



PUBLIC NOTICE

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DA 21-551
Enforcement Advisory No. 2021-06
Released: May 11, 2021

FCC ENFORCEMENT ADVISORY

BROADBAND PROVIDERS PARTICIPATING IN THE EMERGENCY BROADBAND BENEFIT PROGRAM MUST OBTAIN INFORMED SUBSCRIBER CONSENT TO ENROLL AND REQUIRE A CO-PAY FOR CONNECTED DEVICES

The Enforcement Bureau of the Federal Communications Commission (Commission or FCC) issues this Enforcement Advisory to remind broadband providers participating in the Emergency Broadband Benefit (EBB) Program of their obligation to comply with the EBB Program rules, including ensuring that existing Lifeline customers give their informed affirmative consent to participate in the EBB Program and are able to choose not to apply their emergency broadband benefit with their Lifeline provider without jeopardizing their existing Lifeline service. Failure to comply with the rules governing the consumer disclosure and enrollment process may lead to customer confusion and loss of service, while potentially providing anticompetitive advantages over other service providers. Additionally, both the Consolidated Appropriations Act of 2021 (CAA or Act)¹ and the Commission's rules² are clear that customers must pay a portion of the cost of a connected device subsidized by the EBB Program. Circumventing this rule by conjuring a "credit" in lieu of a customer payment or otherwise offering a connected device free of charge is contrary to the policy of requiring households receiving subsidized connected devices to have an ownership stake in the devices. Congress enacted this policy into law in the CAA, the Commission codified the statute's requirement in its rules, and provider adherence to the mandate will be subject to confirmation during audits or investigations. Failure to comply with the co-payment rule could provide an unfair competitive advantage and undermines program integrity by introducing opportunities for waste, fraud, and abuse.

Subscriber Consent to Enroll in EBB Program

Eligible subscribers, including existing Lifeline subscribers, must affirmatively provide their consent to be enrolled in the EBB Program.³ It has come to our attention that providers may be linking EBB Program enrollment to implementation of technical changes necessary to retain the subscriber's existing service or automatically enrolling subscribers that provide information needed for another purpose. These

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904, 134 Stat. 1182, 2130 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

² 47 CFR §§ 54.1603(b), 54.1608(d).

³ 47 CFR § 54.1606(d)(6).

practices may be deceptive and may undermine the integrity of the EBB Program and threaten to put subscribers at risk of losing their existing Lifeline service. Providers must ensure that communications to consumers about the EBB Program are clear, accurate, and not misleading as to the nature of the program, the program's eligibility requirements, and the timing of the program and application process. The Commission may consider inaccurate or misleading marketing of the program or processing of applications to be an unjust and unreasonable practice subject to investigation and enforcement action. To avoid misleading consumers, providers must avoid practices or marketing that may confuse consumers about the EBB Program, including but, not limited to:

- Not clearly distinguishing the process of signing up for EBB services from the process of signing up for, renewing, upgrading, or modifying other telecom services, including Lifeline services.
- Suggesting or implying that signing up for EBB services is required for obtaining or continuing other services, including Lifeline services.
- Tying the submission of customer information provided for another purpose (e.g., address verification) to enrollment in the EBB Program.
- Failing to include the EBB Program disclosures required by the EBB Program rules prior to the point at which the consumer gives their consent to enroll in the EBB Program.

At a minimum, Lifeline providers must make it clear that subscribers: 1) may continue their existing Lifeline service without enrolling in the EBB Program; 2) may choose to take EBB Program benefits from a service provider other than their existing Lifeline provider; and 3) may transfer EBB Program benefits to another provider at any time.⁴ Consistent with the Commission's rules, "the provider must also retain documentation demonstrating that, having received such disclosures, the household provided affirmative consent to applying their Emergency Broadband Benefit to the service received from the EBB provider."⁵ Broadband providers may be required to provide such documentation to demonstrate compliance during an audit, validation, or investigation.

Connected Device Co-Pay

The Act and the Commission's rules are clear that households must be charged a co-pay toward the cost of a subsidized connected device.⁶ That is, a broadband provider must actually bill the customer for the cost of the connected device more than \$10.00 but less than \$50.00 and the household must make this payment as a contribution toward the cost of the connected device.⁷ Advertising "free" connected devices as part of the EBB program is inconsistent with the program rules, misleading to customers, and could provide an unfair competitive advantage over other participating broadband providers charging the required co-pay.⁸ Providers cannot use a scheme by which subscribers earn "credits" that can be applied toward the subscriber portion of the shared cost of a connected device to avoid the requirement that they

⁴ See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29 (2021) (*EBB Program Order*) at para. 38.

⁵ *Id.*

⁶ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(4); 47 CFR § 54.1603(b), 54.1608(e)(7).

⁷ *EBB Program Order* at para. 81.

⁸ We note that broadband providers are required to disclose their standard rates, including rates for connected devices, in their Election Notice filed with the Universal Service Administration Company. We reiterate that "providing materially false information in the election notice will disqualify a provider from participation in the EBB Program." *EBB Program Order* at para. 21.

collect payment from their customers. Similarly, a broadband provider cannot be said to be charging a co-pay if it universally or generally waives such charges for its subscribers, because the eligible household must contribute toward the cost of the connected device.⁹ Broadband providers seeking reimbursement must certify, among other things, that they charged each household more than \$10.00 but less than \$50.00 for each connected device,¹⁰ and that they retained documentation demonstrating compliance with this requirement, which is subject to audit.¹¹

Need More Information?

Media inquiries should be directed to Will Wiquist of the Office of Media Relations at: (202) 418-0509, or by e-mail, at: Will.Wiquist@fcc.gov. Questions about this Enforcement Advisory should be directed to the Investigations and Hearings Division of the Enforcement Bureau at: (202) 418-1420, or by e-mail, EnforcementBureau-IHD@fcc.gov, or Eric Wu, Wireline Competition Bureau, at (202) 418-1543 or Eric.Wu@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory.

Issued by: Chief, Enforcement Bureau

⁹ See *EBB Program Order* at para. 81.

¹⁰ 47 CFR § 54.1608(e)(7).

¹¹ 47 CFR § 54.1608(e)(11). See also *EBB Program Order* at para. 97 (“We find that requiring certifications under penalty of perjury along with the possibility of an audit will help to encourage compliance with EBB Program requirements and reduce the incidence of improper payments.”).