

FCC Implements \$50/Month Broadband Subsidy For Low-Income Households

March 9, 2021

As required by the Consolidated Appropriations Act, 2021 ("CAA"), on February 25, 2021, the FCC adopted a Report and Order to officially establish the Emergency Broadband Benefit ("EBB") Program. Since the COVID-19 pandemic has led to a rise in virtual services and learning, access to broadband services has now become essential for most households. With this in mind, the program is designed to provide broadband services to help low-income households in particular stay connected. We have summarized the program and noted some key provisions and next steps for the FCC and potential participating providers. The program is temporary, and will expire when funds have been exhausted or 6 months after the Health and Human Services Secretary declares the end of the nationwide COVID-19 health emergency.

EBB Program Overview

The EBB Program was authorized by Section 904 of the CAA, which was designed to provide affordable broadband services to low-income households on an emergency basis. Congress allocated \$3.2 billion to the EBB Program to reimburse participating providers for providing discounts on qualifying internet service offerings to qualifying low-income households. The EBB Program will provide discounts of up to \$50 per month (\$75 for residents of Tribal lands) to subsidize broadband services for eligible households. Eligible consumers can also receive a one-time discount of up to \$100 for a desktop or laptop computer, or tablet (no smartphones) supplied by a participating provider. The EBB benefit is limited to one monthly service discount and one device discount per eligible household. To qualify for the EBB program, households must prove that at least one member of their household meets one of the following criteria:

- qualifies for the FCC's Lifeline program (including those who are receiving Medicaid or SNAP benefits);
- approved for the free or reduced-price school lunch program (including through the USDA Community Eligibility Provision);
- experienced substantial and documented loss of income since February 29, 2020 and the household had a total income in 2020 below \$99,000 for single filers and \$198,000 for joint filers;
- received a federal Pell Grant in the current award year; or
- qualifies for a participating provider's existing low-income or COVID relief program (subject to FCC approval of that provider's eligibility process).

All participating providers will need to enroll applicants using the National Lifeline Eligibility Database

("NLAD"), will be subject to a modified the Lifeline Claims System ("LCS") process and must register all enrollment representatives in the Representative Accountability Database ("RAD"). Verifying household eligibility can be done by submitting the applicant's information to the existing Lifeline National Verifier or using an alternative verification process that is approved by the FCC. Providers can also verify household eligibility through schools and the discounted meal programs. One of the more ambiguous eligibility criteria is loss of income and the metric by which this will be measured. In order to confirm that providers are complying with the applicable rules, this program will be subject to regular audits and the FCC's traditional enforcement powers, and the Commission will apply the its Universal Service Fund suspension and debarment rules. However, there is a statutory safe harbor for participating providers relying on eligibility determinations made by the National Verifier or other approved verification methods as well as other information relied on in good faith.

Next Steps

The Order includes many specifics for the implementation of the EBB Program, but also delegates liberally to the Wireline Competition Bureau ("Bureau") for additional details and processes. On Thursday, March 4, the Bureau issued additional [guidance](#) on the timeline for participating provider elections and applications. ETCs are automatically eligible as participating providers in the EBB Program and therefore need only submit an election to participate. The inbox for election notices will open on March 11, 2021. Non-ETC broadband providers that had existing low-income support programs as of April 1, 2020 can apply to be participating providers and will be automatically approved by providing certain information. Non-ETCs without such programs can also apply to be participating providers, but must submit an application to the Bureau for approval before they can elect to participate. The application window opened on March 8, 2021 and all application submitted by March 22, 2021 will be reviewed and acted on by the EBB service commencement date. Applications submitted after March 22 will be reviewed on a rolling basis.

For service providers to be eligible, they must file an election notice to the Universal Service Administrative Company ("USAC"), and non-ETCs must submit an application for either automatic or expedited approval by the Bureau.

Existing ETCs:

Existing ETCs need only submit an election notice to USAC. The following information must be included in election notices:

- a list of states in which the provider plans to participate in the EBB Program;
- a statement that, in each of the listed states, the provider is a "broadband provider" as of December 1, 2020;
- a statement identifying where the provider is an existing ETC;
- a statement identifying where the provider received FCC approval to participate in the EBB Program (this is primarily for providers that are seeking approvals outside of states where they are existing ETCs);
- a statement confirming whether the provider intends to distribute connected devices under the EBB Program; and
- a description and documentation of the Internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state.

Non-ETCs:

Non-ETCs must file an application with the Wireline Competition Bureau ("Bureau") that must be approved to participate in the EBB Program. Non-ETCs with an existing low-income support program must file an application describing:

- the jurisdictions in which it plans to participate,
- the service areas in which the provider has the authority, if needed, to operate in each state, and
- a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the EBB Program.

Such applicants will receive automatic approval upon filing once the Bureau confirms that all required information was submitted.

Non-ETCs without pre-existing low-income support programs must first submit an application for Bureau approval describing:

- the states in which it plans to participate,
- the service areas in which the provider has the authority, if needed, to operate in each state but has not been designated as an ETC, and
- documentation of the provider's plan to combat waste, fraud, and abuse.

Such applicants will not receive automatic approval, but the FCC has committed to expedited review and applications filed by March 22, 2021 will be reviewed in time for the EBB service commencement date. Non-ETCs must also submit an election notice as discussed above to participate.

The FCC has set the expectation that the EBB Program will begin within 60 days of the adoption of the Order. Therefore, participation providers should start providing EBB discounted services by the end of April. For more information on the EBB and related programs, [join us](#) on March 22, 2021 for Kelley Drye's annual webinar discussing the state of the federal Universal Service Fund ("USF"). This year will feature segments on how the ongoing pandemic has influenced the importance of the USF and related policy decisions.