

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

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

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The affordability digital divide has been a longstanding and persistent barrier to achieving true universal broadband service. As of November 2019, approximately 20 percent of U.S. households still had no type of internet service at all. An additional 7 percent of households were solely reliant on mobile internet, which typically comes with stricter data caps and more limited device and usage options. Only 68 percent of U.S. households subscribed to the internet via wired technology at any speed, with some of those connections below even the FCC’s modest threshold for what counts as broadband.¹

Low-income families and people of color have been disproportionately stranded by this divide. Fully 41 percent of households living in poverty had no type of internet service in 2019, meaning that poor people in the U.S. are more than twice as likely as non-poor people to be disconnected from the internet at home.² People of color make up 46 percent of completely disconnected people in the U.S., but represent only 40 percent of the country’s total population.³

¹ See Comments of Free Press, GN Docket No. 20-269 (filed Sep. 18, 2020) at 15.

² Free Press analysis of U.S. Census Bureau (November 2019), *Current Population Survey*.

³ *Id.*

Repeated research has shown that this layered digital divide is primarily the result of a broadband market that fails to offer sufficiently affordable service options.⁴

During the COVID-19 pandemic, these inequities have been exacerbated by unprecedented job and income loss reducing the ability of millions to pay for broadband while the necessity of social distancing has increased the urgency of obtaining reliable and affordable digital connectivity. Notably, the burdens of this health and economic crisis have also fallen disproportionately on the same communities most likely to be disconnected, reinforcing the same racial and economic inequities.⁵ The result is that untold millions of families have been forced to make impossible decisions between maintaining critical (and expensive) broadband connectivity or meeting their other basic needs, such as paying for diapers and grocery bills during a global health emergency.⁶

⁴ See S. Derek Turner, Free Press, “Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption,” at 84-5 (Dec. 2016) (“[I]t’s important yet unsurprising to note that affordability actually is the most-cited reason for not adopting among households with family incomes below \$20,000 . . . Black and Hispanic households without home internet are far more likely to cite affordability, and far less likely to cite don’t want/don’t need, than are White households without home internet.”); John B. Horrigan, “Measuring the Gap: What’s the right approach to exploring why some Americans do not subscribe to broadband?” at 2 (Feb. 2020) (“Cost is the chief reason for not having broadband.”).

⁵ See Mary Van Beusekeom, “Studies: People of color bear larger share of COVID-19 burden,” *Center for Infectious Disease Research and Policy* (July 28, 2020) <https://www.cidrap.umn.edu/news-perspective/2020/07/studies-people-color-bear-larger-share-covid-19-burden>; Elise Gould and Valerie Wilson, “Black workers face two of the most lethal preexisting conditions for coronavirus – racism and economic inequality,” *Economic Policy Institute* (June 1, 2020), <https://www.epi.org/publication/black-workers-covid/>.

⁶ See Andrew Wyrich, “Read the heartbreaking complaints Americans sent the FCC after their internet was shut off,” *Daily Dot* (June 5, 2020) <https://www.dailydot.com/debug/fcc-coronavirus-pledge-complaints/>.

Congress’s decision to establish the Emergency Broadband Benefit (“EBB”) Program in December’s Consolidated Appropriations Act⁷ is therefore both long overdue and deeply necessary. The program is primed to bring more affordable broadband choices to millions of people who badly need them, and it should be implemented with these hardest-hit communities in mind. To that end, in answering the questions raised in its Public Notice,⁸ the Commission must prioritize the following: 1) affirming a sufficiently broad understanding of benefit applicability, 2) affirming a sufficiently broad understanding of household eligibility, 3) ensuring ease of application and use for eligible households, and 4) promoting public awareness and program transparency.

I. The “Standard Rate” Definition Must Encompass All Relevant Costs, Benefits, and Terms as of December 1, 2020.

The language of the Consolidated Appropriations Act repeatedly pegs the EBB reimbursement to the “standard rate,” meaning “the actual amount charged”⁹ for particular service offerings as of December 1, 2020. Promotional rates are so prevalent within the broadband market as to frequently obscure the non-promotional price of service offerings, and must plainly be included in this definition of a “standard rate” tied to the “actual” charge an eligible household would otherwise pay. Thus if an eligible household would have received a promotional rate from a provider on December 1, 2020, that promotional rate must be considered

⁷ Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (“Consolidated Appropriations Act” or “Act”).

⁸ *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6 (rel. Jan. 4, 2021) (“Public Notice”).

⁹ See Consolidated Appropriations Act § 904(a)(7), (9), (13).

“standard” for purposes of determining the EBB reimbursement and any remaining charges to eligible households. And since expiration of these promotions would also consequently adjust the dollar value of the “standard rate” for that service, and the associated EBB reimbursement amount, the Commission must request information regarding the rates and terms of any promotional prices attached to eligible internet service offerings as of December 1, 2020 in order to assess participating providers’ compliance with the certification requirements in Section 904(b)(6) of the Act.

By the same token, rental equipment such as modems or routers should be included within the eligible internet service offering, on the same terms as they were on December 1, 2020. If such equipment was provided to broadband customers free-of-charge on that date, it should also be offered free-of-charge to EBB eligible households and not counted against the program reimbursement amounts. Yet if there was a rental charge for such equipment as of December 1, 2020, the Act makes plain that this charge is part of the “standard rate for an internet service offering and associated equipment,”¹⁰ and is subject to reimbursement.

In sum, the “standard rate” represents the full set of charges, benefits, and terms that would have been offered to customers for a particular service offering on the fixed date of December 1, 2020. The Act tied the EBB calculation to this specific date only in order to ensure that participating providers could not after the fact increase their prices artificially, all to increase the reimbursements available to them and profiteer on the creation of the EBB program. That means that where specific providers made available promotions or free equipment to particular customers on that date, the Commission should ensure that these offerings remain in place for

¹⁰ See *id.* § 904(a)(7) (emphasis added).

eligible households receiving support from the EBB program by including them in its definition of the “standard rate.” These measures will both limit the risk of program waste and guarantee that eligible households receive equal treatment from internet providers.

II. The “Eligible Households” Definition Must Be Construed Broadly.

The Commission also seeks comment on whether to adopt policies that will marginally expand or restrict the number of people able to receive support through the EBB program. Specifically, in cases where multiple economic households reside at the same address, the Commission asks if there should be a cap on the number of benefits a single address can receive, or more rigorous verification standards to ensure that the recipients of these benefits are truly part of separate economic households.

While some limitations or increased verification may (or may not) be warranted in the case of multiple applications for wired service offerings at the same address, the same cannot be said for mobile service offerings. It would be reasonable (as the Lifeline program rules likewise contemplate and fully allow) for multiple households sharing a single address, for example in a shelter for unhoused individuals, to each seek support for a mobile service offering. Establishing additional verification barriers or limiting eligibility in this eventuality would likely foreclose some of the most marginalized people and communities from participating in the program, severely undercutting its effectiveness and purpose.

Similarly, the Commission should not establish additional barriers for households in which at least one member attends a school where the USDA Community Eligibility Provision allows school districts to offer breakfast and lunch at no cost to all students, regardless of their individual family’s income. For the purposes of administering the EBB program, all such

households should be considered eligible for support without an assessment of individual eligibility. The benefits of this approach are clear: it reduces verification burdens for some of the nation's highest poverty communities, helps to tackle the homework gap during a time when education is predominantly remote, and relies on existing and longstanding community eligibility standards established for the free-and-reduced lunch program. The drawbacks are correspondingly minimal. While it is theoretically conceivable that a relatively wealthy family with school-aged children would live in an otherwise high-poverty area, send their children to school in that high-poverty district, and then choose to claim EBB support without demonstrable household need, it is extremely unlikely to be a significant source of waste or fraud in the program.

III. EBB Implementation Should Prioritize Ease of Use for Eligible Households.

The Commission should strive to minimize program burdens for eligible households not just in the application process, but also in the event of an eligible household choosing to discontinue its internet service offering or switch to another participating provider. Specifically, the Commission should ensure that eligible households need not unduly re-demonstrate their eligibility upon switching services, and make certain that their eligibility determination is effectively portable. Additionally, provider reimbursement amounts should be prorated to match only the prorated charges customers would actually incur should they cancel internet service with a participating provider in the middle of a billing cycle.

IV. The Commission Must Promote Both Public Awareness and Program Transparency.

The Commission should clearly establish that participating providers have an obligation to promote the availability of the EBB program in their service areas, particularly to eligible households. Elsewhere in the Public Notice,¹¹ the Commission proposes adopting programmatic requirements similar to those required of eligible telecommunications carriers (“ETCs”) participating in universal service programs such as Lifeline, and here the Commission should again look to these examples. ETCs are required to “advertise the availability of such services and the charges therefor using media of general distribution.”¹² The Commission should adopt similar language requiring all providers participating in the EBB program to publicize their participation and the availability of EBB-discounted internet service offerings. Additionally, the language should require such advertisements to be offered in multiple languages, including Spanish and other primary languages in communities the provider serves.

The Commission need not and should not rely exclusively on providers to distribute information related to program awareness, however, and it should also pursue key measures to promote the program itself as well as transparency regarding it. As part of its duty to keep stakeholders informed,¹³ the Commission should gather and publicly release data regarding the number of households currently using the EBB on a monthly basis, as well as monthly data regarding reimbursement amounts. This will allow regular assessment of the amount remaining in the Emergency Broadband Connectivity Fund, as well as assessment of program uptake.

¹¹ See Public Notice at 4, 11.

¹² 47 U.S. Code § 214(e)(1)(B).

¹³ See Public Notice at 13.

To ensure public accountability and reduce the risk of waste, fraud, and abuse, the Commission should also create a public repository for information submitted by participating providers to certify their reimbursements due. Such a resource would benefit eligible households by allowing them to see at a glance which participating providers offer service in their areas at various discounted price points, including offerings for which the EBB reimbursement covers the entire monthly charge. It would also provide eligible households the tools necessary to file a complaint or seek redress should a participating provider attempt to charge them more than the Act allows.¹⁴ Such a public database is eminently sensible because it would contain only information that would already be publicly available to any potential customer seeking service.

CONCLUSION

The Commission has both an obligation and an opportunity to follow through on Congress's promise of digital connectivity support by implementing the EBB program quickly and effectively, and by prioritizing the needs of eligible communities as outlined above.

Respectfully Submitted,

/s/ Dana Floberg

Dana Floberg, Policy Manager
Matthew F. Wood, VP of Policy
Free Press

¹⁴ See Consolidated Appropriations Act § 904(b)(6)(B) (prohibiting any charge to the eligible household “if the standard rate for such offering is less than or equal to” the EBB maximum of \$50 (or \$75 on tribal lands), and capping the charge to the household if the total charge is more than that EBB maximum at no more “than the difference between the standard rate for such offering” and the EBB reimbursement amount).

1025 Connecticut Avenue, NW
Suite 1110
Washington, DC 20036
202-265-1490

Eric Null, US Policy Manager
Access Now
1440 G St NW, 8th Fl
Washington, DC 20005

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