

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of:</b>	)	
	)	
<b>Affordable Connectivity Program</b>	)	<b>WC Docket No. 21-450</b>
	)	
 <b>To: The Commission</b>		

**COMMENTS OF  
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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## SUMMARY OF ARGUMENT

Because rural electric cooperatives serve 327 (93%) of the nation's 353 "persistent poverty counties," and because NRECA and its members are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities they serve, NRECA applauds the Commission's timely release of the Public Notice seeking comments to assist in developing Affordable Connectivity Program rules.

Many areas that cooperatives serve will likely qualify as "high-cost areas" that are remote, with low population density and high poverty. NRECA believes the "particularized economic hardship" necessary to receive the enhanced benefit should be based on easily verifiable and objective criteria specific to the area that is served, including homes passed per mile and county-wide poverty statistics.

Although the *EBB Program Order* declined to adopt minimum service standards, the EBB "emergency" and "short timeframe" do not apply to the longer-term Affordable Connectivity Program, so that minimum service standards should be reconsidered that are necessary to promote online learning, remote work and telehealth.

NRECA believes the same rates and terms requirement for non-eligible households should apply on a state-specific basis. Supporting documentation should include published price lists for each performance tier, with verification those rates and terms have been offered for at least six months, or such lesser period for new entities (including cooperatives) which commence broadband service less than six months prior to submitting the documentation.

NRECA recommends the Commission modify several definitions under the Program. The definition of "household" should be limited to locations (*i.e.*, a physical address, including a residential unit in an apartment complex, as applied in the CAF II and RDOF Phase I auctions),

since verifying claims that individuals at any given physical address are or are not sharing expenses is problematic. The term “widely available” should be modified to cover all of the provider’s service areas in a state (not “substantial portions”), in order to help maximize the availability of service and be easier to verify. Finally, NRECA agrees that large phones or phablets that can independently make cellular calls should not be included in the definition of “connected devices.”

NRECA members will promote the Program aggressively, and NRECA proposes several ways the Commission might provide helpful guidance to service providers.

Finally, because a permanent program is needed to address broadband affordability, NRECA respectfully proposes that the Commission immediately begin efforts to revise the current Lifeline program or replace it with a permanent program more in line with the Affordable Connectivity Program.

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THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) hereby submits these Comments in response to the Public Notice requesting comment on implementation of the Affordable Connectivity Program (“Program”),<sup>1</sup> consistent with the requirements of the Infrastructure Investment and Jobs Act (“Infrastructure Act” or “Act”).<sup>2</sup>

**I. INTRODUCTION**

**A. Background on NRECA**

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states, or approximately 12 percent of electric customers. Rural electric cooperatives serve 88% of the counties of the United States, including 327 of the nation’s 353 “persistent poverty counties,” which is 93% of these persistent poverty counties. Of the 42 million Americans served by cooperatives, an estimated four million live in persistent poverty counties.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice (Nov. 18, 2021) (“Public Notice”).

<sup>2</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117<sup>th</sup> Congress, *available at* <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (“Infrastructure Act” or “Act”).

Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. They are dedicated to improving the communities in which they serve, and the management and staff of rural electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.<sup>3</sup>

**B. Electric Cooperatives Are Deeply Committed to Promoting Broadband**

NRECA and its members are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which electric cooperatives provide electric service. About 200 NRECA members provide fixed broadband service today, deploying fiber-based, fixed wireless or combined fiber and fixed wireless technologies. Forty-two (42) rural electric cooperatives participated in the Connect America Phase II auction, with 32 co-ops securing winning bids in 15 states worth \$254,720,764.50 over ten years to bring broadband to 86,716 locations. One hundred and fifteen (115) electric cooperatives won RDOF bids securing more than \$1.1 billion dollars over ten years to deploy broadband to over 616,000 locations in 27 states. NRECA estimates that another 100 or so are currently exploring the feasibility of providing broadband, either on their own or through partnerships. Many more are exploring ways they can assist other providers in deploying vital broadband service to their unserved and underserved communities.

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<sup>3</sup> The seven Cooperative Principles are: Voluntary and Open Membership, Democratic Member Control, Members' Economic Participation, Autonomy and Independence, Education, Training, and Information, Cooperation Among Cooperatives, and Concern for Community.

Prior to adoption of the Infrastructure Act, and prior to the Consolidated Appropriations Act, 2021,<sup>4</sup> which established the Emergency Broadband Benefit Program (“EBB Program”), NRECA members took meaningful steps to support rural area households to remain connected to the internet during the first wave of the COVID-19 pandemic. NRECA members providing broadband services maintained broadband service to customers despite lack of payment, waived late fees because of economic distress, and opened Wi-Fi hotspots to those in need. NRECA member broadband providers went a step further to increase their customers’ internet speeds without charge.<sup>5</sup>

For these and other important reasons, NRECA applauds the Commission’s timely release of the Public Notice seeking comments to assist in developing Affordable Connectivity Program rules.

## **II. COMMENTS**

### **A. Demonstrating “Particularized Economic Hardship” for Enhanced Benefits in High Cost Areas**

The Infrastructure Act allows providers in “high-cost areas” (*e.g.*, remote, low population density, high poverty) to receive an enhanced benefit up to \$75 if the provider can show “particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”<sup>6</sup> NTIA will determine the

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<sup>4</sup> Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX, § 904(b)(1) (2020).

<sup>5</sup> See Cathy Cash, *Co-op Broadband Providers Pledge to Sustain Low-Income Service as Pandemic Hardships Increase*, NRECA, <https://www.electric.coop/co-op-broadband-providers-pledge-to-sustain-low-income-service-coronavirus-pandemic-hardships-increase/> (Mar. 25, 2020).

<sup>6</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7)(B), *amended by* Infrastructure Act, div. F, tit. V, § 60502(a)(2)(G)(i).

location of “high-cost areas,” but the Public Notice seeks comment on how providers can show the “particularized economic hardship” necessary to receive the enhanced benefit.<sup>7</sup>

As explained above, NRECA’s rural electric cooperatives serve 93% of the nation’s 353 “persistent poverty counties,” many of which likely will qualify as “high-cost areas” that are remote, with low population density and high poverty. NRECA believes the Commission should determine the “particularized economic hardship” necessary to receive the enhanced benefit based on objective criteria specific to the area that is served. Objective factors are easy to verify and more precise than any subjective evaluation. The number of homes passed per mile, for example, is readily available information which verifies that areas are remote with low population density. County-wide poverty statistics easily establish whether high poverty exists. For purposes of determining whether operations in an area are difficult to sustain, it is reasonable to assume that a provider may have difficulty and incur higher per customer cost maintaining the operation of the portion of its broadband network that is located in areas below a certain number of homes per mile and in counties with high poverty. Objective criteria regarding homes passed per mile and county-wide poverty statistics will also encourage operations in such remote, high poverty areas. NRECA therefore proposes that such simple and objective criteria should be employed when requiring providers to show “particularized economic hardship.”

#### **B. Minimum Service Standards**

The Public Notices asks whether the Commission should apply minimum service standards to the internet service offerings subject to the Affordable Connectivity Program.<sup>8</sup> NRECA believes the Commission should manage the Affordable Connectivity Fund to promote

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<sup>7</sup> Public Notice at ¶ 73.

<sup>8</sup> Public Notice at ¶ 54.



fixed broadband internet access services. Fixed broadband service can support more devices in low income households than mobile broadband offerings. This is clearly the case for the low-income households in the 327 “persistent poverty counties” where electric cooperatives are located, so that Affordable Connectivity Funds can be used more effectively in 93% of the nation’s 353 persistent poverty counties. In order to meet residential broadband connectivity requirements to support video conferencing platforms and other software essential to online learning, remote work and telehealth, the Affordable Connectivity Program funds should only be dispersed for fixed broadband services that meet or, preferably, exceed the current 25/3 Mbps fixed broadband service benchmark. For avoidance of doubt, NRECA would support a minimum higher performance tier, such as 100/20 Mbps, or a baseline symmetrical tier, such as 75/75 Mbps, as these speeds can better support concurrent use of multiple devices within a household.

The Commission declined to adopt these standards in the *EBB Program Order* because of the “emergency nature of the EBB Program and the vital need to maximize consumer choice and benefits in a short timeframe.”<sup>2</sup> NRECA respectfully contends that this “emergency” and “short timeframe” do not apply to the longer-term affordability program being established with the Affordable Connectivity Program, and proposes that these minimum service standards should be reconsidered for the Affordable Connectivity Program.

## **C. Election Notice Matters**

### **1. FRN and SPIN**

The Public Notice proposes to retain the requirement that a participating broadband provider register with the Commission and with USAC, and obtain an FCC Registration Number

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<sup>2</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612, at ¶ 74 (2021) (“*EBB Program Order*”).

(FRN) and Service Provider Identification Number (SPIN).<sup>10</sup> These are reasonable means for the Commission and USAC to identify the provider and track its involvement in the Program.

Although some broadband providers not offering interconnected VoIP, telecommunications or telecommunications services may not currently possess a SPIN, the process for obtaining one is not burdensome.

## **2. Same rates and terms**

The Public Notice asks how to ensure that Infrastructure Act internet offering benefits apply “at the same rates and terms” that are available to households that are not eligible.<sup>11</sup>

When comparing where benefits are available to where they are not, NRECA believes the geographic area to consider should be all areas the provider serves within a particular state, and the services to be considered should be those which were generally available for at least six months prior to submission of the election notice. The requirement that the same rates and terms apply on a state-specific basis, as opposed to a local market, strikes a reasonable balance that is readily auditable.

However, additional electric cooperatives continue to enter the broadband business, and some will likely launch service as this program is being stood up that lack the six-month rate history. This should not disqualify a provider and its customers from receiving the benefits of participating in this important program.<sup>12</sup>

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<sup>10</sup> Public Notice at ¶ 19.

<sup>11</sup> Public Notice at ¶ 15.

<sup>12</sup> Some electric cooperatives were blocked from participating in the EBB because of the FCC’s interpretation of the Consolidated Appropriations Act. The FCC required that any participating EBB provider be offering service at their given rates as of December 1, 2020. Several co-ops launched service in the first week of December 2020 and because of a calendar day their low-income customers were denied the benefit of participating in the program. The Infrastructure Act eliminates the EBB Program requirement that participating providers must have offered a broadband service as of December 1, 2020, but the Commission’s Affordable Connectivity Program process should ensure that any new provider can participate in the program.

For ease of administration, and to ensure that new providers can participate in the program, NRECA proposes that the supporting documentation should include published price lists or a service provider's internal pricing schedules, which: (1) identify the service provider's best available rate for residential service (promotional, bundled or standalone) for each performance tier (defined as the download and upload speed combinations, plus any applicable data usage caps); and (2) explain either that (i) such rates and services have been available statewide for at least six months prior to submission of the election notice, or (ii) the provider commenced broadband service less than six months prior to submitting the documentation, but made available such rates and services statewide for that entire period.

With respect to connected devices, NRECA agrees it is reasonable for the supporting documentation to include the retail rate of the device, including the make, model, and specifications of the device, and also the cost of the device to the provider.<sup>13</sup>

#### **D. Definition of "Household"**

For the EBB Program, the Commission applied the definition of "household" under the Lifeline rules, and placed no limit on the number of participating households that could be located at a particular address.<sup>14</sup> The Public Notice proposes to apply this definition and approach to the Affordable Connectivity Program.<sup>15</sup>

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<sup>13</sup> Public Notice at ¶ 16.

<sup>14</sup> *EBB Program Order*, 36 FCC Rcd 4612, ¶¶ 44, 46; 47 CFR § 54.400(h) (defining household as "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>15</sup> Public Notice at ¶ 29.

NRECA recommends the Commission refine this proposal because having no limit on the number of participating households at a given address could prove problematic. USAC’s explanation of a “household” under the Lifeline program states that individuals residing at the same premise that do not share housing expenses are each a “household” and eligible for a Lifeline discount.<sup>16</sup> This approach may work for mobile services, but it is less than optimal for fixed broadband services. NRECA recommends the concept of location (*i.e.*, a physical address, including a residential unit in an apartment complex, as applied in the CAF II and RDOF Phase I auctions) should constitute a “household” under the Program. This modification will capture standalone, semi-detached and multi-family residential living environments, and verifying individual physical addresses is much easier than verifying claims that individuals at any given physical address are or are not sharing expenses.

#### **E. Definition of “Widely Available”**

The automatic approval process applies to programs that are “widely available.”<sup>17</sup> In the *EBB Program Order*, the Commission defined “widely available” as being offered “in a substantial portion of the service provider’s service area in a particular state,” and not throughout the provider’s national or multi-state service territory.<sup>18</sup> The Public Notice proposes to use this definition for the Affordable Connectivity Program.<sup>19</sup>

Because the Commission’s goal is to maximize the availability of service everywhere, NRECA supports requiring all of the service provider’s service area within a state to be covered, rather than just a “substantial portion” of its service area within a state. This slight modification

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<sup>16</sup> See <https://www.lifelinesupport.org/do-i-qualify/what-is-a-household/>.

<sup>17</sup> Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(d)(2)(B).

<sup>18</sup> *EBB Program Order*, 36 FCC Rcd 4612, at ¶ 29.

<sup>19</sup> Public Notice at ¶ 10.

of “widely available,” to cover all of the provider’s service areas in a state, would help to maximize the availability of service and be easier to verify than “substantial portions.”

**F. Support for Cell Phones and Tablets Making Cellular Calls**

The *EBB Program Order* did not include "devices that can independently make cellular calls such as large phones or phablets" in the definition of connected devices.<sup>20</sup> The Public Notice proposes to adopt the same approach in the Affordable Connectivity Program.<sup>21</sup>

NRECA agrees. The goal of the Affordable Connectivity Program is to support broadband services, not cellular telephone service. For distance learning and telework purposes, desktops, laptops and tablets are required in order to properly engage in the experience. For these reasons, NRECA believes that such devices used for broadband service should be supported, rather than those used primarily for cellular telephone service.

**G. Promoting Awareness of the Program**

The Public Notice seeks comment on how best to publicize the availability of Affordable Connectivity Program support for broadband services and connected devices,<sup>22</sup> and on helpful guidance the Commission might offer to service providers.<sup>23</sup>

Because of their keen interest in making affordable broadband available in their service territories, NRECA believes its members that are broadband service providers will promote the Program aggressively. As for guidance that would be helpful to service providers, the Commission might develop targeted online presentations and webinars for providers which explain the major elements of the program and core compliance obligations. Such an

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<sup>20</sup> *EBB Program Order*, 36 FCC Rcd 4612, at ¶ 79.

<sup>21</sup> Public Notice at ¶ 61.

<sup>22</sup> Public Notice at ¶ 114.

<sup>23</sup> Public Notice at ¶ 116.

educational program would be comparable to those developed by FCC staff in advance of the CAF II and RDOF Phase I auctions. In addition, to alleviate the burden on participating providers, USAC or FCC staff could draft concise, model language that service providers could use for notices to eligible households.

#### **H. The Commission Should Develop a Permanent Low-Income Program**

NRECA applauds efforts to address the affordability of broadband in light of the economic hardship of so many Americans caused by the COVID-19 pandemic. The EBB Program was a necessary emergency step to address immediate needs, and the longer-term Affordable Connectivity Program is a positive next step. However, a permanent program must be implemented to provide a sustainable and long-term program to adequately address broadband affordability. The temporary nature of these programs can discourage provider participation, including by cooperatives. As they have historically done with cost-based affordable electric rates, cooperatives charge cost-based broadband rates. They seek to keep rates low, affordable and consistent. They do not charge promotional or introductory rates that spike after a set period-of-time. Consistent with this philosophy, the temporary nature of the EBB and Affordable Connectivity Program may deter participation by some cooperatives concerned with the potential negative backlash from their customers over price hikes when it expires. For these reasons, NRECA respectfully proposes that the Commission immediately begin efforts to revise the current Lifeline program or replace it with a permanent program more in line with the Affordable Connectivity Program.

### III. CONCLUSION

NRECA is particularly sensitive to the challenges faced by rural communities lacking high speed internet access and how these challenges have been magnified during the COVID-19 pandemic. Our Comments urge the Commission to adopt proposals to ensure the Program is timely implemented with appropriate safeguards to maximize participation for broadband service providers operating throughout the country.

Respectfully submitted,

**National Rural Electric Cooperative Association**

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