

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

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

ORDER

Adopted: May 28, 2021

Released: May 28, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions of LICT Corporation (LICT)1 and the Lumen2 (collectively, the Petitioners) seeking an expedited grant of a limited waiver of the Emergency Broadband Benefit Program (EBB Program) rules (Petitions) as they apply to the discounts they can claim for reimbursement. The Petitioners both seek a waiver that would allow them to claim reimbursement for EBB Program discounts passed through to their subscribers that are not enrolled in the National Lifeline Accountability Database (NLAD) by the snapshot date for EBB service provided in May.3 Both Petitioners are also seeking a one-month extension of the June 15 deadline by which providers must submit their reimbursement claims for discounts provided for service and connected devices offered in the May service month. LICT specifically seeks a waiver of sections 54.1608(a) and (g) of the Commission’s rules, which provide that EBB Program support for qualifying broadband service that is provided directly to the participating provider is “based on the number of actual qualifying low-income households listed in the [NLAD] that the participating provider serves directly at the first of the month”4 and date by which providers shall submit their certified reimbursement claims.5 Section 54.1608(g) further provides that if a provider fails to submit a certified claim by the deadline for that month, the claim will not be processed.6 WTA – Advocates for Rural Broadband (WTA) filed a letter

1 Petition of LICT Corp. for a Limited Waiver, WC Docket No. 20-445 (filed May 26, 2021), https://ecfsapi.fcc.gov/file/10526290557261/LICT%20EBB%20Waiver%20Petition%20May%2026%202021.pdf (LICT EBB Waiver Petition). LICT’s subsidiaries are Cal-Ore Telephone Co.; Central Scott Telephone Co.; CST Communications; Dixon Acquisition; Giant Communications, Inc.; Haviland Telephone Company, Inc.; JBN Telephone Company, Inc.; Alpha Enterprises Ltd., Inc.; Alphacomm.net; Upper Peninsula Telephone Company; WNMC, WNM Communications; CentraCom Interactive (UT, NV); Cal-Ore Communications; Belmont Telephone; and Cuba City Telephone Exchange. Id. at 8.

2 Petition of Lumen for a Limited Waiver, WC Docket No. 20-445 (filed May 26, 2021), https://ecfsapi.fcc.gov/file/10526232411490/2021-05-26%20Lumen%20Petition%20for%20Waiver%20WC%2020-445.pdf (Lumen EBB Waiver Petition).

3 Lumen EBB Waiver Petition at 1-2; LICT EBB Waiver Petition at 1.

4 47 CFR § 54.1608(a).

5 47 CFR § 54.1608(g).

6 Id.

requesting that any relief granted to Lumen and LICT with respect to the June 1 snapshot date and the June 15 reimbursement claims deadline be expanded to all similarly affected EBB providers.⁷

2. Based on the Commission's established waiver standard, we deny the Petitions. We find that the Petitioners have failed to show that good cause exists to allow them to receive reimbursement from the Emergency Broadband Connectivity Fund, when, at the time those discounts were provided, the subscribers were not determined to be eligible for such support. Allowing providers to receive reimbursement from a limited fund for subscribers who were not enrolled in the NLAD prior to receiving the discount from the provider is not in the public interest and unavoidably threatens the integrity of the Emergency Broadband Benefit Program. While we find that the public interest does not support the requested relief and therefore must deny the Petitioners' waivers, we commit to continuing to provide guidance and technical assistance through FCC staff and USAC to assist providers in enrolling eligible subscribers as quickly as possible.

II. BACKGROUND

3. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law⁸ 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.⁹ The Act directed the Federal Communications Commission (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.¹⁰ The EBB Program will conclude when the fund is expended or six months after the end of the public health emergency.¹¹ On January 4, 2021, the Bureau sought comment on how the Commission should implement the EBB Program.¹²

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*.¹³ 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.¹⁴ 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.¹⁵ Participating providers will make available to eligible households a monthly discount off the standard rate

⁷ Letter from Derrick B. Owens, Senior Vice President of Government and Industry Affairs WTA -Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 1-2 (filed May. 27, 2021).

⁸ 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).

⁹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135.

¹⁰ *Id.* § 904(b)(1), (4)&(5).

¹¹ *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).

¹² 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).

¹³ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21- 29, 50, para. 98 (2021) (*EBB Program Order*).

¹⁴ 47 CFR § 54.1602.

¹⁵ *Id.* § 54.1601.

for an Internet service offering and associated equipment, up to \$50.00 per month.¹⁶ On Tribal lands, the monthly discount may be up to \$75.00 per month.¹⁷ Participating providers will receive reimbursement from the EBB Program for the discounts passed through to eligible households.¹⁸ 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 \$50.00.¹⁹ A participating provider may receive reimbursement for only one supported device per eligible household²⁰ and must submit certain certifications to the Commission to receive reimbursement.²¹

5. There are multiple pathways for a household to qualify for the EBB Program. If their preferred provider has an approved alternative verification process, a household may qualify through that process.²² Or a provider may rely on the National Lifeline Eligibility Verifier (National Verifier) to confirm a household's eligibility, or may enroll existing Lifeline subscribers in the Program with the household's consent.²³ In all cases, participating providers must transmit the household's information to the NLAD in order to successfully enroll them in the EBB Program and seek reimbursement for any service and connected device support provided to the household.²⁴ As the Commission stated, "all providers, including those that use an approved alternative verification process or verify eligibility via a school. . . must enroll their subscribers in NLAD prior to claiming reimbursement for those subscribers, to prevent duplicative support between providers."²⁵

6. In addition to checking for duplicative support,²⁵ the NLAD creates a record that forms the basis of the subsequent claim for reimbursement.²⁶ Reimbursement claims for the EBB Program are based on the number of Program subscribers enrolled with each provider in the NLAD as of the first day of each month.²⁷ When adopting the use of NLAD and the Lifeline Claims System for the EBB Program, the Commission explained that these systems would "ensure that EBB Program providers can submit timely reimbursement claims yet are not claiming support for the same household."²⁸ The Commission added that the NLAD "plays a vital role" in the claims process by capturing the households that are enrolled by the provider on the first of each month and ensuring that providers can only claim those subscribers.²⁹

¹⁶ *Id.* § 54.1603(a).

¹⁷ *Id.*

¹⁸ *Id.* §§ 54.1603, 54.1608.

¹⁹ *Id.* §§ 54.1603(b), 54.1608(d).

²⁰ *Id.* §§ 54.1608(a), 54.1605(b).

²¹ *Id.* § 54.1608(e).

²² *EBB Program Order* at 30-3, paras. 62-67.

²³ *EBB Program Order* at 24-5, para. 50.

²⁴ *EBB Program Order* at 23, para. 47.

²⁵ *EBB Program Order* at 4, 47, paras. 8, 91.

²⁶ *EBB Program Order* at 4, para. 8.

²⁷ 47 CFR § 54.1608(a).

²⁸ *EBB Program Order* at 45-6, para. 88.

²⁹ *Id.*

7. For all providers, reimbursement claims are based on the number of eligible subscribers enrolled with the provider in NLAD as of the first of the month.³⁰ In the *EBB Program Order* the Commission explained that when establishing the uniform snapshot date for Lifeline, it had found that the practice would 1) reduce the risk that the Lifeline program would reimburse multiple providers for serving the same customer in a month; 2) assist with the adoption of uniform audit procedures; and 3) aid in the calculation of support based on the number of subscribers listed in NLAD.³¹ 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.³²

III. DISCUSSION

8. We deny the waiver requests, finding that allowing providers to receive reimbursement for service provided to households before they were successfully enrolled in the NLAD undermines the integrity of the EBB Program. We understand that Lumen and LICT are reporting difficulties with enrolling subscribers into NLAD in advance of the June 1 snapshot date,³³ but waiving EBB Program rules in this instance greatly increases the risk of waste, fraud, and abuse by encouraging providers to claim subscribers for service before those subscribers' eligibility had been confirmed by NLAD. To permit such claims would not be in the public interest as it would weaken the integrity of the program and hasten the depletion of the Emergency Broadband Connectivity Fund by allowing claims for ineligible subscribers.

9. As a general matter, "an agency must adhere to its own rules and regulations."³⁴ 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,"³⁵ the Commission's rules may be waived for "good cause shown."³⁶ 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.³⁷ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.³⁸ The Bureau, under delegated authority, may act on requests for waiver of rules.³⁹

10. In their Petitions, LICT and Lumen request a waiver of the EBB Program requirement that providers claim only those households that are enrolled with the provider as of the snapshot date.⁴⁰ Specifically, both are seeking to file by July 15 a reimbursement claim for the households that they are serving by the June 1 snapshot date but do not have enrolled in NLAD as of June 1.⁴¹ LICT specifically seeks a waiver of sections 54.1608(a) and (g) of the Commission's rules, which provide that EBB

³⁰ *EBB Program Order* at 46-7, para. 90.

³¹ *Id.*

³² 47 CFR § 54.1608(g).

³³ LICT EBB Waiver Petition at 3-5; Lumen EBB Waiver Petition at 3-4.

³⁴ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

³⁵ *Mary v. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

³⁶ 47 CFR § 1.3.

³⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁸ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³⁹ 47 CFR § 0.291(b).

⁴⁰ Lumen EBB Waiver Petition at 1-2; LICT EBB Waiver Petition at 1 (seeking a waiver of 47 CFR §§ 54.1608(a) and 54.1608(g)).

⁴¹ LICT EBB Waiver Petition at 1; Lumen EBB Waiver Petition at 2.

Program support for qualifying broadband service that is provided directly to the participating provider is “based on the number of actual qualifying low-income households listed in the [NLAD] that the participating provider serves directly at the first of the month”⁴² and set forth the date by which providers shall submit their certified reimbursement claims.⁴³ Section 54.1608(g) further provides that if a provider fails to submit a certified claim by the deadline for that month, the claim will not be processed.⁴⁴ LICT offers to file claims by June 15 for those subscribers that appear on their June 1 snapshot report and submit by that same date a list of the households that LICT believes are qualified by the National Verifier for EBB service for the month of May but whose qualification LICT was unable to confirm in order to enroll those households in NLAD by the June 1 snapshot date.⁴⁵ LICT would then continue to attempt to enroll those subscribers in to NLAD by June 30 and claim reimbursement for those households by July 15.⁴⁶ WTA filed a letter alleging enrollment challenges facing small providers and requests that any relief granted to Lumen and LICT with respect to the June 1 snapshot date and the June 15 reimbursement claims deadline be expanded to all similarly affected EBB providers.⁴⁷

11. LICT argues that their waiver request is in the public interest and must be granted because it will “enable[e] participation in the first month of the EBB program by eligible households that were found qualified by the [National Verifier] but that, through no fault of their own, were unable to have their data uploaded into the NLAD before June 1.”⁴⁸ Lumen similarly argues that granting its waiver request will allow it to pass through discounts to its subscribers whom it believes are qualified, but whose qualification Lumen cannot confirm in order to enroll those households in the NLAD, through no fault of their own.⁴⁹ Both Petitioners assert that granting their waiver will not materially undermine the efforts of the FCC and Universal Service Administrative Company (USAC) to forecast the projected end of the EBB Program.⁵⁰ Both Petitioners point to the technical challenges they have encountered in establishing their processes for this emergency program and in trying to enroll their subscribers into NLAD as an explanation for why their subscribers have not been enrolled in NLAD and why a waiver must be granted.⁵¹

12. For operational and program integrity purposes, providers cannot claim reimbursement for a household that is not enrolled. As the Commission has explained, the NLAD serves a function beyond managing enrollments for providers – it is used to prevent duplicative support by ensuring that a household is receiving one Emergency Broadband Benefit as required by the Commission’s rules.⁵² It is

⁴² 47 CFR § 54.1608(a).

⁴³ 47 CFR § 54.1608(g).

⁴⁴ *Id.*

⁴⁵ LICT EBB Waiver Petition at 2.

⁴⁶ *Id.*

⁴⁷ Letter from Derrick B. Owens, Senior Vice President of Government and Industry Affairs WTA -Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 1-2 (filed May. 27, 2021).

⁴⁸ LICT EBB Waiver Petition at 2.

⁴⁹ Lumen EBB Waiver Petition at 4.

⁵⁰ LICT EBB Waiver Petition at 4; Lumen EBB Waiver Petition at 3.

⁵¹ LICT EBB Waiver Petition at 3-5; Lumen EBB Waiver Petition at 3.

⁵² 47 CFR § 54.1609(b) (requiring the de-enrollment of a subscriber if the subscriber is receiving the EBB discount from another provider or more than one member of the household is receiving the EBB discount); *See also*, 47 CFR § 54.1600(g) (providing that “Duplicative support exists when an Emergency Broadband Benefit subscriber is receiving two or more Emergency Broadband Benefit services concurrently or two or more subscribers in a household have received a connected device with an Emergency Broadband Benefit discount.”); 47 CFR § 54.1600(p) (defining the National Lifeline Accountability Database as “an electronic and manual system with

(continued....)

incorrect for Lumen and LICT to suggest that their subscribers, despite not being successfully enrolled in the NLAD, are eligible to be claimed for reimbursement for any discount provided before they were enrolled. Even if a consumer has received a qualified result from the National Verifier, only a successful enrollment in the NLAD is proof to the provider that the customer is eligible to receive the Emergency Broadband Benefit. The Petitioners' proposed solution of enrolling these consumers after the June 1 snapshot before claiming them for discounts provided in May ignores the fact that the NLAD is not designed to determine on June 20, for example, whether a consumer was eligible to receive the benefit back in May. Enrolling these subscribers after the June 1 snapshot date does not prove that these subscribers or another member of their household were not enrolled with a different participating provider in May. For providers relying on the National Verifier to determine eligibility, only enrollment of a consumer in NLAD by the June 1 snapshot date can make that consumer eligible to receive the Emergency Broadband Benefit in May. Petitioners' proposed workarounds frustrate the administration of the EBB Program by ignoring the safeguards put in place to ensure that only eligible subscribers are claimed by providers.

13. Moreover, we are also concerned this proposed resolution proffered by Petitioners overlooks the fact that some customers may not be eligible. Petitioners do not appear to consider that the reason they may not be able to enroll a particular customer is because that customer's eligibility may not actually have been confirmed by the National Verifier, not because of technical challenges. Lumen and LICT claim, without support, that the customers they are attempting to enroll and seek to claim all have been qualified. For Lumen and LICT, who are relying on the National Verifier and not an FCC-approved alternative verification process to determine eligibility, only a successful NLAD enrollment would signify that the household 1) received the required qualified result from the National Verifier and 2) is not receiving duplicative support. To claim that all of the subscribers they are attempting to enroll are indeed qualified is not only unsupported but might explain the difficulty they are having with enrolling their subscribers.

14. We are sympathetic to the challenges faced by providers who have agreed to participate in this program. Both LICT and Lumen describe frustrations enrolling prospective subscribers.⁵³ However, over one million households have already been enrolled in the Program by hundreds of providers, indicating that many providers have been able to use the guidance provided in the NLAD enrollment tools USAC shared with providers to successfully enroll customers and overcome any technical challenges they did encounter.⁵⁴ USAC has offered providers training and instructions on the NLAD system and consistently hosted office hours during which providers could ask questions of USAC staff.⁵⁵ This week, USAC provided guidance to providers on enrollment, reminding participating providers that the information the provider uses to enroll a subscriber into the NLAD must match the information the National Verifier has on file for the same subscriber.⁵⁶ In that bulletin, USAC advises providers that to avoid upload errors, they should, in part, enter the consumer's name and address just as they appear on the consumer's "Qualified" screen in the National Verifier application portal. Prior to the filing of these petitions, FCC staff had also spoken to both Lumen and LICT, provided best practices on how to enroll subscribers, and advised that the companies should use National Verifier information provided by the consumer, rather than information entered on the company's own intake forms that may

associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and the Emergency Broadband Benefit Program, as directed by the Commission).

⁵³ LICT EBB Waiver Petition at 3-4; Lumen EBB Waiver Petition at 3.

⁵⁴ Press Release, FCC, Emergency Broadband Benefit Program Enrolls Over One Million Households (May 20, 2021), <https://www.fcc.gov/document/over-one-million-households-enroll-emergency-broadband-benefit>.

⁵⁵ USAC, Webinars and Trainings, <https://www.usac.org/about/emergency-broadband-benefit-program/webinars-and-trainings/> (last visited May 27, 2021).

⁵⁶ Email from USAC, Emergency Broadband Benefit Program: NLAD Best Practices for Common Enrollment Errors (sent May 26, 2021, 17:38 ET).

not match what is on the consumer's National Verifier application to increase the likelihood that consumers with a qualified application will be successfully enrolled in NLAD.

15. We find that granting this waiver would undermine the program integrity controls offered by the NLAD, and would invite waste, fraud, and abuse. Permitting providers to claim subscribers for EBB discounts before the subscribers were even enrolled in NLAD and determined to be fully eligible for the EBB Program eliminates all the safeguards offered by the NLAD, which not only prevents duplicative support but ensures that providers can only claim those subscribers that were enrolled with them as of the uniform snapshot date. Moreover, these program integrity risks could not be successfully mitigated via a conditional waiver without creating a substantial risk of consumer confusion or unexpected fees, for consumers who might believe their provider has enrolled them in the EBB Program, only to find out up to a month later that their eligibility had not actually been verified or they had inadvertently been receiving duplicative support. For Lumen, LICT and any other providers having difficulty enrolling subscribers in NLAD, the Bureau encourages them to review closely the guidance USAC provided to participating providers this week and work to ensure that the information they are using to enroll subscribers is consistent with that which appears on the customer's Qualified screen and National Verifier application. We direct USAC to establish targeted training and outreach specifically for small providers to ensure that they have the opportunity to seek the technical assistance they need to enable their continued participation in the EBB Program. On balance, the Bureau is not convinced that the challenges Petitioners describe warrant a waiver of the EBB Program rules when the waiver could so easily undermine the integrity of the EBB Program and threaten the limited funds available in the EBB Program. Because we are denying the requests of Lumen and LICT, we find the request of WTA to be moot.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED THAT 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 the Petitions for Limited Waiver filed by Lumen and LICT are DENIED. This Order shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau