



Federal Communications Commission
Washington, D.C. 20554

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS
COMMISSION AND THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
REGARDING THE EMERGENCY BROADBAND BENEFIT PROGRAM

I. PURPOSE AND PARTIES

On December 27, 2020, the Consolidated Appropriations Act, 2021 was signed into law. The Act establishes an Emergency Broadband Connectivity Fund in the United States Treasury in the amount of \$3.2 billion and directed the Federal Communications Commission (FCC or Commission) to use that fund to establish an Emergency Broadband Benefit Program (EBBP).¹ Under this program, eligible households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers can receive a reimbursement for such discounts. Congress provided the Commission with authority to reimburse program participants during the emergency period as defined by the statute.² The Act further provides the Commission with authority to use the services of the Universal Service Administrative Company (USAC) to implement the EBBP.³ In addition, the Act states that the Commission may not use more than 2% of the Emergency Broadband Connectivity Fund (Fund) to administer the EBBP.⁴ On January 2, 2021, the Wireline Competition Bureau released a Public Notice, DA 21-6, seeking comment on the program.

The Commission is exercising its authority to use USAC's services to assist the Commission with the implementation of the EBBP. In order to utilize that authority, the Commission and USAC enter into and agree to comply with this Memorandum of Understanding (MOU) to facilitate the efficient management, oversight, and execution of the EBBP. This MOU is not intended to and does not in any way limit the Commission's authority over the EBBP. The Commission is responsible for the effective and efficient management and oversight of the EBBP and the Fund, including all policy decisions. As will be further articulated in the course of relevant Commission orders, public notices and directives, USAC is responsible for the effective administration of the EBBP, including administering the disbursement of program support, producing timely and relevant data and analysis to inform the Commission in its policy-making and oversight of the EBBP and the Fund, educating stakeholders to promote successful participation in the program, and advising the Commission on the operational requirements. To the extent USAC has any questions regarding its functions or duties pursuant to this MOU which are not fully addressed herein or in

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904 (Dec. 27, 2020). The fund is subject to the Antideficiency Act. 31 U.S.C. §§ 1341(a), 1342, and 1517(a).

² Under Section 904, the emergency period "ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates."

³ Section 904(i)(5) provides that "[t]he Commission shall have the authority to avail itself of the services of the Universal Service Administrative Company to implement the Emergency Broadband Benefit Program, including developing and processing reimbursements and distributing funds to participating providers."

⁴ Section 904(i)(3). Section 904 also provides that "[r]eimbursements provided under this section shall be provided from amounts made available under this subsection and not from contributions under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d))."

the Commission's orders, public notices or directives it should address its questions to the FCC's Managing Director.

The Commission notes that there is an overall cap of \$64 million on the administrative costs associated with this program. The Commission expects USAC and the Commission to incur administrative costs that are less than the \$64 million cap and controls need to be implemented to ensure that this cap is not exceeded. In reporting its costs to the Commission, USAC should use fully allocated costs for tracking and accounting for expenses for which USAC seeks reimbursement from the Commission. Under no circumstances shall USAC incur total expenses under this MOU that exceed \$48 million, and under no circumstances shall the Commission be liable to USAC for total expenses in excess of \$48 million. Amounts disbursed to EBBP program participants are not considered administrative costs associated with the program and do not count against the \$64 million and \$48 million caps referred to in this paragraph. Commitments and disbursements to program participants shall be made by the Commission out of Commission funds, even though notification of such commitments may be sent to program participants by USAC.

While the USF is currently exempt from the Antideficiency Act,⁵ the Fund and the EBBP are fully subject to the Antideficiency Act. Accordingly, USAC shall not enter into any contract that constitutes open-ended commitments of monies related to the Fund or the EBBP, or any other commitments or obligations in violation of the Antideficiency Act. In addition, in connection with any monies related to the Fund or the EBBP, USAC shall (a) establish USAC's maximum legal commitment at the time of award, either by establishing a firm fixed price or a not-to-exceed price that the contractor exceeds at its own risk; (b) not include any commitment by USAC to provide indemnification of any other party unless such indemnification has a stated not-to-exceed amount and such amount is considered a part of the total contract price for approval by the USAC Board of Directors and, if applicable, Managing Director, and (c) not include any provision authorizing any party to unilaterally increase the contract price, and not include any provision authorizing automatic renewal or extension of the contract without prior written authorization of USAC. When used in this paragraph, "commitment" refers to obligations USAC incurs to its own staff and its contractors, not to commitments made to EBBP program participants.

II. APPLICABLE PROVISIONS

The Commission and USAC currently have a Memorandum of Understanding (MOU), dated December 19, 2018, which governs the relationship between the Commission and USAC as it pertains to USAC's work as the Commission's designated administrator of the Universal Service Fund (USF).⁶ The Commission would like to leverage the existing agreed upon clauses in the USF MOU to apply to USAC's work on the EBBP. As such, for the purposes of USAC's work for the Commission on this program, the selected MOU clauses listed below that are applicable to USAC's work as USF administrator are incorporated by reference herein to USAC's work on the EBBP.⁷

- IV.A.1 – Coordination and Communication
- IV.A.3 – Conflicts of Interest

⁵ Codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. Guidance is provided by OMB Circular A-11, Section 145 (Dec. 23, 2020) and OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements (April 4, 2013).

⁶ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, Dec. 19, 2018, is available online at: <https://www.fcc.gov/sites/default/files/usac-mou.pdf>.

⁷ The FCC intends that the phrase "and Emergency Broadband Benefit Program" or "and EBBP" be used in lieu of "universal service fund" or "USF" in each of the USF MOU clauses listed in this letter.

- IV.A.4 – Claims Involving the USF [to include the EBBP]
- IV.A.5 – Potential Loss of Service
- IV.A.6 – Forms Approval
- IV.A.7 – Stakeholder Engagement and Program Outreach [if directed by the Commission]
- IV.A.8 – Notification of Rule Violations and Potential Waste, Fraud and Abuse
- IV.A.9 – Enforcement Referrals
- IV.A.10 – USAC Website Changes
- IV.B.1 – Annual Procurement Plan
- IV.B.2 – Quarterly Procurement Reporting
- IV.B.3 – Procurement Advance Review
- IV.B.4 – Transparency
- IV.B.5 – Annual Procurement Report
- IV.B.6 – Procurement Standards and Procedures
- IV.B.8 – Transferability of Property Rights
- IV.B.9 – Contract Administration
- IV.B.10 – Conflicts of Interest
- IV.B.11 – Performance-Based Contracting
- IV.B.12 – Training
- IV.B.13 – Competition Advocate
- IV.C – Treatment of Non-Public Information
- IV. D – Reporting Requirements
- IV.D.1 – Financial and Programmatic Reports
- IV.D.2 – Commission Access to USF Analytics and Data
- IV.D.3 – Performance Measures [except for the “Contributor Performance” measure]
- IV.D.4 – Customer Service Standards
- IV.D.5 – Expenditure Records and Reporting
- IV.F – Statutes and Agency Directives Applicable to the USF [and to the EBBP]
- IV.G – USF Audits and Assessments [if requested by the FCC’s Managing Director and subject to the availability of funds]
- IV.G.1 – Beneficiary and Contributor Audits [if requested by the FCC’s Managing Director and subject to the availability of funds; except provision that the audit program shall be designed to verify that all audited contributors are making the appropriate contributions in accordance with the Commission’s rules does not apply to the EBBP]

- IV.G.2 – Improper Payment Estimates, Identification, and Recovery. USAC shall also follow OMD’s June 15, 2020 Letter to USAC regarding the Payment Integrity Information Act (PIIA), Pub. L. No.116-117 with respect to the EBBP.IV.G.4 – Audit Follow-up
- IV.G.5 – Internal Control
- IV.G.6 – Employing the Audit Program to Advance Program Goals Adopted by the Commission
- IV.H.1 – General Coordination
- IV.I – Freedom of Information Act Submissions [as needed and subject to the availability of funds]
- IV.J – USAC Requests for Guidance
- VI. – Revision and Duration
- VII. – No Private Cause of Action and Disclaimer
- VIII. – Severability
- Attachment A (USAC Confidentiality Agreement) (including Appendix A) [the definition of Personally Identifiable Information in Appendix A will be updated by mutual agreement by USAC and the FCC]

SIGNATURES

Date: _____

Mark Stephens
Managing Director
Federal Communications Commission

Date: February 3, 2021



Radha Sekar
Chief Executive Officer
Universal Service Administrative Company