

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

In the Matter of)
)
Emergency Broadband Benefit Program) WC Docket No. 20-445

ORDER

Adopted: April 20, 2021

Released: April 20, 2021

By the Deputy Bureau Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau addresses the petition of Verizon (Verizon or Petitioner) seeking an expedited grant of a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules (Petition).¹ The Petitioner requests a waiver of the requirement that providers file reimbursement claims by the 15th of each month after each uniform snapshot date, for the first reimbursement claim for each subscriber that has newly enrolled in the Emergency Broadband Benefit (EBB) Program with Verizon.² It also requests a month delay to submit the first reimbursement claim for a newly-enrolled subscriber.³

2. Based on the Commission’s established waiver standard, we grant the Petition. We conclude that the Petitioner’s requested limited waiver will not materially impact or undermine USAC’s ability to track disbursements and to provide a projection for the depletion of the EBB Fund, and will serve the public interest.

II. BACKGROUND

3. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law⁴ 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.⁵ The Act directed the Federal Communications Commission (Commission) to use that fund to establish an 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.⁶ The

¹ Petition of Verizon for a Limited Waiver of the Emergency Broadband Benefit Program Reimbursement Rules, WC Docket No. 20-445 (filed Apr. 8, 2021), <https://ecfsapi.fcc.gov/file/10408037826873/2021%2004%2008%20Verizon%20EBB%20Waiver.pdf> (Verizon EBB Waiver Petition).

² *Id.* at 1, 3.

³ *Id.* (requesting “an additional month, until the 15th day of the next month after the snapshot on which a subscriber first appears, to submit the first claim for the subscriber”).

⁴ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), *available at* <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

⁵ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135.

⁶ *Id.* § 904(b)(1).

EBB Program will conclude when the fund is expended or six months after the end of the public health emergency.⁷ On January 4, 2021, the Wireline Competition Bureau (Bureau) sought comment on how the Commission should implement the EBB Program.⁸

4. On February 25, 2021, the Commission adopted rules and policies creating and governing the EBB Program pursuant to the Consolidated Appropriations Act in the *EBB Program Order*.⁹ The EBB Program uses available funding from the Emergency Broadband Connectivity Fund to provide funding for broadband service and connected devices for low-income households during the COVID-19 pandemic.¹⁰ To participate in the Program, a broadband provider must elect to do so and either be designated as an eligible telecommunications carrier (ETC) or be approved by the Commission.¹¹ Participating providers will make available to eligible households a monthly discount off the standard rate for an Internet service offering and associated equipment, up to \$50.00 per month.¹² On Tribal lands, the monthly discount may be up to \$75.00 per month.¹³ Participating providers will receive reimbursement from the EBB Program for the discounts granted.¹⁴ Participating providers that also supply an eligible household with a connected device, defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet, for use during the emergency period may receive a single reimbursement of up to \$100.00 for the connected device, if the charge to the eligible household for that device is more than \$10.00 but less than \$50.00.¹⁵ A participating provider may receive reimbursement for only one supported device per eligible household¹⁶ and must submit certain certifications to the Commission to receive reimbursement.¹⁷

5. Reimbursement claims for the EBB Program will be based on the number of Program subscribers enrolled with each provider in the National Lifeline Accountability Database as of the first day of each month.¹⁸ In order 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.¹⁹ If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.²⁰ This method helps provide USAC with actual reimbursement claims information from

⁷ *Id.* 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.” *Id.* § 904(a)(8).

⁸ See *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6, at 2 (WCB 2021).

⁹ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21- 29, 50, para. 98 (2021) (*EBB Program Order*).

¹⁰ 47 CFR § 54.1602.

¹¹ *Id.* § 54.1601.

¹² *Id.* § 54.1603(a).

¹³ *Id.*

¹⁴ *Id.* § 54.1608.

¹⁵ *Id.* §§ 54.1603(b), 54.1608(d).

¹⁶ *Id.* §§ 54.1608(a), 54.1605(b).

¹⁷ *Id.* § 54.1608(e).

¹⁸ *Id.* § 54.1608(a).

¹⁹ *Id.* § 54.1608(g).

²⁰ *Id.*

providers as soon as possible after each service month, which it can use to report the disbursement information to the public and to create a forecast for the projected final month of the program.²¹

III. DISCUSSION

6. We grant the limited waiver request and allow Verizon an additional month to submit the first reimbursement claim for a newly-enrolled subscriber. As a general matter, “an agency must adhere to its own rules and regulations.”²² 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,”²³ the Commission’s rules may be waived for “good cause shown.”²⁴ 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.²⁵ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.²⁶ The Bureau, under delegated authority, may act on requests for waiver of rules.²⁷

7. In its Petition, Verizon requests a waiver of the 15-day deadline for the first reimbursement claim for a newly-enrolled EBB subscriber.²⁸ It also requests a month delay to submit the first reimbursement claim for a newly-enrolled subscriber.²⁹ Verizon contends that because it “has elected to offer the EBB discount on multiple services, it will have to separately determine the EBB reimbursement amount for each subscriber on its snapshot list.”³⁰ As a result, it states that “reimbursement amounts will not only vary from service to service, but may also vary among subscribers to the same service.”³¹ For example, its 200/200 Mbps Fios service, one of the services on which it plans to offer the EBB discount, could result in possible per-subscriber EBB reimbursement amounts of “\$49.99 per month, \$40.74 per month (if the subscriber is also receiving a Lifeline discount), \$39.99 per month (if the customer is receiving an autopay discount), and \$50 per month (if the subscriber is also renting a router from Verizon).”³² Additionally, Verizon explains that its existing system can only “determine the reimbursement amount for a newly-enrolled subscriber in an automated manner” after it has “issued a bill with the EBB discount to the subscriber, which may not occur in time for Verizon to prepare and certify the claim by the 15-day deadline.”³³

8. Based on the circumstances described by Verizon, we are convinced that the 15-day deadline for the first reimbursement claim for a newly-enrolled EBB subscriber poses a substantial hardship to Verizon in its EBB Program participation and amounts to a special circumstance that warrants a deviation from the general rule. We find that granting this limited waiver will not materially undermine USAC’s ability to track disbursements and forecast for the projected final month of the program as the

²¹ *EBB Program Order* at 50, para. 98, 100.

²² *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

²³ *Mary v. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

²⁴ 47 CFR § 1.3.

²⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁷ 47 CFR § 0.291(b).

²⁸ Verizon EBB Waiver Petition at 1, 3.

²⁹ *Id.*

³⁰ *Id.* at 3.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 4.

waiver Verizon is seeking is limited to a one-month delay of only a subscriber's first reimbursement snapshot.³⁴ Indeed, according to Verizon, a one month deadline extension, would enable it to submit the first claim for a newly-enrolled subscriber, and after that, meet the existing 15-day deadline for the subscriber's subsequent reimbursement claims.³⁵

9. Finally, we determine that granting the Petition will serve the public interest because the objective of the EBB Program is to encourage as many service providers as possible to offer the EBB discount on a variety of services. To this end, we are convinced by Verizon's argument that the added flexibility offered by the waiver will encourage Verizon to offer the EBB discount on a broad range of services and avoid the alternative whereby it would "simplify [its] reimbursement calculations by offering the EBB discount only on one service or only on services for which the standard rates all exceed \$50 per month."³⁶

IV. ORDERING CLAUSE

10. 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 section 47 CFR § 54.1608(g) of the Commission's rules is WAIVED to the limited extent provided herein and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Deputy Bureau Chief
Wireline Competition Bureau

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 5.