



**Department of
Public Service**

Public Service Commission

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Marlene H. Dortch
Office of Secretary
Federal Communications Commission
445 Fifth Street, SW, Suite TW-A325
Washington, DC 20554

Re: WC Docket No. 20-445, In the Matter of Establishing Procedures for the
Emergency Broadband Connectivity Fund Assistance

Dear Secretary Dortch:

The New York State Public Service Commission (NYPSC) respectfully submits these comments in response to the Federal Communications Commission's (FCC) Public Notice in the above-referenced proceeding.¹ The Consolidated Appropriations Act of 2021 (Act) provided for an Emergency Broadband Connectivity Fund (Fund) of \$3.2 billion, and directed the FCC to establish an Emergency Broadband Benefit Program (Program) to administer the Fund. The NYPSC strongly supports the Program and its stated goals which are primarily aimed at providing eligible households with much needed discounts for their broadband services, while allowing participating providers to receive reimbursements for these broadband discounts. In short, the NYPSC believes the Program will directly benefit households in New York State, and throughout the nation, that are most in need and will help mitigate the financial impacts experienced by those eligible households during the COVID-19 pandemic.

The Public Notice seeks comments on the FCC's management of the Program, under several broad categories, including the eligibility standards for participating providers and participating households, determining appropriate covered devices, reimbursement processes, and promoting awareness and participation in the Program for eligible households. A key feature of the Program is that provider participation is voluntary, and providers must affirmatively elect to participate in the Program. As such, the NYPSC urges the FCC to ensure that final Program rules and regulations are not unduly onerous or burdensome so that potential providers are not deterred from participating in the Program and the Program can yield as much

¹ Pursuant to New York Public Service Law (PSL) § 12, the Chairman is authorized to file comments on behalf of the NYPSC.

needed relief to as many eligible households as possible. This general principal is expressed throughout the NYPSC's specific comments discussed below.

Eligibility and Election Process for Participating Providers

The FCC proposes that participating providers first provide notice to the Universal Service Administrative Company (USAC) indicating their election to participate in the Program, and, at a minimum, provide: (1) the states in which they plan to participate, (2) a statement that, in each such state, they were a "broadband provider" within the meaning of the Consolidated Appropriations Act as of December 1, 2020, (3) whether they seek to participate in each state because they are either a designated eligible telecommunications carrier (ETC) or are seeking designation by the FCC to participate (or both), (4) whether they intend to distribute connected devices in each such state, (5) a description of any internet service offerings for which they plan to seek reimbursement in each state, and (6) documentation demonstrating the standard rates for the services for which they may claim reimbursement from the Program.

Given the need to implement the Program as quickly as possible, the NYPSC agrees that the information listed in the proposed carrier election application above is sufficient, not overly burdensome, and should allow USAC to quickly review and approve applications to participate in the Program. This simplified application and approval process should incentivize as many providers as possible to participate in the Program and expedite funding to eligible households that need this assistance immediately. The NYPSC, however, further recommends that providers intending to participate nationally indicate this intention on their applications. Doing so, will assist the FCC and USAC to prioritize these providers in compliance with the Act's expedited initiatives.

The Act requires the FCC to automatically approve a broadband provider that has an established program as of April 1, 2020 that is widely available and that offers internet service offerings to eligible households and "maintains verification processes that are sufficient to avoid fraud, waste, and abuse." Based on these initiatives, the NYPSC believes the Act's intent is to establish expedited processes and automatic approvals, where such can be obtained. These initiatives are key to getting immediate Program benefits to eligible households. Conducting a preliminary review of all incoming service providers' applications, and fast-tracking approvals for those providers identified as ETCs, and those with established, widely available programs will best serve that purpose. Applications from national service providers could also be given priority status review because national service providers are better positioned to potentially reach more eligible households, more quickly.

Nevertheless, the Act also requires the FCC to establish an expedited process to approve internet service providers that are not designated as ETCs. The NYPSC submits that all approvals, automatic or otherwise, could be subject to subsequent FCC or USAC review and verification for Program participation and eligibility, to protect against fraud and abuse, that could potentially harm other eligible providers and their customers.

The Act limits the Program's benefits to "no more than the standard rate" for an internet service offering, subject to a \$50 cap, as well as a one-time discount of up to \$100 for a device to

access internet service, such as a laptop, desktop, or tablet. The NYPSC agrees with the FCC's approach that interested providers submit documentation demonstrating the standard rates for their services for which they may claim reimbursement. Submission of actual state-level and/or national advertisements of services and rates could be sufficient to document these standard rates. Requiring a participating provider to submit both state-level and national documentation could be especially useful where providers do not have uniform standard rates throughout their service territories.

According to the Public Notice, the Act limits the Program's benefits to be "no more than the standard rate" for an internet service offering (and associated equipment), which it defines as "the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020, excluding any taxes or other governmental fees." Comments are requested on how to address promotional rates that were offered by a participating provider as of December 1, 2020. The NYPSC strongly believes that participating providers and eligible households should receive maximum Program support up to the \$50 cap, regardless of whether or not the eligible household is on a standard rate or receiving a promotional discount. In New York, there are a substantial number of providers and potential eligible households, respectively, that offer and participate in promotional discounts, including discounts associated with bundled services and packages. No such eligible customers should be declared ineligible or be foreclosed from the Program's stated benefits simply because they are on a promotion discount rate.

Using its experience in administering the federal Lifeline program as a model, the FCC proposes that participating providers be required to make the Program benefits available throughout their service areas, and participating providers be required to adopt plans to combat waste, fraud and abuse in the administration of the Program. Drawing upon the FCC's experience with the federal Lifeline program is a good starting point. However, the NYPSC urges the FCC, and by extension USAC, to immediately issue detailed guidance to all potential participating providers on waste, fraud and abuse compliance expectations modeled after the federal Lifeline program. This guidance will help expedite the providers' ability to file compliance plans for USAC's review and approval and avoid unnecessary fraud and waste.

Finally, the NYPSC urges the FCC to require participating providers to publicize the availability of the Program's benefits in their service areas and encourage providers and the FCC to work directly with local governments to ensure the benefits reach as many eligible households as possible. The New York State Department of Public Service has worked to raise awareness about low income broadband enrollment in the State through existing similar programs. For example, the NYPSC required both Altice USA and Charter Communications, Inc. to offer a low income broadband service as conditions of its approval of their acquisitions of other cable companies operating in New York State, and both companies have made efforts to publicize and market these lower cost broadband services to potential customers.

Covered Services and Devices

The Public Notice seeks comments on whether the FCC should clarify the meaning of “Internet service offerings and associated equipment” that are eligible for reimbursement under the Program. The Notice specifically asks whether the definition of associated equipment should include, for example, the monthly rental costs for modems and Wi-Fi routers which are “part and parcel of an Internet service offering.” The NYPSC believes that the monthly rental costs for these types of equipment should be included when the customers rent them directly from the providers. Further, the FCC should identify specifically what types of associated equipment are eligible for reimbursement through the Program, which will assist both providers and eligible customers who wish to participate in the Program.

Tracking and Verifying Household Eligibility

The Public Notice asks for comments on how best to track and verify household eligibility for benefits under the Program. Wherever possible, it would be more efficient to use the familiar and already tested federal Lifeline program rules, methods and procedures rather than “reinventing the wheel” and devising new definitions and procedures specific to the Program. Accordingly, the NYPSC supports the Public Notice’s proposal to use the same definition of “household” provided in the FCC’s federal Lifeline rules for purposes of administering the Program. Also, in order to determine whether a household is eligible to participate and receive a benefit under the Program, the FCC should apply the same processes and procedures it currently uses for federal Lifeline participation, such as the National Lifeline Accountability Database.

Conclusion

The intent and goals of the Emergency Broadband Connectivity Fund are significant and will provide immediate relief for New Yorkers and others throughout the nation impacted by the COVID-19 pandemic. New York is fortunate to have a large number of wired and wireless broadband service providers already operating in the State. Many of them already meet the Program’s requirements. The NYPSC supports the FCC’s efforts to quickly implement the Program and expedite the grant of benefits to eligible households as soon as possible. A simplified application combined with a fast track review and approval processes are key to onboarding as many participating service providers as possible and maximizing the benefits of the Program to eligible customers.

Respectfully submitted,

/s/Robert Rosenthal

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