consumer disclosure	
Choose Your Service Data Plan for 50Mbps Service Tier	
Monthly charge for month-to-month plan	\$60.00
Monthly charge for 2 year contract plan	\$55.00
Click here for other pricing options including promotions and options bundled with other services, like cable television and wireless services.	
Other Charges and Terms	
Data included with monthly charge	300GB
Charges for additional data usage – each additional 50GB	\$10.00
Optional modem or gateway lease – Customers may use their own modem or gateway; click here for our policy	\$10.00/month
Other monthly fees	Not Applicable
One-time fees	
Activation fee	\$50.00
Deposit	\$50.00
Installation fee	\$25.00
Early termination fee	\$240.00
Government Taxes and Other Government-Related Fees May Apply: Varies by location	
Other services on network	
Performance - Individual experience may vary	
Typical speed downstream	53 Mbps
Typical speed upstream	6 Mbps
Typical latency	35 milliseconds
Typical packet loss	0.08%
Network Management	
Application-specific network management practices?	Yes
Subscriber-triggered network management practices?	Yes
More details on network management	
Privacy	See our privacy policy
Complaints or Inquiries	To contact us: online/(123)456-7890 ; To submit complaints to the FCC: online/(888)225-5322
Learn more about the terms used on this form and other relevant information at the FCC's website.	

The FCC's 2016 consumer broadband label

There is strong support in the record for the Commission to require pricing transparency from providers regarding their services offered through the EBB program, and OTI again urges the Commission to use the “Broadband Nutrition Label” previously adopted by the Commission to establish one, standardized, and consumer-friendly format for easily available pricing information.⁴³ OTI agrees with Next Century Cities that the very need for the EBB program suggests the need for extensive collection of broadband pricing data more broadly: “The benefits of the institution of pricing data collection will likely extend well past the EBBP and directly impact the granularity and accuracy of current broadband mapping projects at the federal level.”⁴⁴ For this reason, it is essential the Commission begins to turn the page on the disappointing track record of failing to collect broadband pricing information and failing to address the issue of affordability in its analyses of adoption, competition, availability, and mapping broadly through the imposition of broadband pricing transparency in the EBB program.

Several commenters urge the Commission to require providers to disclose their prices in an easy-to-understand manner for consumers in various recommendations that would broadly be best solved with the Commission’s previously-adopted broadband nutrition label. The Greater Washington DC Chapter of the Internet Society argues that “participating providers should be required to provide clear and transparent details about the prices, speeds, availability areas, and the terms of service” which should be “made readily available to all institutions engaging in community awareness in a format and manner that supports their efforts.”⁴⁵ Public Knowledge similarly argues that the Commission should “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).”⁴⁶ The Benton Institute for Broadband and Society highlight the myriad of hidden fees associated with broadband service in the United States that make shopping for an internet service plan a complicated and frustrating task, particularly in the context of an emergency program aimed at giving low-income consumers the ability to pay for such services they maybe previously were not able to afford.⁴⁷

The most efficient and direct solution for the Commission to achieve the support for broadband pricing transparency is through the use of the broadband nutrition label. This label, which could be modeled on the Nutrition Facts food and beverage labels, would provide consumers an easy-to-understand and familiar format to peruse the pricing set-ups of broadband providers offering service through the EBB program.⁴⁸ Since the Commission has previously adopted this measure, the broadband nutrition label also offers the Commission a

⁴³ OTI Comments at 3.

⁴⁴ Comments of Next Century Cities at 13.

⁴⁵ Comments of the Greater Washington DC Chapter of the Internet Society at 5.

⁴⁶ Comments of Public Knowledge at 10.

⁴⁷ Comments of the Benton Institute for Broadband & Society at 16-19.

⁴⁸ Amir Nasr and Austin Adams, “We Need a Broadband Internet Pricing Equivalent of Nutrition Labels,” *Slate* (Dec. 10, 2020), <https://slate.com/technology/2020/12/broadband-internet-pricing-nutrition-labels.html>.

solution that does not require reinventing the wheel. Benton has endorsed the adoption of broadband nutrition labels, and forecast to research from the organization that “explains that consumers who lack the resources or sophistication to navigate the byzantine complexity—and opacity—of incumbent pricing structures, fees, and terms will often pay higher prices simply because they struggle to understand the confusing materials presented by broadband providers.”⁴⁹ The Commission should ensure these problems do not arise in the EBB program, which aims to help the very low-income consumers who are vulnerable to these predatory pricing schemes.⁵⁰

10. The Commission should explicitly allow consumers the ability to switch between providers through the benefit

Just as the government should not allow grocery stores to pick the best toothpaste for SNAP recipients, consumers—not providers—should be able to choose what internet service they can apply their EBB benefit to, and be able to change it at any time. The Commission should therefore explicitly ensure that those participating in the EBB program may use their benefit for whatever service they see best fitting their needs at any time during their participation in the program.

The record shows some confusion about who knows consumers best that OTI would like to correct. USTelecom writes that carriers should have flexibility in offering broadband programs of their choice.⁵¹ Carriers should be able to maintain the flexibility they already have in their broadband offerings, by offering the same slate of service options to EBB participants as they do non-EBB customers. Those eligible for EBB should not be discriminated against by providers, especially when there is a history of internet service options geared at low-income consumers being of lower quality.⁵² Additionally, some groups in the record want to restrict low-income consumers’ ability to choose what service they want at any time of participating in the program. TracFone Wireless, for instance, proposes that EBB participants only be able to change their service on specific days of the month, while Altice recommends that participants continue with their chosen service provider for at least three months.⁵³ Worst of all, the California Public Utilities Commission recommends that customers who sign up for service be provided service from that provider for up to a year.⁵⁴

⁴⁹ Jonathan Sallet, Broadband for America Now, Benton Institute for Broadband & Society Report (Oct. 2020), https://www.benton.org/sites/default/files/BroadbandAmericaNow_final.pdf at 27.

⁵⁰ Becky Chao and Claire Park, “The Cost of Connectivity 2020,” New America’s Open Technology Institute (July 15, 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-2020/>.

⁵¹ Comments of USTelecom—The Broadband Association at 9.

⁵² Jon Brodtkin, “Comcast lifts uploads to 5Mbps amid complaints its low-income plan is too slow,” Ars Technica (Feb. 2, 2021), <https://arstechnica.com/tech-policy/2021/02/comcast-lifts-uploads-to-5mbps-amid-complaints-its-low-income-plan-is-too-slow/>.

⁵³ Comments of TracFone Wireless at 17; Comments of Altice USA, Inc. at 10.

⁵⁴ Comments of the California Public Utilities Commission at 7.

These suggestions fall in line with existing anticompetitive practices like minimum contract length requirements and contract terminations fees that not only limit consumer choice, but also impose considerable financial burdens on consumers who just want to find the best service for their money. In OTI's Cost of Connectivity research, we found that the average early termination fee charged by U.S. internet service providers is \$162.47.⁵⁵ Those eligible for the EBB program are verified to have financial needs which are preventing them from having internet access. We do not expect consumers who purchase toothpaste to purchase toothpaste from one brand month to month, or year to year. Consumers have a multitude of needs for their internet services, and it's they who know which service would best meet these needs. The Commission should agree with the multitude and diverse set of groups in the record, including Comcast, CTIA, NDIA, NCTA, NHMC, Free Press, Access Now, and Tech Freedom that EBB eligible households can apply the benefit to the services and devices of their choice, which, in the words of TechFreedom, "will encourage providers to compete for customers, and encourage consumers to seek out the best and most affordable service offerings."⁵⁶

11. USAC should notify consumers and providers on a weekly basis the amount of funds dispersed

As benefits from the EBB program fund are distributed, both providers and consumers need to know respectively how much longer they will be reimbursed and subsidized for internet service. At the minimum, the Commission must ensure that both groups are notified in advance of the fund's depletion.⁵⁷ The record shows several suggestions for appropriate notification timelines ranging from 30 to 60 days—the National League of Cities, Multicultural Media, Telecom and Internet Council, and National Urban League recommend 30 days of notice before termination, TracFone Wireless recommends 60 days, with SAHF and Leading Age agreeing on a minimum of 60 day notice up to 90 days, and the Benton Institute and CPUC agree on 90 days of notice.⁵⁸

Furthermore, the Commission should maintain a notification system that would give weekly updates on the program's progress, including participating broadband providers, the total number of broadband service plans and devices subsidized by the provider, state, and county, and remaining program funding. Such a notification system could be hosted on a .gov

⁵⁵ Becky Chao and Claire Park, "The Cost of Connectivity 2020," New America's Open Technology Institute Report (July 15, 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-fees> at "Focus on the Fees."

⁵⁶ Comments of TechFreedom at 4; Comments of Comcast at 17; Comments of CTIA at 8; Comments of the National Digital Inclusion Alliance at 2; Comments of NCTA at 16; Comments of the National Hispanic Media Coalition at 3; Comments of Free Press at Access Now at 6.

⁵⁷ Comments of Public Knowledge at 10; Comments of the Nebraska Public Service Commission at 4.

⁵⁸ Comments of MMTC and NUL at 11; Comments of TracFone Wireless at 22; Comments of Stewards of Affordable Housing for the Future at 5; Comments of Leading Age at 4; Comments of the Benton Institute for Broadband & Society at 43; Comments of CPUC at 7.

website, as suggested in the GAO report on Lifeline and the National Verifier, though the change should be made with consideration of the history of surveillance and potential lack of public trust, especially from marginalized communities, on a .gov website.⁵⁹ This will not only be helpful for the Commission in maintaining the program, but will also be essential to helping consumers find providers in their areas, keep state commissions who have normally dealt with ETC designations up to date on providers, services, and devices offered in their states, and help providers transition consumers from their EBB-supported plans to other plans if needed. As the Nebraska Public Service Commission writes, state commissions can be useful as more localized independent sources with ties to other state agency resources and local community groups to help inform consumers and build their trust in the EBB program.⁶⁰ Therefore weekly public updates on the program would help them keep up to date on the program and help those living in their states find service providers and get their state residents connected. The National Association of Regulatory Utility Commissioners adds that public disclosure by USAC of each provider that has applied, their standard monthly retail broadband rate, and if they have been approved or denied participation in the program by state, would also help. We agree with NCTA that the Commission could establish a real-time or weekly updated dashboard or tracker on the USAC website that would, “allow providers to plan and track funding so that they can transition participating households.”⁶¹ AT&T’s comments also reflect a sense that a weekly update would be useful.⁶² We also agree with NDIA that keeping a weekly updated dashboard would improve general stakeholder and public understanding of the program’s status and its strengths and weaknesses, as well as enable public and nonprofit leaders, nationally and locally, to keep track of the program’s local penetration, impact, and likely duration and coordinate it with other digital inclusion and pandemic-related initiatives.⁶³ A recent report from the Congressional Research Service on resources for tracking COVID-19 spending includes several examples of dashboard design that might be adopted for the EBB program.⁶⁴

12. The Commission should conduct meaningful government-to-government consultation with Tribes to ensure all tribal communities have the opportunity to benefit from EBB

Tribes are some of the least connected communities in the United States. The lack of broadband availability is especially acute on tribal lands, where the American Indian Policy

⁵⁹ GAO Report at 40-41.

⁶⁰ Comments of the Nebraska Public Service Commission at 4.

⁶¹ Comments of NCTA at 18.

⁶² Comments of AT&T at 6.

⁶³ Comments of the National Digital Inclusion Alliance at 3.

⁶⁴ Congressional Research Service, “Resources for Tracking Federal COVID-19 Spending” (Feb. 1, 2021), <https://crsreports.congress.gov/product/pdf/R/R46491>; See USAspending, available at <https://www.usaspending.gov/>.

Institute found that only 49 percent of residents have fixed home internet service.⁶⁵ Nonetheless, recent changes in the Lifeline program disproportionately harmed Indian Country.⁶⁶ Accordingly, the Commission must conduct robust government-to-government consultation with Tribes to ensure the actions that caused tribal Lifeline subscribership to fall do not affect the opportunity for tribal communities to benefit from EBB.

First, the Commission must work with Tribes to establish definitions of “household” and “tribal lands” that include all tribal communities. The Navajo Nation Telecommunications Regulatory Commission noted in their comments that “One of the reasons for the significant drop-off in Tribal Lifeline participation has been the very narrow reading of the term ‘household’ coupled with the lack of rural addresses in much of Indian Country.”⁶⁷ The Cherokee Nation noted support for Lifeline’s definition of tribal lands that includes the Cherokee Outlet, former reservation lands of the Cherokee Nation, in comments to the Commission.⁶⁸ In contrast, comments submitted by the Internet Society corrected the definition advocated in their initial comments, noting the definition submitted in the initial comments would exclude tribal lands based on density measures.⁶⁹

Second, the Commission must improve the quality of information and tools it provides to tribal governments and organizations to ensure they have the resources to assist in EBB enrollment. Those that reside on tribal lands typically rely on tribal governments and organizations for assistance in applying for programs such as EBB and Lifeline. A recent GAO report found that outreach from tribal governments and organizations is more likely to interact directly with tribal members and promote the program via culturally sensitive mediums such as through festivals and radio shows. As GAO noted, “one tribal telecommunications organization told us that elderly consumers on reservations in the region were raised in boarding schools where they were punished for asking questions. Because of this history, it would not be uncommon for an elder to leave a carrier’s store without applying for Lifeline rather than asking questions.”⁷⁰ In the 2016 Modernization Order, the Commission stated the National Verifier would facilitate the participation of third-party organizations, such as tribal governments and organizations, to assist consumers in their applications to Lifeline. However, the Commission did not provide tribal governments with access to the third party portal of the Verifier’s online application. Further, the GAO report found tribal governments and organizations had “varying degrees of awareness of Lifeline, the Verifier, and the extent to which tribal governments and

⁶⁵ Claire Park, “The Cost Connectivity in the Navajo Nation,” New America’s Open Technology Institute (October 12, 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-navajo-nation/>

⁶⁶ Comments of the Navajo Nation Telecommunications Regulatory Commission at 3.

⁶⁷ Comments of the Navajo Nation Telecommunications Regulatory Commission at 6.

⁶⁸ Comments of the Cherokee Nation at 2.

⁶⁹ Reply Comments to Clarify and Correct the Initial Comments of the Greater Washington DC Chapter of the Internet Society at 1.

⁷⁰ Government Accountability Office, “FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience” (Jan. 2021), <https://www.gao.gov/assets/720/712068.pdf> at 27.

organizations could assist residents of tribal lands with the Verifier.”⁷¹ The Commission should also consider whether waivers may be appropriate to address unique tribal considerations. For example, in response to the COVID-19 pandemic, the Wireline Competition Bureau waived certain Lifeline program rules surrounding documentation requirements for participants of the EBB program in rural areas on Tribal lands, recertification, reverification, general de-enrollment, subscriber usage, and income documentation.⁷² These waivers eased the strict verification and use requirements during the pandemic and are critical to tribal governments and organizations to assist in EBB enrollment. However, as comments from the Navajo Nation Telecommunications Regulatory Commission note, the FCC plans to use USAC, the National Verifier, and other certification requirements from the Lifeline Program.⁷³

Lastly, the Commission should recognize that many citizens on tribal lands access the internet exclusively via mobile devices. A survey by the American Indian Policy Institute, “found that residents on tribal lands are predominantly using smartphones to access the internet.”⁷⁴ The Commission should adopt a standard that allows support for all devices capable of running apps for the most popular collaborative video conferencing systems such as Zoom, WebEx, and Microsoft Teams.

13. The Commission should ensure that providers and other stakeholders promote the program in a robust and concerted manner

The Commission must ensure that promoting awareness of the EBB program engages all of the necessary stakeholders in a robust and coordinated manner. The Commission should require providers to publicize the program in the communities that this benefit aspires to reach in a concerted manner beyond mere advertising.⁷⁵ Although the Commission should not prescribe targets and specific directives for providers that would not conform to all the varying circumstances present in each individual locality, the Commission should require some form of a “good faith” effort from providers to promote awareness of the EBB program, to be determined by the Commission on a case-by-case basis. A “good faith” requirement is particularly key in light of how Comcast concealed its standalone broadband program, which was mandated by a Commission consent decree in 2011. Consumer complaints, a lengthy

⁷¹ Government Accountability Office, “FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience” (Jan. 2021), <https://www.gao.gov/assets/720/712068.pdf> at 29.

⁷² Comments of Navajo Nation Telecommunications Regulatory Commission at 4.

⁷³ *Id.*

⁷⁴ Brian Howard and Traci Morris, “Tribal Technology Assessment: The State of Internet Service on Tribal Lands” (July 27, 2019) TPRC47: The 47th Research Conference on Communication, Information and Internet Policy 2019, Available at SSRN: <https://ssrn.com/abstract=3427547>.

⁷⁵ Comments of The City and County of San Francisco at 3.

investigation, and an unprecedented monetary fine by the Commission finally resolved the matter in 2013, but the EBB doesn't have that kind of time.⁷⁶

The Commission, providers, and local organizations' challenge of publicizing the EBB program will include even steeper obstacles, as this will need to be done during the pandemic for a brand-new program for individuals who might not have access to the internet currently. Merely sending fliers in the mail will not be sufficient. The need for innovative promotion strategies is exacerbated by the reality that "brick-and-mortar carrier stores, government offices, and community centers" have closed and left "applicants who need help with the online application or need access to the internet or connected devices to apply... unable to do so," as detailed by a recent GAO report.⁷⁷ These challenges require direct engagement with community stakeholders.⁷⁸ Accordingly, OTI urges the Commission to heed the recommendations of The City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, and the Seattle Housing Authority:

"The most effective program promotion will come from trusted community organizations and community ambassadors. This is especially true for effective outreach to residents with limited English skills, different cultural backgrounds, and cautious seniors. Low-income residents are wary of information and promises provided by private telecommunication companies, especially traditional cable operators, due to a long history of hidden fees, less than transparent pricing, and complex fine print associated with service contracts."⁷⁹

The Commission has an urgent responsibility to get the specifics of this program right. The program's rules, definitions, and requirements must protect consumers, build participant trust, and minimize burdens on applicants. OTI hopes the EBB provides a model for future efforts to close the digital divide and looks forward to working with the Commission, providers, and consumers to make this program a success.

⁷⁶ Jon Brodtkin, "Comcast's Internet for the poor too hard to sign up for, advocates say," Ars Technica (July 23, 2014), <https://arstechnica.com/information-technology/2014/07/comcasts-internet-for-the-poor-too-hard-to-sign-up-for-advocates-say/>.

⁷⁷ Government Accountability Office, "FCC Has Implemented the Lifeline National Verifier but Should Improve Consumer Awareness and Experience" (Jan. 2021), <https://www.gao.gov/assets/720/712068.pdf> at 36.

⁷⁸ Comments of the City of Austin at 3.

⁷⁹ Comments of The City of Seattle, Washington State Broadband Office, the Seattle Public Schools District, and the Seattle Housing Authority at 14.

Respectfully submitted,

/s/

Joshua Stager, Senior Counsel
Amir Nasr, Policy Analyst
Claire Park, Program Associate
Maggie Farry, Policy Analyst

New America
740 15th Street NW, Suite 900
Washington, D.C. 20005

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