

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF AT&T SERVICES, INC.

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January 25, 2021

TABLE OF CONTENTS

I. Introduction and Summary	1
II. Household Eligibility	2
III. Program Administration.....	5
IV. Eligible Services and Devices.....	6
V. Participating Providers.....	10
VI. Conclusion	12

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AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”), submits these comments in response to the Public Notice¹ seeking comment on the implementation of the Emergency Broadband Benefit Program created in Section 904 of the Consolidated Appropriations Act, 2021.²

I. INTRODUCTION AND SUMMARY

The Emergency Broadband Benefit Program (“Program”) is an important step in a broader response to the economic impacts of the coronavirus pandemic on many American households. At the beginning of this crisis, over 800 voice and broadband service providers answered the Commission’s call to take the “Keep Americans Connected Pledge” (“Pledge”) to provide relief to Americans during the COVID pandemic.³ While these actions ensured connectivity, the Pledge

¹ *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”).

² Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020) (“Act”).

³ FCC Initiatives: Keep Americans Connected, <https://www.fcc.gov/keep-americans-connected> (last checked January 21, 2021).

commitments were always intended to be a short-term solution. In enacting the Program, Congress appropriately recognized that a comprehensive, government-funded benefit was the best path to achieve a consistent, reliable, and fully funded solution for Americans who were economically disadvantaged by the pandemic.

As the Program is implemented, the Commission's rules should establish a structure that allows the Congressionally appropriated funding to benefit affected American households as smoothly and quickly as possible by encouraging provider participation through flexibility and choice. At the same time, the rules must balance these goals with strong measures to prevent waste, fraud and abuse. To this end, the Commission should maximize administrative simplicity for eligible households and participating providers, while also preventing fraud and ensuring that consumers receive a substantial product or service for this finite federal benefit.

As discussed below, the Commission can achieve these goals by (1) ensuring the National Lifeline Eligibility Verifier ("National Verifier") and the National Lifeline Accountability Database ("NLAD") can make eligibility determinations for all the eligibility criteria included in the Act and manage enrollments in the Program, (2) ensuring participating providers and households receive adequate notice on the status of the fund, (3) recognizing that provider participation is voluntary and providers have the freedom to select which of their available service offerings and associated equipment they will make available in the Program as long as the service offering meets the Act's requirements, and (4) ensuring the entry path for participating providers is efficient and permits them to launch across the largest geographic area possible.

II. HOUSEHOLD ELIGIBILITY

The Act directs the Commission to (1) "expedite the ability of all participating providers to access the National Verifier and [NLAD] for purposes of determining whether a household is

an eligible household,”⁴ and (2) ensure that the National Verifier is prepared to qualify households based on the new eligibility criteria in the statute⁵ and process applications for the Emergency Broadband Benefit within a two-day turnaround time.⁶ Thus, it is imperative that the Commission collaborate with the Universal Service Administrative Company (“USAC”) on an expedited basis to ensure that the National Verifier and NLAD can fully manage eligibility determinations and enrollment for all of the household eligibility criteria in the Act for all households, including households in states that were permitted to opt out of NLAD for the Lifeline program.⁷ As the Commission previously observed, “one of the main avenues historically leading to fraud and abuse in the Lifeline program [was] Lifeline providers determining subscriber eligibility.”⁸ The Commission has the opportunity to avoid similar fraud and abuse in this Program by relying from the start on the rigor and efficiencies enabled by NLAD and the National Verifier.

We recognize that the National Verifier currently may not have electronic access to data necessary to determine eligibility for the eligibility criteria not currently applicable to Lifeline, or access to the Lifeline eligibility databases in the NLAD opt-out states. Nonetheless, consistent with the Act, the Commission should require USAC to take the necessary steps to update NLAD and the National Verifier as quickly as possible, and in the meantime, it can rely on its manual eligibility engine to review household-provided documentation to determine eligibility. This

⁴ Act, § 904(b)(3)(A).

⁵ *See id.* at § 904(a)(6)(C)-(D).

⁶ *Id.* at § 904(b)(3)(B).

⁷ Those states include California, Oregon and Texas. *See Lifeline and Link Up Reform and Modernization, Report and Order, 27 FCC Rcd 15842, at ¶ 221 (2012).*

⁸ *Lifeline and Link Up Reform and Modernization, Third Report and Order, 31FCC Rcd 3962, 4007-08 ¶ 129 (2016).*

process will ensure consistent results and will be inherently more reliable and efficient than allowing a myriad of participating providers to review documentation with each using their own systems and processes to judge the veracity of eligibility documentation.

In addition, failing to include all criteria in the National Verifier and NLAD could deter participation by providers who are unwilling to incur the costs and burdens of developing and implementing multiple verification processes (one for criteria included in NLAD and the National Verifier, one for NLAD opt-out states, and one or more processes for those criteria not included in either of the former). To the extent that the National Verifier or NLAD are unable to verify and/or enroll households under any of the statutory eligibility criteria or for the NLAD opt-out states, the Commission should make clear that participating providers may limit their enrollments to only those customers that can be qualified using the National Verifier and NLAD until those systems are updated and capable of verifying eligibility for all the statutory criteria.⁹

Although the Act permits participating providers to adopt an alternative verification process to qualify eligible households,¹⁰ AT&T supports the Public Notice's proposal to require all participating providers to track enrollments of eligible households in the NLAD.¹¹ This will ensure there is one repository of all enrolled households, which will significantly reduce the risk of households obtaining more than one benefit.

For providers that seek to qualify eligible households using their own alternative verification processes,¹² the Commission should provide clear direction as to how eligible

⁹ See Act § 904(a)(12)(B) (participation is at the provider's election).

¹⁰ See Act § 904(b)(2)(B).

¹¹ Public Notice at 6.

¹² See *id.* at § 904; Public Notice at 7-8.

households may qualify under the eligibility criteria included in the Act,¹³ to avoid excessive latitude for participating provider interpretation that could lead to fraud or abuse.¹⁴ AT&T agrees with the Public Notice’s proposal that the Commission should require providers’ alternative verification methods to be at least as stringent as the methods used by the National Verifier. As a start, this should include a requirement to collect and retain documentation of the recipient’s identity and eligibility criteria. But the Commission should go further and clearly articulate what documents participating providers must collect and retain to verify (and subsequently demonstrate in an audit) household eligibility for each of the enumerated eligibility criteria. This is the only way to prevent after-the-fact disputes about what qualifies as adequate documentation.

III. PROGRAM ADMINISTRATION

As the Public Notice correctly observes, the Program “will conclude at the end of the emergency period or when the amount appropriated to the Emergency Broadband Connectivity Fund is expended.”¹⁵ As AT&T recently observed, a \$3.2 billion appropriation is a step in the right direction toward helping low-income households afford broadband, but if even a fraction of the existing Lifeline subscriber base enrolls in the Program, the funds could be exhausted in just a few months.¹⁶ Since participating providers are under no obligation to self-fund the benefit after the

¹³ The same clarity is needed to instruct households what documentation they need to present to the National Verifier to determine eligibility.

¹⁴ *See* Section 904(a)(6). This clarification is particularly important for the qualification based on “substantial loss of income,” which is not defined in the statute. For example, must a household’s income be negatively affected by more than X%? Must the household’s resulting income be less than \$X/month, or mean that the household’s income is X% of Federal Poverty Guidelines? Or is the submission of documentation of a layoff or furlough notice, application for unemployment insurance benefits or “similar documentation otherwise verifiable” alone sufficient?

¹⁵ Act, § 904(b)(10).

¹⁶ *See* “New Year, New Solutions: Reforming Universal Service Contributions,” Joan Marsh, Executive Vice President of Federal Regulatory Relations, pub. January 14, 2021,

appropriated funds are expended, it is crucial for participating providers and households to be updated on the funding levels of the Program and are provided a projection for the termination of the Program. To that end, the Commission or USAC should publish a *weekly notice* that includes a running total of the number of subscribers enrolled in the Program, weekly and year-to-date disbursements, and an estimate of when the funds will be depleted. In addition, the Commission should issue a Public Notice announcing the conclusion of the Program 90 days before the funds are projected to be exhausted. These notices will allow participating providers time to modify billing systems to transition customers to standard rates and time to ensure customers have adequate notice, which will prevent customer confusion.

IV. ELIGIBLE SERVICES AND DEVICES

As the Public Notice acknowledges “[p]articipation in the program is voluntary, and a provider must affirmatively ‘elect’ to participate.”¹⁷ Accordingly, participating providers, whether fixed or mobile, must have the freedom to choose which of their service offerings they will make available through the Program, and participating providers should not be required to apply the discount to every service offering they currently offer that might meet the Commission’s definition of broadband. The Act’s definition of Internet service offering encompasses any offering “provided by such provider to a household, offered in the same manner, and on the same terms, as described in any of such provider's offerings for broadband internet access service to such household, as on December 1, 2020.”¹⁸ The Public Notice’s proposed election notice implies that

<https://www.attpublicpolicy.com/universal-service/new-year-new-solutions-reforming-universal-service-contributions/> (last checked January 21, 2021).

¹⁷ Public Notice at 2.

¹⁸ *Id.* at § 904(a)(9) (emphasis added).

participating providers have the freedom to select the service offerings that they wish to include in the Program, by proposing that the election notice include “a description of *any* Internet service offerings for which [the participating provider] plans to seek reimbursement.”¹⁹ Given the voluntary nature of the Program, the Commission should make clear that participating providers may apply the benefit, at their election, to any such service offerings, including bundles, as long as they provide fixed or mobile broadband internet access service as defined in Section 8.1(b) of the Commission’s rules. In addition, the Commission should make clear that the benefit can be applied, consistent with the Act, to maximize eligible households’ ability to participate in the Emergency Broadband Benefit Program by remaining on their existing service offerings or upgrading to an enhanced service offering, if consistent with the Program rules.

First, the Commission should make clear that the benefit may be applied to bundled service offerings as long as the offering was available December 1, 2020 and includes fixed or mobile broadband Internet access service as defined in Section 8.1(b). Most American consumers elect to purchase broadband service bundled with other services, such as voice, and participating providers should have the flexibility to apply the benefit to those offerings.

Second, the Commission should make clear that the benefit may be applied to grandfathered service offerings sold to customers as of December 1, 2020, even if they were no longer available to new customers on that date. This is consistent with the statutory definition, which includes any service offerings “provided by such provider to a household” on December 1, 2020.²⁰ This will ensure that participating providers have the broadest selection of broadband

¹⁹ *Id.*

²⁰ *Id.*

service offerings permitted under the statute from which to choose to make available for this Program.

Third, the Commission should allow participating providers to apply the benefit to service offerings that have been enhanced since December 1, 2020 if the changes to the offering benefits the consumer. For example, if on December 1, 2020 a provider offered a broadband service with speeds up to 100 Mbps and a data usage cap of 50 GB for \$50 per month, but on January 1, 2021 the provider increased the data usage cap to 75 GB while maintaining the same speed and price, the enhanced service offering should be eligible for the Emergency Broadband Benefit. The specification of December 1, 2020 in the statute appears intended to prevent providers from gaming the Program by creating service offerings specifically to maximize the potential benefit reimbursement. But this same goal will be achieved if the Program rules allow participating providers to apply the discount to service offerings that existed on December 1, 2020 but have since been upgraded.

In addition, the Public Notice acknowledges that the statute provides that the benefit applies to internet service offerings *and* associated equipment.²¹ AT&T agrees that “associated equipment” includes modems and routers as suggested in the Public Notice,²² but this term should also include standalone wireless hotspots, i.e. wireless pucks..²³ Like modems and routers, wireless pucks are essential to making the broadband service operational in the home. The Public Notice proposes that such devices may be “associated equipment” if they are offered as “part and

²¹ Public Notice at 8 (emphasis added).

²² *Id.*

²³ *Id.*

parcel of an Internet service offering.”²⁴ However, the Commission must recognize that, historically, providers have offered flexible payment options for these devices. In some cases, providers include the price for the device in the monthly rate for the Internet service; some providers include a separate fee on the bill for the device; and in other cases, the provider sells the device through a separate transaction. Unquestionably, in the first two cases, the statute provides that the cost for the device may be recovered through the emergency broadband benefit – up to \$50 per month for the device and service combined. But the Commission should not stop there. Rather, it should clarify that the emergency broadband benefit covers the cost of associated devices in the third scenario as well. Nothing in the statute clearly and unequivocally precludes extending the associated device subsidy to devices essential to the functioning of the service sold through separate transactions (as opposed to a bundled or separate charge on a customer’s monthly bill). Nor is there any public policy basis to favor one method over another. To do so would deprive consumers of another, low-cost option for broadband that might best meet their needs during the pandemic. Accordingly, the Commission should interpret the statute to permit participating providers to obtain support under the Program for the combined cost of the service and device – up to \$50 per month, or \$75 in tribal areas.²⁵ Any such provider, of course, should be limited to recovering the cost (amortized over time) of any such device as of December 1, 2020.

As the Public Notice correctly notes, “a household that is eligible for the Emergency Broadband Benefit is not disqualified by participating in the Lifeline program and also may receive

²⁴ *Id.*

²⁵ For example, if a provider’s price for a wireless puck is \$50 and the price for the monthly broadband service is \$35, the participating provider could recover \$15 for the device for three months, and \$5 in one month (in each month, the household’s benefit is \$50 or less).

both benefits, either on the same or different services.”²⁶ The Commission should thus clarify that participating providers may allow eligible households to receive the Emergency Broadband Benefit in addition to any current Lifeline benefit they may receive, keeping the two benefits separate. This will allow participating households to receive the maximum benefit for which they are eligible and maximize customers’ ability to apply the new benefit to their existing services, should they wish to do so.

V. PARTICIPATING PROVIDERS

As the Public Notice observes, existing eligible telecommunications carriers (“ETCs”) may participate in the Program if they wish to do so without seeking advance approval from the Commission.²⁷ This approach is logical because existing ETCs were previously vetted by a state commission or the FCC to provide services to consumers in a state and have experience implementing procedures to ensure compliance with state and federal regulatory requirements to prevent waste, fraud and abuse in government sponsored programs. Importantly, the statute does not limit an ETC’s automatic approval to participate in the Program to the geographic scope of the ETC’s designation. Instead, the statute simply dictates that an ETC is automatically approved to participate in the Program.²⁸ Since ETCs were already vetted by the state or the FCC, the Commission should clarify that a participating provider that is designated as an ETC in a state is authorized to offer the Emergency Broadband Benefit throughout its fixed or mobile broadband

²⁶ Public Notice at 6, *citing* Act § 904(e).

²⁷ Public Notice at 2. *See also* Act § 904(a)(12).

²⁸ *Id.*

footprint in that state.²⁹ This will ensure the Program can launch on an expedited basis across a wide geographic scope without sacrificing potential waste, fraud or abuse.

On the other hand, AT&T supports the Commission’s proposed application requirements for non-ETCs as these measures will help prevent waste, fraud and abuse.³⁰ Specifically, the Commission should require non-ETC applicants to file an application that includes the following components: (1) the states in which they plan to participate, (2) the service areas in which they have the authority, if needed, to operate in each state, (3) documentation of their plans to combat waste, fraud, and abuse, (4) whether they seek automatic approval because they offer an established program in each state, and (5) if seeking such automatic approval, documentation of a qualifying established program in such states. This information is necessary to ensure the credibility of these providers and ensure they understand and will adhere to the Commission’s Program compliance requirements.

Consistent with the statutory framework, the Commission should require non-ETCs to await Commission approval of their applications before they are allowed to participate,³¹ but also consistent with the statute, the Commission must “establish an expedited process” for approval of non-ETC participating providers.³² To advance the goal of making the benefit available to Americans as quickly as possible, AT&T proposes that the Commission commit to acting on such applications within 7 days. Such quick action is not without precedent. For example, in the

²⁹ See Act § 904(a)(12) (“The term ‘participating provider’ means a broadband provider that ... is designated as an eligible telecommunications carrier....”).

³⁰ See Public Notice at 4-5.

³¹ See Section 904(a)(12)(A)(ii) (“...meets requirements established by the Commission ... and is approved by the Commission....”).

³² *Id.* at § 904(d)(2)(A).

Hurricane Katrina Lifeline Program, the Commission acted on provider participation applications in a similar timeframe.³³

Finally, the Act specifies that the Program is not Lifeline.³⁴ Accordingly, the Commission should clarify that state-imposed ETC and Lifeline rules and processes do not apply to participating providers' participation in the Emergency Broadband Benefit Program. This will ensure there is no ambiguity concerning the body of applicable rules or the governing regulatory authority associated with the Program.

VI. CONCLUSION

The Commission has the opportunity with the Program to provide meaningful assistance to households in need. This Program is consistent with AT&T's commitment to keeping Americans connected, and AT&T supports the adoption of Program rules, as discussed herein, that will help ensure its success.

Respectfully submitted,

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³³ See, e.g., *Wireline Competition Bureau Announces the Designation of a Temporary Eligible Telecommunications Carrier for the Purpose of Providing the Hurricane Katrina Lifeline Assistance*, Public Notice, 20 FCC Rcd 18075 (WCB 2005) (granting an application 7 days after filing).

³⁴ See Section § 904(e).