

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

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

ORDER

Adopted: January 5, 2023

Released: January 5, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petition of VPNet, Inc. (VPNet), seeking a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules. VPNet requests a waiver of the requirement that it certify reimbursement by the 15th of the month for the October 2021 service month.

2. Based on our established waiver standard, we grant VPNet a waiver to submit certified claims for the October 2021 service month by February 15, 2023. In addition, we grant, on our own motion, a limited waiver to participating providers that uploaded, but did not certify, their reimbursement claims for discounted service provided in the December 2021, January 2022, and February 2022 service months by their respective claims deadlines. This limited waiver will allow the limited number of affected providers to certify any such previously uploaded claims for the December 2021, January 2022, and February 2022 service months by February 15, 2023. We conclude that these limited waivers are consistent with the Program’s statutory requirements and will serve the public interest.

II. DISCUSSION

3. As a general matter, “an agency must adhere to its own rules and regulations.” 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,” the Commission’s rules may be waived for “good cause shown.” 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. The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Bureau, under delegated authority, may act on requests for waiver of rules.

1 VPNet, Inc. Petition for Waiver, WC Docket No. 20-445 (filed June 8, 2022) (VPNet Waiver Petition).

2 47 CFR § 54.1608(g).

3 VPNet Waiver Petition at 1.

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

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

6 47 CFR § 1.3.

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

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

4. 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.<sup>10</sup> 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.<sup>11</sup> The Bureau has previously released waivers on June 8, 2021,<sup>12</sup> August 10, 2021,<sup>13</sup> September 3, 2021,<sup>14</sup> and February 11, 2022,<sup>15</sup> that allowed providers additional time to file certified reimbursement claims.

5. Based on the record before us, we grant the limited waiver request of VPNet. We will permit VPNet an extension of time until February 15, 2023 to submit certified reimbursement claims for its October 2021 service month claims. VPNet requests a limited waiver of the certification requirement for the October 2021 service month.<sup>16</sup> VPNet says that it began processing its claims for the October 2021 service month on November 11, 2021, but was unable to successfully upload the Claims Input Template.<sup>17</sup> VPNet argues that good cause exists to grant a waiver of the reimbursement rules because VPNet took steps that should have been sufficient to timely complete and certify its reimbursement claim for the October 2021 service month.<sup>18</sup> VPNet further argues that grant of a waiver will avoid a miscarriage of justice and further provide assurance to participating providers that continued participation in the EBB Program and its successor program the Affordable Connectivity Program (ACP) will not expose them to undue risk of economic harm.<sup>19</sup> VPNet further states that granting a waiver will not undermine the EBB Program or ACP.<sup>20</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 VPNet to submit certified reimbursement claims for the October 2021 service month by February 15, 2023. We find that it

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<sup>9</sup> 47 CFR § 0.291(b).

<sup>10</sup> 47 CFR § 54.1608(g).

<sup>11</sup> *Id.*

<sup>12</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 9434 (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).

<sup>13</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 12470 (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).

<sup>14</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 13299 (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).

<sup>15</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 22-146 (WCB 2022), <https://docs.fcc.gov/public/attachments/DA-22-146A1.pdf> (granting T-Mobile a waiver of the certification requirement for the October 2021 service month and also granting participating providers that uploaded but did not certify reimbursement claims for the October 2021 and November 2021 service months by the November 15, 2021 and December 15, 2021 deadlines respectively, until March 15, 2022 to certify such claims).

<sup>16</sup> VPNet Waiver Petition at 1.

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.* at 5.

is in the public interest to allow VPNet the opportunity to certify its reimbursement claims for October 2021, given that VPNet in good faith attempted to timely submit its reimbursement claims by the deadline, and the financial hardship VPNet may face if not allowed to seek reimbursement. We also find that granting this waiver to VPNet should neither undermine any program integrity controls, nor invite waste, fraud, and abuse because VPNet will still only be able to claim reimbursement for subscribers that completed the eligibility verification process and did receive discounted service. This waiver is limited to VPNet's claims for the October 2021 service month.

7. Additionally, the Bureau, on its own motion, grants a limited waiver to allow those EBB Program providers that uploaded but did not certify their claims for the December 2021, January 2022, and February 2022 service months by their respective claims deadline additional time to complete the certification process. Those providers will have until February 15, 2023 to submit certified reimbursement claims for discounts provided in the December 2021, January 2022, and February 2022 service months.

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 providers that uploaded their reimbursement claims for the December 2021, January 2022, and February 2022 service months by January 18, 2022, February 15, 2022, and March 15, 2022 respectively, but failed to certify those claims by those respective deadlines, until February 15, 2023 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 should not undermine any program integrity controls, nor invite waste, fraud, and abuse. This waiver is limited to participating providers that successfully uploaded their reimbursement claims for the December 2021, January 2022, and February 2022 service months for discounted service provided to qualified subscribers, 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 on the 1st of the month and that the provider had made a good faith effort at identifying and claiming reimbursement for those subscribers by the deadline.

### 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 VPNet, Inc. is GRANTED.

11. 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

Trent B. Harkrader  
Chief  
Wireline Competition Bureau