

TABLE OF CONTENTS

EXECUTIVE SUMMARY iii

I. INTRODUCTION 1

II. USING CURRENT LIFELINE ADMINISTRATION TOOLS WILL JUMPSTART THE PROGRAM..... 2

 A. The National Verifier Should Verify Participants Seeking to Qualify via the National School Lunch Program..... 4

 B. The National Verifier Should Confirm the Eligibility of All Households that Have Suffered a Substantial Loss of Income..... 5

 C. The Unique Pell Grant Qualification Issues Must be Addressed to Enable Verification via the National Verifier..... 6

III. SIMPLICITY, FLEXIBILITY AND CLARITY WILL ENABLE THE COMMISSION TO QUICKLY CREATE AN EFFICIENT PROGRAM 7

 A. The Program Should Begin as Quickly as Possible on a Rolling Basis 7

 B. The Commission Should Provide Flexibility for Carriers to Offer the Broadband Services of Their Choice..... 9

 Grandfathered Service Offerings..... 9

 New and Improved Service Offerings 10

 Promotional and Term Service Offerings..... 11

 Bundled Service Offerings 12

 Modem/Router Rental Fees 12

 C. The Commission Should Clarify Responsibilities Where a Provider Operates in Both ETC and Non-ETC Areas 13

IV. THE COMMISSION SHOULD PLAN FOR TRANSITIONS AT THE OUTSET 14

V. CONCLUSION 15

EXECUTIVE SUMMARY

USTelecom—The Broadband Association supports Congress’s goal of enabling universal connectivity through the Federal Communications Commission’s Emergency Broadband Benefits (EBB) Program. We are hopeful that this program will provide needed assistance to connect households during the COVID-19 pandemic and demonstrate the value of a comprehensive long-term program for those who need help affording broadband. USTelecom recommends four principles consistent with our affordability framework to streamline implementation of the EBB Program: (1) use existing resources; (2) keep it simple; (3) build flexibility into EBB Program implementation; and (4) plan for transitions at the outset.

The Commission has made substantial improvements that streamlined and simplified the Lifeline process in recent years and these existing resources can serve as a springboard for an Emergency Broadband Benefits program. In particular, the Commission should, as the Act contemplates, rely on the Lifeline National Eligibility Verifier (National Verifier) and National Lifeline Accountability Database (NLAD) to provide a centralized “one stop shop” to verify eligibility and the existing Lifeline Claims System (LCS) to reimburse providers. The National Verifier should collect and process all information necessary to verify participant eligibility for the EBB Program to simplify enrollment for both consumers and participating providers. Also, to speed up the implementation of the EBB Program, the Commission should not require current Lifeline participants to requalify for the EBB Program; however, current customers should be required to indicate the eligible services for which the customer would like the benefit applied.

In order to jumpstart the program, the Commission should expand the National Verifier to allow verification based on participation in the National School Lunch Program (NSLP) to enable NSLP households to easily enroll in the Emergency Broadband Benefit Program. The Commission could direct USAC to establish manual processes for verifying eligibility using documentation presented by the applicant or obtain lists of NSLP-eligible households from schools. The Commission should develop clear guidance for schools as to what type of documentation is acceptable, both to maximize efficiency and to limit the potential for waste, fraud and abuse. To increase program efficiency and integrity, the Commission should also clearly define how the National Verifier determines whether an applicant has experienced “a substantial loss of income since February 29, 2020.” Further, the Pell Grant qualification raises unique issues that the Commission must address of whether the Pell Grant recipient is considered a household and how to update that information in NLAD.

Simplicity and speed will be very important considerations. In order to facilitate a fast roll out and meet the immediate and urgent needs of Americans across this country, the Commission should clarify that a participating provider is eligible to begin enrolling Emergency Broadband Benefit Program participants as soon as USAC verifies a provider’s election to participate, and/or when a provider submits its application and receives Commission approval to participate. USTelecom supports the Public Notice’s proposal for providers to select its eligible service offerings and identify them to the Commission. The Commission should explicitly clarify that providers can submit grandfathered plans (i.e., no longer active offers) or service

offerings introduced or modified after December 1, 2020, if the new offer inures to the consumer's benefit, such as via decreased rates, increased speeds, and increased data usage caps. Furthermore, the Commission should make clear that promotional and term service offerings can be eligible "internet service offerings" within the EBB Program and use common-sense guidance to avoid the potential for waste, fraud and abuse. Bundled services that include broadband should also be eligible for the Emergency Broadband Benefit reimbursement. To further increase flexibility, the Commission should make explicit ETCs may elect to participate in the Program only in their ETC designation area, regardless of whether it operates as a non-ETC in another part of the state.

To provide certainty and assist in any transitions that may be required once Program funding runs out, the Commission or USAC should provide public updates on a regular basis calculating the status of funds used to date, as well as forecasting funding availability. This would allow broadband service providers to have transparent conversations with current customers, preparing them for a shift to regular rates, terms and conditions when the Program expires.

USTelecom is anxious to work with the Commission and other stakeholders to make the EBB Program a success.

public health emergency and demonstrate the value of a comprehensive long-term program to provide meaningful assistance to those who need help affording modern communications connectivity.

Congress intended to provide immediate assistance to those impacted by the COVID-19 crisis and the nature of an “emergency” program requires that all parties—including the government, industry, and public interest coalitions—act quickly to create and implement it. USTelecom and its members support quick action to ensure that all people adversely impacted in their ability to afford broadband have the connectivity access necessary to work and learn during this emergency. As USTelecom has previously outlined,⁴ four principles will help facilitate its immediate implementation: (1) use existing resources; (2) keep it simple; (3) build flexibility into EBB Program implementation; and (4) plan for transitions at the outset. USTelecom offers these comments based upon those principles, noting that it continues to develop positions and proposals to help the Program succeed and will quickly share them with the Commission as developed.

II. USING CURRENT LIFELINE ADMINISTRATION TOOLS WILL JUMPSTART THE PROGRAM

The Commission has made substantial improvements that streamlined and simplified the Lifeline process in recent years, and these existing resources can serve as a springboard for an Emergency Broadband Benefits Program (EBB). In particular, the Commission should, as the Consolidated Appropriations Act⁵ contemplates, rely on the Lifeline National Eligibility Verifier (National Verifier) and National Lifeline Accountability Database (NLAD) to provide a

⁴ Letter from Jonathan Spalter, President & CEO, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 (filed Jan. 4, 2021).

⁵ Consolidated Appropriations Act, § 904(a)(6)(C).

centralized “one stop shop” to verify eligibility and the existing Lifeline Claims System (LCS) to reimburse providers.

The Public Notice proposes to allow broadband service providers to use the National Verifier as an exclusive means of determining eligibility⁶—USTelecom agrees with this proposal. The National Verifier should collect and process all information necessary to verify participant eligibility for the EBB Program to simplify enrollment for both consumers and participating providers. To this end, we further support the Public Notice’s proposal “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,” when consumers obtain broadband from these providers.⁷ The Commission should direct USAC to promptly broaden the scope of the National Verifier’s verification capability to include *all* of the EBB Program’s eligibility criteria, not just those related to the current Lifeline program administered by USAC, for all consumers in all states. To the extent that USAC is unable to add the non-Lifeline-qualifying eligibility criteria to the National Verifier in a timely manner, the Commission should make clear that carriers do not have to stand up another independent verification process, which would only delay the implementation of the EBB Program and deter provider participation.

In addition, to speed up the implementation of the EBB Program, the Commission should not require current Lifeline participants to requalify for the EBB Program. However, current Lifeline customers should be required to affirmatively request the Emergency Broadband Benefit

⁶ Public Notice at 7 (“Participating providers must verify the eligibility of a household for the Emergency Broadband Benefit either by: (1) directing applicants to the National Verifier and then National Lifeline Accountability Database [F]or providers that seek to use the National Verifier and the National Lifeline Accountability Database, we propose 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.”).

⁷ *Id.*

and indicate the eligible services for which the customer would like the benefit applied. In particular, current Lifeline participants could choose to apply their Emergency Broadband Benefit to a different service, like a fixed service that could enable many different connections throughout the home. USAC should track such changes on the Lifeline subscriber's enrollment status already maintained in NLAD.

A. The National Verifier Should Verify Participants Seeking to Qualify via the National School Lunch Program

The Commission should expand the National Verifier to allow verification based on participation in the National School Lunch Program (NSLP) to enable NSLP households to enroll easily in the EBB Program. Incorporating NSLP eligibility verification into the National Verifier is required by the Consolidated Appropriations Act and crucial for existing Lifeline providers that use the National Verifier today and would not have time to establish a separate process to interface with schools directly for the EBB Program. Up until 2016, participation in the NSLP qualified a household for Lifeline service.⁸ The Commission noted, however, that automated federal verification based on NSLP would be challenging, because there was no federal database of NSLP participants and because it would require state level coordination and parental/guardian consent.⁹ While the challenges that the Commission identified in 2016 still exist, the statute requires the Commission to work past these challenges for purposes of this Program. The Commission could, for example, direct USAC to establish manual processes for verifying eligibility using documentation presented by the applicant or obtain lists of NSLP-eligible households from schools.

⁸ *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Order on Reconsideration, 31 FCC Rcd 3962, 4029-30 at para. 189 (2016).

⁹ *Id.* at 4031-32, para. 193.

Relying on the National Verifier would reduce burdens for schools. First, the National Verifier would be able to approve many applicants for the EBB Program based on other qualifying eligibility criteria, thus substantially reducing the number of applicants that would need to obtain NSLP documentation from schools.¹⁰ Second, it may be far easier for the school to seek parental/guardian consent from all eligible households simultaneously, and then provide a list of eligible households to one entity—the National Verifier—than to multiple service providers. The Commission should develop clear guidance for schools as to what type of documentation is acceptable, both to maximize efficiency and to limit the potential for waste, fraud and abuse. We know that schools have worked tirelessly to ensure student connectivity during the pandemic; we owe it to them to present as simple a process as possible.

B. The National Verifier Should Confirm the Eligibility of All Households that Have Suffered a Substantial Loss of Income

The Consolidated Appropriations Act makes eligible households where “at least one member of the household has experienced a substantial loss of income since February 29, 2020.”¹¹ While the statute provides that an applicant can demonstrate this by “layoff or furlough notice [or] application for unemployment insurance benefits,” it also includes an open-ended “similar documentation” clause to show hardship.¹²

The National Verifier should assume responsibility for all verifications under these criteria, drastically lowering the substantial likelihood of abuse that could otherwise accompany this broad category. The statute contemplates the important role of the National Verifier in this

¹⁰ *Id.* at 4031, para. 192 (Before 2016, NSLP accounted for only 0.31 percent of total participation in the Lifeline program. Also, there was “substantial overlap” between NSLP and SNAP: 87 percent of NSLP students qualified for NSLP through SNAP participation of the household.).

¹¹ Consolidated Appropriations Act, § 904(a)(6)(C).

¹² *Id.*

category, providing that documentation “is otherwise verifiable through the National Verifier or National Lifeline Accountability Database.”¹³ Program efficiency and integrity demand that broadband service providers are not placed in a position to judge what qualifies as either a “substantial loss of income” or “sufficient documentation” under this potentially very large and ambiguous category of eligibility. Moreover, providers would be more likely to participate in the EBB Program without the considerable audit risk that would exist if the Commission forced them into the role of verifier for this purpose. While the statute provides a “Safe Harbor” provision for those relying “in good faith on the information provided . . . to make the verification,”¹⁴ some USTelecom members may find the risks too extreme to justify participating in the Program if they must assume that responsibility.

The Commission should clearly define how the National Verifier shall determine whether an applicant has experienced a “substantial loss of income” (e.g., is it a percentage decline in monthly household income? For how long? Does a new job offset that loss? Does this criterion apply only for households with incomes below a specified level?) and develop objective criteria for the appropriate eligibility documentation.

C. The Unique Pell Grant Qualification Issues Must be Addressed to Enable Verification via the National Verifier

USTelecom agrees with the Public Notice’s proposal to adopt the Lifeline definition of “household” for the Emergency Broadband Benefit Program,¹⁵ but the Pell Grant qualification raises issues that the Commission must address. Pell Grants are used to support those in college, who may be living away from their parents, and thus a separate household with a need for

¹³ *Id.*

¹⁴ Consolidated Appropriations Act, § 904(j).

¹⁵ Public Notice at 6.

broadband service, yet dependent on parental support as defined by the Free Application for Federal Student Aid (FAFSA) criteria.¹⁶ Federal student aid programs are based on the concept that it is primarily the student and the student's family's responsibility to pay for the student's education. A dependent student is assumed to have the support of parents, so the parents' financial information has to be assessed along with the student's in order to qualify for a Pell Grant. A dependent student's parents are not required to pay anything towards the student's education. Not living with parents or not being claimed by them on tax forms does not allow a dependent student to omit parental income from the application for federal student aid. Such complex factors are best evaluated by the National Verifier pursuant to Commission guidance, rather than by individual service providers. The Commission should clarify whether the Pell Grant recipient is considered a household in this example and, more importantly, determine how to update that information in NLAD. USTelecom members are agnostic as to this determination, but proper coding in the database is essential for Program integrity, and as previously noted, participating providers who elect to use the National Verifier for Program eligibility determinations must be able to rely solely on the National Verifier for eligibility determinations under this criterion.

III. SIMPLICITY, FLEXIBILITY AND CLARITY WILL ENABLE THE COMMISSION TO QUICKLY CREATE AN EFFICIENT PROGRAM

A. The Program Should Begin as Quickly as Possible on a Rolling Basis

In order to facilitate a fast roll out and meet the immediate and urgent needs of Americans across this country, the Commission should clarify that a participating provider is eligible to begin enrolling Emergency Broadband Benefit Program participants as soon as USAC

¹⁶ Federal Student Aid, *Dependency Status*, <https://studentaid.gov/apply-for-aid/fafsa/filling-out/dependency> (last visited Jan. 19, 2021).

verifies a provider’s election to participate, and/or when a provider submits its application and receives Commission approval to participate. The emergency nature of the Program dictates that speed is of the essence with respect to providing the funding to those most in need—this is why Congress expedited the Commission’s rulemaking process,¹⁷ waived sections of the Administrative Procedure Act and Paperwork Reduction Act,¹⁸ and directed the Commission to establish an “expedited” approval process for non-eligible telecommunications carriers (ETCs).¹⁹ Accordingly, Commission approvals can be granted on a rolling basis for different providers.

The Commission should not delay the start of the Program until all providers that elect into the Program are verified. ACA Connects recently suggested that “the Commission should set a single date on which all participating providers, including non-ETCs that have applied for Commission approval to participate, can begin offering benefits that are eligible for reimbursement.”²⁰ While ACA proffers the suggestion in the name of “consumer choice,” delaying the Program as they suggest would run counter to Congress’s goals and would hurt the very people Congress intended to benefit. Of course, the Commission should ensure that provider applications are processed as quickly as possible.²¹ Nevertheless, Congress intended for this Program to rapidly start benefiting consumers in need and the Commission should honor that objective.

¹⁷ Consolidated Appropriations Act at § 904(c).

¹⁸ *Id.* at § 904(h).

¹⁹ *Id.* at § 904(d)(2)).

²⁰ Letter from Brian Hurley, Vice President, Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, 2 (Jan. 12, 2021).

²¹ *See id.* at 3.

B. The Commission Should Provide Flexibility for Carriers to Offer the Broadband Services of Their Choice

The Consolidated Appropriations Act gives providers the flexibility to specify the broadband service offerings for which they will offer the Emergency Broadband Benefit.²² Due to the competitive market, USTelecom members may offer a number of different broadband service offerings with some customers subscribing to service offerings that are no longer available for enrollment. USTelecom supports the Public Notice’s proposal for providers to select the service offerings that are eligible and identify them to the Commission.²³ The corollary to providers proactively identifying the service offerings that are eligible for the Program is that a provider is not required to make all of its service offerings eligible for the Emergency Broadband Benefit Program. The Commission should make this clear as well. In all cases, the Commission should direct its administrator, USAC, to process—within seven days like the alternative eligibility verification process²⁴—any service offerings broadband service providers identify for eligibility. Additionally, a number of complicating factors within the broadband service offering identification process require the Commission to provide additional clarity in advance.

Grandfathered Service Offerings

The Commission should explicitly clarify that providers can submit grandfathered plans (i.e., no longer active offers) as eligible service offerings. Without such clarification, otherwise

²² USTelecom notes that the statute adopts a broad definition of Broadband Internet Access Service instead of tying it to specific performance thresholds. Consolidated Appropriations Act at § 904(a)(1) (adopting the FCC’s definition of Broadband Internet Access Service found in 47 C.F.R. § 8.1(b)).

²³ Public Notice at 2 (proposing that participating providers notify USAC of, among other things, “a description of any Internet service offerings for which it plans to seek reimbursement in each state”).

²⁴ See Consolidated Appropriations Act, § 904(b)(2)(B) (providing seven days for the Commission to approve an alternative verification process).

eligible customers would either not be able to participate in the EBB Program or would be forced to switch plans in order to participate, leading to confusion and unnecessary burdens for customers.

New and Improved Service Offerings

The Commission should allow a provider to offer the Emergency Broadband Benefit on service offerings introduced or modified after December 1, 2020, if the new offer inures to the consumer's benefit based upon a set of objective criteria. The statute looks to the rates, terms and conditions of plans in effect as of December 1, 2020 for good reason—Congress wanted to avoid broadband providers inflating their prices in order to take advantage of the money newly available through the Program. Yet service offerings are not static and many providers may modify their service offerings after that date in response to the competitive broadband market. To honor Congressional intent while ensuring the benefits of flexibility go to the consumer, if a broadband service provider made or makes a new service offering available after December 1, 2020, it should be allowed to submit the new service offering for eligibility. The service provider should be required to demonstrate that for any new service offering submitted that, in comparison to a plan offered by the provider on December 1, 2020:

- The rate for the service offering either stayed the same or decreased;
- The speeds offered on the service offering stayed the same or increased above those available on December 1, 2020; and
- The offered data usage caps stayed the same or increased, allowing more data per month for the customer.

In this way, service providers can compete with their best offerings while consumers benefit from more competitive overall packages than may have existed even a short time ago.

Promotional and Term Service Offerings

Many broadband service providers offer term contracts with introductory rates that change once the promotional period has ended—therefore the actual rates charged on December 1, 2020 may have expired already or will expire over the expected duration of this Program. The Commission should make clear that such service offerings can be eligible “internet service offerings” within the EBB Program and use common-sense guidance to avoid the potential for waste fraud and abuse. In these cases, the broadband service provider is eligible for reimbursement for the rate of the internet service that the customer would have paid that month, subject to the \$50 per month cap. For example, if a participating provider offered a service with an introductory rate of \$30 for year one that increased to \$35 in year two, the participating provider would be eligible to receive \$30 per month in reimbursement while the subscriber is in year one of his or her contract. When the subscriber’s rate would have changed to \$35 according to predetermined rates, terms and conditions, the participating provider would then be eligible for \$35 in reimbursement per month. The underlying principle is that no participating provider is eligible for reimbursement that exceeds what the customer would have been billed (excluding taxes and mandatory fees per the statute). Similarly, participating providers should not be required to continue to offer promotions that may have been available on December 1, 2020. For example, if a provider had an existing promotion on December 1, 2020 that offered an introductory discount, the participating provider should be able to discontinue that promotion in the ordinary course of business.

The Public Notice asks whether the Commission should require documentation demonstrating that a certain percentage of providers' subscribers had purchased a service at a rate prior to the creation of that program.²⁵ USTelecom opposes such a documentation requirement, as it would increase administrative burdens for no clear public interest benefit. That a provider offered the service in a competitive market (before any knowledge of this Program) and subscribers chose it is sufficient to qualify it for this Program.

Bundled Service Offerings

Bundled services that include broadband should also be eligible for reimbursement. Many customers choose to purchase their broadband service as part of a bundle with other services, such as voice. The Commission should make clear that providers may apply the benefit to the bundle price, rather than require providers to allocate the bundle price between broadband and non-broadband components. Such an allocation requirement would substantially increase the burdens of participation and greatly lengthen the implementation time for Americans to start receiving the benefit on bundled services.

Modem/Router Rental Fees

The Commission should make explicit, per statutory direction, that modem and router rental fees are reimbursable under the Program.²⁶ The statute provides that the “emergency broadband benefit” means a monthly discount off “the standard rate for an internet service offering *and associated equipment . . .*”²⁷ USTelecom members report that many customers

²⁵ Public Notice at 3.

²⁶ *See id.* at 8 (“We seek comment on whether the Commission should provide any further clarity on Internet service offerings and associated equipment that are eligible for reimbursement in the Emergency Broadband Benefit Program.”).

²⁷ Consolidated Appropriations Act § 904(a)(7) (emphasis added).

rent their modem and/or router and pay for that rental on a monthly basis as an integral part of the total broadband service. The Commission should explicitly provide that those rental fees are reimbursable and set clear policies on the extent to which other equipment (e.g., network extenders, which are often necessary to extend Wi-Fi signals in some houses) are also reimbursable.

C. The Commission Should Clarify Responsibilities Where a Provider Operates in Both ETC and Non-ETC Areas

The Public Notice proposes an approval process for designating broadband providers where they are not ETCs.²⁸ However based on the statute, this distinction and corresponding approval process is unnecessary. The Act defines “participating provider” as “one that is designated as an eligible telecommunications carrier.”²⁹ The Consolidated Appropriations Act does not impose a geographic limitation on the ETC’s participation in the Program, and for good reason; ETCs have already been vetted by either the state regulatory body or the Commission, and were approved to operate in the state. Thus, it could unnecessarily delay the implementation of the Program if the Commission requires ETCs to apply to participate in this Program in any state where they were already granted ETC status. Thus, under the statute, an ETC can become a participating provider anywhere in a state where it is an ETC by making an election to participate.³⁰

Further, the Commission should make clear that ETCs may elect to participate in the Program only in their ETC designation area, regardless of whether it operates as a non-ETC in

²⁸ Public Notice at 4.

²⁹ Consolidated Appropriations Act § 904(a)(12)(A).

³⁰ *Id.* at 904(a)(12)(B).

another part of the state. In the section related to “Designating Broadband Providers Where They are Not Eligible Telecommunications Carriers,” the Public Notice proposes that a provider make the Program “available across all of its service areas in each of the states in which it is approved to participate.”³¹ As noted above, this distinction is unnecessary and not required by the statute. However, the Commission should also clarify that this proposal, if adopted, does not require an ETC to participate in the EBB Program in service areas where it is not designated as an ETC. Forcing ETCs to extend their EBB offerings into non-ETC areas would slow EBB implementation or even deter ETCs from participating. Should an ETC wish to include its non-ETC service territories, it could of course elect to do so but the Commission should make clear that a provider may participate without requiring participation of any affiliates.

Lastly, should an ETC or non-ETC elect to participate in this Program, the FCC should make clear that the Program is a federally administered Program and states have no authority over participating providers or the Program.

IV. THE COMMISSION SHOULD PLAN FOR TRANSITIONS AT THE OUTSET

Both consumers and providers need to be certain that funding will be available in order to make the Program viable and successful. Congress has appropriated a set amount of funding and it is unclear how long these funds, and thus the Program, will be available to customers—it will be a function of eligibility, take rate, service offerings, and time that is impossible to predict. It would be extremely detrimental to a new broadband adopter’s experience if he or she were to sign up with an expectation that the Program would cover all or most of their broadband costs only to find out this was not the case because the funds have been depleted. Further, the Commission should not have an expectation that service providers will be responsible for

³¹ Public Notice at 4.

continuing the benefits of the program without the certainty that they will be reimbursed for the service provided.

To hedge that uncertainty and assist in any transitions that may be required once Program funding runs out, USTelecom requests the Commission or USAC to provide public updates on a regular basis calculating the status of funds used to date, as well as forecasting funding availability. In this way, broadband service providers can have transparent conversations with prospective customers and advise current customers of the status of the Program, preparing them for a shift to the regular rates, terms and conditions when the funds have been used and the Program expires.

V. CONCLUSION

USTelecom and its members stand ready to work with the Commission as it develops this important Program to enhance universal connectivity. We offer these comments based on our practical experience as broadband providers in a competitive marketplace and long-time participants in the Lifeline Program. The comments and principles we have previously articulated are intended to assist the Commission in standing up and implementing a program that will allow providers to rapidly implement the program and start connecting more Americans as soon as possible. In addition to these comments, USTelecom and its members are ready willing to roll up our sleeves and work with Commission staff and other stakeholders on the practical implementation issues that will inevitably arise as the program is finalized and once it is underway.

Providing connectivity to all during this national emergency is a top priority for Congress and the Commission. It is also a top priority for USTelecom and we look forward to working with all stakeholders on this critical issue. While this Program is an important first step, we are

anxious for Congress and the Commission to build on this effort to create a sustainable broadband benefit program that will permanently address the broadband affordability gap.

Respectfully submitted,

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