

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

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

ORDER

Adopted: August 10, 2021

Released: August 10, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petition of Atlantic Broadband Finance, LLC (Atlantic Broadband or Petitioner) seeking an expedited grant of a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules (Petition). The Petitioner requests a waiver of the requirement that providers submit certified reimbursement claims for June 2021 service by July 15, 2021. Based on the Commission's established waiver standard, we grant the Petition and, on our own motion, extend this waiver to similarly situated participating providers. This waiver permits all participating providers that uploaded their reimbursement claims for discounted service provided in May and/or June 2021 by July 15, 2021, but were unable to complete the certification of those claims by the July 15, 2021 deadline, to certify such claims by August 16, 2021. We conclude that Petitioner's requested limited waiver and its application to all similarly situated EBB Program providers is consistent with the Program's statutory requirements and will serve the public interest.

II. BACKGROUND

2. The EBB Program uses available funding from the Emergency Broadband Connectivity Fund to support broadband service and connected devices for low-income households during the COVID-19 pandemic. Participating providers receive reimbursement from the EBB Program for discounts granted to eligible low-income households for qualifying service and connected devices. Participating providers must transmit the household's information to the National Lifeline Accountability Database (NLAD) in order to successfully enroll them in the EBB Program and also to seek reimbursement for any service and connected device support provided to the household.

1 Atlantic Broadband, Finance, LLC Petition for Waiver, WC Docket No. 20-445 (filed July 27, 2021), https://ecfsapi.fcc.gov/file/10727111389604/ABB%20EBB%20Waiver%20-%20PUBLIC.pdf (Atlantic EBB Waiver Petition).

2 Id. at 1 (citing 47 CFR § 54.1608(g)).

3 The typical deadline of the 15th of the month falls on a Sunday in August, so we will move the deadline to the following business day, pursuant to 47 CFR § 54.1608(g).

4 47 CFR § 54.1602.

5 47 CFR § 54.1608.

6 Emergency Broadband Benefit Program, WC Docket No. 20-445, Report and Order, FCC 21- 29, 23, para. 47 (2021) (EBB Program Order) ("all providers, including those that use an approved alternative verification process

(continued....)

3. 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 (referred to as the “snapshot date”).⁷ In the *EBB Program Order* the Commission explained that the uniform snapshot date would: 1) reduce the risk that the Lifeline program would reimburse multiple providers for serving the same customer in a given month; 2) assist with the adoption of uniform audit procedures; and 3) aid in the accurate calculation of support based on the number of subscribers listed in NLAD.⁸ The Commission concluded that the NLAD “plays a vital role” in the claims process by capturing the households that are enrolled with each provider on the first of each month and ensuring that providers can only claim those subscribers for reimbursement.⁹

4. To receive reimbursement, providers must submit certified reimbursement claims¹⁰ 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.¹¹ If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.¹² 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, which enables USAC to report the disbursement information to the public and to create a forecast for the projected final month of the program.¹³ On June 8, 2021, the Bureau released a waiver order granting participating providers an additional month, until July 15, 2021, to submit the first reimbursement claim for service provided in May 2021.¹⁴

III. DISCUSSION

5. Based on the record before us, we grant the limited waiver request and allow Atlantic Broadband an extension of time until August 16, 2021, to submit certified reimbursement claims for its previously uploaded but uncertified claims for service provided in June 2021. On our own motion, we extend this waiver but only to similarly situated EBB Program providers that also successfully uploaded their May and/or June 2021 reimbursement claims by July 15, 2021, but did not certify those reimbursement claims by that date.

6. As a general matter, “an agency must adhere to its own rules and regulations.”¹⁵ 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,”¹⁶ the Commission’s rules may
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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.”)

⁷ 47 CFR § 54.1608(a); *EBB Program Order* at 4, para. 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ USAC has provided a list of the certifications a provider is required to make when submitting EBB Program claims in the Lifeline Claims System. Emergency Broadband Benefit Program Reimbursement Claims, USAC Webinar at 33-34 (Apr. 2021), <https://www.usac.org/wp-content/uploads/about/documents/ebb-program/EBB-LCS-training.pdf>.

¹¹ 47 CFR § 54.1608(g).

¹² *Id.*

¹³ *EBB Program Order* at 50, paras. 98, 100.

¹⁴ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-671 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-671A1.pdf>.

¹⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

¹⁶ *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

be waived for “good cause shown.”¹⁷ 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.¹⁸ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.¹⁹ The Bureau, under delegated authority, may act on requests for waiver of rules.²⁰

7. In its Petition, Atlantic Broadband requests a waiver of the requirement that a provider cannot receive a reimbursement for claims that were not certified by the 15th of each month, specifically as it applies to Atlantic Broadband’s June 2021 reimbursement claims.²¹ Atlantic Broadband contends that in June, it successfully submitted certified claims for all of its May 2021 service.²² For the June 2021 service month, Atlantic Broadband sought to repeat the same claims reimbursement process it used for the May 2021 service month but was only able to timely certify one of its 11 claims.²³ It further notes that it is only seeking a waiver for the June 2021 claims, and argues that “such a minor adjustment early on would not materially affect the projected fund depletion calculations.”²⁴ After Atlantic Broadband reached out to USAC for help resolving its reimbursement claims issues, USAC worked closely with Atlantic Broadband to see if it could replicate the errors Atlantic Broadband described. USAC also investigated its claims system to diagnose what would have caused Atlantic Broadband’s issues, or if any other providers had indicated that they experienced the same problem, but was unable to find evidence of a systemic problem. USAC has further walked through the claims process step-by-step with Atlantic Broadband to ensure that there are no issues with claims reimbursement going forward.

8. Based on the record before us, the Bureau finds that good cause exists for a limited waiver of the requirement of section 54.1608(g) of our rules as applied to the May and June 2021 reimbursement claims,²⁵ which requires providers to submit certified reimbursement claims through the Lifeline Claims System by July 15, 2021, and that a provider that failed submit a certified reimbursement claim by the deadline would not have the claim processed. This waiver will permit providers that uploaded their reimbursement claims for May and/or June 2021 service by July 15, 2021, but did not certify such claims by July 15, 2021, an additional month until August 16, 2021 to certify such claims. We find that this waiver does not disturb the statutory requirement that reimbursements are only provided to subscribers that were enrolled in NLAD by the snapshot date.²⁶

9. We further find that preventing providers from seeking reimbursement for discounted service claims that were submitted but that were unable to be certified poses a substantial hardship to Atlantic Broadband and all other EBB Program participating providers that are similarly situated. We find that a limited waiver is appropriate because the July 15, 2021 deadline was the first EBB Program reimbursement claims deadline,²⁷ and some providers, especially those that are new to the USAC systems,

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ *Id.*; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁰ 47 CFR § 0.291(b).

²¹ Atlantic Broadband EBB Waiver Petition at 1.

²² *Id.* at 2-3.

²³ *Id.* at 3.

²⁴ *Id.* at 5.

²⁵ 47 CFR § 54.1608(g).

²⁶ 47 CFR § 54.1608(a).

²⁷ On its own motion, the Bureau extended the June 15, 2021 deadline for May 2021 claims to July 15, 2021, making July 15, 2021 the first deadline for both May and June 2021 claims. *See supra* note 14.

may have had trouble navigating the claims process and certifying their uploaded reimbursement claims. It is in the public interest to allow these providers the opportunity to certify their submitted reimbursement claims for the first claims deadline given the newness of the EBB Program.

10. We also find that granting this waiver to Atlantic Broadband and extending it to all similarly situated participating providers for May and June 2021 reimbursement claims that were submitted but not certified should not undermine any program integrity controls, nor invite waste, fraud, and abuse. This waiver is limited to participating providers that, like Atlantic Broadband, successfully uploaded their reimbursement claims, but were only unable to certify them, thus ensuring that the providers' claimed subscribers were in fact enrolled in NLAD as of the snapshot date and that the provider had made a good faith effort at identifying and claiming reimbursement for those subscribers by the deadline. We also understand that the vast majority of participating providers were able to timely submit certified reimbursement claims, so granting this limited waiver to only Atlantic Broadband and other similarly situated providers for the May and June 2021 service months will not have a significant impact on EBB Program reporting or forecasting. To ensure that participating providers are equipped to meet all future claims deadlines, the Bureau directs USAC to work with and provide training for Atlantic Broadband and any similarly situated providers regarding the claims certification process before the next August 16, 2021 claims deadline. USAC should also continue to devote trained staff to assist with service provider questions to ensure providers are able to successfully file and certify claims around the claims filing deadline each month.

IV. ORDERING CLAUSE

11. 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.

12. IT IS FURTHER ORDERED, pursuant to the authority contained 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 request for waiver filed by Atlantic Broadband Finance, LLC is GRANTED.

13. 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