

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

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

ORDER

Adopted: December 8, 2021

Released: December 8, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives certain provisions of sections 54.1600(n), (s) and 54.1601(c)(2) of the Commission’s rules governing the internet service offering, standard rate, provider participation, and election notice requirements for the end of the Emergency Broadband Benefit Program (EBB Program) as a result of the text in the Infrastructure Investment and Jobs Act (Infrastructure Act).1 The Bureau also provides additional guidance to help consumers, participating service providers, program partners and other stakeholders prepare for the transition from the EBB Program to the Affordable Connectivity Program (sometimes referred to as “ACP”). This guidance covers: (1) the transition of EBB providers to the Affordable Connectivity Program; (2) the timing of the enrollment freeze for the EBB Program and the start of enrollments for the Affordable Connectivity Program; (3) the continued access to the paper and online EBB Program applications; (4) the treatment of pending applications for the EBB Program on and after December 31, 2021; (5) the households that qualify for the 60-day transition period; (6) the reverification process for certain households enrolled in the EBB Program; and (7) the service provider consumer notification responsibilities about the upcoming program changes.

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.2 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 receive a reimbursement for providing such discounts.3 The EBB Program was designed to be a

1 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).

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

3 Id. § 904(b)(1), (4) & (5).

temporary, emergency program that would conclude when the fund is expended or six months after the end of the public health emergency.⁴

3. On February 25, 2021, the Commission adopted rules and policies creating and governing the EBB Program pursuant to the Consolidated Appropriations Act.⁵ These rules incorporated statutory provisions to require internet service offerings and the accompanying standard rates to be offered in the same manner and same terms as broadband internet service offerings as of December 1, 2020.⁶ Further, the Commission limited providers eligible to participate in the EBB Program to those that offered broadband services to end-users as of December 1, 2020.⁷ In keeping with this restriction on provider eligibility, the Commission required providers to make showings in the Bureau EBB Program provider application process and the Universal Service Administrative Company (USAC) election notice process that the provider offered broadband service and its standard rates were based on offerings available as of December 1, 2020.⁸

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.⁹ 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.¹⁰ The Infrastructure Act makes several changes to the eligible internet service offerings by removing the December 1, 2020 restriction and removes references to “standard rates.”¹¹ Additionally, the Infrastructure Act requires participating providers to offer the Affordable Connectivity Program discount on any internet service offering.¹² The Infrastructure Act also 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 effective date, which the statute defines as 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 *Affordable Connectivity Program 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

⁴ *Id.*

⁵ See generally *Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

⁶ 47 CFR § 54.1600(n), (s).

⁷ *EBB Program Order*, 36 FCC Rcd at 4618, para. 13 (citing Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9)).

⁸ *Id.*

⁹ Infrastructure Act, Pub. L. No. 117-58 (2021).

¹⁰ 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) (*Affordable Connectivity Program Public Notice*).

¹¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8).

¹² Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i).

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

¹⁴ *Affordable Connectivity Program Public Notice* at 2, para. 3.

5. On November 26, 2021, the Bureau issued an Order waiving the end of EBB Program enrollment freeze and notice requirements in sections 54.1610(b), (c), and (d) of the Commission's rules governing the EBB Program on the grounds that these requirements were no longer necessary and would likely result in consumer confusion given the establishment of the Affordable Connectivity Program which will start on December 31, 2021.¹⁵ That Order also provided preliminary guidance concerning the end of enrollments for the EBB Program, the 60-day transition period, and the start of the Affordable Connectivity Program, and indicated that the Bureau would provide additional guidance concerning the transition between the programs.¹⁶

III. DISCUSSION

A. Interim Waivers of December 1, 2020 Internet Service Offering Restrictions

6. *Interim Waivers of Sections 54.1600(n) and (s)*. On our own motion, the Bureau finds good cause exists to waive the sections of the rules enacting the Consolidated Appropriations Act's December 1, 2020 restrictions. As a general matter, "an agency must adhere to its own rules and regulations."¹⁷ Although strict application of a rule may be justified "to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,"¹⁸ 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. Beginning with the start of household enrollments in the Affordable Connectivity Program on December 31, 2021, we find that it is in the public interest to waive the requirements in sections 54.1600(n) and (s) that internet service offerings and the accompanying standard rates be offered on the same manner and terms as offerings available on December 1, 2020.²² This December 1, 2020 restriction was adopted to comply with the statutory language of the Consolidated Appropriations Act enacting the EBB Program. However, the Infrastructure Act removes the December 1, 2020 restriction and now requires participating providers to offer the ACP discount on any internet service offering.²³ In keeping with this statutory change, as we act to enable Affordable Connectivity Program household enrollments beginning on December 31, 2021, we find it in the public interest to waive the EBB Program December 1, 2020 limitations on eligible internet service offerings and standard rates to enable providers to offer discounts on any of their internet service offerings to participating households. This interim waiver extends until the Commission enacts final rules governing the Affordable Connectivity Program.

¹⁵ See generally *Emergency Broadband Benefit Program*, WC Docket Nos. 20-445, 21-250, Order, DA 21-1477 (WCB Nov. 26, 2021) (*EBB Program Guidance Order*).

¹⁶ *EBB Program Guidance Order* at 4-6, paras. 8-13.

¹⁷ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

¹⁸ *Mary v. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

¹⁹ 47 CFR § 1.3.

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

²¹ *Id.*; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²² 47 CFR § 54.1600(n), (s).

²³ Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8).

8. *Interim Waiver of Section 54.1601(c)(2)*. In keeping with the Infrastructure Act’s direction to remove the December 1, 2020 restrictions, we find that it is also in the public interest to waive the requirement in the Commission’s rules that participating providers submit to USAC a “statement that, in each state or territory, the provider was a ‘broadband provider’ as of December 1, 2020.”²⁴ This December 1, 2020 restriction was adopted consistent with the statutory language of the Consolidated Appropriations Act enacting the EBB Program. However, the Infrastructure Act removes the December 1, 2020 restrictions and therefore the December 1, 2020 limitation on provider participation eligibility is no longer in keeping with the statutory direction for the Affordable Connectivity Program. Beginning with the acceptance of new provider USAC election notices on December 27, 2021 and lasting until the Commission enacts final rules concerning the Affordable Connectivity Program, new participating providers will need to submit evidence that they were offering broadband service in each jurisdiction but will not need to show they were offering broadband as of December 1, 2020.

B. Additional Guidance Regarding the Transition from the EBB Program to the Affordable Connectivity Program

9. *EBB Program Enrollments and Start of Affordable Connectivity Program Enrollments*. As explained in the *EBB Program Guidance Order*, for administrative purposes and to ensure compliance with the Infrastructure Act, it will be necessary to freeze EBB Program enrollments before December 31, 2021.²⁵ Starting at 6:00 p.m. (EST) on December 30, 2021, the National Lifeline Accountability Database (NLAD) will be closed for purposes of subscriber transfers and the addition of new subscribers, and service providers will no longer be able to enroll qualified consumers in the EBB Program.²⁶ The NLAD will reopen for subscriber transfers and the addition of new subscribers to the Affordable Connectivity Program on December 31, 2021. For purposes of enrolling subscribers into the EBB Program, service providers should plan to enroll qualified consumers in the NLAD prior to the start of the EBB Program enrollment freeze. Subscribers newly enrolled after the NLAD reopens on December 31, 2021 will be eligible for the applicable Affordable Connectivity Program monthly benefit amount but will not qualify for the EBB Program subsidy amount during the 60-day transition period.

10. The temporary gap between the EBB Program and the start of Affordable Connectivity Program enrollments is *de minimis*, and the timing of the EBB Program enrollment freeze reflects the Bureau’s careful consideration of administrative concerns and the system changes necessary to transition to the Affordable Connectivity Program, as well as the interest in maximizing the time in which qualified consumers can enroll in the EBB Program before the start of the Affordable Connectivity Program. As directed in the *EBB Program Guidance Order*, USAC will make the system changes necessary to implement the freeze in EBB Program enrollments and will provide further guidance to service providers as necessary concerning the enrollment freeze.²⁷ We direct USAC to give participating service providers advance notice about the upcoming NLAD system changes and related National Eligibility Lifeline Verifier (National Verifier) changes necessary for the December 31, 2021 start of the Affordable Connectivity Program, so that service providers can plan for corresponding changes to their systems.

11. *Access to the Online and Paper EBB Program Applications*. The *EBB Program Guidance Order* explained that USAC may need to remove access to the online and paper applications for the EBB Program before the end of the EBB Program to minimize the potential for consumer confusion and support the transition to the Affordable Connectivity Program.²⁸ To maximize the ability to process

²⁴ 47 CFR § 54.1601(c)(2).

²⁵ *EBB Program Guidance Order* at 5, para. 10.

²⁶ During this period, service providers can continue to de-enroll subscribers, and will also be able to view records in the NLAD.

²⁷ *EBB Program Guidance Order* at 5, para. 10.

²⁸ *Id.*

EBB Program applications received in December 2021 before EBB Program enrollments cease, the online EBB Program application²⁹ will close on December 30, 2021, at 6:00 p.m. EST. The EBB Program paper application will also be removed on December 30, 2021, at 6:00 p.m. EST because enrollments in the EBB Program will have ceased at that time.³⁰ USAC will make available a preliminary online and paper application for the Affordable Connectivity Program by December 31, 2021.

12. Allowing access to the online application until December 30, 2021, at 6:00 p.m. EST will permit additional households to apply for and enroll in the EBB Program and should minimize the potential for overloading the application review systems at the end of the month. Nonetheless, we strongly encourage consumers seeking to enroll in the EBB Program to submit their online or paper application well before December 30, 2021, at 6:00 p.m. EST. We direct USAC to make the necessary changes to implement these actions, and provide notice about the closing of the online EBB Program application and removal of the paper application on the relevant program websites, in the National Verifier application portal, and in other relevant communications to service providers, consumers, program partners and other stakeholders. Participating service providers, program partners and other stakeholders should also communicate this deadline when providing information to prospective subscribers about applying for and enrolling in the EBB Program.

13. *Treatment of Pending EBB Program Applications on and after December 31, 2021.* As noted above, we strongly encourage consumers to submit their application for the EBB Program and enroll with a service provider well in advance of the freeze in EBB Program enrollments. We further encourage providers to expeditiously enroll eligible consumers in the NLAD after receiving the consumer's consent to do so to ensure enrollment in the EBB Program prior to the enrollment freeze.³¹ However, we anticipate that there may be some EBB Program applications pending in the system even after EBB Program enrollments cease.³² If a household has a pending EBB Program application after EBB Program enrollments cease, regardless of whether the application was submitted in the application portal or via a mailed paper application, that household can continue to rely on that application for purposes of an eligibility determination and enrollment in the Affordable Connectivity Program, provided that the household is applying based on income level or participation in a qualifying program for the Affordable Connectivity Program. Households with a pending EBB Program application on December 31, 2021 that sought to qualify solely based on substantial loss of income since February 29, 2020 or participation in a service provider's COVID-19 program will need to submit a new application for the Affordable Connectivity Program because these eligibility criteria no longer qualify a household for the Affordable Connectivity Program benefit.³³

14. *Households Eligible for the 60-day Transition Period.* The Infrastructure Act provides for a 60-day transition period for households that were enrolled in the EBB Program before December 31, 2021.³⁴ The transition period allows all such households to continue to receive the \$50 per month EBB

²⁹ The online EBB Program application is available at https://www.checklifeline.org/lifeline/?id=nv_flow&ebbp=true. During the period that the online application is unavailable, service providers will not be able to use the API connection to the National Verifier.

³⁰ The paper EBB Program application is available at: https://getemergencybroadband.org/res/documents/EBB_Application_Form_FINAL.pdf; https://getemergencybroadband.org/res/documents/EBB_Application_Form_FINAL_SPANISH.pdf.

³¹ See 47 CFR § 54.1606(d)(6).

³² For purposes of this Public Notice, "pending application" is defined as an EBB Program application that after the freeze in EBB Program enrollments is either: (1) under review or (2) qualified as eligible for the EBB Program but the household did not enroll with a service provider before the freeze in EBB Program enrollments.

³³ See *EBB Program Guidance Order* at 6, para. 13 & n.33 (discussing the Infrastructure Act's removal of these programs for purposes of qualifying for the Affordable Connectivity Program).

³⁴ *EBB Program Guidance Order* at 4, para. 9. See also Infrastructure Act, div. F, tit. V, § 60502(b)(2) (2021).

Program subsidy, rather than the \$30 per month ACP subsidy, for the first 60 days of the Affordable Connectivity Program.³⁵ In order to continue to receive a monthly discount off an internet service bill of the EBB Program subsidy amount during the transition period, the household must be enrolled in the EBB Program (which means both qualified for the EBB Program *and* enrolled with a service provider in NLAD) prior to 6:00 p.m. EST on December 30, 2021, and must not otherwise be subject to de-enrollment.³⁶

15. The 60-day transition period will begin December 31, 2021 and continue through March 1, 2022. During the transition period, legacy EBB Program households who are not otherwise subject to de-enrollment can transfer their benefit to another participating service provider and continue to receive their EBB Program subsidy amount through the end of the transition period. Service providers will be eligible for reimbursement at the EBB Program levels for broadband service discounts that they pass on to legacy EBB Program households during the 60-day transition period, subject to the usage and de-enrollment rules.³⁷ Broadband service discounts issued to participating households after the end of the transition period will only be eligible for reimbursement up to the applicable ACP benefit level. We direct USAC to provide additional guidance to service providers concerning the administration of the transition period and submitting claims for legacy EBB Program subscribers.

16. *Reverification.* As explained in the *EBB Program Guidance Order*, legacy EBB Program households that qualified based on substantial loss of income since February 29, 2020 or a service provider's COVID-19 program will need to reverify their eligibility in order to continue receiving an ACP benefit after the end of the 60-day transition period.³⁸ The impacted EBB Program households must reverify their eligibility by March 1, 2021.³⁹ This reverification effort will only impact a small percentage of households that are currently enrolled in the EBB Program. The majority of legacy EBB Program households will not need to reverify their eligibility to continue to receive the Affordable Connectivity Program benefit after the end of the transition period.

17. USAC will conduct the reverifications and necessary de-enrollments for impacted households that were deemed qualified for the EBB Program through the National Verifier. USAC will also conduct the reverification and necessary de-enrollments for impacted households that were deemed qualified for the EBB Program through a service provider approved alternative verification process, if the service provider informed USAC that it will not continue using its approved alternative verification process for the Affordable Connectivity Program.⁴⁰ USAC's reverification process will include the following steps: (1) issue reverification notices to impacted subscribers; (2) notify service providers of

³⁵ For the Affordable Connectivity Program, eligible households that reside on qualifying Tribal lands continue to receive an up to \$75 monthly benefit. Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(A) (2021).

³⁶ Sections 54.1609(a)-(c) of the Commission's EBB program rules outline the circumstances in which service providers are required to de-enroll consumers from the EBB Program.

³⁷ See 47 CFR § 54.1609 (outlining the circumstances under which consumers must be de-enrolled from the EBB Program); § 54.1608(c) (providing that where the service provider does not assess and collect a monthly fee from its subscribers, it can only claim support for service that the subscriber has actually used at least once during the service month being claimed).

³⁸ *EBB Program Guidance Order* at 6, para. 13 (citing to Consolidated Appropriations Act, div. B, tit. IX, § 904(a)(6)(c), *struck by* Infrastructure Act, div. F., tit. V, sec 60502(b)(1)(A)(i)(ii); Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(III), (V), § 904(a)(6)(D) (2021)).

³⁹ De-enrollments as a result of this reverification must occur consistent with the Commission's rules after the March 1, 2022 snapshot is taken.

⁴⁰ For example, USAC would perform the necessary reverifications where a service provider indicates that its approved alternative verification process was only for a COVID-19 program, which is no longer an eligible program for the Affordable Connectivity Program.

their respective subscribers who are subject to reverification; (3) review subscriber eligibility documentation; (4) inform service providers which subscribers will be de-enrolled; and (5) de-enroll subscribers who do not respond to the reverification notice or no longer qualify for the Affordable Connectivity Program.

18. To allow sufficient time for subscriber responses, documentation review and service provider notification of de-enrollments by March 1, 2022, we anticipate that USAC will send reverification notices to impacted households around mid-January 2022. Impacted households will be given at least 30 days to respond to USAC's reverification notice, and will maintain their EBB Program subsidy level during the transition period, subject to the de-enrollment rules.⁴¹ We direct USAC to provide service providers any additional guidance about the reverification process, and to also provide service providers as much advance notice as possible of the pending subscriber de-enrollments after USAC has processed the reverification results. Subject to the de-enrollment and non-usage rules, service providers can continue to provide and seek reimbursement for broadband service benefits provided to the impacted legacy EBB Program households during the transition period.

19. Except as noted above, service providers must conduct the reverification process for their respective legacy EBB Program subscribers who qualified through the service provider's approved alternative verification process, subject to the eligibility criteria for the Affordable Connectivity Program. Service provider reverifications must be conducted in accordance with the eligibility review process outlined in the provider's approved alternative verification process. Service providers must give consumers at least 30 days to provide documentation to reverify their eligibility. We encourage service providers to start the reverification process as soon as possible to allow sufficient time to outreach consumers and review subscriber documentation. We direct USAC to provide service providers any additional guidance that may be necessary for them to conduct these reverifications. After the end of the transition period on March 1, 2022, the service providers must de-enroll those subscribers who did not respond to the reverification notice or qualify for the Affordable Connectivity Program. As with USAC-conducted reverifications, impacted households will continue to receive their current benefit level during the transition period, subject to the de-enrollment rules. Service providers are expected to comply with the applicable document retention requirements for any reverifications.⁴²

20. *Service Provider Notices to EBB Program Households.* We direct USAC to notify all households enrolled in the EBB Program about the upcoming program changes and also update the relevant websites to include information about these changes. In addition, as explained in the *EBB Program Guidance Order*, service providers play an important role in disseminating information to their legacy EBB Program subscribers and should be prepared to answer any questions about the upcoming program changes.⁴³ We also direct service providers with EBB Program households to communicate with those households about the upcoming changes. We expect that at a minimum service providers will communicate the following information to their EBB Program subscribers who will transition to the Affordable Connectivity Program: (1) the change in the program name to the Affordable Connectivity Program; (2) the effective date of December 31, 2021 for the new program; (3) the continued availability of their current subsidy amount during the 60-day transition period; (4) the beginning and end dates of the 60-day transition period; (5) the subsidy amounts available under the Affordable Connectivity Program

⁴¹ Providing at least 30 days for consumers to respond to the reverification notice is consistent with the consumer response period under section 54.1609 of the Commission's EBB Program rules. *See* 47 CFR § 54.1609(a) (requiring participating service providers to give EBB Program households 30 days to respond to an impending termination letter to demonstrate continued eligibility).

⁴² Section 54.1611 of the Commission's EBB Program outlines the document retention requirements for the EBB Program. Service providers must also comply with any document retention requirements that the Commission adopts for the Affordable Connectivity Program.

⁴³ *EBB Program Guidance Order* at 6, para. 12.

after the 60-day transition period; (6) that the subscriber may switch service offerings at any time; and (7) that the subscriber will receive additional information if they are required to take any steps to retain any benefit after March 1, 2022. We do not prescribe specific language for service providers to communicate these changes to their EBB Program subscribers and we encourage providers to communicate any other information to these subscribers to ease the transition between the EBB Program and the Affordable Connectivity Program. Service provider communications about these changes should be clear and easily understood. Service providers must communicate these changes via any written communications used in their ordinary business practices, such as a bill message, and may use any other means of communication that will effectively inform the households about the changes. We also recognize that service providers will need time to communicate these changes to their EBB Program subscribers in an organized fashion so we decline to require any specific deadlines by which providers must inform the households. However, the statute requires the new program to start on December 31, 2021 so we expect providers to notify their EBB Program subscribers about these important changes as soon as practicable.

C. Guidance Regarding Provider Participation Requirements for the Affordable Connectivity Program.

21. To promote the orderly transition from the EBB Program to the Affordable Connectivity Program, we next provide guidance to help service providers to plan and prepare for the transition period and the start of the Affordable Connectivity Program in advance of the issuance of the Commission's final rules.⁴⁴

22. *Existing EBB Program Participating Providers.* Consistent with the Commission's *EBB Program Order*, participation in the Affordable Connectivity Program remains voluntary.⁴⁵ In providing this guidance, we seek to enable a quick and orderly transition period by reducing administrative burdens for participating providers, the Commission, and USAC. EBB Program participating providers will automatically transition to the Affordable Connectivity Program on December 31, 2021.⁴⁶ Such providers will not be required to submit documentation or otherwise update information with USAC prior to providing Affordable Connectivity Program services. During this interim period prior to the enactment of final rules, existing EBB Program providers transitioning to the Affordable Connectivity Program will not need to file supplemental or additional service plan information with USAC prior to offering Affordable Connectivity Program discounts in their approved EBB Program jurisdictions. 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. Moreover, existing EBB Program participating providers with approved alternative verification processes will continue to be able to use their alternative verification process for household enrollments in the Affordable Connectivity Program consistent with their EBB Program approvals. For existing participating providers seeking to expand into new jurisdictions (states or territories), these providers must file the necessary Bureau approval applications and USAC election notices. Participating providers

⁴⁴ The Commission must promulgate rules for the implementation of the Affordable Connectivity Program within 60 days of enactment of the Infrastructure Act. Accordingly, we anticipate the Commission's rules will be adopted in mid-January. *Affordable Connectivity Program Public Notice* at 2, paras. 2-3; Consolidated Appropriations Act, div. N, tit. IX, § 904(c). Notwithstanding any guidance we provide in this Order, participating service providers are ultimately responsible for reviewing and complying with the requirements of the Consolidated Appropriations Act and Infrastructure Act.

⁴⁵ *EBB Program Order*, 36 FCC Rcd at 4616, para. 10.

⁴⁶ A list of EBB Program participating providers that have completed the USAC election notice process is available at: <https://www.fcc.gov/emergency-broadband-benefit-providers>.

must continue to retain documentation consistent with Commission rules⁴⁷ and must continue to make the ACP discount available on at least one service offering.⁴⁸

23. Beginning with the launch of household enrollments for the Affordable Connectivity Program, existing EBB Program providers will be able to offer ACP discounts on any of their internet service offerings.⁴⁹ Allowing participating providers to make the discount available on any of their internet service offerings will promote an efficient transition to the Affordable Connectivity Program by reducing administrative filing burdens for participating providers.⁵⁰ Additionally, this guidance is consistent with the statutory language of the Infrastructure Act that requires providers to offer the ACP discount on “any internet service offering,” removes the December 1, 2020 restrictions on the Consolidated Appropriations Act’s definition of “internet service offering,” and removes the references to “standard rates.”⁵¹

24. *Administrative Pause of Participating Provider Filings.* To enable the orderly transition of the EBB Program to the Affordable Connectivity Program, the Bureau and USAC will stop accepting EBB Program provider participation applications and election notices on December 20, 2021. Both the Bureau and USAC will begin accepting new Affordable Connectivity Program provider applications and election notices on December 27, 2021 for any new provider that did not participate in the EBB Program or existing participating provider seeking to expand to new jurisdictions. This pause in accepting provider applications and election notices will help USAC administer the transition between the programs by enabling clear distinctions between providers that participated in the EBB Program and thus are subject to the EBB Program requirements during the transition and new providers that will be participating only in the new Affordable Connectivity Program. Additionally, this pause will allow the necessary time for USAC to provide assistance to EBB Program providers transitioning to the Affordable Connectivity Program, and to educate providers about the updated ACP processes and any revisions to the provider application and election forms for the Affordable Connectivity Program.

25. *Bureau Provider Approval for New Affordable Connectivity Program Providers.* During this interim period beginning on December 27, 2021 and ending with the effective date of final rules for the Affordable Connectivity Program, the Bureau will use its existing EBB Program provider application process and requirements to approve new ACP participating providers. Accordingly, non-ETC broadband providers that do not already participate in the EBB Program or are seeking to expand previously approved jurisdictions for participation in the Affordable Connectivity Program must file an approval application with the Bureau consistent with the EBB Program requirements prior to filing a USAC election notice.⁵² Consistent with the EBB Program, ETC broadband providers do not need to seek Bureau approval to participate in the Affordable Connectivity Program and only need to submit a USAC election notice.⁵³ Providers filing these approval applications do not need to establish they provided or

⁴⁷ 47 CFR § 54.1611.

⁴⁸ *EBB Program Order*, 36 FCC Rcd at 4628-29, para. 37.

⁴⁹ Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i).

⁵⁰ Consistent with the *Affordable Connectivity Program Public Notice*, Affordable Connectivity Program participating providers remain on notice that this interim guidance is subject to change. See *Affordable Connectivity Program Public Notice* at 7-9, paras. 14-19 (seeking comment on changes to the USAC election notice process for the Affordable Connectivity Program).

⁵¹ Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8).

⁵² *EBB Program Order*, 36 FCC Rcd at 4624-28, paras. 25-35.

⁵³ *Id.* at 4619, para. 15.

offered broadband services prior to December 1, 2020,⁵⁴ but will need to establish they provide or offer broadband services to end-users. The additional automatic and expedited approval requirements and the approval process will remain in effect during this interim period prior to the enactment of final rules governing the Affordable Connectivity Program.⁵⁵

26. *USAC Election Notice for New Affordable Connectivity Program Providers.* During this interim period beginning on December 27, 2021 and ending with the enactment of final rules, USAC will accept election notices for new providers that did not participate in the EBB Program or existing EBB Program providers seeking to expand approvals to new jurisdictions to enable access to the necessary administrative systems for the Affordable Connectivity Program. These election notices should comply with the election notice requirements for the EBB Program.⁵⁶ The EBB Program provider election notice includes: (1) the states in which the provider plans to participate in the EBB Program; (2) a statement that, in each such state, the provider was a “broadband provider;” (3) a list of states where the provider is an existing ETC, if any; (4) a list of states where the provider received FCC approval, whether automatic or expedited, to participate, if any; (5) whether the provider intends to distribute connected devices under the EBB Program; (6) a description of the internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state; (7) documentation demonstrating the standard rates for those services; and (8) any other administrative information necessary for USAC to establish participating providers in the EBB Program.⁵⁷ The EBB Program provider election notice also required a provider to represent it was a broadband provider as of December 1, 2020 in the relevant jurisdiction. Consistent with the waiver of section 54.1601(c)(2) described above, new participating providers will need to submit a statement during the USAC election notice process that, in each state or territory, the provider is a broadband provider.

27. Consistent with the EBB Program provider election notice process, new providers seeking to participate in the Affordable Connectivity Program must obtain and be able to provide the necessary administrative registrations to utilize the Commission and USAC processes. This requires new providers to have and obtain registrations for the Commission Registration System (CORES), FCC Registration Number (FRN), Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), System for Award Management (SAM), Employer Identification Number (EIN), Tax Identification Number (TIN) and/or Dun & Bradstreet DUNS number for all entities the provider anticipates seeking reimbursement. For new providers to the Affordable Connectivity Program, the FRN, EIN/TIN, and DUNS should all be associated with the same entity filing the election notice.

⁵⁴ See, e.g., *id.* at 4627, para. 34(b) (requiring “expedited” approval applications to demonstrate the provider offered broadband services as of December 1, 2020).

⁵⁵ See Federal Communications Commission, *Emergency Broadband Benefit Program*, <https://www.fcc.gov/emergency-broadband-benefit-program> (Nov. 22, 2021) (click on “Provider FCC Approvals” section for information detailing the application requirements and providing access to the online application portal).

⁵⁶ See *EBB Program Order*, 36 FCC Rcd at 4618-20, paras. 14-19; see also USAC, *Getting Started*, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/get-started/> (click on “Submit an Election Notice” detailing the election notice requirements for the EBB Program) (last visited Dec. 8, 2021).

⁵⁷ *EBB Program Order*, 36 FCC Rcd at 4618-20, paras. 14-19.

IV. ORDERING CLAUSES

28. 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, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 54.1600(n) and (s) and 54.1601(c)(2) of the Commission's rules are WAIVED to the extent provided herein.

29. 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