

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE BENTON INSTITUTE FOR BROADBAND & SOCIETY

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Summary

In recent years, the Benton Institute for Broadband & Society has advocated reforms of the Federal Communications Commission's Lifeline program, reforms consistent with the Consolidated Appropriations Act, 2021 and the proposed Emergency Broadband Benefit Program. Benton urges the Commission to adopt Benton's proposals while considering overarching principles to guide creation of the Emergency Broadband Benefit Program:

1. **This is an emergency:** As Congress recognizes in the very title of the program in question, the Commission is to create a broadband benefit in the midst of, and in response to, a national emergency. The Commission must act swiftly to get and keep as many Americans connected in the shortest amount of time.
2. **Keep it simple:** The Commission must keep rules and requirements for participating providers and recipients simple, clear, and easy to understand and execute so that those who can benefit most from the program are able to take advantage of it.
3. **Competition and choice:** The Commission's rules should encourage as many providers as possible to compete against each other to serve eligible households.
4. **Prioritize the unconnected:** In creating the Emergency Broadband Benefit Program, Congress recognizes that more needs to be done to connect the unconnected, especially those with low-incomes.
5. **Identify and enlist eligibility aggregators:** The Commission has natural partners through which to reach and verify eligible households, thus speeding the process and ensuring timely service delivery: the administrators of other federal assistance programs.

In implementing the Emergency Broadband Benefit Program, the Commission should recognize three key U.S. broadband marketplace realities. First, consumers are blissfully unaware whether their broadband provider is an eligible telecommunications carrier or not. Current market trends see consumers overwhelmingly picking non-ETCs for broadband services. The Commission's rules should allow non-ETCs to swiftly offer services supported by the Emergency Broadband Benefit Program. States have been active in creating targeted broadband service support programs during the pandemic; the Commission should seek out best their practices.

Second, "standard rates" for new broadband customers are markedly different than "standard rates" for existing customers. Standard rates in the Emergency Broadband Benefit Program should be different based on whether a provider has signed up a new customer or not.

Third, customers must do a great deal of work to determine what a provider's rates are and to compare them to another provider's rates. Emergency Broadband Benefit Program rules should not further engrain these practices; instead, the Commission should strive for greater transparency both for consumers and so regulators can minimize waste, fraud, and abuse.

Although U.S. broadband consumers routinely pick services at far greater speeds, the Commission recently reiterated that the speed benchmark of 25/3 Mbps is "an appropriate measure by which to assess whether a fixed service is providing advanced telecommunications capability." The Emergency Broadband Benefit Program should only support services at 25/3 or greater.

To help make potential Emergency Broadband Benefit Program enrollees aware of the benefit, the Commission should revisit successful portions of its digital television transition plan to identify and communicate with eligible households.

Finally, the Commission should release ongoing progress reports to a breadth of stakeholders about participation in the Emergency Broadband Benefit Program including estimates on how long the Emergency Broadband Connectivity Fund will last.

I. Background

Pursuant to the Consolidated Appropriations Act, 2021 (Consolidated Appropriations Act or Act),¹ the Federal Communications Commission's Wireline Competition Bureau released a Public Notice on January 4, 2021 seeking comment on the provision of assistance from the Emergency Broadband Connectivity Fund and through the Emergency Benefit Program and other related matters.² Section 904 of Division N – Additional Coronavirus Response and Relief, Title IX – Broadband Internet Access Service, in the Consolidated Appropriations Act establishes an Emergency Broadband Connectivity Fund of \$3.2 billion and directs the Federal Communications Commission (Commission) to use that fund to establish an Emergency Broadband Benefit Program, under which eligible households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers can receive a reimbursement for such discounts.³

¹ Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020) (enacted), *available at* <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act) (enrolled bill).

² Public Notice, *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*. (WC Docket No. 20-445, DA 21-6) (January 4, 2021). (Public Notice)

³ Consolidated Appropriations Act, §904(b)(1) (2020).

In a 2019 call for a new, comprehensive, national broadband plan, the Benton Institute for Broadband & Society⁴ (Benton) urged the creation of a broadband affordability agenda, an agenda that includes:⁵

- **Enhancements to the Commission’s Lifeline program.** Benton urged the Commission to allow more providers to participate in Lifeline, to simplify the enrollment process for eligible households, to enlarge the scope of eligibility so more at-risk households receive the benefit, and an expansion of the program to provide the subsidies needed to make better broadband affordable for low-income households.
- **Assistance to Broadband Providers’ Low-Income Programs.** Providers could expand their low-income programs if it were easier to ascertain who is eligible for discounted prices—a process that has been described as time-consuming. Governments, through actions like the automated electronic eligibility verification process established for Lifeline, should help lower providers’ costs for offering these services by enabling them to use government verification systems—another reason for the prompt deployment of Lifeline’s national verification system.

⁴ Benton, a non-profit, operating foundation, believes that communication policy – rooted in the values of access, equity, and diversity – has the power to deliver new opportunities and strengthen communities. Our goal is to bring open, affordable, high-capacity and competitive broadband to all people in the U.S. to ensure a thriving democracy. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

⁵ Sallet, Jonathan. October 2019. Broadband for America’s Future: A Vision for the 2020s. Evanston, IL: Benton Institute for Broadband & Society.
<https://www.benton.org/publications/broadband-policy2020s>

- **A Call to Educate and Protect Consumers.** Benton identified lack of awareness of the Lifeline program as a major barrier to participation by eligible households. In addition, Benton noted that access to transparent program and pricing information helps consumers make informed choices. Consumers need clear information to understand the nature of introductory pricing, termination fees, and other terms of their broadband service.
- **Support for Making Low-Cost Computing Devices Available.** The availability of low-cost or free computers is often just as important as access to low-cost or free broadband options.

In June 2020, former-FCC Commissioner Mignon Clyburn⁶ and Benton Senior Fellow Jonathan Sallet penned an op-ed that appeared in the *Boston Globe*.⁷ Clyburn and Sallet called on Congress to create a \$50/month credit to ensure many more people can afford broadband service. This proposal was repeated with more detail in a subsequent Benton report published in 2020.⁸

⁶ Mignon Clyburn now serves on the Benton Institute for Broadband & Society board of directors.

⁷ Mignon Clyburn and Jon Sallet, "Make broadband far more affordable," *Boston Globe* (June 27, 2020), <https://www.bostonglobe.com/2020/06/27/opinion/make-broadband-far-more-affordable/>

⁸ Sallet, Jonathan. "Broadband for America Now," Benton Institute for Broadband & Society (October, 2020), <https://www.benton.org/publications/broadband-america-now>

All of these proposals are consistent with the Act and Benton urges the Commission to adopt them in this proceeding. In addition, Benton offers the following comments based on five overarching principles:

1. **This is an emergency:** As Congress recognizes in the very title of the program in question, the Commission is to create a broadband benefit in the midst of, and in response to, a national emergency.⁹ Connectivity is an essential tool for slowing the spread of the coronavirus; facilitating distance learning and telehealth services; coordinating vaccinations; and connecting the unemployed to job opportunities. The Commission must recognize that this emergency has existed since mid-March 2020 and must act swiftly¹⁰ to get and keep as many Americans connected in the shortest amount of time. At stake are community and individual health, household incomes, children’s education, and our economic recovery.
2. **Keep it simple:** The Commission must keep rules and requirements for participating providers and recipients simple, clear, and easy to understand and execute so that those who can benefit most from the program are able to take advantage of it.
3. **Competition and choice:** Although the Emergency Broadband Benefit Program is new, the overarching purpose of U.S. telecommunications law remains—to promote competition in order to secure lower prices and higher quality services for American

⁹ “Emergency” appears 43 times in §904.

¹⁰ Congress, in fact, mandates that the Commission to expedite processes three times in §904 – in addition to creating a short timeline for issuing rules to create the Emergency Broadband Benefit Program.

telecommunications consumers. The Commission’s rules should encourage as many providers as possible to compete against each other to serve eligible households.

4. **Prioritize the unconnected:** The Commission attempted, through the Keep Americans Connected Pledge, to help prevent consumers from losing service due to the economic downturn. However, many millions of Americans did not have broadband service before the COVID crisis, many because they could not afford service.¹¹ In creating the Emergency Broadband Benefit Program, Congress recognizes that more needs to be done to connect the unconnected, especially those with low-incomes. For providers, it will be very easy to just apply the emergency broadband benefit to existing qualified households. The Commission should incentivize providers to do the harder work of identifying, certifying eligibility, and connecting the disconnected – as Congress intended – to meet our COVID connectivity challenges.
5. **Identify and enlist eligibility aggregators:** In the Digital Age, delivering messages to people who are not online may seem even more difficult. However, in creation of the Emergency Broadband Benefit Program, the Commission has natural partners through which to reach and verify eligible households, thus speeding the process and ensuring timely service delivery. For example, the Commission should allow school districts to act as eligibility aggregators, certifying qualified K-12 households for providers for the

¹¹ “Mobile Technology and Home Broadband 2019,” Pew Research Center (June 2019), <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>

purposes of the emergency broadband benefit. In addition, the Commission should immediately enter into memorandums of understanding with the administrators of assistance programs that are already verifying that households are income-eligible for the Emergency Broadband Benefit Program. Such programs include: Medicaid; Supplemental Nutrition Assistance Program (SNAP); Supplemental Security Income (SSI); Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start; and the Food Distribution Program on Indian Reservations. Participants in all these programs should be added to the Lifeline National Eligibility Verifier Database. Administrators of these programs should inform participants that they are eligible for the Emergency Broadband Benefit Program and supply them with vouchers or some other means to demonstrate their eligibility to providers.

II. Encourage All Broadband Providers to Participate in the Emergency Broadband Benefit Program While Also Protecting Consumers

To participate in the Emergency Broadband Benefit Program, a provider must elect to participate and either be designated as an eligible telecommunications carrier or be approved by the Commission.¹² The Commission seeks comment on the eligibility and election process for participating providers. To avoid processing elections for providers that cannot receive any reimbursement, the Commission construes the statute as limiting participation to broadband providers offering service as of December 1, 2020.¹³

The Commission's aim in implementing Emergency Broadband Benefit Program rules should be to encourage as many providers as possible to compete to serve as many eligible households as possible and to deploy high-quality broadband services to these households as quickly as possible. The Commission's requirements of providers should be clear, simple, and quickly achievable. Commission's rules should also protect consumers as these households are already reeling from twin health and financial crises.

1. Provider Notice to the Universal Service Administrative Company Should Not Be a Barrier to Participation, But Must Be a Tool to Protect Consumers

The Commission proposes to require all providers that wish to participate in the Emergency Broadband Benefit Program to submit a notice to the Universal Service Administrative Company (USAC) indicating their election to do so.¹⁴

¹² Consolidated Appropriations Act, §§904(a)(12) and (d)(2).

¹³ Public Notice at p. 3

¹⁴ Public Notice at p.2

Benton urges the Commission to adopt rules that will encourage all broadband internet access service providers to participate in the Emergency Broadband Benefit Program and to be able to offer supported services as soon as possible. The rules should create a level playing field for all providers (no matter if they are eligible telecommunications carriers or not). There is no evidence that consumers weigh whether or not a broadband provider is an eligible telecommunications carrier when choosing services. Market trends, in fact, point to consumers overwhelmingly picking non-ETCs for service.¹⁵

The Commission should create its own model compliance plan and allow providers to opt into it. This will reduce the burden of creating a compliance plan, especially on smaller providers. Streamlining this aspect of the approval process could greatly expedite the process overall, in part by relieving Commission staff of the burden of reviewing individualized plans. In addition, the Commission should create a streamlined process for review and approval of “alternative verification processes” prior to the start of the program for participating providers that choose that verification method.

Although the Emergency Broadband Benefit Program is new, some states and municipalities have used Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to initiate

¹⁵ In the third quarter of 2020, for example, the largest cable and wireline phone providers in the U.S. – representing about 96% of the market – acquired about 1,530,000 net additional broadband internet subscribers. The top cable companies added about 1,320,000 of those new subscribers. See “About 1,530,000 Added Broadband in 3Q 2020,” Leichtman Research Group, Inc. (November 18, 2020), <https://www.leichtmanresearch.com/about-1530000-added-broadband-in-3q-2020/>

programs to provided free or discounted broadband service.¹⁶ The National Telecommunications and Information Administration reports that the state of Oregon used CARES Act funding to expand the Commission’s Lifeline phone and internet discounts through its [Oregon Lifeline Program](#) and Vermont expanded its existing [Connectivity Initiative](#) to cover students, remote workers, and communities with telehealth needs.¹⁷ Benton urges the Commission to reach out to these states and incorporate lessons learned from successful efforts to improve connectivity during the COVID-19 pandemic.

For example, on July 31, 2020, Governor Kay Ivey announced the Alabama Broadband Connectivity (ABC) for Students program. ABC for Students used federal CARES Act funds to purchase internet service to connect qualifying low-income households with K-12 students so that they can participate in educational activities online, including homework and distance learning.

¹⁶ De Wit, Kathryn, “States Tap Federal CARES Act to Expand Broadband,” Pew Charitable Trusts. (November 16, 2020), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/11/states-tap-federal-cares-act-to-expand-broadband>. As of November 2020, Alabama, Connecticut, Idaho, Maryland, Maine, Michigan, Mississippi, Missouri, Nevada, North Carolina, Ohio, and Tennessee had acted to help families with K-12 students at home purchase internet-enabled devices, wireless hotpots, or both. In addition, Missouri supported upgrading college campus broadband networks, providing students with digital devices or hotspots, and enhancing learning-management systems. And Tennessee made \$20 million available for grants to help public and private institutions of higher education implement either technological improvements to ease the transition to online learning or social distancing measures for campus safety

¹⁷ “States Rise to the 2020 Broadband Challenge,” National Telecommunications and Information Administration (December 29, 2020), <https://www.ntia.gov/blog/2020/states-rise-2020-broadband-challenge>

In creating ABC for Students, Alabama sought commitments from established broadband internet access service providers to:¹⁸

1. *Designate a project manager for the duration of the program, to whom the state would have access to on a full-time basis to facilitate information exchange, reporting, and problem resolution.*

Similarly, the Commission should require providers to identify personnel who will act as points of contact for Emergency Broadband Benefit Program participants, the Commission, and USAC.

2. *Accept and process telephone or web orders from qualifying households with K-12 students for internet service, assuming the majority will be over telephone.*

The Commission should require providers to indicate if they have processes in place to quickly enroll many new customers in a short period of time.

3. *Accept payment from the qualifying household through an individualized voucher code.*

The Commission should consider adopting rules allowing for qualified households to receive electronic and paper vouchers indicating that they are eligible for service and to pass these vouchers on to providers so service can begin promptly.

4. *Check the status of the voucher code through the designated, secure program website and then redeem the voucher code through the website when taking the order.*

The Commission should require USAC to adopt mechanisms for immediate authentication of vouchers.

5. *Invoice the Alabama Department of Economic and Community Affairs (ADECA) on a monthly basis based on the number of voucher codes activated, using a form to be provided to successful respondents by ADECA.*

Emergency Broadband Benefit Program providers should have the ability to bill USAC electronically for services provided to qualified households each month.

¹⁸ Alabama Department of Economic and Community Affairs, Request for Information for Alabama Broadband Connectivity for Students Program (August 5, 2020) <https://abcstudents.org/wp-content/uploads/2020/08/ABC-for-Students-RFI-August-5-2020.pdf>

6. *Allow eligible existing internet customers to use the voucher code to offset payment for existing service in the amount covered by the voucher. Stated otherwise, the provider must agree to accept the voucher code from existing customers and reduce those customers' future bills by the amount agreed by the provider and ADECA for monthly service for purposes of the ABC for Students Program.*

The Commission should adopt rules requiring providers to inform existing and new customers of the existence of the Emergency Broadband Benefit Program including information about eligibility criteria.

7. *For new customers paying with the voucher, providers may not require any customer contract beyond the term of the program funding period or any other payment in addition to the voucher.*

Congress has targeted the Emergency Broadband Benefit Program at a financially vulnerable population. Commission rules should ensure that providers are clear in communications with eligible households about service options, the total amount of a monthly bill a household is responsible for, when the subsidy will end, and consumers' options when the program ends.

8. *Within the number of days agreed in the contract with ADECA, undertake one of the following:*

- a. *Install service at the household, OR*
- b. *Deliver to the household the necessary equipment and detailed self-installation instructions, OR*
- c. *Deliver to the household a user device capable of providing the service, with detailed instructions for use*

Commission rules should encourage quick installation and provision of new services, including delivery of supported devices. Providers' plans should indicate how long it will take to begin service for a qualified household.

9. *Provide internet service according to the technical specifications.*

The Commission's requirement for a description of any internet service offerings should include information on speeds, latency, in-home Wi-Fi capabilities, out-of-home Wi-Fi network access,¹⁹ and other aspects of the provider's standard terms of service.

¹⁹ Some providers, like AT&T, offer consumers access to a national or regional Wi-Fi hotspot network. Emergency Broadband Benefit Program consumers should be made aware of this feature of their service.

10. Provide all ABC for Students customers with information regarding parental controls, either provided by the provider or available from a third-party.

Pursuant to the Commission's *Restoring Internet Freedom Order*,²⁰ Emergency Broadband Benefit Program rules must recognize that a critical part of internet openness involves internet service providers being transparent about their business practices.

To provide adequate notice to consumers, the Commission should also require that, when marketing and offering service, providers should provide consumers with notice about:

a) Network Management Practices

- *Blocking.* Any practice (other than reasonable network management) that blocks or otherwise prevents end user access to lawful content, applications, service, or non-harmful devices, including a description of what is blocked.
- *Throttling.* Any practice (other than reasonable network management elsewhere disclosed) that degrades or impairs access to lawful internet traffic on the basis of content, application, service, user, or use of a non-harmful device, including a description of what is throttled.
- *Affiliated Prioritization.* Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate, including identification of the affiliate.
- *Paid Prioritization.* Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.
- *Congestion Management.* Descriptions of congestion management practices, if any. These descriptions should include the types of traffic subject to the practices; the purposes served by the practices; the practices' effects on end users' experience; criteria used in practices, such as indicators of congestion that trigger a practice, including any usage limits triggering the practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.

²⁰ See 47 CFR §8.1. See also Federal Communications Commission, *Disclosure Instructions for ISPs* <https://www.fcc.gov/consumer-governmental-affairs/internet-service-provider-disclosures/disclosure-instructions-isps>

- *Application-Specific Behavior.* Whether and why the ISP blocks or rate-controls specific protocols or protocol ports, modifies protocol fields in ways not prescribed by the protocol standard, or otherwise inhibits or favors certain applications or classes of applications.
- *Device Attachment Rules.* Any restrictions on the types of devices and any approval procedures for devices to connect to the network.
- *Security.* Any practices used to ensure end-user security or security of the network, including types of triggering conditions that cause a mechanism to be invoked (but excluding information that could reasonably be used to circumvent network security).

b) Performance Characteristics

- *Service Description.* A general description of the service, including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications.
- *Impact of Non-Broadband Internet Access Service Data Services.* If applicable, what non-broadband internet access service data services, if any, are offered to end users, and whether and how any non-broadband internet access service data services may affect the last-mile capacity available for, and the performance of, broadband internet access service.

c) Commercial Terms

- *Price.* For example, monthly prices, usage-based fees, and fees for early termination or additional network services.
- *Privacy Policies.* A complete and accurate disclosure about the ISP's privacy practices, if any. For example, whether any network management practices entail inspection of network traffic, and whether traffic is stored, provided to third parties, or used by the ISP for non-network management purposes.
- *Redress Options.* Practices for resolving complaints and questions from consumers, entrepreneurs, and other small businesses.

2. The Commission's Determination of "Standard Rate" Should Recognize that Standard Rates Differ for New and Existing Customers

The Commission seeks comment on how to interpret the “standard rate” for supported offerings.²¹ The Commission asks about promotional rates, contract rates (of varying lengths), and how to deal with the standard rates for Internet access service plans offered by the provider when they are not uniform across all areas it serves.

The Commission’s questions illustrate the difficulty U.S. consumers face when trying to consider (and compare) service plans by (competing) service providers (where competition exists). The Commission does not collect or disseminate any pricing or service quality data; it should begin to do so.

Many broadband providers do not publish standard service rates that would enable the Commission (and consumers) to compare options and understand all of the costs of their choices. The online interfaces for purchasing broadband service generally require consumers to nearly complete the sign-up process for each individual service option before most of the information is available on a single web page. As a result, the only way to develop a full understanding of all costs for each service option is to undertake a multi-step and potentially lengthy ordering process for all of those options to access a “checkout screen” and then compare one’s findings. Moreover, consumers already have to be online to access this information. With safe social distancing practices barring visits to the homes of family, friends, and neighbors who may already be connected – and with many libraries and community computing centers closed – it is hard to understand how unconnected, potential participants in

²¹ Public Notice at p. 3

the Emergency Broadband Benefit Program will be able to access the information needed to determine the true value of service they are subscribing to.

Hidden or hard-to-decipher fees are endemic in broadband pricing. Important details – like post-discount pricing, data cap overage charge details, and additional fees – are hidden online in linked pages of fine print.²² These additional online pages are full of lengthy and/or legally-complex language. These company policies can be critical. For example, CenturyLink threatens to “disconnect your service after the third month of excessive usage in a rolling 12-month period,”²³ a detail only found on page 4 of its “Excessive Use Policy FAQ.”

²² Many broadband providers use broad and language not easily understood by customers to identify that other fees likely apply. Using fairly typical language, AT&T notes that “one-time transaction fees, \$10/mo equipment fee, and monthly cost recovery surcharges which are not government-required may apply, as well as taxes.” On its “Taxes, fees, and surcharges” policy page, CenturyLink provides an explanation that likely represents the challenges faced by the other broadband providers in providing customers with the information they would need to understand part of their fees:

“Want to see taxes, fees and surcharges for CenturyLink products specific to your location? These charges vary by city and state, and with thousands of possible combinations, it’s not possible to list them out here. However, for internet services you can visit our online ordering tool and see the associated taxes, fees and surcharges for your location. Don’t worry, you don’t have to finish the order. Just build a quote to get the most accurate preview of the associated charges.”

²³ CenturyLink, “CenturyLink Excessive Use Policy Frequently Asked Questions,” 4, <https://www.centurylink.com/asset/home/help/downloads/EUP.pdf> (accessed January 8, 2020).

Hidden fees can come in a range of forms; five common types are: post-promotional pricing,²⁴ monthly rental fees for equipment, usually for a modem or a router,²⁵ data cap

²⁴ In particular, some broadband providers' promotional and post-promotional pricing could differ significantly. Not including other fees, Mediacom's 1 Gbps, 500 Mbps, and 200 Mbps service plan prices fully double after the promotional period ends, with its 1 Gbps plan increasing from \$70 to \$140 and its 500 Mbps plan increasing from \$60 to \$120. This increase is relegated to fine print in the terms of service. While less obtuse, Comcast's competitive 200 Mbps service price nearly doubles in a few markets, increasing \$43 above its original \$50 price. Even when a broadband provider does a good job of making sure the customer is aware of the likely increase, the broadband provider likely ensures it can ignore its own post-promotional price statement. AT&T's post-promotional pricing description warns consumers of a price increase and identifies what it would currently be if it occurred at the moment that a customer would accept a services package, but it warns that this amount could be different at the point of increase, describing the ultimate post-promotional price as a "then-prevailing rate" to be defined in the future. AT&T, "See offer details" popup box.

²⁵ Mediacom's Xtreme WiFi 360 is initially offered for free, but the service term details included a \$5 per month fee after the first three months of the service, on top of the modem fee of \$11.50 to \$12 per month. CenturyLink's equipment choices are stated in a somewhat imprecise manner, with the opportunity to raise prices if it wishes: "CenturyLink provided modem may be required for Internet; lease (up to \$15/mo fee; subject to increase, even with Price for Life) or one-time purchase option (up to \$200)." Others, such as Spectrum and Verizon, seem to change their modem rental costs based on the level of the service package, a pricing detail that would be impossible to identify without testing all options.

overage charges,²⁶ installation fees; and deceptively-named mandatory fees that imply they are imposed by government.²⁷

Quality differences are also harder to comprehend than might be expected. The true cost of monthly broadband takes as given a specified set of performance criteria and, to permit comparison with other services, requires common criteria, such as upstream speed, downstream speed, latency, and data usage limits. But broadband providers do not follow common speed tiers. Broadband providers also do not actually guarantee that they will deliver the speeds they claim to offer – even (as one might find in a service-level agreement) for a

²⁶ Some data use policies seem designed to encourage an upsell or provide confused consumers with the opportunity to select inefficiently expensive services. For example, in the markets where Comcast does meter its customers' data, the actual overage cost of \$10 per 50 GB was located multiple pages deep, with a link to another page describing the policy in further detail. Of course, consumers are encouraged to upgrade their modem rental to include both unlimited data and additional security features for just \$11 more per month over their \$14 per month router option, or, perhaps confusingly, to pay \$30 per month to obtain unlimited data as a separate option. *See also*, Mediacom data usage discussion, *infra*.

Others place important policy details on separate screens that would not necessarily be encountered by proceeding in a linear manner through the signup process. *See, e.g.*, CenturyLink, "CenturyLink Excessive Use Policy Frequently Asked Questions," 2, <https://www.centurylink.com/asset/aboutus/downloads/legal/internet-service-disclosure/excessive-use-policy-faq.pdf> (accessed December 4, 2020), (CenturyLink explains its data cap policies at a separate location).

²⁷ For example, CenturyLink's website frequently imposes an "Internet Cost Recovery Fee" of \$4 per month per connection to "help[] defray costs associated with building and maintaining CenturyLink's High-Speed broadband network, as well as the costs of expanding network capacity to support the continued increase in customers' average broadband consumption." CenturyLink, "Internet Cost Recovery Fee," <https://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/internet-cost-recovery-fee.html> (accessed December 2, 2020).

certain percentage of the time.²⁸ Several major broadband providers – including AT&T, CenturyLink, Comcast, Spectrum, and Verizon – don’t include information about their upload speeds. Providers do not define latency standards in their terms of service. Some, such as Spectrum, never identify post-promotional pricing.

Data caps in particular seem to put consumers at risk for expensive surprises. Life during the pandemic has highlighted how quickly some households may change their usage patterns dramatically, with *The Wall Street Journal* reporting that the average household’s monthly internet usage increased by 46% between September 30, 2019 and March 31, 2020.²⁹ When faced with such a sudden increase in usage, many consumers may not be aware of the data usage fee penalties buried in this fine print.³⁰

²⁸ The lack of obligation to actually deliver advertised speeds is widespread. AT&T’s top-level offerings page includes small print describing the speed as “Download max. typically [stated speed]. Not g’td.” Its “See offer details” popup box explains: “**Internet speed claims** represent maximum network service capability speeds and are based on wired connection to gateway. Actual customer speeds may vary based on a number of factors and are not guaranteed.” (emphasis in the original) Comcast explains that “*Actual speeds vary and are not guaranteed.*” Comcast, second page of each service description. Mediacom’s fine print includes a statement that “Download and upload speeds may vary” (emphasis in the original).

²⁹ The average internet-using household used 402.5 GB per month on March 31, 2020, up from 275.1 on September 31, 2019. Lillian Rizzo, “Americans Working from Home Face Internet Usage Limits,” *The Wall Street Journal* (October 25, 2020). <https://www.wsj.com/articles/americans-working-from-home-face-internet-usage-limits-11603638000>.

³⁰ For example, in some markets, Mediacom offers a special 60/5 Mbps plan for price-sensitive, light users that includes only 60 GB of data per month. If a customer were to use 111 GB within a month, less than a third of the average U.S. household, he or she would be charged an additional \$20, the equivalent of subscribing to the version of the 60/5 Mbps plan that includes

In addition to these hidden fees, broadband providers require consumers to agree, in purchasing service, to broad service provider rights to post-contractual modifications—including fee increases and changes.³¹ For example, Mediacom’s website includes language, buried deep in the purchase process, that “monthly charges may increase from time to time. After the first year, if our standard rate for your service increases or we institute a new fee for service subscribers generally, we can pass that increase or new fee along to you.”³²

In sum, consumers have too little information and the information they are given is not presented in a clear way.

Although this may not be the appropriate proceeding to address all of the transparency deficiencies in the U.S. broadband marketplace, the Commission should not further ingrain them either. The Act provides that “[a]t the conclusion of the Emergency Broadband Benefit Program, any participating eligible households shall be subject to a participating provider’s

400 GB/month of data. If a household that might have complied with the low data cap version of the service changes its Internet usage patterns to match current trends, by using more videoconferencing and streaming services for example, it can easily face extra fees reminiscent of the punishing mobile phone overage charges of the late 1990s and early 2000s. The price-sensitive family that might have complied with the affordable package’s limit before the crisis but that began to use the internet as much as the average U.S. household would face a penalty of \$70, assuming that Mediacom does not exploit its right to increase “Usage allowances and excess usage charges ... at any time.”

³¹ In the details to each of its services, Comcast identifies that “Prices are subject to change.” Mediacom states that “All of these monthly charges may increase from time to time. After the first year, if our standard rate for your service increases or we institute a new fee for service subscribers generally, we can pass that increase or new fee along to you.” “Usage allowances and excess usage charges are subject to change at any time.”

³² <https://www.buytvinternetphone.com/mediacom/internet-disclaimer>

generally applicable terms and conditions.”³³ The at-risk consumers the Emergency Broadband Benefit Program aims to help need applicable terms and conditions to be conveyed in a clear manner.

As the Commission considers what a “standard rate” is, part of the aim must be to bring some clarity to the low-income consumers Congress aims to help here. Rules should encourage price transparency both for a) consumers, so they understand what services they are getting and what they are worth, and b) USAC and the Commission itself as a tool for preventing waste, fraud, and abuse.

By including “same terms” in its definition of “internet service offering,”³⁴ Congress is obviously instructing the Commission to consider providers’ terms of service.³⁵ These terms of service include many aspects of a provider’s service including speed tiers (and speed of internet services, which may be different) and bandwidth, e-mail services, Domain Name System (DNS) services, interconnection, data usage, inside wiring, home Wi-Fi, access to regional or national Wi-Fi hot spots (if the provider has a network available in its service region(s)), member

³³ Consolidated Appropriations Act, §904(b)(10).

³⁴ Id., §904(a)(9).

³⁵ See, for example, AT&T Last Updated: January 14, 2019 <https://www.att.com/legal/terms.internetAttTermsOfService.html>; Charter/Spectrum Terms of Service/Policies (accessed January 17, 2021) <https://www.spectrum.com/policies/terms-of-service>; TDS Residential Terms of Service last updated November 16, 2020 <https://hellotds.com/terms-of-service.html>; Frontier General Residential Service Terms and Conditions (accessed January 17, 2021) <https://frontier.com/~media/corporate/terms/general-terms-residential.ashx?la=en>; Google Fiber Residential Terms of Service last modified June 18, 2019 <https://fiber.google.com/legal/terms/residential/>; Comcast/Xfinity Customer Agreements, Policies & Service Disclosures (accessed January 17, 2021) <https://www.xfinity.com/policies>.

accounts and subaccounts, password protections, account security, pricing (term plans and bundle discounts), customer termination or cancellation of service, acceptable use/restrictions on use, how the provider decides to terminate or suspend service, payment processes, bill inquiries, refunds and credits, customer equipment requirements, provider equipment (including modems, routers, antennas or gateways), third party services, resale restrictions, copyright infringement and the Digital Millennium Copyright Act, use by children, network management practices, privacy policies, dispute resolution, software use agreements, customer service and contact information, and online safety.

The “standard rate” determination should ensure that consumers participating in the Emergency Broadband Benefit Program should enjoy the terms of service that a broadband provider’s consumers were receiving on December 1, 2020.

The Commission proposes that the provider specify the standard rates for such plans for each area of each state in which it plans to participate and provide supporting documentation. In the event that the provider’s standard rates are uniform across the areas it serves, the Commission proposes that the provider submit supporting documentation for those rates.

The Commission’s proposal ignores a basic reality of the U.S. broadband marketplace: there are “standard rates” for *new* customers and “standard rates” for *existing* customers. The standard rates for new customers are widely advertised, promotional rates that a new customer enjoys for the first 12 months with a service provider. The standard rates for existing customers are unpublished and are generally increased after a promotion ends and every year afterwards.

Benton offers a simplified hypothetical to exemplify the kinds of calculations that the Commission will have to do to determine “standard rates.” Imagine a 100/10 Mbps service offered at \$60/month for one year, with a price that then rises to \$80/month, with a monthly modem/router rental fee of \$10/month and an installation charge of \$90. The critical assumption, of course, is how long a consumer will maintain a subscription. For this purpose, let’s assume, first, 12 months – for that consumer, the average monthly cost is \$77.50. Second, for the consumer who remains a subscriber for 24 months, the average monthly rate over the course of the subscription is \$83.75.

In implementing the Emergency Broadband Benefit Program, the Commission should adopt a determination of “standard rates” that reflect marketplace reality:

- Since the Emergency Broadband Benefit Program is meant to be a short-term, temporary program lasting just six months after the COVID national emergency ends and since promotional rates are the standard rates for *new* broadband customers for up to one year, the Commission should ask for and consider such promotional rates on December 1, 2020 as the standard rate for any *new* customer subscribed through the Emergency Broadband Benefit Program.
- For any *existing* customers who participate in the Emergency Broadband Benefit Program, the provider should provide documentation of what the consumer’s bill was on December 1, 2020.

- For either new or existing subscribers, providers that offer consumers monthly discounts if the consumers enroll in autopay and paperless billing should apply that discount if Emergency Broadband Benefit Program billing to USAC is done electronically.

3. Enroll as Many Providers as Possible for the Emergency Broadband Benefit Program Launch; Then Accept Providers on a Rolling Basis

The Commission proposes to accept providers' elections to offer services on a rolling basis throughout the Emergency Broadband Benefit Program.³⁶ Initially, the Commission should set a single date on which all participating providers that have timely applied for Commission approval to participate, can begin offering benefits that are eligible for reimbursement. In so doing, the Commission will promote consumer choice by ensuring that eligible households are able to survey all options available to them before selecting the broadband benefit that best meets their needs. Subsequently, the Commission should approve additional providers on a rolling basis.

The Commission seeks comment on what information it should disclose to the public about applications as well as its determinations. At the designated start date of the Emergency Broadband Benefit Program, the Commission should publish a comprehensive list of

³⁶ Specifically, the Commission asks: "Should the Commission adopt a specific timeframe for acting on provider elections? Once USAC has reviewed an election notice and verified the broadband provider is eligible to participate, how should it inform applicants of that determination? Should such a determination apply only prospectively, or be effective as of the date the election notice was properly and completely filed? What information should USAC disclose to the public about election notices as well as its determinations?" Public Notice at pp. 3-4; "Should the Commission delegate to the Wireline Competition Bureau authority to review and approve (or deny) applications?****Once the Commission has reviewed an application and approved (or denied) an application, how should it inform applicants of that determination?" Public Notice at p. 5.

participating providers. The list should include the services each provider is offering including speeds and prices. The list will help program participants know what offers are valid under the program. The Commission should add to this list as new providers are approved to provide service under the Emergency Broadband Benefit Program.

4. Expedite Access to the National Lifeline Accountability Database

The Consolidated Appropriations Act provides that the Commission “shall expedite the ability of all participating providers to access the Lifeline National Eligibility Verifier (National Verifier) and National Lifeline Accountability Database for the purposes of determining whether a household is an eligible household.”³⁷ The Commission proposes that all participating providers be required to have their agents and other enrollment representatives registered with the Representative Accountability Database, as previously recommended by the Office of the Inspector General for the Lifeline program, as a best practice to minimize waste, fraud, and abuse.

The Commission should immediately direct USAC to grant any requesting provider prompt access to the multiple Lifeline databases, including the National Lifeline Accountability Database and National Verifier, that the Public Notice contemplates participating providers will need to use. Immediate access will give providers an opportunity to familiarize themselves with these databases and to address any operational challenges or concerns before the program begins. Immediate access will also help providers decide whether they will use the National

³⁷ Consolidated Appropriations Act, §904(b)(3).

Verifier to verify household eligibility or seek to use other options that the Act makes available.³⁸ The Commission should also direct USAC to a) make available tutorials and other guidance to help providers get up to speed quickly on the use of these databases and b) have staff available to answer any questions. Early access to the Lifeline databases, and assistance from USAC on using them, will be especially helpful to smaller providers and encourage their participation in the program.

III. To Track and Verify Household Eligibility, Identify and Enlist Eligibility Aggregators

A household may qualify for the Emergency Broadband Benefit if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program;³⁹ (2) has been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act⁴⁰ or the school breakfast program under section 4 of the Child Nutrition Act of 1966;⁴¹ (3) has experienced a substantial loss of income since February 29, 2020; (4) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965⁴³ in the current award year; or (5) meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the

³⁸ See Consolidated Appropriations Act, §904(b)(2).

³⁹ 47 CFR §§54.409(a)-(b).

⁴⁰ See 42 U.S.C. §1751, *et seq.*

⁴¹ See 42 U.S.C. §1773.

⁴³ See 20 U.S.C. §1070a.

public interest.⁴⁴ A household that is eligible for the Emergency Broadband Benefit is not disqualified by participating in the Lifeline program and also may receive both benefits, either on the same or different services.⁴⁵ Participating providers may not disqualify a household because a “member of the household has any past or present arrearages with a broadband provider.”⁴⁶

Participating providers must verify the eligibility of a household for the Emergency Broadband Benefit either by: 1) directing applicants to the National Verifier and the National Lifeline Accountability Database, 2) relying on a school to verify participation in the free and reduced price lunch program or the school breakfast program, or 3) using the provider’s eligibility verification process if such process is approved by the Commission.⁴⁷

The Commission has natural partners through which to verify eligible households. The Commission should immediately enter into memorandums of understanding with the administrators of assistance programs that are already verifying that households are income-eligible for the Emergency Broadband Benefit Program. These programs include: Medicaid;⁴⁸

⁴⁴ Consolidated Appropriations Act, §904(a)(6).

⁴⁵ *See id.*, §904(e) (“Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program . . .”). If a household is applying their Lifeline benefit and Emergency Broadband Benefit to the same broadband service, the household is limited to receiving the total price of the service or the combined maximum Lifeline and Emergency Broadband Benefit, whichever is lower.

⁴⁶ *Id.*, §904(a)(6).

⁴⁷ *Id.*, §904(b)(2).

⁴⁸ Participants are low-income families, qualified pregnant women and children, and individuals receiving Supplemental Security Income (SSI). States have additional options for coverage and

Supplemental Nutrition Assistance Program (SNAP);⁴⁹ Supplemental Security Income (SSI);⁵⁰

Federal Public Housing Assistance;⁵¹ Veterans and Survivors Pension Benefit;⁵² Bureau of Indian

Affairs general assistance;⁵³ Tribally administered Temporary Assistance for Needy Families;⁵⁴

may choose to cover other groups, such as individuals receiving home and community-based services and children in foster care who are not otherwise eligible. The Affordable Care Act of 2010 extended eligibility for children to at least 133% of the federal poverty level (FPL) in every state (most states cover children to higher income levels), and states were given the option to extend eligibility to adults with income at or below 133% of the FPL. Most states have chosen to expand coverage to adults, and those that have not yet expanded may choose to do so at any time.

⁴⁹ Participants must have gross monthly income at 130% of federal poverty level or less.

⁵⁰ Participants must be at least age 65 OR be blind or disabled; have less than \$2,000 in assets, for a single person, and \$3,000 for a couple; and, in general, the income limit for SSI is the federal benefit rate (FBR), which is \$783 per month for an individual and \$1,175 per month for a couple in 2020.

⁵¹ The Department of Housing and Urban Development sets the lower income limits at 80% and very low income limits at 50% of the median income for the county or metropolitan area in which a person chooses to live. Income limits vary from area to area so a person may be eligible at one housing authority but not at another. The housing authority serving a community can provide a person with the income levels for the area and family size.

⁵² Veteran who A) Entered active duty on or before September 7, 1980, and served at least 90 days on active military service, with at least 1 day during a covered wartime period, B) Entered active duty after September 7, 1980, and served at least 24 months or the full period for which they were called or ordered to active duty (with some exceptions), with at least 1 day during a covered wartime period, or C) Was an officer and started on active duty after October 16, 1981, and hadn't previously served on active duty for at least 24 months. Maximum Annual Pension Rate set by Congress (~\$23,238/year)

⁵³ To be eligible for General Assistance, all applicants must apply concurrently for financial assistance from other state, tribal, county, local or other Federal agency programs for which they might be eligible.

⁵⁴ In order to qualify for this benefit program, you must be a Native American/American Indian who is unemployed or about to become unemployed, you or a family member must be enrolled in a federally recognized American Indian tribe or Alaska Native village, you must live on or near

Head Start;⁵⁵ and the Food Distribution Program on Indian Reservations.⁵⁶ Lifeline National Eligibility Verifier access to these databases is far too limited. Participants in all these programs should be added immediately to the Lifeline National Eligibility Verifier Database.

There is precedent for direct certification. State agencies provide school districts with a list of students whose households receive certain public-assistance benefits -- the Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR), and Temporary Assistance for Needy Families (TANF) -- and school districts confer eligibility for free school meals to these students.⁵⁸ Thus, participants are automatically certified for school-meals benefits without having to fill out a separate school-meals application. Students receiving certain public-assistance benefits or meeting an approved designation, such as if they are homeless or foster children, are categorically eligible for free-meal benefits. The Commission should implement a direct certification process for the Emergency Broadband Benefit Program.

In addition, administrators of these federal assistance programs should inform their participants that they are also eligible for the monthly broadband discounts that are part of the Emergency Broadband Benefit Program. The Commission should direct USAC to create a system through which these program administrators can deliver a voucher to their participants (both

an Indian reservation, and you must characterize your financial situation as low income or very low income.

⁵⁵ See <https://aspe.hhs.gov/poverty-guidelines>

⁵⁶ See SNAP eligibility.

⁵⁸ See, for example, <https://www.cde.ca.gov/ls/nu/sn/directcert.asp>

digitally and on paper) that the participants can, in turn, use as proof of eligibility for the Emergency Broadband Benefit Program. The voucher should be all that a provider needs to be able to track eligibility and begin providing supported services in the program.

For providers that seek to use the National Verifier and National Lifeline Accountability Database, the Commission proposes to require eligible households to directly interact with the National Verifier to apply for the Emergency Broadband Benefit Program, as is currently required for the Lifeline benefit.

The Commission should avoid creating burdens for consumers. Low-income consumers are less likely to have existing broadband and/or telephone service. Commission rules should not put the onus of verification on these consumers.

For providers that rely on a school to verify eligibility based on participation of a member of the household in the free and reduced price lunch program or the school breakfast program,⁵⁹ the Commission proposes that a provider identify the school it relied on when enrolling a household in the National Lifeline Accountability Database.

⁵⁹ *Id.*, §904(b)(2)(C).

As has been done successfully in Chicago,⁶⁰ in North Carolina,⁶¹ and in Milwaukee,⁶² school districts and states have proven that they can successfully certify needy K-12 households. Data exchange is key.

The Act allows for two verification options that may make it difficult to identify qualified K-12 households:

- The National Lifeline Verifier does not have any data on participation in the free and reduced lunch program, and
- Federal law⁶³ and some state laws (see, for example, California⁶⁴) prevent schools -- for valid privacy reasons -- from sharing information on which students qualify for the free and reduced lunch program. So, schools may be unable to verify that a

⁶⁰ Through the Chicago Connected initiative <https://www.cps.edu/strategic-initiatives/chicago-connected/>, students who qualify for broadband support are assigned an activation code. The code provides access to a wired connection through a broadband provider. Families can check for and receive their access code through a number of means: on report cards and progress reports, through an online parent portal, students' identification cards, and by calling the school.

⁶¹ NC Student Connect initiative <https://www.ncstudentconnect.com/>

⁶² Digital Bridge initiative <https://www.digitalbridge.ngo/>

⁶³ See 42 U.S.C. §1758. See also 7 CFR §245.6(k).

⁶⁴ See Cal. Educ. Code §49558(a) ("All applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to free or reduced-price meal eligibility shall be confidential, and may not be open to examination for any purpose not directly connected with the administration of any free or reduced-price meal program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any free or reduced-price meal program.")

household is eligible for the emergency broadband credit because they would be in violation of the law.

Thus, the Commission needs to adopt an alternative verification process for unconnected households with K-12 students.

The Commission could rely on the precedent set by the Community Eligibility Provision⁶⁵ in the free and reduced lunch program, which allows schools to provide free breakfast and lunch to students that do not individually qualify for the free and reduced lunch program when at least 40% of students in a school directly qualify for the free and reduced lunch program. The Commission should extend this eligibility framework to allow schools to verify their students are eligible for the emergency broadband benefit.

The Commission can also limit waste, fraud, and abuse by limiting the number of students that a school district can qualify to the total number of students in any given school that are in the free and reduced lunch program -- aggregate data that USAC already collects annually as a part of its administration of the Commission's E-Rate program.

For providers that use their own alternative verification process,⁶⁶ the Commission proposes that a provider identify the process used when enrolling a household in the National Lifeline Accountability Database. In order to use such a process, a participating provider must submit information detailing the verification process to the Commission and explain why that

⁶⁵ See <https://www.fns.usda.gov/cn/community-eligibility-provision>

⁶⁶ Consolidated Appropriations Act, §904(b)(2)(B).

process is sufficient to avoid waste, fraud, and abuse. The Commission shall then determine within seven days of receipt of the information whether the proposed process is sufficient.

The Commission seeks comment on what information should be provided.⁶⁷ As in the case of the compliance plans, the Commission should create a model “alternative verification processes” prior to the start of the program for participating providers that choose that verification method. Doing so will reduce the burden of an alternative verification method, especially on smaller providers. Streamlining this aspect of the approval process could greatly expedite the process overall, in part by relieving Commission staff of the burden of reviewing individualized plans.

A household is also eligible to participate in the Emergency Broadband Benefit Program if it has experienced a substantial loss of income since February 29, 2020. The Commission asks how it should define “substantial loss” and which additional types of documentation would demonstrate such a loss. The Commission asks if a certain level of income should exclude some households even if they have experienced substantial loss of income.

On September 4, 2020, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) issued an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19.⁶⁸ Covered persons in the Order included individuals who (i) expected to

⁶⁷ *Id.*, §904(b)(2)(B).

⁶⁸ Centers for Disease Control and Prevention, *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19*. 85 Federal Register 55292 (September 4, 2020). /

earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),[6] (ii) were not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act. Covered persons also includes individuals who are unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses.

Benton urges the Commission to consult with CDC, consider the same income criteria, learn how CDC defines “substantial loss of household income,” and how it asks consumers to demonstrate it.

In determining “substantial loss of income” and how to document it, the Commission should keep in mind the widespread loss of income in the U.S. due to the pandemic.

As of April 2020, 43% of U.S. adults said that they or someone in their household had lost a job or taken a cut in pay due to the COVID-19 outbreak.⁶⁹ Among lower-income adults, an even higher share (52%) said they or someone in their household has experienced this type of job upheaval. And lower-income adults are less prepared to withstand a financial shock than those with higher incomes. Only about one-in-four (23%) say they have rainy day funds set aside that would cover their expenses for three months in case of an emergency such as job loss, sickness

⁶⁹“About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19,” Pew Research Center (April 2020), https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2020/04/PSDT_04.21.20_covidfinance_FULL.REPORT.pdf

or an economic downturn, compared with 48% of middle-income and 75% of upper-income adults. And while 53% of lower-income adults said they will have trouble paying some of their bills in April 2020, about a quarter of middle-income adults and 11% of those in the upper income tier say the same. Among those who don't have emergency funds, relatively few say they could tap into other resources in order to make ends meet. Only 28% say they would be able to cover their basic expenses by borrowing money, using their savings or selling assets.

As of September 2020, one-in-four adults have had trouble paying their bills since the coronavirus outbreak started, a third have dipped into savings or retirement accounts to make ends meet, and about one-in-six have borrowed money from friends or family or gotten food from a food bank.⁷⁰ Among lower-income adults, 46% say they have had trouble paying their bills since the pandemic started and roughly one third (32%) say it's been hard for them to make rent or mortgage payments. About one-in-five or fewer middle-income adults have faced these challenges, and the shares are substantially smaller for those in the upper-income tier.

Job loss has also been more acute among certain demographic groups. Overall, 25% of U.S. adults say they or someone in their household was laid off or lost their job because of the coronavirus outbreak, with 15% saying this happened to them personally. Young adults (ages 18 to 29) and lower-income adults are among the most likely to say this has occurred in their household.

⁷⁰ "Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest," Pew Research Center (September 2020), https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2020/09/SDT_2020.09.24_COVID-19-Personal-Finances_FINAL.update2.pdf

Of those who say they personally lost a job, half say they are still unemployed, a third have returned to their old jobs and 15% are in a different job than before. Lower-income adults who were laid off due to the coronavirus are less likely to be working now than middle- and upper-income adults who lost their jobs (43% vs. 58%). Adults ages 18 to 29 are less likely than those 30 to 64 to have returned to their previous job.

Even if they didn't lose a job, many workers have had to reduce their hours or take a pay cut due to the economic fallout from the pandemic. About a third of all adults (32%) say this has happened to them or someone in their household, with 21% saying this happened to them personally. Most workers who have experienced this (60%) are earning less now than they were before the coronavirus outbreak, while 34% say they are earning the same now as they were before the outbreak and only 6% say they are earning more.

Americans who have experienced job or wage loss – either personally or in their household – are more than twice as likely as those who have not to say they have had trouble paying their bills, struggled to pay their rent or mortgage, used money from savings or retirement to pay bills or borrowed money from friends or family

IV. The Emergency Broadband Benefit Program Should Only Support True Broadband Service

The Consolidated Appropriations Act defines “internet service offering”⁷¹ and defines “broadband Internet access service” as eligible for reimbursement with the meaning given to

⁷¹ Consolidated Appropriations Act, §904(a)(9).

that term in section 8.1(b) of the Commission’s rules.⁷² The Commission seeks comment on whether it should provide any further clarity regarding services that are eligible for reimbursement in the Emergency Broadband Benefit Program.

Section 8.1(b) of the Commission’s rules excludes dial-up internet service, but is otherwise vague on performance criteria such as speed. In defining an “internet service offering” in the Act, Congress specifically references “broadband” providers and “broadband internet access service.”⁷³ In its *Fourteenth Broadband Deployment Report*, the Commission found “that the current speed benchmark of 25/3 Mbps remains an appropriate measure by which to assess whether a fixed service is providing advanced telecommunications capability.”⁷⁴ Although Benton finds the 25/3 Mbps threshold unreflective of the current U.S. broadband marketplace in which consumers routinely pick 100 Mbps service, the recipients of Emergency Broadband Benefit Program deserve service of no less quality than the Commission has previously defined.⁷⁵

⁷² See *id.*, §904(a)(1) (citing 47 CFR §8.1(b)).

⁷³ §904(a)(9).

⁷⁴ *Fourteenth Broadband Deployment Report*, GN Docket No. 20-269, FCC 21-18) (January 19, 2021).

⁷⁵ The Commission may decide it needs to make exceptions in areas where 25/3 service is not available. However, in areas where a provider has accepted high-cost universal service support tied to broadband deployment commitments, such as the Connect America Fund (including the CAF Auction), the Alternative Connect America Cost Model, Alaska Plan, CAF Broadband Loop Support, Mobility Funds, Rural Broadband Experiments, or others, the Commission should limit Emergency Broadband Benefit Program support to broadband service meeting the minimum performance requirements of those programs.

V. The Commission Should Partner with Administrators of Federal Support Programs to Promote Awareness of the Emergency Broadband Benefit Program

The Commission seeks comment on the best methods to publicize the availability of the services and connected devices supported by the Emergency Broadband Benefit Program. Should participating providers have any obligation under the program’s rules to publicize the availability of the benefit? What are the most effective means of publicizing this benefit to the communities most in need? The Commission seeks comment on best practices employed by providers with existing low-income broadband plans to reach low-income households.

As noted above, the Commission has natural partners through which to both reach and verify eligible households. The Commission should immediately enter into memorandums of understanding with the administrators of assistance programs that are already verifying that households are income-eligible for the Emergency Broadband Benefit Program. These programs include: Medicaid;⁷⁶ Supplemental Nutrition Assistance Program (SNAP);⁷⁷ Supplemental

⁷⁶ Participants are low-income families, qualified pregnant women and children, and individuals receiving Supplemental Security Income (SSI). States have additional options for coverage and may choose to cover other groups, such as individuals receiving home and community-based services and children in foster care who are not otherwise eligible. The Affordable Care Act of 2010 extended eligibility for children to at least 133% of the federal poverty level (FPL) in every state (most states cover children to higher income levels), and states were given the option to extend eligibility to adults with income at or below 133% of the FPL. Most states have chosen to expand coverage to adults, and those that have not yet expanded may choose to do so at any time.

⁷⁷ Participants must have gross monthly income at 130% of federal poverty level or less.

Security Income (SSI);⁷⁸ Federal Public Housing Assistance;⁷⁹ Veterans and Survivors Pension Benefit;⁸⁰ Bureau of Indian Affairs general assistance;⁸¹ Tribally administered Temporary Assistance for Needy Families;⁸² Head Start;⁸³ and the Food Distribution Program on Indian Reservations.⁸⁴ Participants in all these programs should be added immediately to the Lifeline National Eligibility Verifier Database. Administrators of these programs should inform their

⁷⁸ Participants must be at least age 65 OR be blind or disabled; have less than \$2,000 in assets, for a single person, and \$3,000 for a couple; and, in general, the income limit for SSI is the federal benefit rate (FBR), which is \$783 per month for an individual and \$1,175 per month for a couple in 2020.

⁷⁹ The Department of Housing and Urban Development sets the lower income limits at 80% and very low-income limits at 50% of the median income for the county or metropolitan area in which a person chooses to live. Income limits vary from area to area so a person may be eligible at one housing authority but not at another. The housing authority serving a community can provide a person with the income levels for the area and family size.

⁸⁰ Aveteran who A) Entered active duty on or before September 7, 1980, and served at least 90 days on active military service, with at least 1 day during a covered wartime period, B) Entered active duty after September 7, 1980, and served at least 24 months or the full period for which they were called or ordered to active duty (with some exceptions), with at least 1 day during a covered wartime period, or C) Was an officer and started on active duty after October 16, 1981, and hadn't previously served on active duty for at least 24 months. Maximum Annual Pension Rate set by Congress (~\$23,238/year)

⁸¹ To be eligible for General Assistance, all applicants must apply concurrently for financial assistance from other state, tribal, county, local or other Federal agency programs for which they might be eligible.

⁸² In order to qualify for this benefit program, you must be a Native American/American Indian who is unemployed or about to become unemployed, you or a family member must be enrolled in a federally recognized American Indian tribe or Alaska Native village, you must live on or near an Indian reservation, and you must characterize your financial situation as low income or very low income.

⁸³ See <https://aspe.hhs.gov/poverty-guidelines>

⁸⁴ See SNAP eligibility.

participants that they are also eligible for the monthly broadband discounts that are part of the Emergency Broadband Benefit Program. The Commission should direct USAC to create a system through which these program administrators can deliver a voucher to their participants (both digitally and on paper) that the participants can, in turn, use as proof of eligibility for the Emergency Broadband Benefit Program. The voucher should be all that a provider needs to be able to track eligibility.

The Commission also seeks comment on whether the Commission or USAC should also take steps to publicize the program to supplement the outreach of the participating providers. The Commission seeks comment on using other civic entities to publicize the availability of these funds.

The Commission should incorporate lessons learned from the analog-to-digital television transition (DTV transition) to inform an outreach plan. Similar to the DTV transition, the Commission needs to reach a wide audience in a short period of time to make the Emergency Broadband Benefit Program a success. In the DTV transition, the Commission worked with the National Telecommunications and Information Administration to:⁸⁵

- identify areas of high risk,

⁸⁵ Goldstein, Mark L, "Digital Television Transition: Implementation of the Converter Box Subsidy Program Is Under way, but Preparedness to manage and Increase in Subsidy is Unclear," United States Accountability Office (September 2008). <https://www.gao.gov/assets/290/280987.pdf>

- target at risk demographics (seniors, low-income, minority and non-English speaking, rural households, and persons with disabilities),
- partner with organizations that serve these hard-to-reach populations, and
- participate in events with the National Social Worker Association.

The Commission should embark on a similar effort to raise awareness of, and participation in, the Emergency Broadband Benefit Program by eligible households. As in the DTV transition, the Commission should create a consumer help line dedicated to helping low-income consumers understand, enroll, and begin receiving services supported by the Emergency Broadband Benefit Program.

USAC is another natural partner for the Commission in these efforts. Not only should USAC inform all Universal Service Fund program participants (both providers and recipients of services) about the Emergency Broadband Benefit Program, USAC's E-rate program data can be used to identify the school districts that have the largest populations participating in the free and reduced lunch programs.

VI. The Commission Should Improve Transparency Around Terms of Service

The Consolidated Appropriations Act provides that “[a]t the conclusion of the Emergency Broadband Benefit Program, any participating eligible households shall be subject to a participating provider’s generally applicable terms and conditions.”⁸⁶ The Emergency

⁸⁶ See Consolidated Appropriations Act, §904(b)(10).

Broadband Benefit Program will conclude six months after the end of the emergency period⁸⁷ or when the amount appropriated to the Emergency Broadband Connectivity Fund is expended,⁸⁸ whichever is sooner. In light of this statutory language, how should providers be required to explain these terms and conditions to eligible households prior to or upon initial enrollment? Is there other information that should be provided to eligible households before enrollment or while the service is being supported by the program to ensure eligible households understand the scope of the program and the impact of fund exhaustion on the program discount?

As noted above, U.S. consumers face great difficulty when trying to consider (and compare) service plans by (competing) service providers (where competition exists). The Commission does not disseminate any pricing or service quality data; it should do so.

Many broadband providers do not publish standard service rates that would enable consumers to compare options and understand all of the costs of their choices. As consumers transition out of the Emergency Broadband Benefit Program, service rate information should be easily accessible and understandable. Important details—like actual upstream and downstream speeds, data cap overage charge details, and additional fees—should be included.⁸⁹

The Commission's Emergency Broadband Benefit Program rules should not engrain these transparency deficiencies in the U.S. broadband marketplace.

⁸⁷ See *id.*, §904(a)(8).

⁸⁸ See *id.*, §904(i)(2).

⁸⁹ See footnote 22, *supra*.

VII. The Commission Should Provide Detailed, Ongoing Reporting on the Emergency Broadband Benefit Program to a Breadth of Stakeholders

The Commission seeks comment on how to keep stakeholders informed during the duration of the program regarding the funds remaining in the Emergency Broadband Connectivity Fund. What information should the Commission share about disbursements made from the Emergency Broadband Connectivity Fund and at what intervals?

The Commission must note that there is a breadth of stakeholders that will need information for widely different purposes. Stakeholders include Congress and the new administration, consumers, providers, and the households participating in the program. The Commission must respect personal privacy while releasing as much data about the program as possible at regular intervals.⁹⁰ Information should include the number of participating providers, the number of consumers (both new and existing) the program is benefiting, how much of the Emergency Broadband Connectivity Fund has been used, and when the Commission estimates the Emergency Broadband Connectivity Fund will be completely drawn down. At each new interval, the Commission should note the number of new providers and subscribers since the last update and how these participation numbers will likely impact the duration of the fund.

⁹⁰ At a minimum, Benton urges monthly updates.

VIII. Give Stakeholders Early Warning of the Conclusion of the Emergency Broadband Benefit Program

The Commission seeks comment on how it should administer the conclusion of the program. What notice should it give to participating providers? How should participating providers give notice to eligible households that their benefit will conclude after a certain date? What precipitating events should trigger such notice, and what information should be included in that notice?

Congress, providers, and consumers need to know how long the Emergency Broadband Benefit Program will last and be given sufficient notice about the pending conclusion of the program. Consumers should be given at least 90 days' notice about the end of the benefit. Congress should be given up to 180 days in case it wants to act to extend the Emergency Broadband Benefit Program.

CONCLUSION

Benton urges the Commission to move swiftly to create and launch a competitive Emergency Broadband Benefit Program, delivering high-quality broadband services to as many low-income Americans as possible as quickly as possible.

Respectfully submitted,

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