

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF T-MOBILE USA, INC.**

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January 25, 2021

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T-Mobile USA, Inc. (“T-Mobile”)<sup>1</sup> submits these comments in response to the Wireline Competition Bureau’s Public Notice seeking comment on the administration of the Emergency Broadband Connectivity Fund (“Fund”) and the implementation of the Emergency Broadband Benefit Program.<sup>2</sup>

**I. INTRODUCTION & SUMMARY**

T-Mobile supports the swift implementation of the Emergency Broadband Benefit Program (“EBB” or “EBB Program”), enacted as part of the Consolidated Appropriations Act, 2021 (“Act”),<sup>3</sup> and applauds the Commission’s goal of ensuring broadband connectivity for low-income consumers, especially those experiencing financial hardship during the COVID-19 pandemic. T-Mobile is proud of its long-standing commitment to low-income consumers. We

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<sup>1</sup> T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company. T-Mobile and Sprint are now one company operating under the name “T-Mobile.”

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, Public Notice, WC Docket No. 20-445, DA 21-6 (rel. Jan. 4, 2021) (“*Public Notice*”).

<sup>3</sup> See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904, 134 Stat. 1182, 2129-36 (2020).

provide Lifeline broadband voice services in 43 jurisdictions, including Puerto Rico,<sup>4</sup> and also offer a variety of cost-effective broadband plans under the T-Mobile and Metro brands, including in-home broadband.<sup>5</sup> To help close the digital divide and keep communities connected during the COVID-19 pandemic, T-Mobile recently launched Project 10Million, a five-year, \$10 billion effort to close the homework gap by offering school districts free internet access and mobile hotspots to serve 10 million eligible households.<sup>6</sup>

The EBB Program holds the promise of helping to connect consumers to essential broadband services when they need it most. As directed by the Act,<sup>7</sup> the Public Notice generally seeks comment on what rules the Commission should adopt to implement the EBB Program.<sup>8</sup> Given the short-term nature of the program and its goals of delivering emergency relief to consumers, the Commission should fashion rules to make the administration of the EBB Program—and providers’ participation in the program—as simple and streamlined as possible. In particular, the Commission’s rules should encourage the efficient delivery of benefits by giving providers flexibility to participate and market their broadband services—avoiding unnecessary complexity and administrative burdens that could threaten a smooth rollout and

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<sup>4</sup> T-Mobile provides Lifeline service as an ETC in 10 jurisdictions, including Puerto Rico, while T-Mobile provides Lifeline service as an ETC in 42 jurisdictions under the Assurance Wireless brand. *See Lifeline Program*, T-Mobile, <https://www.t-mobile.com/offers/lifeline-program> (last visited Jan. 21, 2021); *What Is Lifeline Service?*, Assurance Wireless, <https://www.assurancewireless.com/lifeline-services/what-lifeline> (last visited Jan. 21, 2021).

<sup>5</sup> T-Mobile, Home Internet, <https://www.t-mobile.com/isp> (last visited Jan. 21, 2021); T-Mobile, Plans, <https://www.t-mobile.com/plans> (last visited Jan. 21, 2021); Metro by T-Mobile, Plans, <https://www.metrobyt-mobile.com/shop/plans> (last visited Jan. 21, 2021).

<sup>6</sup> T-Mobile, Project 10Million, [https://www.t-mobile.com/business/education/project-10-million?cmpid=TFB\\_RAD\\_P\\_20TENMM\\_OU0ZJSRLLM0FYL758187](https://www.t-mobile.com/business/education/project-10-million?cmpid=TFB_RAD_P_20TENMM_OU0ZJSRLLM0FYL758187) (last visited Jan. 21, 2021).

<sup>7</sup> *See* Pub. L. No. 116-260, § 904(c)(2).

<sup>8</sup> Public Notice at 1.

operation of the program. To accomplish these objectives, T-Mobile makes the following recommendations:

1. To encourage widespread participation by providers, the Commission should automatically approve eligible telecommunications carriers (“ETCs”) and any non-ETC affiliates who wish to participate. This automatic approval would enable ETCs and non-ETC affiliates to offer EBB plans in any state, regardless of ETC designation. If the Commission does not grant automatic approval, the Commission should adopt a streamlined approval process for these non-ETC affiliates. The Commission should also confirm that states have no role in the administration or implementation of the EBB Program.

2. To determine a consumer’s eligibility, the Commission should permit but not require providers to rely on the existing Lifeline databases and permit participating providers to rely on consumer certifications and third-party databases. To avoid abuse and ensure that as many households as possible can benefit from the EBB Program, the Commission should limit the EBB service benefit to one per household.

3. The Commission should also give providers flexibility to decide what service plans and connected devices to offer through the EBB Program. In particular, the Commission should clarify that mobile hotspot plans and bundled plans qualify as “internet service offering[s]” and that a larger 4G LTE or 5G mobile phone that can support video conferencing qualifies as a “connected device” under the Act.

4. To minimize burdens associated with the short-term EBB Program, the Commission should avoid applying its Lifeline rules (many of which are irrelevant) to the program as much as possible. T-Mobile has the unique perspective of being both a Lifeline and non-Lifeline provider and understands the tremendous burdens associated with the Lifeline

program. To comply with the Act’s audit requirement, the Commission should follow the Lifeline Payment Quality Assurance (“PQA”) Program but otherwise decline to follow the Lifeline audit rules or the Lifeline Beneficiary and Contributor Audit Program. To increase transparency, the Commission should provide real-time updates on the depletion of EBB funds through a USAC dashboard or similar online portal.

5. Finally, the Commission should encourage participation by construing the Act’s safe harbor broadly, and decline to use violations of other Commission rules as a basis for withholding EBB funds.

If successful, the EBB Program could serve as a pilot to explore ways that the Lifeline program could be reformed to expand provider participation and bring more competitive choices and options to low-income consumers. T-Mobile looks forward to working with the Commission to ensure that the EBB Program is a success.

## **II. THE COMMISSION SHOULD FACILITATE PROVIDER PARTICIPATION AND ENCOURAGE NEW OFFERINGS TO ENSURE THE PROGRAM’S SUCCESS.**

The Commission should encourage broad participation in the EBB Program to give consumers as many competitive broadband options as possible. Because the program is limited in duration and meant to deliver emergency relief for consumers who are struggling during the COVID-19 pandemic, the Commission should adopt a simple, streamlined process for providers to participate in the EBB Program with basic protections to discourage waste, fraud, and abuse.

### **A. The Commission Should Automatically Approve ETCs and Their Affiliates.**

Section 904(d)(2)(B) of the Act directs the Commission to automatically approve broadband providers that have established programs as of April 1, 2020 for delivering internet service offerings, determining consumers’ eligibility for those offerings, and preventing fraud,

waste, and abuse.<sup>9</sup> Section 904(d)(1) provides that “[t]he Commission may not require a broadband provider to be designated as an eligible telecommunications carrier in order to be a participating provider” in the EBB Program.<sup>10</sup> The Commission seeks comment on how to implement these directives and eligibility requirements for providers to participate in the program.<sup>11</sup>

To encourage broad participation and streamline the process, the Commission should automatically approve electing ETCs and their non-ETC affiliates to participate in the EBB Program, and this approval should extend to any state in which these providers intend to offer EBB Program benefits to consumers, regardless of ETC designation. In the Public Notice, the Commission proposes to allow ETCs to submit a notice of election to USAC but to require any non-ETC affiliates to go through an application process.<sup>12</sup> Instead, T-Mobile urges the Commission to afford affiliates of ETCs the same automatic approval as ETCs. These automatic approvals should apply to every state in which the provider seeks to offer EBB service plans. Doing so will promote broader participation and greater choice for consumers, reduce burdens, and enable non-ETC affiliates to leverage both the expertise of ETCs in using the USAC databases in determining consumers’ eligibility for universal service benefits and their familiarity with the National Lifeline Accountability Database (“NLAD”) and the Lifeline National Eligibility Verifier (“National Verifier”).

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<sup>9</sup> See Pub. L. No. 116-260, § 904(d)(2)(B).

<sup>10</sup> See *id.* § 904(d)(1).

<sup>11</sup> See Public Notice at 4.

<sup>12</sup> *Id.* at 2, 5.



Automatically approving ETCs and their affiliates is fully consistent with Congress’s clear mandate that non-ETCs are allowed to participate in the EBB Program. And the Commission has in the past reasonably construed the term “provider” as applying to affiliates even where this interpretation is not made express in the text of the relevant statute.<sup>13</sup>

The Commission should also make clear that its approval is dispositive, and that there is no need for a participating provider to seek additional approval from states to participate in the EBB Program, regardless of whether the provider has been designated as an ETC in a given state.<sup>14</sup> This approach is consistent with Congress’s intent to create an expedited, emergency program to keep low-income consumers connected.

The Public Notice proposes to require non-ETCs to “adopt a plan to combat waste, fraud, and abuse similar to the compliance plans required of non-facilities-based carriers seeking approval to participate in the Lifeline program.”<sup>15</sup> The Commission must make the requirements for such a plan as simple and streamlined as possible to allow for expedited implementation of the program, as required by Section 904(d)(2)(A).<sup>16</sup> The Commission’s rule must also be

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<sup>13</sup> See *Policy & Rules Concerning the Interstate, Interexchange Marketplace*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812, 11820 ¶ 16 (1997) (concluding that “provider” included affiliates for the purposes of Section 254(g) and explaining that “[a]bsent a clear statement in the Act or its legislative history that we may not treat commonly owned and controlled interexchange affiliates as a single provider, for purposes of section 254(g), we conclude that ‘provider’ in section 254(g) should be interpreted in ways that will permit achievement of the Congress’ intent”).

<sup>14</sup> One strength of the Hurricane Katrina Lifeline Assistance program was that the Commission played a centralized role in approving providers, which made the process for delivering relief to consumers much quicker and more efficient. The program had certain shortcomings (particularly the highly burdensome audit process), but the Commission’s centralized role streamlined the approval process. See *The 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 (2005).

<sup>15</sup> Public Notice at 4.

<sup>16</sup> See Pub. L. No. 116-260, § 904(d)(2)(A).

consistent with the automatic approval process required by Section 904(d)(2)(B) and the fact that the Act allows participants to rely on alternative processes to verify eligibility.<sup>17</sup>

T-Mobile recommends that non-ETCs be allowed (though not required) to satisfy this requirement by certifying in their notice of election submitted to USAC that they will use the NLAD and/or the National Verifier or certain third-party database(s). As discussed below, the Commission should also adopt a pre-approved list of third-party databases on which participating service providers may rely to determine a consumer's eligibility.<sup>18</sup> ETC affiliates who certify that they will rely on USAC's databases and/or one or more of these databases for EBB eligibility determinations should also be granted automatic approval.

If the Commission nonetheless declines to automatically approve affiliates of ETCs (or to otherwise approve an ETC in states where it is not designated), the Commission should adopt a streamlined approval process for these entities. The Commission should presume that affiliates of ETCs have the technical and financial resources to participate in the program.

**B. The Commission Should Adopt a Single Window for Accepting Applications from Broadband Providers.**

In the Public Notice, the Commission seeks comment on whether elections to participate in the EBB Program should be accepted on a rolling basis or during a set window.<sup>19</sup> The Commission proposes to accept providers' elections on a rolling basis.<sup>20</sup>

As an experienced Lifeline provider, T-Mobile is excited about the opportunity the EBB Program presents to offer expanded service offerings to its Lifeline customers. At the same time,

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<sup>17</sup> *See id.* §§ 904(b)(2)(B), (d)(2)(B).

<sup>18</sup> *See infra* at 9-10.

<sup>19</sup> Public Notice at 3-4.

<sup>20</sup> *Id.*

T-Mobile offers many additional products and services that serve individual consumers and their families—including low-income families—throughout the nation. A single window for accepting applications and elections would be preferable for several reasons. First, a single window would be more efficient because it will allow companies with multiple affiliates, including ETCs and non-ETCs, to submit a single election on behalf of affiliates wishing to participate in the EBB Program. Second, a single window would eliminate confusion in the process and ensure that all providers start at the same time. Finally, a single window would also give the Commission time to ensure that the National Verifier has been updated and that USAC has processes in place to process the necessary reimbursement claims for a large new program.

### **III. PROVIDERS SHOULD HAVE FLEXIBILITY TO DETERMINE CONSUMER ELIGIBILITY.**

Avoiding unnecessary or excessive administrative burdens should be a key objective of the EBB Program for the sake of all stakeholders—consumers, providers, and the Commission alike. In adopting the eligibility verification process for the EBB benefit, the Commission should strike a pragmatic balance between protecting the integrity of the program and avoiding unnecessary burdens that may prevent or make it difficult for consumers experiencing economic hardships due to the pandemic from getting relief.

#### **A. The Commission Should Give Providers Multiple Options for Verifying Eligibility.**

Because the Act requires the Commission to allow participating providers to rely on alternative verification processes and provides for automatic approval of providers who have established programs as of April 1, 2020, the Commission should provide maximum flexibility and not impose unduly stringent requirements for determining a household's eligibility.

First, reliance on the National Verifier and NLAD should be voluntary, not mandatory. Although T-Mobile supports leveraging Lifeline infrastructure to the extent feasible, the

Commission should not constrain providers by requiring them to use these systems for determining eligibility in all cases. Requiring providers to utilize the National Verifier to determine eligibility also restricts eligibility to the qualifying program information which the National Verifier already receives, which currently does not include access to information such as unemployment benefits, Pell Grants and school lunch program, among others. While the National Verifier may be able to be updated to include this information, such a process would not occur immediately. Adopting rules that have the effect of limiting the EBB Program to existing Lifeline service plans would not be consistent with Congress's intent.

Second, if a provider does not use the National Verifier (or if the National Verifier lacks information for certain eligibility criteria), the Commission should allow providers to rely in good faith on documentation submitted by subscribers regarding their own eligibility to the extent feasible. For example, if subscribers submit documentation showing that they are Pell Grant recipients, a provider should be allowed to rely on that documentation. Similarly, to verify loss of income to qualify for the EBB Program, consumers should be allowed to demonstrate eligibility by providing official notice of unemployment benefit payments or notice of a successfully submitted application for unemployment benefits—the same documentation the Commission has allowed via waiver to determine Lifeline eligibility during the pandemic. Another example of reliable, accurate eligibility processes is the system used by T-Mobile as part of its Project 10Million program whereby school districts submit documentation showing the eligibility of households in their respective districts. Processes like these are a reliable and efficient way for providers to determine whether households are eligible for the EBB Program.

Third, T-Mobile recommends that the Commission adopt a pre-approved list of third-party databases that participating service providers can rely on to determine eligibility.

Participating service providers will need to rely on these databases to some extent to determine whether a consumer satisfies eligibility criteria that are not captured by NLAD or the National Verifier. For example, providers can reasonably rely on third-party databases like LexisNexis to determine address information. Adopting a pre-approved list of such databases will make it easier for providers to implement verification systems for the EBB Program and streamline the provider approval process for the Commission.

**B. The Commission Should Clarify that the EBB Service Benefit Is Limited to One Subscription per Household.**

T-Mobile supports the Commission’s proposal to limit the EBB monthly service benefit to one per household (with household as defined in Section 54.400(h) of the Commission’s Lifeline rules) to help ensure that as many households receive critical EBB Program assistance as possible. Although this may impose some administrative burdens on the service provider, it is an equitable requirement and a valid protection against program waste, fraud, and abuse.

**IV. PROVIDERS SHOULD HAVE FLEXIBILITY TO CHOOSE THE SERVICE PLANS THEY WANT TO OFFER UNDER THE EBB PROGRAM.**

The Commission should give providers flexibility to offer a variety of different service plans and a variety of different devices that deliver connectivity to consumers. The Commission should also construe “standard rate” broadly to give providers flexibility to determine which plans to offer under the EBB Program.<sup>21</sup>

**A. The Commission Should Broadly Construe “Internet Service Offering” and “Connected Device.”**

The Commission should make clear that a service plan providing mobile hotspot access qualifies as a reimbursable “internet service offering” so long as the plan was offered to

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<sup>21</sup> See Public Notice at 13.

households as of December 1, 2020. The Commission should also clarify that certain mobile phones that provide similar functionality as a basic tablet are considered connected devices for the purposes of the EBB Program. The Commission should confirm that providers have flexibility to determine what service offerings qualify for the benefit. For example, hot spot service plans should be eligible for the EBB service subsidy. Hot spots are a critical option for households during the pandemic, and they are particularly useful in multi-student households for facilitating remote learning via multiple devices. Indeed, as T-Mobile has seen with Project 10Million, mobile hotspots are an efficient and effective way to connect eligible households.<sup>22</sup>

To maximize the benefits to consumers, the Commission should construe the phrase “connected device” broadly. Under Section 904(b)(5), participating service providers may receive reimbursement up to \$100 for a connected device supplied to eligible households, provided that the household has not been charged less than \$10 or more than \$50 for the device.<sup>23</sup> The Act defines “connected device” as “a laptop or desktop computer or a tablet.”<sup>24</sup> In its Public Notice, the Commission seeks comment on whether there are any criteria for distinguishing “smaller tablets and larger mobile phones.”<sup>25</sup>

The Commission should clarify that a larger mobile phone with 4G LTE or 5G capability that can support video conferencing for remote working and learning is a “tablet” for the purposes of the EBB Program. These mobile phones are often comparable to, and may even

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<sup>22</sup> *See supra* at 2.

<sup>23</sup> *See* Pub. L. No. 116-260, § 904(b)(5).

<sup>24</sup> *Id.* § 904(a)(4).

<sup>25</sup> Public Notice at 8.

exceed, the capabilities and functionality of a tablet, and these mobile phones deliver the very kind of connectivity that Congress intended.

The Public Notice appears to acknowledge, correctly, that it can be quite difficult to articulate a principled distinction between tablets and today's 4G LTE and 5G mobile phones.<sup>26</sup> Smaller tablets and larger mobile phones commonly have touch-screens with comparable sizes, capabilities, and virtually indistinguishable user interfaces. For example, T-Mobile carries the Moxee tablet, a 4.89" x 8.58" device with an 8" HD screen, 3 GB of RAM and expandable memory of up to 128 GB.<sup>27</sup> Those specifications are comparable to many of the mobile phones T-Mobile offers.<sup>28</sup>

The Commission should construe the Act's definition of "connected device" in a manner that renders both of these devices eligible for reimbursement. Doing so is in the public interest and will have the added benefit of allowing consumers to use these devices as hotspots to connect even more devices in their households. Many consumers today use 4G LTE and 5G mobile phones for the same purposes that consumers use laptops, desktops, and devices conventionally referred to as "tablets." In short, for many American's their mobile phone serves as their sole or primary link to the internet. Some mobile phones may be superior to certain conventional tablets in terms of performance and functionality, making it illogical to exclude the former but include the latter. Consumers are also likely to be more familiar with how to use

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<sup>26</sup> *Id.*

<sup>27</sup> See *Moxee Tablet*, T-Mobile, <https://www.t-mobile.com/tablet/moxee-tablet?sku=610214663795> (last visited Jan. 18, 2021).

<sup>28</sup> To take just one example, the Samsung Galaxy S20 FE is a 2.93" x 6.29" mobile phone with a 6.5" FHD screen, 6 GB of RAM and 128 GB of native memory, with expandable memory of up to 1 TB. See *Samsung Galaxy S20 FE 5G*, T-Mobile, <https://www.t-mobile.com/cell-phone/samsung-galaxy-s20-fe-5g?sku=610214666376> (last visited Jan. 18, 2021). Aside from a slight difference in screen size, the two devices are perfectly comparable for the purposes of internet access. In fact, the Samsung mobile phone has twice as much RAM and up to eight times more memory.

mobile phones than other types of connected devices. Including certain mobile phones will therefore ensure that digital literacy is no barrier to connectivity under the EBB Program. Finally, by including certain mobile phones in the EBB Program, the Commission will avoid the cumbersome task of fashioning a non-arbitrary distinction between mobile phones and tablets and the even more cumbersome task of adjudicating whether a panoply of different devices are “mobile phones” or “tablets” for the purposes of the EBB Program.

**B. The Commission Should Interpret “Standard Rate” Broadly.**

The Public Notice also seeks comment on how to interpret the term “standard rate” and what documentation should be provided to demonstrate a provider’s standard rate.<sup>29</sup> “Standard rate” is defined in the statute as “the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020.”<sup>30</sup> The Commission should construe the term broadly as referring to the prevailing rate for service plans offered by the provider or any of its affiliates in the state at the relevant service tier.

The phrase should apply to any service plan that existed as of December 1, 2020. As long as the plan was commercially offered as of December 1, 2020, the potential for gaming is mitigated, and the Commission should encourage as many offerings as possible to ensure the EBB is a success. There is no reason to unduly restrict providers’ flexibility in offering EBB plans.<sup>31</sup>

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<sup>29</sup> Public Notice at 17.

<sup>30</sup> Pub. L. No. 116-260, § 904(a)(13).

<sup>31</sup> The Commission should also construe “standard rate” to include any service plans as of December 1, 2020, including those that were all-inclusive including taxes and fees. These plans are pro-consumer and transparent and the Commission should not force providers to unravel these service offerings and then separately charge consumers taxes and fees. Doing so will allow participating providers to offer attractive service plans under the EBB Program that are not already offered to existing customers.



As evidence of a provider’s standard rate for a given service plan, the Commission should afford participating service providers flexibility to submit a variety of different forms of documentation, including webpages and promotional materials published on or before December 1, 2020.

**V. THE COMMISSION SHOULD ADOPT RULES THAT STREAMLINE ADMINISTRATION OF THE EBB PROGRAM AND MINIMIZE BURDENS ON PROVIDERS.**

The Commission should avoid adopting complicated and burdensome rules for the EBB Program. Instead, the Commission should focus its efforts on adopting a streamlined set of rules governing the determination of eligibility, administration of the EBB Program, and the process for seeking reimbursement from the Fund.

**A. The Commission Should Generally Not Apply the Lifeline Rules to the EBB Program.**

The Public Notice broadly seeks comment on the extent to which the Commission’s rules for the Lifeline Program (Part 54, Subpart E) should apply to the EBB Program. T-Mobile supports allowing, but not requiring providers, to use existing databases for the Lifeline program to implement the EBB Program, including giving participating service providers the option of using the National Verifier to determine eligibility whenever feasible. But with limited exception, most of the Lifeline rules are not appropriate for a short-term, emergency program and the Commission should decline to impose them on the EBB Program.

While most of the Lifeline rules should not apply, there are two rules that T-Mobile does support extending to the EBB. First, T-Mobile supports applying the Lifeline program’s “Snapshot” Rule to the EBB Program,<sup>32</sup> so that consumers are considered to be enrolled as of the

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<sup>32</sup> 47 C.F.R. § 54.407(a).

first day of the first month of their participation, rather than pro-rating partial months of service. Applying the Snapshot Rule to the EBB Program would simplify the enrollment and reimbursement processes as it does under the Lifeline program.

Second, with respect to auditing requirements,<sup>33</sup> T-Mobile would support applying a simplified version of USAC's PQA audit process to the EBB Program.<sup>34</sup> Unlike the more cumbersome Beneficiary and Contributor Audit Program,<sup>35</sup> PQA audits are intended to assess whether payments have been made properly under the relevant program.<sup>36</sup> This targeted auditing process is a more appropriate model for the EBB Program, the core purpose of which is to distribute emergency relief to consumers on a short-term basis. This simplified process also comports fully with the Act's auditing requirements, which focuses on assessing whether payments from the Fund are made properly and preventing waste, fraud, and abuse.<sup>37</sup>

T-Mobile also believes that a one-year retention period is sufficient for this short-term program, as opposed to Lifeline's minimum three-year retention requirement.<sup>38</sup> Providers should be able to satisfy the retention requirement by collecting and retaining the documentation used to verify a consumer's eligibility, including self-certifications submitted by consumers where applicable. Any program audits should be conducted within one year to avoid a longer retention period.

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<sup>33</sup> See Pub. L. No. 116-260, § 904(b)(7)-(8).

<sup>34</sup> USAC, PQA Program, <https://www.usac.org/about/appeals-audits/pqa-program> (last visited Jan. 21, 2021).

<sup>35</sup> See USAC, Beneficiary and Contributor Audit Program (BCAP), <https://www.usac.org/about/appeals-audits/beneficiary-and-contributor-audit-program-bcap> (last visited Jan. 20, 2021).

<sup>36</sup> USAC, PQA Program, <https://www.usac.org/about/appeals-audits/pqa-program> (last visited Jan. 21, 2021).

<sup>37</sup> See Pub. L. No. 116-260, § 904(b)(7) (listing seven items to be included in the Inspector General's finding of improper payment or waste, fraud, or abuse).

<sup>38</sup> Public Notice at 11.

However, many of the other Lifeline rules would be cumbersome to implement for the purposes of the EBB Program, particularly for non-ETC providers wishing to participate in the program. For example, the Lifeline program’s annual certification and reporting requirements were fashioned for an open-ended universal service program rather than a short-term emergency program.<sup>39</sup> T-Mobile therefore urges the Commission to avoid applying Lifeline rules, particularly those designed for ETCs, to the EBB Program.

**B. The Commission Should Not Adopt Additional Certification Requirements.**

Section 904(d)(6) of the Act includes comprehensive requirements for the certifications that providers must submit to receive reimbursements under the EBB program.<sup>40</sup> The Commission seeks comment on what other certifications should be added to this extensive list of requirements and whether the Commission should require additional documentation to receive reimbursement for a connected device.<sup>41</sup> The Commission also asks whether it should require providers to demonstrate the retail value or the costs of connected devices. The answer to all of these questions is “no.” The Act directs the Commission to impose only necessary

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<sup>39</sup> 47 C.F.R. §§ 54.416, 54.422. Similarly, the Commission should not apply the rules requiring providers to register their non-Lifeline agents and enrollment representatives with the Representative Accountability Database (as is required for Lifeline enrollment representatives) and other restrictions on EBB Program enrollment representations are an unnecessary administrative burden in the context of the EBB Program. *Id.* § 54.406. The same is true for the statutory definition of “service area” (which should not apply here since the EBB Program is not limited to ETCs), 47 U.S.C. § 214(e)(5), and other Lifeline rules like the program’s de-enrollment rules, 47 C.F.R. § 54.405(e), disclosure requirements, *id.* §§ 54.405(c)-(d), and voice and texting requirements. *Id.* § 54.401(a)(2).

<sup>40</sup> Pub. L. No. 116-260, § 904(d)(6). These include requirements to certify that: (1) the provider is seeking reimbursement for an amount that is no more than its standard rate; (2) that eligible households are not charged for offerings if the standard rate for those offerings is less than or equal to the EBB for that household; (3) that households are not charged more for the EBB offering than the difference between the standard rate and the EBB benefit; (4) that households are not required to pay early termination fees for cancelling EBB plans; (5) that households are not subject to a mandatory waiting period based on previous receipt of service; (6) that households are otherwise subject to the same terms and conditions as non-EBB subscribers; and (7) that recipients of EBB device benefits are not charged \$10 or less or \$50 or more for such device. Providers must also include a description of the verification process used and a certification that the verification process was designed to avoid waste, fraud, and abuse. *Id.*

<sup>41</sup> Public Notice at 9-10.

administrative burdens, especially when requiring providers to certify that the amount of reimbursement they seek “is not more than the standard rate.”<sup>42</sup> Moreover, Congress enacted a comprehensive set of certification requirements, which indicates that it did not intend to include other requirements.

**C. The Commission Should Not Require Service Providers to Promote the EBB Program.**

With respect to promoting awareness of the EBB Program, the Commission should encourage—but not require—participating service providers to engage in such promotion efforts. First, these promotional requirements are unnecessary. Participating service providers will have an incentive to promote the EBB Program and encourage eligible households to enroll. These incentives make it unnecessary for the Commission to mandate that participating providers promote the EBB program or to specify any particular promotional vehicles. Second, promotion requirements add unnecessary burdens on providers. Participating providers are best suited to determine how to target different plans to eligible consumers, particularly certain vulnerable populations, and should not be artificially directed or limited in how it does so. Any one-sized fits all outreach is inappropriate and unnecessary. Third, imposing promotion requirements on EBB providers unnecessarily increases the costs and complexity of this short-term program.

**D. The Commission Should Provide Real-Time Tracking of the Depletion of the Fund.**

T-Mobile encourages the Commission to adopt processes to keep participating providers informed about draw-down levels in the Fund so that providers can plan for the EBB Program’s sunset. Specifically, the administrator of the Fund should provide real-time information and publicly disclose how much of the \$3.2 billion Fund has been spent to date or the dollar-value of

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<sup>42</sup> Pub. L. No. 116-260, § 904(b)(6).

reimbursement claims filed to date (e.g., that as of the current date, \$X of the \$3.2 billion fund has been disbursed or that \$Y in reimbursement claims have been filed). These data should be made available through a dashboard platform that providers can access to keep apprised about the funds remaining to support the EBB Program. This will allow participating providers time to plan accordingly, and it should avoid situations where service providers must render discounted service, relying on the promise of reimbursement when there is in fact no EBB money left.

Because the Fund is capped, the Commission should allow participating service providers to determine whether or when to terminate their participation in the EBB Program, and whether or how to transition EBB customers to an alternative service plan. There should be no requirement or expectation that EBB service will continue absent reasonable guarantee of reimbursement.

## **VI. THE COMMISSION SHOULD ADOPT A ROBUST SAFE HARBOR BASED ON GOOD-FAITH IMPLEMENTATION.**

Finally, the Public Notice seeks comment on “the ability of the Commission to impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements.”<sup>43</sup> With respect to enforcement, T-Mobile submits that the same guiding principles discussed above—encouraging participation and the efficient delivery of benefits to consumers—should apply.

The EBB Program is of limited duration and is designed to provide emergency relief for consumers. Indeed, funding may only last for a few months, limiting the window for consumers to benefit from the EBB Program, as well as the number of opportunities that providers have to fine-tune their processes for implementing the EBB Program. Moreover, an unduly strict

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<sup>43</sup> Public Notice at 11.

approach to enforcement would likely limit participation and undermine the goals of Congress. With these limitations in mind, the Commission should avoid adopting draconian enforcement provisions that would penalize good-faith efforts to implement the EBB Program as quickly and efficiently as possible.

**A. A Robust Safe Harbor for Good-Faith Implementation Is Critical.**

As a general matter, so long as participating service providers show good faith in their efforts to determine eligibility, seek reimbursement, and otherwise comply with the Commission's EBB Program rules, the Commission should not seek to impose forfeitures or other penalties on those providers for mistakes in their administration of the EBB Program. Nor should the Commission engage in "claw back" of subsidies paid in error resulting from factors not under the service provider's control. For example, if a carrier provides EBB service in good faith to a consumer who submitted false documentation, or because a school has provided incorrect school lunch program documentation, that carrier should not be forced to repay the service subsidy.<sup>44</sup> Exposing service providers to a risk of substantial liability while implementing a novel and short-term program would only discourage participation and squander an opportunity to bring much-needed relief to consumers across the country. That approach would also discourage participation in any similar programs the Commission might adopt in the future. A robust safe harbor for good-faith efforts to implement the EBB Program is therefore critical.

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<sup>44</sup> In the E-rate proceeding, the Commission concluded that where universal service funds had been disbursed in error, "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question." *See Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Assn, Inc.; Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255 ¶ 10 (2004). A similar principle should apply to the EBB Program to promote participation in the program and minimize uncertainty.

Indeed, that is precisely what Congress intended. With respect to a provider’s efforts to verify eligibility—a challenging process, and one where mistakes are virtually inevitable—the statute prohibits the Commission from using its enforcement powers “if a participating provider demonstrates to the Commission that such provider relied in good faith on information provided to such provider.”<sup>45</sup>

The Public Notice seeks comment on what should constitute good-faith reliance under the EBB Program and how the Commission should determine good-faith reliance in a given case.<sup>46</sup> Given the short-term and remedial nature of the EBB Program, the Commission should interpret “good faith” in this context broadly. In particular, participating providers should not be liable for errors in determining eligibility (or related predicate determinations, e.g., that a consumer is a recipient of a Pell Grant or is a Lifeline recipient) made by any third party, such as USAC, school districts, or third-party databases.

To implement the EBB Program quickly and offer benefits to consumers that are eligible through non-Lifeline programs, providers will generally need to rely on these third parties to make these basic determinations, and providers should not be subject to forfeitures or other penalties when they do so in good faith. This is yet another reason for the Commission to adopt a pre-approved list of third-party vendors,<sup>47</sup> as doing so can help steer providers to third parties whose eligibility determinations are generally reliable. A participating service provider should also be allowed to rely in “good faith” on information provided by the requesting household without facing potential liability. As discussed above, Congress has determined that consumers

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<sup>45</sup> See Pub. L. No. 116-260, § 904(j).

<sup>46</sup> Public Notice at 12.

<sup>47</sup> See *supra* at 9-10.

are eligible for EBB if they meet one or more criteria that outstrip the eligibility criteria for Lifeline. For participating providers to offer service to households that meet eligibility criteria other than those set for the Lifeline program, providers will likely have to rely in part on information sources other than the National Verifier, including certifications made by requesting households. The Commission’s rules should generally not subject providers to the risk of penalties under these circumstances. Otherwise, providers will have little incentive to offer the EBB services to those whose eligibility cannot be confirmed using the National Verifier or databases that are suited for determining Lifeline eligibility.

Here, “good faith” should be understood as the absence of knowledge that a third-party determination or certification submitted by a requesting consumer is mistaken in a given instance, or absence of knowledge that the third party whose determinations the provider relies on is generally unreliable. Where a participating provider seeks to verify a consumer’s eligibility itself, the Commission should impose limited liability only if the participating provider failed to make reasonable efforts to determine eligibility (e.g., by checking applicants against reliable databases to determine eligibility). This approach will ensure that participating providers implement reasonable processes to make reliable, good-faith determinations about eligibility without punishing providers for mistakes that cannot be reasonably avoided.

**B. The Commission Should Not Use Violations of Other Rules as a Basis for Withholding EBB Program Funding.**

The Public Notice seeks comment on whether the Commission should “withhold program funding from participants found to be in violation of other Commission rules.”<sup>48</sup> For similar reasons, the Commission should generally not treat a violation of the Commission’s other rules

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<sup>48</sup> Public Notice at 12.



as a basis for withholding EBB Program funding from participants. Doing so would only discourage providers from participating in the EBB Program.

## **VII. CONCLUSION**

T-Mobile is proud of its commitment to low-income consumers and applauds the Commission for its efforts to implement the EBB Program. T-Mobile encourages the Commission to adopt streamlined rules that encourage broad participation and efficient administration of the EBB Program, and it looks forward to working with the Commission on this and other efforts to help low-income consumers get and stay connected.

Respectfully Submitted,

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January 25, 2021