

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**Reply Comments of  
The National Tribal Telecommunications Association**

The National Tribal Telecommunications Association (NTTA) files these reply comments in response to the Public Notice issued in the above-captioned proceeding.<sup>1</sup>

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Siyeh Communications, Tohono O’odham Utility Authority, and Warm Springs Telecom, as well as associate members Alaska Tribal Broadband, Nez Perce Tribe, Sacred Wind Communications, and Spokane Tribe Telecom Exchange. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, Public Notice, WC Docket No. 20-445 (DA 21-6, rel. January 4, 2021) (*Public Notice*)

**I. Introduction**

The United States Congress, as part of the COVID-19 relief package contained within the 2021 Appropriations Bill, provided the broadband industry with a unique opportunity to provide its most vulnerable customers with much-needed support for vital broadband services – the Emergency Broadband Connectivity Fund (EBCF) and Emergency Broadband Benefits (EBB). Since the start of the COVID-19 pandemic and its coincident economic downturn, the most vulnerable citizens of the United States have suffered through food, housing, employment, education and health care crises. The EBBs will help address some of the problems arising from these crises, but only if the benefits get out to those who need them as quickly as possible.

Congress properly recognized the urgency for these benefits to be distributed to those in need. Also recognized in the legislation and by the Commission is the additional need for those living in Tribal areas, in the form of an increased \$75 monthly benefit as well as the proposal to use all eligibility criteria currently utilized to determine eligibility for the federal Lifeline assistance and use of participation in Tribal-specific assistance programs to prove eligibility for EBCF benefits.<sup>2</sup> Properly administered, these provisions will allow the emergency benefits to flow as quickly as possible to those in need.

**II. Household Eligibility**

The EBCF legislation requires that household-based eligibility for EBBs is determined via five methods: (1) participation in the federal Lifeline program, (2) approved to receive free and

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<sup>2</sup> *Public Notice* at 10

reduced-price lunch program or school breakfast program, (3) experienced a substantial loss of income since February 29, 2020, (4) has received a Pell Grant in the current award year, or (5) meets the eligibility criteria for a participating provider's existing low-income or COVID-19 program.

**A. Lifeline Program-Based Criteria**

Congress clearly placed importance on ensuring the EBBs go to those who need them most. In order to get those benefits out to households as quickly as possible, Congress established the current federal Lifeline program as one of the criteria. Using the current Lifeline program's existing criteria will allow for households to quickly qualify for benefits from participating providers and can be done efficiently by using current eligibility determination processes.

The Cherokee Nation proposes that the Commission "develop a streamlined system for enrolling citizens eligible for *Emergency Broadband Connectivity Fund Assistance* into the existing Lifeline program."<sup>3</sup> NTTA agrees, and further recommends the Commission automatically enroll households for EBBs that have federal Lifeline customers subscribing to broadband service who are served by participating providers. The customers in these households have already proven eligibility in the Lifeline program, including for the enhanced benefit available to those living in Tribal areas, and thus should be considered immediately eligible.<sup>4</sup> This would allow these immediately eligible households to begin receiving benefits quickly, which is in keeping with Congress' stated intent. Use of this "automatic" enrollment of households containing current federal Lifeline customers should be limited to participating providers that are current Eligible

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<sup>3</sup> Cherokee Nation Comments, first page (emphasis in original)

<sup>4</sup> Households should be provided an opportunity to opt-out of receiving the EBBs.

Telecommunications Carriers and preferred carriers, some of which may not currently be designated ETCs, that are designated by the relevant Tribal government.<sup>5</sup> NTTA recommends that this automatic enrollment not be available to those carriers seeking expedited approval as contained in the legislation<sup>6</sup> and are not chosen by the Tribal government.

## **B. Tribal-Specific Eligibility Determination**

The Cherokee Nation asks the Commission to “develop a process in which the tribe can automatically enroll citizens to the fund based on data acquired by the tribe when providing services to its citizens.”<sup>7</sup> NTTA agrees with the Cherokee Nation and urges the Commission to allow Tribal governments to enroll households the EBBs based on needs determinations made previously and consistent with Tribal programs.<sup>8</sup>

As the Navajo Nation Telecommunications Regulatory Commission correctly noted, Tribal Lifeline participation has declined disproportionately compared to national trends, with one of the causes being “the strict verification requirements and the establishment of the National Verifier.”<sup>9</sup> NTTA has expressed concern previously about the National Lifeline Verifier and its ability to properly verify potential Lifeline subscribers in Tribal areas.<sup>10</sup> Allowing Tribal governments to automatically enroll households for receiving EBBs would address, at least temporarily, issues identified by NTTA, The Cherokee Nation, and the NNTRC that have the effect of depressing Lifeline participation in Tribal areas.

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<sup>5</sup> NTTA believes the Tribal government is in the best position to quickly determine which preferred provider is ready and able to deliver broadband service pursuant to the EBCF legislation

<sup>6</sup> *Public Notice* at 2

<sup>7</sup> *Cherokee Nation Comments*, first page

<sup>8</sup> NTTA notes that most Tribal governments are already aware of those receiving school lunch and/or breakfast benefits, as well as those that have lost income due to the pandemic.

<sup>9</sup> Navajo Nation Telecommunications Regulatory Commission (NNTRC) Comments at 4

<sup>10</sup> NTTA Comments, WC Docket No. 11-42 *et. al.*, filed August 31, 2015, at 11

NTTA recommends that the automatic enrollment of households for the EBB program using Tribal government criteria, as proposed by the Cherokee Nation, only apply to current ETC providers serving Tribal areas.<sup>11</sup> This will allow provide the best method to address possible concerns about waste, fraud, and abuse of the EBCF program. These providers have a history with the Lifeline program, have relationships with USAC, and are well-versed in navigating the systems used to enroll customers and request reimbursement. As such, current ETC providers (and preferred providers designated by Tribal governments) that elect to participate in the EBCF are best positioned to ensure the limited resources provided by Congress are used in the most efficient way possible.

### **C. Definition of Households**

As the Commission notes, the Consolidated Appropriations Act refers to eligible households, but does not define “household.”<sup>12</sup> The current federal Lifeline program definition of household is:

“is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An ‘economic unit’ consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.”<sup>13</sup>

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<sup>11</sup> However, see discussion in section II. A and footnote *supra* recommending that Tribal governments be allowed to designate a preferred non-ETC provider or providers

<sup>12</sup> *Public Notice* at 6

<sup>13</sup> 47 CFR § 54.400(h)

However, as the NNTRC notes, this definition “has resulted in many Navajos losing access to the Lifeline program. The FCC should not make the same mistake with the Emergency Fund, and should engage with Tribes, on a nation-to-nation consultative process, to better define what a ‘household’ actually means in Indian Country.”<sup>14</sup> NTTA agrees, but in order to ensure eligible households begin receiving the benefit as soon as possible, NTTA recommends the Commission accept household enrollments from Tribal governments as recommended by the Cherokee Nation and as discussed above. This will allow all eligible households to quickly receive benefits, while at the same time avoiding difficulties commonly encountered in Tribal areas in attempting to identify and count households.<sup>15</sup>

### III. End of Benefit Period

The benefits promised by the EBCF program have an end date – either six months after the date the COVID-19 national emergency ends or when the benefits appropriated by Congress run out.<sup>16</sup> According to the legislation, after the EBB ends, “any participating eligible households shall be subject to a participating provider’s generally applicable terms and conditions.”<sup>17</sup> The Commission requests comment on this issue, asking:

- How should providers be required to explain these terms and conditions to eligible households prior to or upon initial enrollment?<sup>18</sup>

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<sup>14</sup> NNTRC Comments at 7

<sup>15</sup> NTTA notes that President Biden’s *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* reaffirms the November 6, 2000 Executive Order 13175 mandate to engage in “regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications.” Section 1 states that the Biden “Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities.” Allowing Tribal government involvement in the household eligibility determination process for EBBs would certainly serve to further the Biden Administration’s stated goal.

<sup>16</sup> Consolidated Appropriations Act, 2021, Division N, Title IX, Section 904(a)(8) and (i)

<sup>17</sup> *Id.*, at (b)(10)

<sup>18</sup> *Public Notice* at 13

- Is there other information that should be provided to eligible households before enrollment or while the service is being supported by the program to ensure eligible households understand the scope of the program and the impact of fund exhaustion on the program discount?<sup>19</sup>

NTTA stresses the importance of this issue, as without an effective communication process between the FCC, USAC, participating providers, and customers, many households receiving EBBs may face unexpected higher bills for broadband service. To this end, NTTA agrees with the urgency expressed by NTCA on this issue:

“[T]he Commission must prepare for the “end-game” with respect to this program so that providers and consumers alike know what to expect when appropriations are expended – demonstrating in significant part the perils of relying upon appropriations for essential universal service functions. No low-income consumer should obtain service via the EBB without a full understanding of the fact that support will be withdrawn when program funds are expended and without an awareness of the rate applicable to their service once that takes place. Providers will also need sufficient notice of when program funds will be expended so that they can in turn communicate effectively with subscribers regarding potential service plan and rate changes.”<sup>20</sup>

NTCA specifically addresses these concerns with specific proposals, including that (1) providers be required to inform consumers in writing, before enrolling in the program, that the program is temporary, and use language from the Consolidated Appropriations Act (*i.e.*, the program “will conclude at the end of the emergency period or when the full amount appropriated by Congress for this purpose has been dispersed”); (2) the notice should also state that at the conclusion of the program, subscribers will have the option of continuing their service at whatever level they select at the then current rate or discontinuing their service without penalty; and (3) In order to allow providers and customers adequate time to transition at the conclusion

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<sup>19</sup> *Id.*

<sup>20</sup> NTCA Comments at iii-iv

of the EBB...the Commission [should] issue an update to participating providers every two weeks stating the amount of funds remaining in the EBB and, based on the number of consumers enrolled in the program, a best estimate of when the program will conclude.<sup>21</sup>

NTTA agrees with NTCA's recommendations in this regard, and further suggests any notices affecting households on Tribal lands receiving the EBB also be provided to the relevant Tribal government, especially in areas where the participating provider was not an ETC prior to participating in the program.<sup>22</sup>

## Conclusion

NTTA appreciates the opportunity to provide reply comments to the Commission on the important issue of how to implement and administer the Emergency Broadband Connectivity Fund benefits program. The up to \$75 monthly allowance for households located on Tribal lands has the potential to greatly assist struggling families, and as such, the benefits need to be made available as soon as possible. To that end, NTTA recommends the Commission automatically enroll households currently participating in the Lifeline program and are subscribing to data or voice/data services, if they are served by a participating ETC provider or a Tribal government-designated preferred provider, and are given an opportunity to opt-out of the program. NTTA also urges the Commission to allow enrollment of household on Tribal lands based on work previously done by Tribal governments to identify those most in need, and to allow these governments, where they choose, to determine how "households" are determined. Finally, NTTA

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<sup>21</sup> *Id.*, at 16-17

<sup>22</sup> To this end, NTTA believes the FCC's Office of Native Affairs and Policy would prove to be a valuable source and purveyor of this type of information



agrees with NTCA's position on ensuring the end-of-program issues are handled in an efficient and effective manner, and ensure that customers are prepared for EBBs to end.

Respectfully Submitted,

*Godfrey Enjady*

President

National Tribal Telecommunications Association

February 16, 2021