

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

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

ORDER

Adopted: February 11, 2022

Released: February 11, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions of GCI Communication Corp. (GCI)1 and T-Mobile USA, Inc. (T-Mobile),2 seeking a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules. To receive reimbursement under the EBB Program rules, providers must 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.3 If the participating provider fails to submit a certified reimbursement claim by the deadline for that service month, the reimbursement claim will not be processed.4 The Bureau has previously released waivers on June 8, 2021,5 August 10, 2021,6 and September 3, 20217 that allowed providers additional time to file certified reimbursement claims. GCI requests a waiver of the requirement that it certify reimbursement by the 15th of the month8 for the October 2021 and November 2021 service months.9 T-Mobile seeks a declaratory ruling finding that it timely submitted the reimbursement claim for its subsidiary, Assurance Wireless USA, LP (Assurance Wireless) for the

1 GCI Communication Corp. Petition for Waiver, WC Docket No. 20-445 (filed Dec. 23, 2021), (GCI Waiver Petition).
2 Petition of T-Mobile USA, Inc. for Declaratory Ruling Or, in the Alternative, Limited Waiver, WC Docket No. 20-445 (filed Dec. 8, 2021), (T-Mobile Waiver Petition).
3 47 CFR § 54.1608(g).
4 Id.
5 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 (granting all participating providers an additional month, until July 15, 2021, to submit the first reimbursement claim for service provided in May 2021).
6 Emergency Broadband Benefit Program, WC Docket No. 20-445, Order, DA 21-980 (WCB 2021), https://docs.fcc.gov/public/attachments/DA-21-980A1.pdf (granting participating providers that uploaded but did not certify reimbursement claims for the May and/or June 2021 service months by the July 15, 2021 deadline until August 16, 2021 to certify such claims).
7 Emergency Broadband Benefit Program, WC Docket No. 20-445, Order, DA 21-1098 (WCB 2021), https://docs.fcc.gov/public/attachments/DA-21-1098A1.pdf (granting participating providers that uploaded but did not certify reimbursement claims for the July 2021 service month by the August 16, 2021 deadline until September 15, 2021 to certify such claims).
8 47 CFR § 54.1608(g).
9 GCI Waiver Petition at 1.

October 2021 service month in satisfaction of section 54.1806(g), or in the alternative, a limited waiver of the certification requirement for the October 2021 service month.<sup>10</sup>

2. Based on the Commission's established waiver standard, we grant GCI's petition, and on our own motion, extend this waiver to similarly situated participating providers. Specifically, we grant a limited waiver to participating providers that uploaded, but did not certify, their reimbursement claims for discounted service provided in the October 2021 and November 2021 service months by the November 15, 2021, and December 15, 2021 deadlines, respectively. The limited waiver will allow the limited number of affected providers to certify any such previously uploaded claims for the October 2021 and November 2021 service months by March 15, 2022. In addition, we grant in part and deny in part T-Mobile's petition. We will grant T-Mobile a waiver to submit certified claims for the October 2021 service month and otherwise deny T-Mobile's petition. We conclude that these limited waivers are consistent with the Program's statutory requirements and will serve the public interest.

## II. DISCUSSION

3. Based on the record before us, we grant the limited waiver request of GCI. We will permit GCI an extension of time until March 15, 2022, to submit certified reimbursement claims for its previously uploaded but uncertified claims for service provided in October 2021 and November 2021. On our own motion, we extend this waiver to similarly situated providers that also uploaded their October 2021 and November 2021 reimbursement claims by November 15, 2021 and December 15, 2021, respectively, but did not certify those reimbursement claims by the respective deadlines.

4. As a general matter, "an agency must adhere to its own rules and regulations."<sup>11</sup> 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,"<sup>12</sup> the Commission's rules may be waived for "good cause shown."<sup>13</sup> 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.<sup>14</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.<sup>15</sup> The Bureau, under delegated authority, may act on requests for waiver of rules.<sup>16</sup>

5. In its Petition, GCI requests a waiver of the requirement that a provider cannot receive a reimbursement for claims that were not certified by the 15<sup>th</sup> of each month, specifically as it applies to GCI's October 2021 and November 2021 reimbursement claims.<sup>17</sup> GCI contends that it timely certified its reimbursement claims for May through September 2021.<sup>18</sup> For the October 2021 and November 2021 service months, GCI asserts that it timely uploaded but failed to certify its reimbursement claims for those months due to an administrative oversight.<sup>19</sup> GCI says that it recognized its failure to certify its reimbursement claims for October 2021 and November 2021 on December 16, 2021, and it promptly filed

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<sup>10</sup> T-Mobile Waiver Petition at 1.

<sup>11</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>12</sup> *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

<sup>13</sup> 47 CFR § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>16</sup> 47 CFR § 0.291(b).

<sup>17</sup> GCI Waiver Petition at 3.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

its petition.<sup>20</sup> It further argues that there is good cause because “strict application of the deadline would undermine the important goals of promoting essential broadband services for low-income customers and averting substantial hardship for providers,”<sup>21</sup> and granting the petition would present “no issues for the reporting or forecasting of the EBB Program funds.”<sup>22</sup>

6. 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 the Commission’s rules to permit providers that uploaded their reimbursement claims for the October 2021 and November 2021 service months by November 15, 2021 and December 15, 2021, respectively, but failed to certify those claims by those respective deadlines, until March 15, 2022 to certify such claims. We find that it is in the public interest to allow these providers the opportunity to certify their submitted reimbursement claims, given the substantial hardship they may face if not allowed to seek reimbursement. We also find that granting this waiver to GCI, and extending it to all similarly situated participating providers for October 2021 and November 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 GCI, successfully uploaded their reimbursement claims for the October 2021 and November 2021 service months, but did not certify them, thus ensuring that the providers’ claimed subscribers were in fact enrolled in National Lifeline Accountability Database (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 find that given the transition from the EBB Program to the Affordable Connectivity Program that began on December 31, 2021, there will not be an impact on EBB Program reporting or forecasting.

7. Additionally, T-Mobile requests a declaratory ruling finding that it timely submitted the reimbursement claim for its subsidiary, Assurance Wireless, for the October 2021 service month, or in the alternative, a limited waiver of the certification requirement for the October 2021 service month.<sup>23</sup> T-Mobile states that on November 15, 2021, the deadline to certify claims for the October 2021 service month, T-Mobile successfully certified claims for its other EBB participating subsidiaries, all of whom had smaller data files than for Assurance.<sup>24</sup> T-Mobile says that it began processing its claims for Assurance before 11:59 p.m. Eastern Standard Time on November 15, 2021, but it was unable to successfully upload the Claims Input Template for Assurance Wireless because of the file size.<sup>25</sup> T-Mobile then tried to submit smaller, more manageable claims files but those attempts were bounced back due to file size restrictions.<sup>26</sup> T-Mobile then further broke down the files into smaller sizes and emailed them to USAC a few hours after the November 15, 2021 deadline for October claims.<sup>27</sup> T-Mobile argues that good cause exists to grant a waiver of the reimbursement rules because T-Mobile attempted to certify its reimbursement claims in advance of the deadline, but was unable to solely due to the file size limitations.<sup>28</sup> T-Mobile further argues that the delay in certifying its October 2021 reimbursement claims

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 3, 7.

<sup>22</sup> *Id.* at 5

<sup>23</sup> T-Mobile Waiver Petition at 1.

<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> *Id.* at 4 (asserting that USAC’s instructions did not identify any file size limitations).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4-5

<sup>28</sup> *Id.* at 7.

will have “no impact whatsoever on the integrity of the program of USAC’s administration of the EBB Program,” and without a waiver, T-Mobile would suffer significant financial penalty.<sup>29</sup>

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 the Commission’s rules to permit T-Mobile to submit certified reimbursement claims for the October 2021 service month by March 15, 2022. We find that it is in the public interest to allow T-Mobile the opportunity to certify its reimbursement claims for October 2021, given that T-Mobile in good faith attempted to timely submit its reimbursement claims by the deadline, and the substantial hardship T-Mobile may face if not allowed to seek reimbursement. We also find that granting this waiver to T-Mobile should neither undermine any program integrity controls, nor invite waste, fraud, and abuse. This waiver is limited to T-Mobile’s claims for Assurance Wireless for the October 2021 service month. We decline, however, to issue a declaratory ruling that T-Mobile timely certified its October 2021 reimbursement claims.

### III. ORDERING CLAUSES

9. 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.

10. IT IS FURTHER ORDERED, that 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 GCI Communication Corp. is GRANTED.

11. IT IS FURTHER ORDERED, that 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 T-Mobile USA, Inc. is GRANTED IN PART and otherwise DENIED.

12. 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

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<sup>29</sup> *Id.*