

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

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

ORDER

Adopted: June 8, 2021

Released: June 8, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives, on its own motion, the Emergency Broadband Benefit Program (EBB Program) reimbursement rules requiring providers to file reimbursement claims by the 15th of the month after the uniform snapshot date. This waiver is limited to subscribers that were enrolled and received the EBB-supported service in May 2021. Based on the record before us, we find that good cause exists for a limited waiver, as provided herein, to allow all EBB participating providers an additional month, until July 15, 2021, to submit the first reimbursement claim for service provided in May 2021.

II. BACKGROUND

2. 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.¹ Participating providers will receive reimbursement from the EBB Program for the discounts granted to eligible low-income households for qualifying service and connected devices.² A participating provider must submit certain certifications to the Commission to receive that reimbursement.³

3. 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 (NLAD) as of the first day of each month.⁴ 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.⁵ If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.⁶ This method helps provide the Universal Service Administrative Company (USAC) with actual reimbursement claims information from providers as soon as possible after each service month,

¹ 47 CFR § 54.1602.

² *Id.* § 54.1608.

³ *Id.* § 54.1608(e).

⁴ *Id.* § 54.1608(a).

⁵ *Id.* § 54.1608(g).

⁶ *Id.*

which it can then use to report the disbursement information to the public and to create a forecast for the projected final month of the program.⁷

III. DISCUSSION

4. As a general matter, “an agency must adhere to its own rules and regulations.”⁸ 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,”⁹ the Commission’s rules may be waived for “good cause shown.”¹⁰ 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.¹¹ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.¹²

5. The EBB Program rules were finalized on February 25, 2021, and the Commission worked quickly to set up systems and processes to implement the Program, culminating in the launch on May 12, 2021. As provided in the Consolidated Appropriations Act establishing the EBB Program, the EBB Program is built on USAC’s existing Lifeline systems including NLAD and the Lifeline National Eligibility Verifier.¹³ Participating providers, including providers that are not Lifeline providers and do not have familiarity with the relevant USAC systems, have also been working expeditiously to set up their own business processes and develop systems to enroll customers in the EBB Program. Even those providers that are experienced with the Lifeline program have had to adjust their processes in certain ways to account for the differences between the EBB Program and Lifeline. As a result, a number of providers have filed petitions for waiver seeking additional time to submit reimbursement claims for their EBB subscribers.¹⁴

6. Based on the record before us, we find there is good cause to grant a limited waiver of the reimbursement rules and allow all providers until July 15, 2021 to submit reimbursement claims for households that were enrolled in the EBB Program in May 2021. Providers across the program suggest it would be helpful to provide additional time to confirm and submit up their reimbursement claims for service provided to eligible households in the first month of the EBB Program. In particular, while the

⁷ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21- 29, 50, paras. 98, 100 (2021) (*EBB Program Order*).

⁸ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁹ *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

¹⁰ 47 CFR § 1.3.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(b)(3), 134 Stat. 1182, 2132 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

¹⁴ See, e.g., Cox Petition for Limited Waiver, WC Docket No. 20-445 (filed May 10, 2021), <https://ecfsapi.fcc.gov/file/105101144728616/EBB%20Waiver%20Claims%20Submission%20Final.docx>; Cellular South Licenses, LLC Petition for Limited Waiver, WC Docket No. 20-445 (filed May 14, 2021), https://ecfsapi.fcc.gov/file/10514206053988/C%20Spire%20EBB%20Waiver_%20FINAL.pdf; Cable One Expedited Petition for Waiver, WC Docket No. 20-445 (filed May 17, 2021), [https://ecfsapi.fcc.gov/file/10517303123951/Cable%20One%20Expedited%20Petition%20for%20Waiver%20\(5-17-21\).pdf](https://ecfsapi.fcc.gov/file/10517303123951/Cable%20One%20Expedited%20Petition%20for%20Waiver%20(5-17-21).pdf); Radiate Petition for Waiver and Request for Expedited Treatment, WC Docket No. 20-445 (filed May 25, 2021), <https://ecfsapi.fcc.gov/file/10526114322360/Radiate%20Holdings%20Petition%20for%20Expedited%20Waiver%20May%2025%202021%20Dkt%2020%20445.pdf>; WOW Petition for Limited Waiver and Request for Expedited Treatment, WC Docket No. 20-445 (filed May 27, 2021), https://ecfsapi.fcc.gov/file/1052729447937/WOW_EBB%20Waiver%20Petition%20Final.pdf. While we reference these individual provider petitions in justifying the relief given in this waiver order, the petitions also contain more discrete requests specific to the operational needs of the requesting providers and we therefore do not act on these individual petitions in today’s Order. The petitions remain pending.

details of the waiver requests vary in their requested relief, all petitions raise the concern that the 15-day deadline for the first reimbursement claims based on the Program's first snapshot could pose a substantial hardship to providers.

7. Because we grant only a one-month delay of the deadline for reimbursement claims for subscribers enrolled in May 2021, we find that this limited waiver will not materially undermine USAC's ability to track disbursements and forecast for the projected final month of the program. Moreover, applying this limited waiver to all providers and giving them an additional month to file reimbursement claims for subscribers enrolled in May 2021 will ensure that providers have the time needed to develop and refine their processes and billing systems, and to submit accurate reimbursement claims for their enrolled subscribers. Finally, we are comfortable that the additional time we grant providers to prepare to file their first EBB claims will not materially affect the operations of the Program or impact the broadband service provided to the enrolled households.

IV. ORDERING CLAUSE

8. 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

Kris Anne Monteith
Chief
Wireline Competition Bureau