



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

_____))
In the Matter of))
)) WC Docket No. 20-445
Establishment of the Emergency Broadband))
Benefit Program))
_____))

COMMENTS OF THE STATE E-RATE COORDINATORS’ ALLIANCE
ON THE
PROPOSED EMERGENCY BROADBAND BENEFIT PROGRAM
(WC Docket 20-445; DA 21-6)

I. Introduction

The State E-rate Coordinators’ Alliance (“SECA”) submits these Comments in response to Public Notice DA 21-6 seeking comment on the \$3.2 billion Emergency Broadband Connectivity Fund enacted as part of the Consolidated Appropriations Act, 2021, signed into law on December 27, 2020. The new law directs the FCC to establish the Emergency Broadband Benefit (“EBB”) Program that will provide financial assistance, in the form of credits, to reduce the fees for broadband Internet, as well as to support the cost of a connected device, to low-income households.

SECA has long recognized, as has the Commission, the importance of the availability and accessibility of broadband Internet access by students beyond the confines of physical brick and mortar school buildings and school property. Acting Chairperson Jessica Rosenworcel, in particular, has eloquently

expressed the need to eliminate the “Homework Gap.” The current COVID crisis has highlighted the fact that student home access to Internet service is vital to enable remote online education *during the school day*, as well as for homework assignments after school. Unfortunately, the availability and affordability of sufficient home Internet services and connected devices are beyond the financial capability of many low-income families. The EBB program will provide a concrete and comprehensive step in facilitating affordable household access to Internet services for student learners as a temporary measure during the pandemic, and what we hope will be the model for home connectivity after the national emergency has ended.

II. Schools Already are Serving an Instrumental Role in Facilitating Remote Online Access for Students, and EBB Implementation Must Allow for Coordination of These Ongoing Activities.

When the pandemic emergency first arose in the early months of 2020, health and safety concerns required most schools to close their doors and implement a fully online remote learning model. School officials quickly realized the ongoing “homework gap” had widened to become a nationwide education gap. In order to provide all students with access to education as required by federal law, schools were forced to themselves tackle the daunting, nationwide problem of lack of sufficient Internet connectivity and access to connected devices in households with K-12 students.

To address this challenge, numerous schools (and some states) have already devoted significant efforts to identify and financially assist those students’ families who do not otherwise have affordable and sufficient access to Internet access and/or devices in their homes for remote learning. These schools and states have purchased and distributed vast numbers of connected devices, as well as wireless mobile hotspots, to their students, and the schools and states are paying for the associated ongoing monthly fees.

The equipment and services for which are currently being paid by schools and/or state agencies on behalf of students include the devices and services explicitly authorized under the EBB program. Additionally, either directly or indirectly, a large number of schools are paying monthly recurring charges for wired home Internet access such as coaxial cable modem and DSL services, through unique

partnerships with Internet service providers. Cooperative arrangements have been established all over the country subject to confidentiality and non-disclosure agreements whereby the school or state agency is the contracting party or guarantor of payment and the household is the third party beneficiary. The school or state agency then pays for the Internet service for that household.

This approach was established in the absence of other available funding sources to quickly enable Internet service offerings to be made available to households with students. Now EBB offers a source of these funds for the duration of the pandemic (and through six months after the emergency is declared to be over). **SECA submits that these schools and agencies should be permitted to leverage the EBB funds to offset the costs that the schools/state agencies are incurring to pay for Internet to those households that will qualify for EBB.**

Further, schools and state agencies have learned that many families are unable or reluctant to complete the enrollment forms and other paperwork to sign up for a benefit such as Lifeline. However, schools report that when they reached out to families last spring and summer, they were willing to be enrolled in home-based Internet access programs that were paid for by the school and/or state agency. This proactive step by schools and/or states to reach out to families without Internet access and offer assistance has been an important first step. Schools and some states saw this as a vital public service to be undertaken, to ensure that students continued to have access to education remotely during the pandemic.

One of the questions in the Public Notice asked whether schools could play a role to promote participation in the program and the answer is, of course, yes. Beyond publicizing the program, SECA strongly believes that schools should be permitted to play an active role in making sure that households with students have access to affordable Internet and connected devices and to utilize EBB resources in the following ways:

1) Enrolling on Behalf of Eligible Families:

The Commission should allow schools to obtain a letter of authorization from a student's parent or legal guardian and assist to enroll qualifying households in EBB. This process will help to ensure that the EBB funds reach the intended beneficiaries and will allow schools that have

been providing financial support for monthly Internet fees to reduce their financial burden of paying for the qualifying services and equipment. This is especially beneficial for those schools who have already been serving in this role and have ongoing communications with their local Internet service providers. The Internet service providers will also experience efficiencies in enrolling households in EBB by being able to communicate with a single point of contact for numerous household beneficiaries instead of having to sign up each beneficiary individually.

2) Qualifying Existing School-Provider Arrangements:

Where schools/state agencies have entered into financial arrangements with Internet service providers on behalf of low-income families, and where those households will now qualify for EBB, the EBB rules should permit those arrangements to qualify for EBB funding. Last spring and summer, many schools were forced to enter into long-term contracts, particularly for mobile hotspots, for at least two years. In order for those service plans to now be eligible for EBB funding, the Commission should direct that these pre-existing service agreements entered into with participating EBB service providers are eligible to receive EBB credits prospectively – whether the agreement is the name of the household, school or agency, as long as the low-income household is the recipient of the broadband Internet service at home. Alternatively, the Commission should compel wireless carriers to not charge early termination penalties if those service plans are reassigned to a low-income family. **This request is vital so that our schools are not left paying for plans that are no longer being used, simply because they rose to the challenge prior to the EBB program becoming available.**¹

III. Student Privacy Must Be Maintained When Implementing the EBB Program.

One of the current challenges faced by schools providing monthly Internet access for students from low-income households is how to protect student confidentiality as required by the Family Educational

¹ SECA is not requesting EBB credits prior to the effective date of the EBB rules. Due to the lag time that may occur from the effective date of the rules to the time that participating service providers receive their EBB carrier approval, however, and when households may enroll in EBB, the Commission may wish to consider whether there is a mechanism to enable the EBB credits to be effective retroactive to the effective date of the EBB rules. Alternatively, the Commission may consider issuing a public notice to announce the effective date of when enrollment may begin in EBB.

Rights and Privacy Act (“FERPA”). This will be a challenge for the EBB program whenever participating providers may request schools to validate the NSLP information for an individual household who applies for EBB. One approach to this problem may be to structure non-disclosure agreements (“NDAs”) between the schools and the service providers. The nature of such NDAs may vary on a school-by-school or state-by-state basis.

Wisconsin, as an example, has addressed this problem through a series of legal agreements between school districts, the Wisconsin Department of Public Instruction (“DPI”), the Public Service Commission of Wisconsin (“PSC”), and specific Internet service providers. The agreements are designed to govern access to the addresses of eligible students without Internet access “for the sole purpose of learning which addresses contained in the Data Set are in the service area for which the Vendor is willing and able to provide Internet service.” Other states, such as North Dakota and South Dakota, have entered into similar arrangements to try to connect all their students with Internet at home.

SECA encourages the FCC to address student privacy concerns in the EBB regulations by clarifying that schools and state agencies have the right to condition the sharing of NSLP related information upon the service provider’s execution of a non-disclosure agreement. Alternatively, the Commission may wish to create a standard protective order that companies are required to complete in order to use the NSLP verification method for enrolling EBB households. While streamlining the enrollment process is to be encouraged, protective measures to preserve student privacy under FERPA must be an integral part of the application process.

IV. The Commission should Enact Regulations that Facilitate the Availability of the EBB Funds as Quickly as Possible.

The FCC is required to issue regulations by February 27, 2021 to implement EBB. There is pent-up demand for the EBB program and school officials are anxiously awaiting the commencement of the program. SECA urges the FCC to act swiftly to issue the regulations and to streamline the implementation of the program so that consumers can begin to receive this benefit as quickly as possible.

We encourage the FCC or USAC to create a standard EBB service request form that providers can offer, and families can complete in lieu of thousands of different participating service provider forms. We also encourage USAC to provide a real-time, searchable list of participating providers by zip code on their website and establish a toll-free phone number for families to call for assistance in determining which companies in their area are participating in EBB. It should not be forgotten that the very reason that EBB exists is because so many families do not currently have Internet access; thus, we cannot expect that they will be able to access the EBB resources online.

In addition to the data points to be included on the notices of election that were identified in the Public Notice, the Commission should address whether carriers are permitted to impose installation charges for connecting consumers in the EBB program. If installation charges are permitted, this information should be required in the companies' notices of election and description of service offerings submitted to USAC.

V. EBB Rules Should Stipulate that Participating Providers Must Adhere to Certain Consumer Protections to Avoid Saddling Low-Income Consumers with an Unexpected Expense Once the EBB Program Ends.

Low-income households may be particularly susceptible to business practices that could result in the household incurring an unexpected expense and continuing legal obligation to pay for Internet once the EBB program ends. Due to their vital need for Internet connectivity, these families may be willing to “check the boxes” and accept whatever mandatory terms and conditions accompany the online or paper enrollment application for EBB without fully appreciating the implications and consequences that they may have consented to be fully liable for the Internet service bill after the EBB ends. If the only other option is to decline their consent and not be able to enroll in EBB, such an unfair choice and result must not be allowed to occur.

SECA encourages the FCC to restrict participating service providers from imposing as a condition of EBB enrollment that (1) requires the customer to sign a term agreement that would compel the customer to pay for the Internet service charges in full once EBB ends; (2) stipulates that the customer

must agree to receive service for a minimum period of time or else be subject to early termination charges; and/or (3) states that the provider will automatically continue service after EBB ends and charge customers in full unless and until the customer contacts the service provider to cancel the service.

Instead, each participating service provider shall be obliged to communicate proactively with their customers before EBB ends; shall be required to provide each customer with the estimated charges including taxes and surcharges for the continued receipt of the service; and then seek each customer's express agreement to continue to pay in full for the Internet service once EBB ends. In the absence of a customer's consent, the service should be terminated so that the customer does not incur unexpected charges.

VI. Procedures Must Be Put in Place to Monitor the Usage of Program Funds and Implement Additional Steps to Assure that the Program is Sufficiently Funded to Meet Demand.

Since the EBB program is subject to a funding cap, and the program will allow for rolling enrollments by both service providers and beneficiaries, it will be extremely difficult, if not impossible, to estimate the number of months that the EBB benefit may be available to each participating low-income household. Implementing steps to carefully track the disbursement of funds is vitally important to oversee the program successfully.

Tracking the use of funding in a manner that would permit an orderly early termination of the EBB program if and when funding is exhausted will not be a trivial exercise. Neither the FCC nor USAC can afford to wait until all credits are invoiced. Instead, SECA believes that a cumulative record of subscriptions and associated estimates of projected credits must be developed. That record can best be built only after the EBB rules are published and enrolled beneficiary households are identified and validated.

VII. The EBB Program Should Specify Minimum Bandwidth Requirements for Internet Service Offerings

The Public Notice asks whether the term “broadband Internet access service” as that term is defined in section 8.1(b) of the Commission’s rules should be further clarified. Section 8.1 does not set forth specific bandwidth transmission standards. **At a minimum**, the definition of broadband shall be the “advanced services” standard of 25 Mbps downstream and 3 Mbps upstream. It is our understanding that this standard would be sufficient for a single commended minimum bandwidth for a video-conferencing meeting — can meet the basic needs of single-user households and should be established as a minimum EBB requirement. Service providers should be required to offer broadband services at speeds comparable to the speeds available under their “standard rates.” This symmetry will ensure that EBB participants will be able to receive service that is comparable to a service provider’s commercially available service and not be subject to a substandard service option.

VIII. Additional Clarity is Required Regarding the Availability of Discounts for “Connected Devices.”

Both the Consolidated Appropriations Act and the Public Notice indicate that a participating provider “may receive a single reimbursement of up to \$100.00 for the connected device, if the charge to the eligible household for that device is more than \$10.00 but less than \$50.00.” (Public Notice at page 2). The Public Notice further explains that the participating provider would have to document that the household made the required financial contribution of between \$10 and \$50. This provision of the Act appears to limit the maximum pre-reimbursement device charge to \$150. With the cost of a “connected device” — computer, laptop, or tablet — well above this threshold, the \$10-50 household requirement would seem to leave a substantial amount of the underlying device costs remaining to be paid. One such option might be for a participating provider offering a “connected device” and Internet service offering would be to amortize the remaining cost of the device in the monthly recurring cost of the Internet service. This approach could undermine the intent of defraying the Internet connectivity costs to low-income consumers. In any event, SECA requests the EBB regulations permit schools to pay for the balance of the costs of connected devices on behalf of the students in low-income households including the minimum contribution requirement that may range from \$10 to \$50.

It is also important to consider that set-up and ongoing technical assistance must be part of any service provider's offering of discounts for "connected devices." Schools have found that their employees must provide these services in order to help students get connected and stay connected. Otherwise, the "connected device" may end up being unconnected or disconnected which would be a huge waste of EBB funds and not achieve the purpose of the program for low-income consumers to access broadband Internet connectivity.

IX. Conclusion

SECA believes that the EBB program represents a critical and necessary step in bringing broadband Internet to low-income households — particularly to those with students struggling to pursue their education remotely — during this pandemic.

Longer-term, beyond the "Emergency" aspect of the EBB program, SECA hopes that the Commission and/or Congress can identify a sustainable funding source that will build upon the successful bedrock of the EBB program to effectively provide discounted home Internet access for low-income households.

Respectfully Submitted by:



Debra M. Kriete
Debra M. Kriete, Chair
State E-Rate Coordinators' Alliance
1300 Bent Creek Blvd., Suite 102
Mechanicsburg, PA 17050
(717) 232-0222
dmkriete@comcast.net
January 25, 2021