

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Emergency Broadband Benefit Program |) | WC Docket No. 20-445 |
| |) | |
| Affordable Connectivity Program |) | WC Docket No. 21-450 |

ORDER

Adopted: December 30, 2021

Released: December 30, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) provides additional guidance about requirements for the upcoming Affordable Connectivity Program (sometimes referred to as ACP) during the interim period until the Commission’s ACP rules become effective.¹ The interim period between the statutorily required start of the Affordable Connectivity Program and the effective date of the Commission’s rules could create uncertainty for ACP providers as they begin to enroll new subscribers while also continuing to serve the households that were enrolled in the Emergency Broadband Benefit Program (EBB Program) and are entitled to continue to receive a monthly broadband benefit at the current EBB support amount until March 1, 2022. In this Order, we offer clarity on the rules that will govern the Affordable Connectivity Program before the Commission’s rules are in effect. We also partially waive section 54.1608(a) of the Commission’s rules governing reimbursement to the extent described herein to manage the transition of the EBB Program to the Affordable Connectivity Program.² We find good cause to eliminate the January 1, 2022 snapshot for discounts provided to households that were newly enrolled in the Affordable Connectivity Program on December 31, 2021, and we offer guidance for providers seeking reimbursement on discounts offered to legacy EBB Program households during the 60-day transition period.

II. BACKGROUND

2. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law and established an Emergency Broadband Connectivity Fund of \$3.2 billion in the United States Treasury to help Americans afford internet service during the COVID-19 pandemic.³ The Act directed the Commission to use that fund to establish the EBB Program, under which 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

¹ See Letter from Scott Bergmann, Senior Vice President, CTIA; Rick Chessen, Senior Vice President and Chief Legal Officer, NCTA; Patrick Halley, Senior Vice President and General Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450 et al., at 2 (filed Dec. 22, 2021) (Industry Associations *Ex Parte*).

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (Infrastructure Act).

³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 1182, at 2130, 2135.

receive a reimbursement for providing such discounts.⁴ The EBB Program was designed to be a temporary, emergency program that would conclude when the fund is expended or six months after the end of the public health emergency.⁵

3. On February 25, 2021, the Commission adopted rules and policies creating and governing the EBB Program pursuant to the Consolidated Appropriations Act.⁶ Participating providers receive reimbursement from the EBB Program for the discounts granted to eligible low-income households for qualifying service and connected devices.⁷ A participating provider must submit certain certifications to the Commission to receive that reimbursement.⁸ Reimbursement claims for the EBB Program are based on the number of subscribers enrolled with each provider in the National Lifeline Accountability Database (NLAD) as of the first day of each month (the snapshot date).⁹ To receive reimbursement, providers must then submit certified reimbursement claims through the Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend.¹⁰

4. On November 15, 2021, the Infrastructure Act was enacted, providing \$14.2 billion for the longer-term Affordable Connectivity Program. The Affordable Connectivity Program will extend and supplant the EBB Program, and will continue to provide eligible households with a discount on broadband service and connected devices.¹¹ On November 18, 2021, the Bureau issued a Public Notice seeking comment on the rules and administration of the Affordable Connectivity Program, and providing 20 days for initial comments, and 20 days for reply comments.¹² The Infrastructure Act directs the Commission to effectuate for the Affordable Connectivity Program specified changes, such as to EBB Program eligibility and the program benefit amount, by the date the Commission notifies Congress that all EBB Program funds have been fully expended or December 31, 2021, whichever is earlier.¹³ As explained in the *ACP Public Notice*, based on current projections, EBB Program funds will not be fully expended on December 31, 2021, and we therefore consider December 31, 2021 to be the effective start date of the Affordable Connectivity Program.¹⁴

5. On December 8, 2021, the Bureau issued an Order waiving certain provisions of the Commission's rules for the EBB Program and providing additional guidance on the transition from the EBB Program to the Affordable Connectivity Program.¹⁵ As explained in the Bureau's *December 8th Order*, the Infrastructure Act provides for a 60-day transition period for households that were enrolled in

⁴ *Id.* §§ 904(b)(1), (4) & (5).

⁵ *Id.*

⁶ See generally *Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

⁷ 47 CFR § 54.1608.

⁸ *Id.* § 54.1608(e).

⁹ *Id.* § 54.1608(a).

¹⁰ *Id.* § 54.1608(g).

¹¹ See generally Infrastructure Act div. F, tit. V, § 60502(a).

¹² See generally *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453, at 1, para. 3 (WCB Nov. 18, 2021) (*ACP Public Notice*).

¹³ Infrastructure Act, div. F, tit. V, § 60502(b)(1).

¹⁴ *ACP Public Notice* at 2, para. 3.

¹⁵ *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket Nos. 20-455 and 21-450, Order, DA 21-1524 (WCB Dec. 8, 2021) (*December 8th Order*).

the EBB Program before December 31, 2021,¹⁶ and all such households that are enrolled in the EBB Program prior to 6:00 p.m. EST on December 30, 2021 and not otherwise subject to de-enrollment (legacy EBB Program households) will continue to receive the \$50 per month EBB Program subsidy during the transition period through March 1, 2022.¹⁷ Households that were not enrolled in the EBB Program before December 31, 2021 and that enroll in the Affordable Connectivity Program beginning December 31, 2021 (new ACP households) are only eligible for the ACP standard monthly benefit of up to \$30 (up to \$75 per month for those on Tribal lands).¹⁸

III. DISCUSSION

A. Elimination of the January 1, 2022 Snapshot for New ACP Enrollments

6. The Commission's rules may be waived for "good cause shown."¹⁹ The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁰ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.²¹

7. On our own motion, the Bureau finds good cause exists to adopt a one-time partial waiver of the first day of the month snapshot requirement in section 54.1608(a) with respect to new ACP households that enrolled on December 31, 2021. Under the Commission's rules, providers would be provided with their qualifying households listed in NLAD for the month of December 2021 on January 1, 2022.²² However, given that the Affordable Connectivity Program does not start until December 31, 2021, we find that for efficiency and ease of administration, as well as to avoid the potential for program waste, it is unnecessary to perform a snapshot on January 1, 2022 of new ACP household enrollments that occur on December 31, 2021. Instead, the first snapshot for households newly enrolled in the Affordable Connectivity Program on or after December 31, 2021 will occur on February 1, 2022. The data month associated with the February 1, 2022 snapshot will cover discounts passed through to newly enrolled subscribers in the Affordable Connectivity Program between December 31, 2021 and the end of January, up to the maximum monthly support amount of \$30 for households on non-Tribal lands and up to \$75 for households on qualifying Tribal lands.²³ In other words, the January 2022 data month will effectively be from December 31 through January 31 and provider claims for this data month cannot exceed the maximum monthly amount allowed for that household under the Affordable Connectivity Program. The claims deadline for the February 1, 2022 snapshot will be February 15, 2022, pursuant to section 54.1608(g) of the Commission's rules.

8. We find that this minimal adjustment to the data month length is appropriate to avoid program waste by preventing providers from claiming reimbursement based on a single day of service. Having a snapshot taken immediately following the start of the new program may introduce confusion

¹⁶ *December 8th Order* at 5, para. 14; *see also* Infrastructure Act, div. F, tit. V, § 60502(b)(2) (2021).

¹⁷ *December 8th Order* at 5-6, para. 14. The Bureau also waived rules governing the internet service offering, standard rate, provider participation, and election notice requirements for the end of EBB Program. *Id.* at 3, paras. 7-8.

¹⁸ *Id.* The Bureau also issued an Order waiving certain rules governing the end of the EBB Program. *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket Nos. 20-455 and 21-450, Order, DA 21-1477 (WCB Nov. 26, 2021) (*November 26th Order*).

¹⁹ 47 CFR § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²¹ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²² 47 CFR § 54.1608(a).

²³ Infrastructure Act, div. F., tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(7) (2021).

and challenges for existing providers who need to manage claims for both EBB Program and ACP households, and for those providers who are new to the Affordable Connectivity Program. Moreover, it is unlikely that providers will be able to pass through a discount to newly enrolled ACP households on that first day of enrollment for a new program, particularly where that first day of the program falls on a federal holiday.²⁴ By delaying the snapshot for these households, the Universal Service Administrative Company (USAC) will have adequate time to train service providers on the claims process, especially where providers will be claiming for both legacy EBB and newly enrolled ACP households. Accordingly, we find that eliminating the January 1, 2022 snapshot for newly enrolled ACP households is in the public interest. This waiver does not apply with respect to legacy EBB households, however, and providers serving those households will continue to have a January 1, 2022 snapshot for the December 2021 data month, a February 1, 2022 snapshot for the January 2022 data month, and a March 1, 2022 snapshot for the February 2022 data month.

9. Providers should be prepared to file claims for the February 1, 2022 snapshot by February 15, 2022, pursuant to section 54.1608(g) of the Commission's rules, and we remind providers that are serving legacy EBB households during the 60-day transition period that they are required to continue to certify claims for service and device discounts in accordance with the Commission's rules. We direct USAC to issue guidance to providers on how to submit certified reimbursement claims for the new ACP households for the February 1, 2022 snapshot as well as for discounts passed through to the legacy EBB households during the 60-day transition period.

B. Guidance on Rules Governing the Affordable Connectivity Program

10. Since the release of the *ACP Public Notice*, the Bureau has been proactively establishing a roadmap for the end of the EBB Program and transition to the Affordable Connectivity Program,²⁵ which has been necessary given that these milestones are occurring before the Commission's anticipated adoption of ACP rules in mid-January.²⁶ Because the Affordable Connectivity Program will by statute begin before the Commission adopts rules for the program, we find that it is necessary for the administration of the Affordable Connectivity Program to clarify the rules that will govern the program during the interim period until the Commission's rules are effective. We agree that clarity is needed for providers that elected to participate in the EBB Program and are transitioning to the Affordable Connectivity Program, and those providers that are newly electing to participate in the Affordable Connectivity Program.²⁷ Without such clarity, we understand that providers may be reluctant to participate in the Affordable Connectivity Program.

11. Until the Commission's new ACP rules are effective, the EBB Program rules will continue to govern to the extent provided herein. The portion of the Infrastructure Act establishing the Affordable Connectivity Program heavily relies on the EBB Program requirements set forth in the Consolidated Appropriations Act by overlaying new ACP requirements on top of the existing EBB

²⁴ Office of Personnel and Management, 2022 Holiday Schedule, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=2022>.

²⁵ *November 26th Order* (waiving certain requirements related to the end of the EBB Program and offering preliminary guidance on the end of enrollments in the EBB Program); *December 8th Order* (waiving service plan requirements for the Affordable Connectivity Program; establishing that EBB providers can participate in the Affordable Connectivity Program; and setting forth enrollment and applications processes for end of the EBB Program and beginning of the Affordable Connectivity Program).

²⁶ We interpret the Consolidated Appropriations Act, as amended by the Infrastructure Act, to require that the Commission promulgate rules for the implementation of the Affordable Connectivity Program within 60 days of the November 15, 2021 enactment of the Infrastructure Act. Accordingly, we anticipate the Commission's rules will be adopted in mid-January. *ACP Public Notice* at 2, paras. 2-3; Consolidated Appropriations Act, div. N, tit. IX, § 904(c).

²⁷ Industry Associations *Ex Parte* at 1-2.

Program requirements.²⁸ Because Congress established the Affordable Connectivity Program by modifying and extending the EBB Program,²⁹ we believe it would be reasonable for providers to continue to rely on EBB Program rules until the effective date of new rules to be established for the Affordable Connectivity Program to the extent that those EBB Program rules are consistent with the statutory directives in the Infrastructure Act. Moreover, the EBB Program rules are a familiar framework for providers and consumers, having been adopted in February 2021 and governing the EBB Program since its launch on May 12, 2021, with Bureau orders, advisories,³⁰ and USAC bulletins³¹ issued to clarify the requirements and processes. Congress was well aware of these rules, and we believe that—except to the extent it specifically required changes to them—it would be reasonable to conclude that as an interim matter compliance with such rules would be appropriate until new rules are in place governing the Affordable Connectivity Program. During this interim period, providers must continue to obtain the required informed consent when enrolling subscribers into the Affordable Connectivity Program,³² submit certified reimbursements claims,³³ and require that enrollment representatives register in the Representative Accountability Database in accordance with the established EBB Program rules.³⁴ Providers are directed to retain documentation demonstrating compliance with the EBB Program rules during this interim period as provided in this Order, pursuant to the documentation retention requirements for the EBB Program.³⁵

12. The text of the Infrastructure Act also makes changes to the eligibility criteria and benefit amount for the Affordable Connectivity Program, both of which will be in effect on December 31, 2021.³⁶ First, the Infrastructure Act removed as qualifying criteria for the Affordable Connectivity Program substantial loss of income since February 29, 2020 and participation in a provider's COVID-19 program.³⁷ To effectuate these statutory requirements, the Bureau has directed USAC to modify the ACP applications to eliminate substantial loss of income from the list of qualifying criteria for the Affordable Connectivity Program, and we direct providers with approved alternative verification processes not to enroll households in the program based on a household's participation in a provider's COVID-19

²⁸ *ACP Public Notice* at 2, para. 2.

²⁹ Infrastructure Act, div. F, tit. V, sec. 60502(a).

³⁰ See, e.g., *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*, Public Notice, 36 FCC Rcd 8324 (EB 2021); *Broadband Providers Must Apply the Emergency Broadband Benefit Discount Prior to Claiming Reimbursement and Are Reminded of Measures to Protect Against Waste, Fraud, and Abuse*, WC Docket No. 20-445, Public Notice, DA 21-1018 (WCB Aug. 20, 2021); *Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision* (FCC OIG Nov. 22, 2021), <https://www.fcc.gov/docuemnt/fcc-inspector-general-advisory-regarding-ebb-enrollment-fraud>; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Broadband Benefit Program Enrollments Based on the Community Eligibility Provision*, WC Docket No. 20-445, DA 21-1464 (WCB Nov. 22, 2021).

³¹ See USAC, EBB Program Bulletins, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/ebb-program-bulletins/> (last visited Dec. 27, 2021).

³² *EBB Program*, 36 FCC Rcd at 4629, para. 38.

³³ 47 CFR § 54.1608.

³⁴ 47 CFR § 54.1607.

³⁵ 47 CFR § 54.1611.

³⁶ *ACP Public Notice* at 2, para. 3; Industry Associations *Ex Parte* at 3.

³⁷ *ACP Public Notice* at 13-14, para. 30; Consolidated Appropriations Act § 904(a)(6)(C) *stricken by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(II), 60502(B)(1)(A)(V)(aa).

program or substantial loss of income.³⁸ Moreover, the ACP application will also include among the qualifying programs participation in the Special Supplemental Nutritional Program for Woman, Infants and Children (WIC)³⁹ and will increase the maximum income for qualifying based on household income from “135 percent” to “200 percent” of the Federal Poverty Guidelines for a household of that size,⁴⁰ as set out in the Infrastructure Act.

13. Moreover, the Infrastructure Act reduces the standard monthly benefit amount for the Affordable Connectivity Program to \$30 but retains the same enhanced monthly benefit level for eligible households living on Tribal lands.⁴¹ We clarify that, consistent with this statutory change, households enrolled in the Affordable Connectivity Program may receive a monthly benefit up to the maximum support amount of \$30 or up to \$75 for those households on qualifying Tribal lands, as Tribal lands are defined in the *EBB Program Order*.⁴² As stated in the *December 8th Order*, providers may continue to offer their EBB approved plans to households newly enrolling in the Affordable Connectivity Program.⁴³ We reiterate that because the Infrastructure Act removes for the Affordable Connectivity Program the restriction that only plans available as of December 1, 2020 are eligible for the monthly benefit, providers will have the flexibility to voluntarily offer service plans in the Affordable Connectivity Program beyond what providers offered in the EBB Program. This approach is consistent with that envisioned by the Industry Associations,⁴⁴ and we find that allowing providers flexibility in the plans that they make available in the Affordable Connectivity Program during this interim period will serve both providers and households by increasing consumer choice in the program.

14. The Infrastructure Act also states that a provider “shall not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.”⁴⁵ In this interim period between the start of the Affordable Connectivity Program and when the Commission’s rules for that program are adopted and become effective, we interpret this statutory provision to bar providers from considering the results of a credit check before deciding to enroll a household in the Affordable Connectivity Program. We note that the Commission is still considering the record with respect to this provision and may ultimately provide further guidance or clarification when promulgating rules regarding this credit check provision in the Infrastructure Act.⁴⁶ The consumer protection provisions in place for the EBB Program will remain in

³⁸ As noted in the *December 8th Order*, households that qualified based on substantial loss of income or participation in a provider’s approved COVID-19 program will have their eligibility reverified in order to continue receiving an ACP benefit after the end of the 60-day transition period for the Affordable Connectivity Program. *December 8th Order* at 6, para. 16.

³⁹ *ACP Public Notice* at 14, para. 30 *citing* Consolidated Appropriations Act, § 904(a)(6)(A-E) (2021), *amended in part and stricken in part by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(I)-(VI).

⁴⁰ *ACP Public Notice* at 4, para. 30; Consolidated Appropriations Act, § 904(a)(6)(A), *amended by* Infrastructure Act, div. F., tit. V, sec. 60502(b)(1)(A)(i)(I).

⁴¹ *ACP Public Notice* at 25, para. 59 *citing* Infrastructure Act, div. F, tit. V., sec. 60502(b)(1)(A)(i), § 904(a)(7) (2021). The Infrastructure Act also retains the definition of connected device and the reimbursement rate for such devices for the Affordable Connectivity Program that was used in the EBB Program. *ACP Public Notice* at 25-26, para. 60 *citing* Infrastructure Act, div. F., tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

⁴² *EBB Program Order*, 36 FCC Rcd at 4654, para. 83; 47 CFR § 54.1600(t).

⁴³ *December 8th Order* at 8, para. 22 (“Beginning on December 31, 2021, existing EBB Program participating providers can offer their EBB Program service plans and any of their other internet service offerings on a voluntary basis to households enrolling in the Affordable Connectivity Program regardless of whether the service plan was offered prior to December 1, 2020.”).

⁴⁴ See Industry Associations *Ex Parte* at 3-4.

⁴⁵ Infrastructure Act, div. F., tit. V, sec. 60502(b)(1)(A)(iv), § 904(b)(7)(A)(ii) (2021).

⁴⁶ *ACP Public Notice* at 34, paras. 81-82.

effect for the Affordable Connectivity Program. Specifically, providers must not deny an eligible household the ability to enroll in the Affordable Connectivity Program based on any past or present arrearages, must not require the household to pay an early termination fee if the household enters into a contract for an ACP service and later terminates that contract, and must not subject the household to a mandatory waiting period based on the household having previously received service from that provider.⁴⁷

15. By this Order, the Bureau aims to give participating providers a roadmap for how the Affordable Connectivity Program will operate during this interim period prior to the effective date of the Commission's rules. As with the EBB Program, we find that guarding against waste, fraud, and abuse is essential to protect the integrity of the Affordable Connectivity Program. Accordingly, we intend to monitor operations closely during this period, and believe that it would be reasonable for providers to comply with the statutory mandate against such abuse by continuing to comply with the EBB Program rules, unless otherwise stated in this Order. Providers offering service to legacy EBB households, enrolling new ACP subscribers, and submitting claims for reimbursement remain subject to the Commission's audit and enforcement authority.⁴⁸ As with the EBB Program, we reserve all rights and remedies with respect to providers failing to comply with this statutory mandate. Nothing in this Order alters the duty of a provider offering EBB- or ACP-supported service to disclose any non-compliant conduct and return improperly received funds from the EBB and the Affordable Connectivity Programs to the Commission.⁴⁹

IV. ORDERING CLAUSES

16. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, as amended by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-5, 135 Stat. 429 (2021), and sections 0.91, 0.291, 1.2, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.2, and 1.3, that section 47 CFR § 54.1608(a) of the Commission's rules is WAIVED to the extent provided herein.

17. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

⁴⁷ See *EBB Program Order*, 36 FCC Rcd at 4628-29, para. 37; see also *Industry Associations Ex Parte* at 3.

⁴⁸ See *EBB Program Order*, 36 FCC Rcd at 4677-79, paras. 139-41.

⁴⁹ *Id.* at 4661, n.322.