January 7, 2022

FCC FACT SHEET
Affordable Connectivity Program
Report and Order and Further Notice of Proposed Rulemaking – WC Docket No. 21-450

Background: This Report and Order, if adopted, would finalize rules for the Affordable Connectivity Program, which builds upon the Emergency Broadband Benefit Program, and will offer eligible low-income households discounts off the cost of broadband service and connected devices. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress extended and made several changes to the EBB Program to transform it from an emergency program designed to respond to a public health crisis to a longer-term broadband affordability program, and appropriated to the Commission an additional $14.2 billion to implement those changes.

What the Report and Order Would Do:

- Establish household eligibility requirements for the Affordable Connectivity Program, including adding USDA's WIC Program and expanding the income eligibility to 200% of the Federal Poverty Guidelines.
- Adopt technology neutral Program rules for participating broadband providers.
- Define the rules governing broadband plans and connected devices available in the new Program, and outline the reimbursement and claims processes providers must follow to receive the up to $30 per month standard subsidy or the up to $75 per month subsidy for eligible households on Tribal lands.
- Adopt consumer protection rules as well as disclosure and consumer consent requirements; establish a dedicated FCC complaint process for Program participants.
- Establish a roadmap and consent requirements to assist legacy EBB Program households transitioning to the Affordable Connectivity Program.
- Initiate the FCC's outreach program as permitted in the Infrastructure Act to encourage eligible households to enroll in the new Program.

What the Further Notice of Proposed Rulemaking Would Do:

- Seek comment on the structure of and objectives for an outreach partner grant program.
- Seek comment on a mechanism with which an eligible household in a high-cost area may receive an enhanced benefit of up to $75 per month.

Ex Parte Rules[*]

Before filing, participants should familiarize themselves with the Commission's *ex parte* rules and refer to the Wireline Competition Bureau's January 6, 2022 Public Notice announcing modifications to *ex parte* rules in the Affordable Connectivity Fund Proceeding (*ACP Ex Parte Public Notice*). In the *ACP Ex Parte Public Notice*, the Bureau announced that the public may make *ex parte* presentations consistent with the Commission's "permit-but-disclose" rules through Tuesday, January 11, 2022 at 5:00 p.m. EST. After Tuesday, January 11, 2022 at 5:00 p.m. EST, all presentations, whether *ex parte* or not, are prohibited, unless otherwise noted in the Commission's rules. Summaries of any oral *ex parte* presentations made on January 10-11, 2022, must be filed no later than 12:00 p.m., EST on January 12, 2022. To ensure timely consideration of all *ex parte* presentations, courtesy copies should be submitted in addition to electronic filings to Christian Hoefly, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition, via email at Christian.Hoefly@fcc.gov.

[*] *See FCC Modifies Ex Parte Rules in Affordable Connectivity Fund Proceeding*, WC Docket Nos. 20-445, 21-450, Public Notice, DA 22-16, at 2 (WCB Jan. 6, 2022) (*ACP Ex Parte Public Notice*). The *ACP Ex Parte Public Notice* is available here: https://docs.fcc.gov/public/attachments/DA-22-16A1.pdf.

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

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
Emergency Broadband Benefit Program	)	WC Docket No 20-445
	)	
	)	
	)	
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING*

Adopted: [ ] **Released: [ ]**

Comment Date: (30 days after publication in the Federal Register)
Reply Comments Date: (60 days after publication in the Federal Register)

By the Commission:

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* This document has been circulated for tentative consideration by the Commission by January 14, 2022, the statutory deadline for promulgating rules for the Affordable Connectivity Program. *See* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021). The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the unique circumstances involved in the implementation of this statute under a very short deadline, and in the interest of promoting the public's ability to understand the nature and scope of the important issues under consideration, the public interest would be served by making this document publicly available. The FCC's *ex parte* rules apply and presentations are subject to "permit-but-disclose" *ex parte* rules (*see, e.g.*, 47 C.F.R. §§ 1.1206, 1.1200(a)), as modified in this proceeding by the Wireline Competition Bureau on January 6, 2022 (https://docs.fcc.gov/public/attachments/DA-22-16A1.pdf.). Under this modification, the public may make *ex parte* presentations through Tuesday, January 11, 2022 at 5:00 p.m. EST. After that time, given the statutory deadline for establishing rules in this proceeding, we prohibit presentations, whether *ex parte* or not, subject to limited exceptions set forth in the Public Notice referenced above.

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I. INTRODUCTION

1. In this Order, the Federal Communications Commission (Commission) adopts final rules for the Affordable Connectivity Program, which builds upon the Emergency Broadband Benefit Program (EBB Program), to offer eligible low-income households discounts off the cost of broadband service and connected devices.[1] As part of the investment in broadband affordability, deployment and access in the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress makes several changes to the EBB Program to transform it from an emergency program designed to respond to a public health crisis to a longer-term broadband affordability program, and appropriates to the Commission an additional $14.2

[1] *Emergency Broadband Benefit Program,* WC Docket No. 20-445, Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

billion to implement those changes and support. [2] We recognize the opportunity the Infrastructure Act offers to make refinements to this broadband affordability program. To that end, in this Report and Order we adopt rules that maintain the framework of the EBB Program, but make adjustments to account for the Congressional directives in the Infrastructure Act and other necessary changes.

2. The Infrastructure Act directed the Commission to effectuate for the Affordable Connectivity Program specified changes, such as to eligibility criteria and the program benefit amount, by a delayed effective date, which the statute defines as the date the Commission notifies Congress that all EBB Program funds are fully expended or by December 31, 2021, whichever is earlier.[3] Commission staff, in coordination with the Universal Service Administrative Company (USAC), the administrator of the EBB Program, prepared for the transition from the EBB Program to the Affordable Connectivity Program, and began accepting applications and enrollments for the Affordable Connectivity Program on December 31, 2021.[4] To date, approximately 90,000 households have enrolled in the Affordable Connectivity Program and more than 9 million EBB Program households transitioned to the Affordable Connectivity Program and will continue to receive affordable broadband through this newly launched program.

II. BACKGROUND

A. Emergency Broadband Benefit Program

3. The EBB Program was established pursuant to the Consolidated Appropriations Act of 2021, on December 27, 2020.[5] Congress provided the Commission with $3.2 billion in the Emergency Broadband Program Fund to establish the EBB Program to be used until expended for discounted broadband service to low-income households, including those experiencing COVID-19 related economic disruptions.[6] Under the requirements of the Consolidated Appropriations Act, the Wireline Competition Bureau (Bureau) issued a public notice on January 4, 2021, seeking comment on the rules for and implementation of the EBB Program.[7] The Commission voted unanimously to adopt the EBB Program rules, and pursuant to statutory requirements, the final order was adopted on February 25, 2021.[8] The EBB Program launched on May 12, 2021.[9]

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[2] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), *available at* https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf (Infrastructure Act or Act). The $14.2 billion appropriation is contained in Division J, *Appropriations*, Title IV – *Financial Services and General Government,* of the Infrastructure Act. The statutory changes to the EBB Program are contained in Division F, *Broadband,* Title V*, Broadband Affordability,* Section 60502*, Broadband Affordability,* of the Infrastructure Act. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752, *Benefit for broadband service*.

[3] Infrastructure Act, div. F, tit. V, sec. 60502 (b)(1).

[4] *See generally Emergency Broadband Benefit Program*, WC Docket Nos. 20-445, 21-250, Order, DA 21-1477 (WCB Nov. 26, 2021) (*Nov. 26th Guidance Order*).

[5] *See* 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).

[6] Consolidated Appropriations Act, div. N, tit. IX, §§ 904(b)(1), (i)(4).

[7] *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance,* WC Docket No. 20-445, Public Notice, 36 FCC Rcd 15 (WCB 2021) (*EBB Program Public Notice*).

[8] *See generally, EBB Program Order*.

[9] *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket. No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021) (*EBB Launch Date Public Notice*).

B. Affordable Connectivity Program

4. Pursuant to the Infrastructure Act, the Affordable Connectivity Program builds on the EBB Program by using new funding to provide discounted broadband service and connected devices to low-income households. The Infrastructure Act leaves the EBB Program's basic framework in place, but it does make changes to the benefit amount, rules regarding plan and subscriber eligibility, and providers' public promotion obligations, among other changes. While the Infrastructure Act did modify some provisions of the Consolidated Appropriations Act, it did not change the procedural and rulemaking timeline requirements contained in section 904(c). As explained in the *ACP Public Notice*, the Bureau interpreted these requirements as applying to the promulgation of rules for the Affordable Connectivity Program, and accordingly, the Bureau initiated a 20-day public comment period followed by a 20-day period for replies.[10] Pursuant to this timeline, the Commission must promulgate rules for the Affordable Connectivity Program within 60 days of enactment of the Infrastructure Act. By adoption of this Report and Order, we meet that requirement.

5. Consistent with the requirements of the Infrastructure Act, USAC, in coordination with Bureau staff, revised its systems to begin accepting applications and enrollments for the Affordable Connectivity Program that reflect the basic changes to the program, including a reduction of the monthly standard benefit from $50 to $30.[11] Because the Infrastructure Act removes eligibility for households that qualified based on having experienced a substantial loss of income since February 29, 2020,[12] this criterion was not included in the ACP application.[13] Moreover, the ACP application adjusts the income threshold from 135% to 200% of the Federal Poverty Guidelines,[14] and adds Special Supplemental Nutritional Program for Woman, Infants, and Children (WIC) as a qualifying program, as required by the Infrastructure Act.[15] Systems were also adjusted to prevent providers with an approved alternative verification process from indicating that households that these providers were enrolling in the Affordable Connectivity Program were qualified based on a provider's COVID-19 program, which was also eliminated by the Infrastructure Act.[16]

6. To enable a swift and efficient transition from the EBB Program to the Affordable Connectivity Program, the Bureau issued additional guidance to facilitate ACP household enrollments starting on December 31, 2021. On November 26, 2021, the Bureau issued an Order waiving the end of

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[10] *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453, at 2, para 2 (WCB Nov. 18, 2021) (*ACP Public Notice*). The Bureau set the initial public comments due date as Dec. 8, 2021, and reply comments as Dec. 28, 2021. The Commission received comments addressing the issues raised in the *ACP Public Notice* from broadband providers; state and local governments; educational groups; consumer groups; non-profits; and individual stakeholders. Those comments are addressed in this Order.

[11] Infrastructure Act, div. F, tit. V, sec. 60502 (a)(3).

[12] Consolidated Appropriations Act, div. N. tit. IX, § 904(1)(6)(C) *struck by* Infrastructure Act, div. F, tit. V, § sec 60502(b)(1)(A)(i)(II) (2021).

[13] *See* USAC, *Emergency Broadband Benefit Program How to Apply*, (last visited Jan. 7, 2022). The application is available both online and by mail in English and Spanish. *See* FCC Form 5638, EBB Program Application Form, English, https://getemergencybroadband.org/_res/documents/EBB_Application_Form_FINAL.pdf (last visited Jan. 7, 2022) *compare with* USAC, *Affordable Connectivity Program How to Apply*, https://acpbenefit.org/how-to-apply/ (last visited Jan. 7, 2022), FCC Form 5645, Affordable Connectivity Program Application Form, English, https://acpbenefit.org/wp-content/uploads/lifeline/images/ACP-Application-Form-English.pdf (last visited Jan. 7, 2022.

[14] Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i)(I), § 904(a)(6)(A) (2021).

[15] Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(III), (V), § 904(a)(6)(I) (2021).

[16] Consolidated Appropriations Act, div. N., tit. IX § 904(a)(6)(D), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i) (2021).

the EBB Program enrollment freeze and notice requirements on the grounds that these requirements were no longer necessary and would likely result in consumer confusion given the establishment of the Affordable Connectivity Program.[17] That Order also provided preliminary guidance concerning the end of enrollments for the EBB Program, the 60-day transition period, and the start of the Affordable Connectivity Program.[18] On December 8, 2021, the Bureau issued additional guidance waiving the Commission's rules governing the internet service offering, standard rate, provider participation, and election notice requirements for the end of the EBB Program.[19] The Bureau also provided guidance to help consumers, participating service providers, program partners and other stakeholders prepare for the transition to the Affordable Connectivity Program. This guidance covered: (1) the transition of EBB providers to the Affordable Connectivity Program; (2) the timing of the enrollment freeze for the EBB Program and the start of enrollments for the Affordable Connectivity Program; (3) the continued access to the paper and online EBB Program applications; (4) the treatment of pending applications for the EBB Program on and after December 31, 2021; (5) the households that qualify for the 60-day transition period; (6) the reverification process for certain households enrolled in the EBB Program; and (7) the service provider consumer notification responsibilities about the program changes.[20] On December 30, 2021, the Bureau issued a final guidance order providing a roadmap for stakeholders of the rules that would govern the Affordable Connectivity Program in the interim period between the launch of the program and when the new rules adopted by the Commission would become effective, and eliminating the January 1, 2022 snapshot for newly enrolled ACP households.[21] This final guidance order also described the reimbursement process for legacy EBB households receiving the limited duration 60-day transition period benefit amount, and explained that providers will use the February 1, 2022 snapshot (for the January data month) and March 1, 2022 snapshot (for the February data month) to request reimbursement for the transition period benefit amount passed on to legacy EBB subscribers.[22]

7. To prepare for the statutorily required start date for the Affordable Connectivity Program, the Commission engaged in outreach efforts through the Consumer and Governmental Affairs Bureau (CGB) to provide relevant educational materials and regular updates to consumers and stakeholder groups about the transition and launch of the new program.[23] These outreach efforts were bolstered by USAC's efforts to provide regular communications, trainings, and listening sessions to participating providers, groups supporting low-income consumers, other program partners and stakeholders, and households regarding the transition and launch of the Affordable Connectivity Program.[24] In furtherance of these actions by the Bureau, USAC has conducted trainings focused on relevant information for service

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[17] *See generally Nov. 26th Guidance Order*.

[18] *EBB Program Guidance Order* at 4-6, paras. 8-13.

[19] *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket No. 20-445 and 21-450, Order, DA 21-1524 (WCB Dec. 8, 2021) (*Dec. 8th Guidance Order*).

[20] *See generally Dec. 8th Guidance Order.*

[21] *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket No. 20-445 and 21-450, Order, DA 21-1654 (WCB Dec. 30, 2021) (*Dec. 30th Guidance Order*).

[22] *Dec. 30th Guidance Order* at 4, para. 8. We make clear that to receive reimbursement for the limited duration up to $50 non-Tribal transition period benefit amount for legacy EBB households, the benefit must be passed through to legacy EBB households before March 1, 2022. Given the statutory 60-day limit on the transition period, ACP benefits passed on to eligible households on or after March 1, 2022 will only be eligible reimbursement for up to $30 for non-Tribal households.

[23] *See* FCC, *Affordable Connectivity Program*, https://www.fcc.gov/acp (Dec. 16, 2021).

[24] *See* USAC, *Affordable Connectivity Program | Learn*, https://www.usac.org/about/affordable-connectivity-program/affordable-connectivity-program-learn/ (last visited Jan. 7, 2022).

providers, consumer advocates, and other interested stakeholders.[25] USAC and the Bureau also took the necessary steps to update the EBB Program administrative systems to enable Affordable Connectivity Program household enrollments and allow participating provider elections.[26]

III. DISCUSSION

8. We now establish the requirements and processes of the Affordable Connectivity Program as required by the Infrastructure Act. In this section, we discuss the providers that may participate in the Affordable Connectivity Program, the household eligibility requirements for the program, benefits for covered services and devices, the program's budget and reimbursement, and other administrative aspects of the program.

A. Participating Providers

9. In this section, we modify certain existing EBB Program rules and procedures to accommodate the changes the Infrastructure Act makes to the existing statute. Additionally, we establish the process for eligible providers to participate in the Affordable Connectivity Program, including the process for existing EBB Program providers to continue providing ACP-supported broadband services and devices. Congress in the Consolidated Appropriations Act established that in order to participate in the EBB Program a carrier must have provided broadband Internet access service to households as of December 1, 2020.[27] The Infrastructure Act makes several changes to the eligible internet service offerings by removing the December 1, 2020 restriction and removes references to "standard rates."[28] In place of the previous December 1, 2020 restrictions, the Infrastructure Act requires participating providers to offer the ACP discount on any internet service offering.[29] The Infrastructure Act does not alter the definition of participating provider or the framework through which providers may seek to participate in the Affordable Connectivity Program. Like participation in the EBB Program, provider participation in the Affordable Connectivity Program is voluntary.

10. In the Consolidated Appropriations Act, Congress defined an eligible "participating provider" as either an existing Eligible Telecommunications Carrier (ETC) or a provider approved by the Commission under an "expedited approval process."[30] As this portion of the statute is unchanged, the Commission will continue to utilize the participating provider election and approval processes we used in the EBB Program. In the EBB Program, the Commission created an "expedited approval process" to approve providers to participate in the EBB Program where the provider is not an ETC.[31] Alternatively, the Commission created an "automatic approval process" for providers with an "established program as of April 1, 2020" offering broadband services to eligible households with verification process sufficient to

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[25] *See* USAC, *Affordable Connectivity Program | Learn*, https://www.usac.org/about/affordable-connectivity-program/affordable-connectivity-program-learn/ (last visited Jan. 7, 2022).

[26] USAC, Participate in ACP, https://www.usac.org/about/affordable-connectivity-program/participate-in-acp/ (last visited Jan. 7, 2022).

[27] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(2), (a)(9), (a)(12), (d).

[28] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8).

[29] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i).

[30] Infrastructure Act, div. F, tit. V, sec. 60502(a)(1)(B)(ii), § 904(a)(11)(A).

[31] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D), § 904(d)(2); *EBB Program Order*, 36 FCC Rcd at 4626-28, paras. 33-35.

prevent fraud, waste, and abuse.[32] The Commission will continue to require all new participating providers to file USAC election notices prior to offering ACP supported services.[33] Accordingly, providers that have participated in the EBB Program and are still in good standing as of December 31, 2021 when the EBB Program ceased can continue to participate in the same manner in the Affordable Connectivity Program without seeking Bureau approval or filing election notices. This includes providers with alternative verification process approvals. Providers that have not already participated in the EBB Program or been designated as an ETC by a state or the Commission must file for automatic approval or expedited approval from the Commission. All new providers to the Affordable Connectivity Program will need to file USAC election notices. We delegate the authority to the Bureau to administer the participating provider approval process and to oversee USAC's administration of the program, including the administration of election process. Further, we delegate authority to the Bureau to provide additional guidance where necessary to carry out this Order.

1. Providers Eligible to Participate

11. *Participating Provider Eligibility Requirements.* The Commission will retain the broad, technologically neutral approach to provider participation that was used in the EBB Program.[34] Commenters continue to support broad provider eligibility.[35] The Infrastructure Act does not alter the definitions of "participating provider," "broadband provider," or "broadband internet access service."[36] Accordingly, ETCs and non-ETCs seeking to participate in the Affordable Connectivity Program must establish they provide broadband services to participate, and we decline to further narrow provider eligibility among those providers that offer broadband services as defined by the statute. This interpretation not only continues to allow for ETCs or non-ETCs like traditional Internet Service Providers (ISPs) including cable providers and wireless Internet service providers, but also permits non-traditional broadband providers like community-owned networks, electric cooperatives, or municipal governments.[37]

12. The Infrastructure Act removes the Consolidated Appropriations Act requirement that the EBB Program supported service must have been offered "in the same manner, and on the same terms, as described in any of such provider's offerings for broadband internet access service to such household, as on December 1, 2020."[38] Moreover, the Infrastructure Act also imposes a new requirement that providers "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same rates and terms available to households that are not eligible households."[39] In the EBB Program, we required participating providers to have offered retail broadband Internet access service to eligible households as of December 1, 2020.[40] Consistent with the

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[32] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D), § 904(d)(2)(B); *EBB Program Order*, 36 FCC Rcd at 4625-26, paras. 27-32.

[33] *See EBB Program Order*, 36 FCC Rcd at 4618-20, paras. 14-19.

[34] *EBB Program Order*, 36 FCC Rcd at 4617, para. 12.

[35] *See* Broadband Strategy Office for the Hawaii Broadband & Digital Equity Office, State of Hawaii Comments at 5; California Emerging Technology Fund Comments at 7; County of Los Angeles Comments at 1; CTIA Comments at 11; New York Public Service Commission Comments at 2; Ting Comments at 1; NaLA Reply at 9.

[36] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(B)(ii), (a)(2)(D), § 904(a)(11) (definition of participating provider); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(1) (definition of broadband internet access service).

[37] *EBB Program Order*, 36 FCC Rcd at 4617, para. 12.

[38] Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv).

[39] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i) (2021).

[40] *EBB Program Order*, 36 FCC Rcd at 4618, para. 13.

Infrastructure Act's removal of the December 1, 2020 restriction, participating providers will only need to establish they offered broadband services to end-users prior to seeking to participate in the Affordable Connectivity Program. Participating providers will be able to establish through certification that they provided broadband internet access service and reimbursable Internet service offerings by timely filing the FCC Form 477 and any successor filing.[41] Participating providers that do not file FCC Form 477 must certify, under penalty of perjury, that they provided retail broadband Internet access service to end-users prior to submitting the application.[42] We continue the EBB Program requirement that retail broadband Internet access service must be offered or provisioned to end users, meaning the provider of retail broadband internet access service maintains a direct relationship with the customer, is responsible for dealing with customer complaints, handles customer billing, and provides quality of service guarantees to the end user.[43] We find these provider certifications, in addition to the submission of broadband plan and rate information described below, appropriately satisfy the statute's eligibility requirements. As described further below, ETCs must make a showing that they offer qualifying broadband service in the election notice filed with USAC. Non-ETCs will make a threshold showing in the approval process to the Bureau.

13. *Existing EBB Program Participating Providers*. We seek to enable a quick and orderly transition period by reducing administrative burdens for participating providers, the Commission, and USAC. To that end, the Bureau issued guidance allowing EBB Program participating providers to automatically transition to the Affordable Connectivity Program on December 31, 2021.[44] Beginning on December 31, 2021, existing EBB Program participating providers have offered Affordable Connectivity Program discounts. We find support in the record for continuing to allow existing EBB Program participating providers in good standing to be automatically eligible to participate in the Affordable Connectivity Program.[45] By automatically transitioning participating providers from the EBB Program to the Affordable Connectivity Program we help ensure eligible households continue to receive the Affordable Connectivity Program discount without disruptions due to the eligibility of their service provider. Additionally, providers that were eligible for the EBB Program remain eligible for the Affordable Connectivity Program, as requiring additional filings to demonstrate eligibility results in redundant filings and reviews, thereby increasing administrative burdens for providers, the Commission, and USAC.

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[41] The Commission will consult the subscription data provided on the FCC Form 477 to determine compliance with this requirement. To fulfill this requirement, a provider should reference the most recent FCC Form 477 data month submission showing service in the jurisdiction. *See* FCC, *Who Must File Form 477?*, https://us-fcc.app.box.com/v/WhoMustFileForm477, para. 1 (Dec. 31, 2019) ("An entity that is a facilities-based provider of broadband connections to end users must complete and file the applicable portions of this form if it has one or more broadband connection in service to an end user on the as-of date associated with the form (either June 30 or December 31).").

[42] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

[43] *EBB Program Order*, 36 FCC Rcd at 4618, para. 13. (Explaining this approach is consistent with the Commission's approach to "offering" services. *See Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, 35 FCC Rcd 6077, 6129, para. 139 & n.322 (2020)).

[44] *Emergency Broadband Benefit Program; Affordable Connectivity Program*, WC Docket No. 20-445 and 21-450, Order, DA 21-1524, 8-9, para. 22 (WCB Dec. 8, 2021) (*Dec. 8th Guidance Order*).

[45] *See* ACA Connects Comments at 23; Altice Comments at 6; California Emerging Technology Fund at 7, 9; Competitive Carriers Association Comments at 5; County of Los Angeles at 1; CTIA Comments at 11; Dish Comments at 6; Google Fiber Comments at 5; Hughes Network Services Comments at 4; INCOMPAS Comments at 3; National Lifeline Association Comments at 14; NCTA Comments at 31; NTCA Comments at 4; New York Public Service Commission Comments at 2; Starry Comments at 9; Ting Comments at 1; T-Mobile Comments at 10; USTelecom Comments at 12; Verizon Comments at 4; WTA Comments at 3; NaLA Reply at 9; Sacred Wind Communications Reply at 2-3.

2. Elections to Participate in the Affordable Connectivity Program by Existing EBB Program Providers, Existing ETCs and Bureau-Approved Providers

14. In the EBB Program, the Commission required all participating providers to file an election notice with USAC to participate. The Commission established an expedited process where existing ETCs and other approved providers could gain access to the necessary USAC systems being used to administer the EBB Program. The EBB provider election notice requires: (1) the states in which the provider plans to participate in the EBB Program; (2) a statement that, in each such state, the provider was a "broadband provider" as of December 1, 2020; (3) a list of states where the provider is an existing ETC, if any; (4) a list of states where the provider received FCC approval, whether automatic or expedited, to participate, if any; (5) whether the provider intends to distribute connected devices under the EBB Program; (6) a description of the internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state; (7) documentation demonstrating the standard rates for those services; and (8) any other administrative information necessary for USAC to establish participating providers in the EBB Program.[46] Consistent with the interim guidance provided by the Bureau[47] and the general USAC election process established for the EBB Program,[48] and as contemplated in *ACP Public Notice*,[49] providers who did not participate in the EBB program but wish to participate in the Affordable Connectivity Program will be required to file election notices with USAC to facilitate the administration of the program and provide USAC the necessary information to incorporate providers into its systems for eligibility determination, enrollment, and reimbursement. Existing EBB Program participating providers in good standing will automatically transition to the ACP participating providers consistent with their EBB Program election notices and will not need to file new election notices or supplemental or additional information to USAC except as otherwise required by this Order.[50]

15. The Infrastructure Act maintains the direction that the Commission establish an expedited process where existing ETCs and other approved providers could "elect" to participate in the Affordable Connectivity Program and gain access to the necessary USAC databases being used to administer the Program.[51] Accordingly, we continue to require all new participating providers to file an election notice to participate in the Affordable Connectivity Program. For providers that did not participate in the EBB Program or providers seeking to add new jurisdictions (states or territories), existing ETCs will need to file an election notice with USAC only, while non-ETCs will need to first apply for and then obtain Bureau approval prior to filing their election notice with USAC. Commenters are supportive of retaining the streamlined election process for the Affordable Connectivity Program.[52] We direct the Bureau and

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[46] *EBB Program Order*, 36 FCC Rcd at 4618-24, paras. 14-24.

[47] *Dec. 8th Guidance Order* at 8-10, paras. 22, 25-27.

[48] *EBB Program Order*, 36 FCC Rcd at 4618-24, paras. 14-24.

[49] *ACP Public Notice* at 7, para. 14.

[50] *Dec. 8th Guidance Order* at 8, para. 22 ("[E]xisting EBB Program providers transitioning to the Affordable Connectivity Program will not need to file supplemental or additional service plan information with USAC prior to offering Affordable Connectivity Program discounts in their approved EBB Program jurisdictions. Beginning on December 31, 2021, existing EBB Program participating providers can offer their EBB Program service plans and any of their other internet service offerings on a voluntary basis to households enrolling in the Affordable Connectivity Program regardless of whether the service plan was offered prior to December 1, 2020.").

[51] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(B)(ii), (a)(2)(D), § 904(a)(11) (2021).

[52] *See* ACA Connects Comments at 23; Altice Comments at 6; California Emerging Technology Fund at 7, 9; Competitive Carriers Association Comments at 5; County of Los Angeles at 1; CTIA Comments at 11; Dish Comments at 6; Google Fiber Comments at 5; Hughes Network Services Comments at 4; INCOMPAS Comments at 3; National Lifeline Association Comments at 14; NCTA Comments at 31; NTCA Comments at 4; New York Public Service Commission Comments at 2; Starry Comments at 9; Ting Comments at 1; T-Mobile Comments at 10; USTelecom Comments at 12; Verizon Comments at 4; WTA Comments at 3; ACA Connects Reply at 3; ACP

(continued….)

USAC to work expeditiously to review provider applications and elections, respectively, and we direct the Bureau to issue additional guidance and instruction as necessary for providers seeking to participate in the Affordable Connectivity Program. Further, we expect the Bureau and USAC to prioritize their reviews to limit excessive delay in issuing approvals of the applications and elections once properly submitted by the providers.

a. Election Notice Process and Requirements

16. Consistent with the EBB Program election process, we direct USAC, under the supervision of and in coordination with the Bureau, to establish and administer a process to enable all new participating Affordable Connectivity Program providers to file election notices containing information sufficient to effectively administer the program. We direct USAC to collect the information discussed below in the election notices. In addition to those criteria, participating providers must certify under penalty of perjury that the information set forth in the election notice is true, accurate, and complete; they understand and will comply with all statutory and regulatory obligations described within this Order; and all terms and conditions and other requirements applicable to using the Lifeline National Eligibility Verifier (National Verifier), National Lifeline Accountability Database (NLAD), Representative Accountability Database (RAD), and other USAC systems. Providing materially false information in the election notice will disqualify a provider from participation in the Affordable Connectivity Program or result in a reduced reimbursement, as appropriate. We find support in the record for adopting these requirements and certifications.[53] These requirements align with the Infrastructure Act's requirements for provider participation and eligibility.[54]

17. Provider elections must include the following information to establish that the provider has met the criteria and can provide enough information to allow USAC to administer the program. We direct USAC, under the supervision of and in coordination with the Bureau, to establish and administer this election process consistent with this Order.

(a) *List of states or territories in which the provider plans to participate in the Affordable Connectivity Program.* A provider must list each state in which it will offer Affordable Connectivity Program services. Consistent with USAC's existing processes, providers should identify to USAC the postal ZIP code(s) or Census Block(s) where the provider will offer the Affordable Connectivity Program service to obtain Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), and provide information for use in the "Companies Near Me Tool" to the extent necessary.[55]

(b) *A statement that, in each such state or territory, the provider was a "broadband provider."* Consistent with the Commission's broadband data reporting rules,

(Continued from previous page)
Providers Reply at 8; Competitive Carriers Association Reply at 7; Local Governments Reply at 5; NaLA Reply at 10; USTelecom Reply at 8; Verizon Reply at 11-12.

[53] *See* ACA Connects Comments at 23; Altice Comments at 6; California Emerging Technology Fund at 7, 9; Competitive Carriers Association Comments at 5; County of Los Angeles at 1; CTIA Comments at 11; Dish Comments at 6; Google Fiber Comments at 5; Hughes Network Services Comments at 4; INCOMPAS Comments at 3; National Lifeline Association Comments at 14; NCTA Comments at 31; NTCA Comments at 4; New York Public Service Commission Comments at 2; Starry Comments at 9; Ting Comments at 1; T-Mobile Comments at 10; USTelecom Comments at 12; Verizon Comments at 4; WTA Comments at 3; ACA Connects Reply at 3; ACP Providers Reply at 8; Competitive Carriers Association Reply at 7; Local Governments Reply at 5; NaLA Reply at 10; USTelecom Reply at 8; Verizon Reply at 11-12.

[54] Infrastructure Act, div. F, tit. V, §§ 904(a)(11), (d).

[55] *See* USAC, *Stay Connected | Companies Near Me*, https://getemergencybroadband.org/companies-near-me/ (last visited Jan. 7, 2022).

participating providers will be able to establish that they provided broadband Internet access service and reimbursable Internet service offerings through reference to previous FCC Form 477 filings.[56] Providers that are not required to file FCC Form 477 must certify that they provided retail broadband Internet access service to end users and identify the underlying carrier providing the network facilities.

(c) *A statement identifying where the provider is an existing ETC.* A provider who is an ETC or is affiliated with an ETC seeking to begin offering the Affordable Connectivity Program must submit to USAC documentation demonstrating that it is a participating provider in specific states. While ETCs are automatically eligible to participate and likely have already obtained administrative numbers from USAC, such as SPINs or SACs, requiring demonstration of ETC status, filing this statement with USAC will allow more efficient processing of elections.

(d) *A statement identifying where the provider received Bureau approval to participate in the Affordable Connectivity Program.* Providers seeking approvals outside of states where they are existing ETCs or are affiliated with existing ETCs will need to identify those states and submit the statement to the Bureau for approval to participate in the program.[57]

(e) *A statement confirming whether the provider intends to distribute connected devices and supporting documentation*. Providers seeking reimbursement for connected devices must submit a statement of intent to distribute connected devices as part of their election notice. These providers should also include documentation detailing the equipment (device make, device model, device type) and applicable wholesale costs of the laptop, desktop or tablet. Connected devices must be accessible to and usable by users with disabilities.

18. Consistent with the EBB Program provider election notice process, providers newly seeking to participate in the Affordable Connectivity Program must obtain and be able to provide the necessary administrative registrations to utilize the Commission and USAC processes. This requires new providers to have and obtain registrations for the Commission Registration System (CORES), FCC Registration Number (FRN), Service Provider Identification Number(s) (SPINs), Study Area Codes (SACs), System for Award Management (SAM), Employer Identification Number (EIN), Tax Identification Number (TIN) and/or Dun & Bradstreet DUNS number for all entities the provider anticipates seeking reimbursement. For new providers to the Affordable Connectivity Program, the FRN, EIN/TIN, and DUNS should all be associated with the same entity filing the election notice. Additionally, the provider should identify any parent/subsidiary or affiliate relationships the provider has with other broadband service providers.[58] To better assist USAC and the Commission with processing

[56] *See* FCC, *Form 477 Resources*, https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources (Nov. 23, 2021). The Commission will consult the subscription data provided on the FCC Form 477 to determine compliance with this requirement. To fulfill this requirement, a provider should reference the most recent FCC Form 477 data month submission showing service in the jurisdiction. *See* FCC, *Who Must File Form 477?*, https://us-fcc.app.box.com/v/WhoMustFileForm477, para. 1 (Dec. 31, 2019) ("An entity that is a facilities-based provider of broadband connections to end users must complete and file the applicable portions of this form if it has one or more broadband connection in service to an end user on the as-of date associated with the form (either June 30 or December 31)."). For providers that cannot reference an earlier FCC Form 477 filing, the provider should certify to providing service and reference supporting documentation demonstrating public, end-user broadband service offerings.

[57] *S*ee 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

[58] *S*ee 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

reimbursement claims, we clarify that an election should be filed for every entity expecting to receive reimbursement from the Affordable Connectivity Program.

19. We are persuaded by comments not to collect broadband internet service plan information during the election process.[59] The Infrastructure Act requires that a participating provider "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households."[60] The Infrastructure Act also makes several changes to the eligible internet service offerings by removing the December 1, 2020 restriction and references to "standard rates."[61] Additionally, the Infrastructure Act requires the Commission to adopt an annual collection of "data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program" that will necessitate the filing of information detailing service plans offered in the Program.[62] The administrative burden of filing information on all service plans for a particular provider could result in thousands of permutations of price, service characteristics, and geographic information that would delay election notice filing and processing.[63] Such an administrative burden could discourage provider participation and unnecessarily burden USAC with review of voluminous information that has no direct bearing on the election process since USAC no longer must verify that a service offering is being offered at the standard rate for that service as of December 1, 2020. Additionally, an administrative requirement to keep service plan information up to date within the ACP election notice requirements would be duplicative of the annual collection of "data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program" required by the Infrastructure Act. As such, we find that the ACP consumer complaint process, audit requirements, program integrity reviews, and the future annual information collection create strong incentives and mechanisms for ensuring providers comply with their obligations and keep adequate records of the service offerings and terms they make available to both ACP and non-ACP households. Accordingly, participating providers do not have to file broadband service plan information during the USAC election process or update existing service plan information filed during the EBB Program election process. Providers are on notice of the statutory requirement to offer ACP discount on "any internet service offering" and the requirement adopted in this Order to certify compliance with the ACP rules as a condition of participation.

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[59] *See* ACA Connects Comments at 13-15; Altice Comments at 6-7; Cincinnati Bell Comments at 3; Competitive Carriers Association Comments at 5; CTIA Comments at 12; Dish Comments at 6; Google Fiber Comments at 5; Hughes Network Services Comments at 4; INCOMPAS Comments at 3; National Lifeline Association Comments at 14-15; NCTA Comments at 31; NTCA Comments at 4; Starry Comments at 9; Ting Comments at 1; T-Mobile Comments at 10-11; USTelecom Comments at 13; Verizon Comments at 21-22; WTA Comments at 3; ACA Connects Reply at 3; ACP Providers Reply at 8; Competitive Carriers Association Reply at 7; Local Governments Reply at 5; NaLA Reply at 10; USTelecom Reply at 8; Verizon Reply at 11-12.

[60] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

[61] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8).

[62] Infrastructure Act, div. F, tit. V, sec. 60502(c)(1).

[63] *See* ACA Connects Comments at 13-15; Altice Comments at 6-7; Cincinnati Bell Comments at 3; Competitive Carriers Association Comments at 5; CTIA Comments at 12; Dish Comments at 6; Google Fiber Comments at 5; Hughes Network Services Comments at 4; INCOMPAS Comments at 3; National Lifeline Association Comments at 14-15; NCTA Comments at 31; NTCA Comments at 4; Starry Comments at 9; Ting Comments at 1; T-Mobile Comments at 10-11; USTelecom Comments at 13; Verizon Comments at 21-22; WTA Comments at 3; ACA Connects Reply at 3; ACP Providers Reply at 8; Competitive Carriers Association Reply at 7; Local Governments Reply at 5; NaLA Reply at 10; USTelecom Reply at 8; Verizon Reply at 11-12.

20. We direct USAC in coordination with the Bureau to expeditiously process election notices. We require USAC to establish necessary systems and processes to systematically review election notices on a rolling basis. USAC should notify a provider promptly if its election notice is incomplete or otherwise contains errors that prevent USAC from processing the election notice. USAC will only reject election notices that are materially incomplete and that the provider fails to update.

b. Obligations of Providers Electing to Participate in Affordable Connectivity Fund

21. We find there is authority within the Consolidated Appropriations Act as modified by the Infrastructure Act to require participating providers to make available the necessary information and certifications to provide access to the systems needed to administer the Affordable Connectivity Program.[64] Use of existing USAC databases is the most efficient and least disruptive way to quickly implement the program while also ensuring adequate safeguards to prevent waste, fraud, and abuse. Accordingly, we authorize USAC to continue to make available the appropriate databases to administer the program, including the National Verifier, NLAD, RAD, and Lifeline Claims System (LCS). We direct USAC to take the appropriate actions to update, modify, or create the necessary USAC systems to administer the Affordable Connectivity Program in line with the Commission's direction in this Order. We also direct the Bureau and the Office of Managing Director (OMD) to supervise and coordinate with USAC all actions necessary to continue to make USAC databases and systems available for the Affordable Connectivity Program.

22. *Access to Affordable Connectivity Program Systems*. Consistent with the EBB Program and the Consolidated Appropriations Act's provision allowing us to use USAC's systems and services to implement the Affordable Connectivity Program, we find that participating providers will be required to use certain USAC systems, such as the LCS, NLAD, and RAD, for program administration and will be permitted to use the National Verifier to determine household eligibility.[65] Based on our experience with the EBB Program, we will continue to rely on the USAC-administered National Verifier, NLAD, RAD, LCS, and other established processes for the EBB Program, including the provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews.[66] We direct the Bureau, and USAC as directed by the Bureau, to issue any further guidance or instruction necessary to clarify the obligations of participating providers when using USAC databases and the administrative process established for the Affordable Connectivity Program.

23. *Required Updates to Election Notice Information Resulting from Transactions of Participating Providers.* We require participating providers to maintain up-to-date information in their election notice filed with USAC.[67] In order to effectively administer the program and maintain compliance with fiscal laws related to entities that can receive funding from government assistance programs, participating providers shall keep the identifying information specified in paragraph 18 above, including points of contact, FRN, EIN/TIN, and DUNS, up to date. Participating providers must update this information following any transaction that would result in a change to the identifying information submitted on an election notice. When a participating provider undertakes a transaction that results in a transfer of ownership or control under section 214 of the Act, the provider need not seek approval from

[64] *EBB Program Order*, 36 FCC Rcd at 4628-30, 4683, paras. 36-40, 154 (citing authority within the Consolidated Appropriations Act to require certain provider actions); *see, e.g.*, Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(F), § 904(b)(3).

[65] *See, e.g.*, Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(F), § 904(b)(3). This requirement is only to the extent necessary as determined by the Bureau and USAC to administer the program. Providers with approved alternative verification process will not be required to the use the National Verifier to enroll subscribers through that alternative process.

[66] *EBB Program Order*, 36 FCC Rcd at 4629, para. 39.

[67] *ACP Public Notice* at 6, para. 13.

the Bureau specifically for its continued participation in the Affordable Connectivity Program post-transaction.[68] This requirement impacts changes resulting from transactions, as well as, a general requirement to maintain up-to-date and accurate contact information and similar administrative information referenced above. These updates must be made within ten business days of the change in information.

24. *Sales Agent Financial Incentives for Enrollments.* Consistent with the EBB Program rules, we continue to require all participating providers to have their agents and other enrollment representatives registered with the Representative Accountability Database (RAD), as is currently required for the Lifeline[69] and EBB Programs, as a way to minimize waste, fraud, and abuse.[70] To address the potential for waste, fraud, and abuse caused by commission-based compensation for sales agents, the Bureau proposed prohibiting any commission compensation for enrollment representatives or direct supervisors.[71] At this time, we decline to adopt a strict prohibition on participating providers offering commission-based compensation to employees, sales agents, or similar enrollment representatives. We instead adopt a more limited prohibition on participating providers and, as we do in Lifeline, restrict them from offering or providing to their enrollment representatives or direct supervisors any commission compensation that is based on the number of households who apply for or are enrolled in the Affordable Connectivity Program with that provider, or based on revenues the participating provider receives in connection with the Affordable Connectivity Program, including payments for connected devices.[72] In the *EBB Program Order*, the Commission declined to apply this prohibition to the EBB Program "to avoid discouraging provider participation and diminishing consumer choice" in a temporary program."[73] The considerations for the more permanent Affordable Connectivity Program are different, and our experience during the EBB Program with agent-driven, apparent improper enrollments necessitates adopting a program ban on agent commission compensation similar to the Lifeline Program. For example, the FCC's Office of Inspector General (OIG) recently issued an advisory raising concerns about potential waste, fraud and abuse with respect to EBB Program enrollments based on the USDA National School Lunch Program's Community Eligibility Provision (CEP).[74] Specifically, the advisory observes and describes certain problems associated with the CEP enrollment process that involve misconduct by sales agents.[75] While the Bureau and USAC have engaged in remedial actions to prevent

[68] Providers are still required to obtain Commission or Bureau approval for a transaction if required by section 214 of the Act and part 63 of our rules. 47 U.S.C. § 214; 47 CFR §§ 63.03-04; *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384, 9393-94, para. 30 (WCB 2021) (stating that ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications). *See ACP Public Notice*, at 6, para. 13 and n.28 (citing transfer of control requirements for ETCs). With regard to discontinuance of service by ACP providers, we require participating providers to adhere to a specific process below to ensure that subscribers have adequate notice and an opportunity to transfer their benefit to another service provider.

[69] 47 CFR § 54.406(a).

[70] *Id*. at § 54.1607.

[71] *ACP Public Notice* at 9, para. 20.

[72] 47 CFR § 54.406(b); *ACP Public Notice* at 9, para. 20.

[73] *EBB Program Order*, 36 FCC Rcd at 4681, para. 147.

[74] *See generally Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision* (FCC OIG Nov. 22, 2021), https://www.fcc.gov/document/fcc-inspector-general-advisory-regarding-ebb-enrollment-fraud (*OIG Advisory*); *Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Benefit Program Enrollments Based on the Community Eligibility Provision*, WC Docket No. 20-445, DA-21-1464 (WCB Nov. 22, 2021).

[75] *OIG Advisory*, at 2-3.

this specific abuse, we are concerned that the financial incentives for provider sales agents based on enrollments and applications invites program waste.

25. We are bolstered in this decision by a similar restriction in the Lifeline program. In 2019, the Commission banned this practice in the Lifeline program, holding that "while the National Verifier plays an important role in helping to address waste, fraud, and abuse in the program, we do not believe that it will eliminate the financial incentives for individuals to attempt to defraud the Lifeline program. Commissions based on the number of Lifeline applications or successful Lifeline enrollments are one such incentive, and by limiting them today, we remove a financial incentive for committing fraudulent activity."[76] We find this rationale persuasive. While we initially declined adopting such a ban for the EBB Program to not discourage provider participation, given the robust provider participation and household enrollments seen in the EBB Program we find the public interest is better served by preventing waste, fraud, and abuse caused by incentives related to commissions.

26. In considering this decision, we are not persuaded by comments in the record suggesting that such a limited commission-based compensation prohibition is unnecessary or that representative registration in the RAD alone is sufficient to prevent waste, fraud, and abuse.[77] In our experience, both in Lifeline and the EBB Program, agent registration does not remove the financial incentive to improperly enroll a household when the agent is compensated based on the enrollment.[78] Further, agent registration allows for audits, trend analysis, and other remedial actions after the improper enrollment occurs, but does little to prevent the improper behavior or remove the incentive for abuse. Commenters additionally suggest that the Lifeline commission ban was a stop gap measure that was put in place prior to the full launch of the National Verifier and thus does not need to be implemented in the Affordable Connectivity Program, which utilizes the National Verifier.[79] The Commission however continues to ban commission-based compensation in the Lifeline program following the full deployment of the National Verifier, and we have recognized the National Verifier itself does not remove the financial incentives for sales agents to improperly enroll ineligible households.[80] We considered a stricter prohibition that would bar any commission-based compensation to participating providers' enrollment representatives.[81] This prohibition would have prevented any commissions paid to enrollment representatives or direct supervisors related to service initiations of ACP households. However, such a broad prohibition may have had unintended consequences given the frequency broadband providers use commission-based compensation for their enrollment representatives across multiple services and business operations.[82] By limiting the prohibition to only commissions based on ACP application and enrollments, we strike a

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[76] *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, Fifth Report and Order, 34 FCC Rcd 10886, 10917, para. 75 (2019) (*Lifeline Fifth Report and Order*).

[77] *See* AT&T Comments at 17; CTIA Comments at 24; National Lifeline Association Comments at 26; NCTA Comments at 33; T-Mobile Comments at 20; Letter from Anisa L. Green, Director, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (filed Dec. 3, 2021) (AT&T *Ex Parte*); Letter from B. Lynn Follansbee, VP, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (filed Dec. 20, 2021) (USTelecom Dec. 20, 2021 *Ex Parte*); Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Dec. 14, 2021); AT&T Reply at 10; CTIA Reply at 12; NaLA Reply at 20-21; USTelecom Reply at 10; Verizon Reply at 10-11.

[78] *See OIG Advisory*, at 2-3.

[79] AT&T Comments at 17-18; CTIA Comments at 23-24.

[80] *Lifeline Fifth Report and Order*, 34 FCC Rcd at 10917, para. 75.

[81] *ACP Public Notice* at 9, para. 20.

[82] *See* AT&T Comments at 17; CTIA Comments at 24; NaLA Comments at 26; NCTA Comments at 33; T-Mobile Comments at 20; USTelecom Comments at 20; AT&T Reply at 10; CTIA Reply at 12; NaLA Reply at 20-21; USTelecom Reply at 9-10; Verizon Reply at 10-11.

balance in preventing certain abuses in the program while reducing the logistical and administrative burden for participating providers that a blanket prohibition on commissions may have caused. Finally, we find support in the record to ban agent compensation based on ACP applications and enrollments from commenters recognizing the financial incentive to enroll consumers can result in misleading and improper information being provided to consumers to induce enrollments or other abusive behaviors.[83]

27. Accordingly, we prohibit participating providers from offering or providing commissions to enrollment representatives and their direct supervisors based on the number of consumers who apply for or are enrolled in the Affordable Connectivity Program with that provider. This restriction applies to an employee, agent, contractor, or subcontractor, acting on behalf of a participating provider or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment. For purposes of this rule, a provider's payment to a third-party entity that in turn provides commissions to an enrollment representative is subject to this prohibition. Likewise, we determine that providers who allow agents to retain cash payments for device purchases related to the ACP enrollments are providing an incentive based on ACP enrollments and thus this activity is also prohibited under these rules. This restriction strikes the balance between a blanket commission prohibition that may have been logistically and administratively difficult for participating providers given the frequent use of this practice for broadband providers in general service initiations and the goal of preventing waste, fraud, and abuse caused by the financial incentives to enroll any household in the Affordable connectivity program through the use of commissions. This restriction is not intended to prevent providers from using customer service representatives to assist consumers in the application and recertification processes, but customer service representatives should not be compensated based on the number of customer applications that are approved. Further, this restriction only applies to commissions related to ACP applications or enrollments and does not prohibit commissions paid for sale of service or provider business incentives unrelated to the Affordable Connectivity Program.[84] This approach to restricting commissions based on ACP applications is supported by commenters that recognize this compromise addresses potential improper behaviors while not causing overly burdensome implementation for participating providers.[85]

28. *Provider Annual Certifications Requirements.* We next adopt the proposal to require providers to submit to USAC annual officer certifications relating to the Affordable Connectivity Program.[86] With the certification, the officer must certify under penalty of perjury, that the participating provider has policies and procedures in place to ensure compliance with ACP rules. The Commission currently uses similar protections in the Lifeline and High Cost programs through the FCC Form 481, which requires providers to certify compliance with program rules. Also, in the Lifeline program, pursuant to section 54.416 of the Commission's rules, ETCs must certify their compliance with Lifeline program rules and must attest that they have policies and procedures in place to ensure that their Lifeline subscribers are eligible for Lifeline service. Based on our experience in the Lifeline and EBB Programs, we find that this annual certification is necessary to ensure that all ACP providers are vigilant against waste, fraud, and abuse, and are undertaking efforts to ensure compliance with the ACP rules, which will be particularly important as this program is anticipated to last multiple years. There is support in the

[83] AARP Comments at 4-5; National Consumer Law Center & UCC Media Justice (NCLC/UCC-MJ) Comments at 12; National Digital Inclusion Alliance Comments at 7 (NDIA); United Ways of California (UWCA) Comments at 8; Connecticut Office of State Broadband Reply at 8.

[84] *See* AT&T Comments at 18-19 (suggesting a rule limited to "restricting commission-based compensation that is based specifically and solely on the number of successful ACP enrollments").

[85] *See* AT&T Comments at 17-19; CETF Comments at 12; NDIA Comments at 7; AT&T Reply at 10; USTelecom Reply at 10; Verizon Reply at 10-11.

[86] *ACP Public Notice* at 54, para. 134.

record for this annual certification,[87] and we therefore adopt a requirement that an officer who oversees ACP business activities must file an annual certification for Affordable Connectivity Program. At a minimum, the annual certification will require ACP providers to attest that they have policies and procedures to ensure the eligibility of their subscribers to receive ACP support and for ensuring the accuracy and completeness of the information they provide to the National Verifier and NLAD; an acknowledgement that providers are liable for violations of ACP rules and that their liability extends to violations by their agents, contractors, and representatives; and other information deemed necessary by the Bureau to ensure that providers have a plan for complying with ACP rules. We direct the Bureau to develop an annual officer certification and submission process with USAC and set a uniform deadline for all providers to submit this annual certification.

3. Non-ETC Provider Applications and Approval Process

29. The Consolidated Appropriations Act established that providers not already designated as ETCs that wished to participate in the EBB Program could seek either an automatic or expedited approval from the Commission based on certain criteria.[88] Specifically, the Consolidated Appropriations Act required the Commission to establish an expedited process for such approval and "to automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse."[89] Consistent with this Congressional directive, we established both an automatic approval and an expedited approval process for non-ETC providers seeking to participate in the EBB Program. The Infrastructure Act does not modify the statute's provider approval process.[90] We find support in the comments to retain the EBB Program provider approval processes for the Affordable Connectivity Program.[91] Accordingly, we retain the provider approval processes used during the EBB Program in accordance with the discussion below. We delegate to the Bureau the authority to administer the process by which providers seek these approvals, including through appropriate direction to USAC. Applications from new providers will be reviewed on an expedited, rolling basis.

30. As discussed above, we allow participating providers in good standing to automatically transition to the Affordable Connectivity Program on December 31, 2021.[92] By automatically transitioning participating providers from the EBB Program to the Affordable Connectivity Program we help ensure eligible households continue to receive the discount without disruptions due to the eligibility of their service provider. Accordingly, non-ETC broadband providers that did not participate in the EBB Program or are seeking to expand previously approved jurisdictions for participation in the Affordable Connectivity Program must file an approval application with the Bureau prior to filing a USAC election notice.[93] Consistent with the EBB Program, ETC broadband providers do not need to seek Bureau approval to participate in the Affordable Connectivity Program and only need to submit a USAC election notice.[94]

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[87] CETF Comments at 52.

[88] Consolidated Appropriations Act, div. N, tit. IX, § 904(d).

[89] *Id.* § 904(d)(2).

[90] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D), § 904(d) (2021).

[91] *See* Broadband Strategy Office for the Hawaii Broadband & Digital Equity Office, State of Hawaii Comments at 5; California Emerging Technology (CETF) Comments at 7; County of Los Angeles Comments at 1; CTIA Comments at 11; New York Public Service Commission (NY PSC) Comments at 2; Ting Comments at 1.

[92] *December 8th Guidance Order* at 8-9, para. 22.

[93] *EBB Program Order*, 36 FCC Rcd at 4624-28, paras. 25-35.

[94] *EBB Program Order*, 36 FCC Rcd at 4619, para. 15.

a. Automatic Approval Process for Providers with Existing Support Programs

31. We adopt an automatic approval process consistent with the EBB Program and Infrastructure Act to enable non-ETC broadband providers with "an established program as of April 1, 2020, that is widely available and offers Internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse" to be automatically approved upon the filing of information meeting the criteria.[95] Any non-ETC broadband provider seeking to qualify for such automatic approval must file an application describing: (1) the states or territories in which in which it plans to participate, (2) the service areas in which the provider has the authority, if needed, to operate in each state, but has not been designated an eligible telecommunications carrier, and (3) a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Affordable Connectivity Program.

32. *Established Program as of April 1, 2020*. We maintain the interpretation of what constitutes an "established program" that is "widely available" while accounting for the Infrastructure Act's modifications to the statute.[96] This requirement encompasses any eligible broadband provider that maintains an existing program that was made available by April 1, 2020 offering broadband to subscribers meeting at least one of the criteria in the statute's definition of an eligible household.[97] Specifically, providers offering broadband subscribers discounted rates based on criteria such as low-income, participation in federal, state, or local assistance programs, or other means-tested eligibility criteria qualify for this automatic approval process. Importantly, the Infrastructure Act makes several changes to the ways households can qualify for the Affordable Connectivity Program. In the EBB Program, a household may qualify if it meets the requirements of a provider's existing low-income or COVID-19 program,[98] subject to the requirements of the provider's approved verification process. However, under the Affordable Connectivity Program, eligibility for a provider's COVID-19 program no longer qualifies a household to receive ACP benefits.[99] Additionally, the Infrastructure Act removes eligibility for households that qualified based on having experienced a substantial loss of income since February 29, 2020.[100] In keeping with the directive of Congress, we modify the requirements of what constitutes an "established program" to reflect the removal of COVID-19-specific response programs and other short-term bill forbearance or forgiveness programs. Accordingly, a provider seeking to participate in the Affordable Connectivity Program can demonstrate an "established program" for automatic approval by submitting information demonstrating that it maintains an existing low-income program that was made available by April 1, 2020 to subscribers meeting at least one of the criteria in the revised definition of an eligible household. Consistent with the Infrastructure Act's modifications to the statute, to qualify for automatic approval, providers must demonstrate that they are offering broadband subscribers discounted rates based on criteria such as low-income, participation in federal, state, or local assistance programs, or other means-tested eligibility criteria, and must also demonstrate the pre-existing verification process used for this existing program. The principal consideration in determining an "established program" for automatic approval is whether subscribers receive or were eligible to receive a financial benefit through reduced rates. Consistent with our rules in the EBB Program, we find that a program is "widely

[95] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D), § 904(d)(2)(B) (2021); *see also EBB Program Order*, 36 FCC Rcd at 4625-26, paras. 27-32.

[96] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D), § 904(d)(2)(B) (2021).

[97] *See id.* at sec. 60502(b)(1)(A)(i), § 904(a)(6) (2021).

[98] Consolidated Appropriations Act, div. N., tit. IX § 904(a)(6)(D), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i) (2021).

[99] Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(6)(D) (2021).

[100] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C), *struck by* Infrastructure Act, div. F, tit. V, §sec. 60502(b)(1)(A)(i)(II) (2021).

established" when it was offered to subscribers in a substantial portion of the service provider's service area in a particular state.[101]

33. *Required Verification Processes*. The Infrastructure Act continues to require that providers seeking automatic approval to participate in the Affordable Connectivity Program have established programs that maintain verification processes that are "sufficient to avoid fraud, waste, and abuse."[102] As we did in the EBB Program, we apply this requirement in a forward-looking manner so as to strike the appropriate balance between responsible stewardship of the funds and ensuring broad provider participation in the Affordable Connectivity Program. Providers that have been offering a broadband program for eligible households have generally foregone collecting revenue they might otherwise have assessed from participating subscribers. Those providers therefore already have incentive to prevent enrollment in their programs by ineligible households. Providers submitting applications for automatic approval must describe only the established program and participation requirements to meet the approval criteria.[103]

34. Consistent with the EBB Program rules, providers that receive automatic approval to participate in the Affordable Connectivity Program will use the National Verifier and NLAD to verify household eligibility or their own alternative household eligibility verification processes, or the combination of both, before seeking reimbursement. Even if a provider has its own existing broadband program for determining eligible households, it may decide to use the National Verifier for some or all applications to the Affordable Connectivity Program, although it is not required to do so.[104] To ensure the eligibility of the households enrolled through an approved alternative verification process, we direct USAC to conduct periodic program integrity reviews to ensure that subscribers enrolled through a provider's alternative verification process are eligible for the Affordable Connectivity Program.

35. *Timing of Approvals*. Providers that file applications certifying to and making necessary demonstrations for the criteria outlined above will receive approval automatically once the Bureau confirms all required information was submitted. Thus, we delegate to the Bureau the authority to administer an application process that will automatically approve provider applications meeting the criteria described above. Additionally, once approved, all providers must file with USAC an election to participate in the Affordable Connectivity Program to gain access to USAC systems.

b. Expedited Review Process for Non-ETC Providers

36. We adopt an expedited review process for non-ETC providers that do not qualify for automatic application processing and are not affiliated with an ETC in the same jurisdiction consistent with the EBB Program.[105] Such providers must file an application for expedited review to receive approval from the Bureau to participate in the Affordable Connectivity Program. Each non-ETC broadband provider seeking to participate must file an application: (1) describing the state(s) in which it plans to participate, (2) describing the service areas in which the provider has the authority, if needed, to operate in each state but has not been designated an eligible telecommunications carrier, and (3) certifying to the provider's plan to combat waste, fraud, and abuse.

37. Provider applications for review must establish a sufficient showing that the provider has met the criteria for expedited review and approval, as outlined below. We direct the Bureau to administer this expedited application review process consistent with this Order.

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[101] *EBB Program Order*, 36 FCC Rcd at 4625-26, para. 29.

[102] Infrastructure Act, div. F, tit V sec. 60502(a)(2)(D)(ii), § 904(d)(2)(B) (2021).

[103] *EBB Program Order*, 36 FCC Rcd at 4626, paras. 30-31.

[104] *Id.* at para. 31.

[105] *EBB Program Order*, 36 FCC Rcd at 4626-28, para. 33-35.

(a) *A list of states or territories where the provider will offer Affordable Connectivity Program services.* A provider seeking approval must list each jurisdiction in which it seeks to be approved to offer ACP-supported services. While the provider need only identify the state or territory where it plans to offer qualifying services for purposes of its submission to the Bureau, providers should be prepared to identify to USAC in their election the postal ZIP code(s) or Census Block(s) where Program service will be offered to obtain Service Provider Identification Number(s) (SPINs) or Study Area Codes (SACs), as necessary.

(b) *A statement identifying the jurisdiction in which the provider requires FCC approval and jurisdictions in which the provider is an existing ETC.* A provider that is designated as an ETC or affiliated with an ETC[106] in some states or territories must submit an application and obtain Bureau approval to participate in the Program in states or territories where the provider is not designated as an ETC. A provider, even if already designated as an ETC in some states or territories, must seek Bureau approval to offer Affordable Connectivity Program services in states or territories in which the provider is not designated as an ETC. Providers without ETC designations or unaffiliated with ETCs must certify that they are authorized to provide broadband services.

(c) *Certification of the provider's plan to combat waste, fraud, and abuse.* Participating provider applications must include a certification that the provider understands and complies with all statutory and regulatory obligations, including those described within this Order, as a condition of offering ACP-supported services. Specifically, a provider must certify that it will:

(i) confirm a household's eligibility for the Program through either the National Verifier or a Commission-approved eligibility verification process prior to seeking reimbursement for the respective subscriber;

(ii) follow all enrollment requirements and obtain all certifications as required by the Program, including providing eligible households with information describing the Program's eligibility requirements, one-per-household rule, and enrollment procedures;

(iii) interact with the necessary USAC systems, including the National Verifier, NLAD, and RAD, before submitting claims for reimbursement, including performing the necessary checks to ensure the household is not receiving duplicative benefits within the Program;

(iv) de-enroll from the Program any household it has a reasonable basis to believe is no longer eligible to receive the benefit consistent with Program requirements;

(v) comply with the Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and

(vi) agree to the Commission's enforcement and forfeiture authority.

38. *Timing of Approvals*. Providers that have filed an application satisfying the criteria outlined above will receive expedited review on a rolling basis. We delegate to the Bureau the authority to administer an application review process that will expeditiously consider provider applications meeting

[106] *S*ee 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

the criteria described above. Additionally, all approved providers must file an election with USAC to participate in the Affordable Connectivity Program.

c. Alternative Verification Process Applications

39. The Consolidated Appropriations Act allowed a participating provider to "rely upon an alternative verification process of the participating provider," to determine household eligibility and enroll households in the EBB program, subject to certain conditions.[107] Pursuant to the process set out by the Consolidated Appropriations Act, the "participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement," and the Commission has seven days after receipt of the information to notify the participating provider if its "alternative verification process will be sufficient to avoid waste, fraud, and abuse."[108] This approval allowed participating providers to verify all household eligibility criteria through their own eligibility verification process in addition to, or instead of, using the National Verifier. The Infrastructure Act does not modify this basic framework. However, because the Infrastructure Act eliminated some paths to eligibility for households, providers' alternative verification processes may need to be revised to reflect these changes.

40. *Participating Provider Eligibility to Use an Alternative Verification Process.* The Commission required alternative verification processes for the EBB Program to be at least as stringent as methods used by the National Verifier.[109] The household eligibility determinations made by the National Verifier represent a strong waste, fraud, and abuse prevention tool. The importance of the independent household eligibility reviews and verification conducted by the National Verifier was recognized by Congress,[110] and the Commission has also stated that the National Verifier is an effective tool and important protection against waste, fraud, and abuse.[111] During the EBB Program, the periodic updates to the National Verifier to improve the EBB household verification process proved to be an effective and robust tool for providers and households to efficiently determine household eligibility. In fact, many providers with approved alternative verification processes choose to use the National Verifier process in addition to or in lieu of their own alternative processes.[112] Further, strong financial incentives exist for providers to enroll as many households in the Affordable Connectivity Program given the direct government subsidy per household. While the Bureau and USAC have engaged in remedial actions to address abuse by providers and their sales agents,[113] like those described by the FCC's OIG in its

[107] Consolidated Appropriations Act, div. N., tit. IX, § 904(b)(2)(B).

[108] *Id.*

[109] *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 66.

[110] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2).

[111] *EBB Program Order*, 36 FCC Rcd at 4635, para. 49; *FCC Enforcement Advisory: Lifeline Providers Remain Liable for Ensuring the Eligibility of Their Subscribers to Receive Lifeline Service*, Public Notice, 34 FCC Rcd 11934, 11934-36 (EB 2019); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4009-16, para. 132-144 (2016) (*2016 Lifeline Order*).

[112] One of the many advantages of using the National Verifier is that it has connections to state and federal databases for various eligibility programs enabling automated eligibility decisions so that consumers who participate in those programs do not need to provide documentation to show they qualify. Specifically, the National Verifier has connections to the Centers for Medicare and Medicaid Services and the Department of Housing and Urban Development, allowing automated eligibility verification for recipients of Medicaid and Federal Public Housing Assistance. USAC and the FCC have also entered into agreements with states/territories for access to SNAP data for purposes of confirming eligibility for the Program.

[113] *See generally Wireline Competition Bureau Announces Additional Program Integrity Measures for Emergency Benefit Program Enrollments Based on the Community Eligibility Provision*, Public Notice, WC Docket No. 20-445, DA 21-1464 (WCB Nov. 20, 2021) (*CEP Public Notice*).

advisory,[114] the financial incentives for providers to commit waste, fraud, and abuse remain when the provider has the cost of providing broadband services fully covered or dramatically reduced by the ACP discount.

41. Further, our experience during the EBB Program provides additional concern with providers seeking alternative verification processes without an "established program." During the EBB Program, some providers without established low-income programs sought approval of alternative verification processes even where the providers had already been designated as ETCs, had been providing Lifeline service for years, and had a history of using the National Verifier and other USAC systems to determine eligibility for Lifeline. These providers typically claimed they needed an alternative verification process for efficiency reasons or administrative ease, but their requests for approval did not address the increased risk of waste, fraud, and abuse inherent in not using the National Verifier. Moreover, these alternative verification processes were untested and seemingly created only for the purpose of the EBB Program application. In such cases, the provider may not have the appropriate financial incentives to make accurate eligibility determinations, because the Emergency Broadband Connectivity Fund, and not the provider itself, is subsidizing the discounted service.[115] In contrast, a provider who is enrolling households in its own low-income program has an adequate financial incentive to make accurate eligibility determinations because the process was developed to support an existing program through which the provider had committed to subsidize the discounted service offered to eligible households.

42. Accurately determining household eligibility is the principal consideration for the National Verifier and its independent reviews. The accuracy of the eligibility decision is the principal tool in preventing improper payments and other waste, fraud, and abuse in the Affordable Connectivity Program. A proposal to use an alternative verification process that does not offer an explanation for why the alternative process is necessary when the provider could easily use the National Verifier fails to make the statutorily required showing that the process will be "sufficient to avoid waste, fraud, and abuse."[116] Further, the National Verifier maintains a number of database connections that produce automatic eligibility approvals that individual providers would otherwise have to conduct through a manual application review process.[117] We find these considerations weigh in favor of limiting the use of alternative verification processes to providers that maintain an existing verification process used for their own self-subsidized low-income program or other purpose unrelated to the EBB Program, Affordable Connectivity Program, or similar federal assistance programs. This limitation is supported in the record.[118] Accordingly, we expect that only providers that maintain an existing household eligibility verification process for their own purposes would seek approval of an alternative verification process. Providers lacking an existing household eligibility verification process would not be able to demonstrate that a new process would be sufficient to avoid waste, fraud and abuse. Accordingly, these providers must use the NLAD, in conjunction with the National Verifier and the school-based eligibility as permitted by statute,[119] to determine household eligibility for the Affordable Connectivity Program.

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[114] *OIG Advisory*, at 2-3.

[115] *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 65.

[116] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B)(ii)(I) (delegating the authority to the Commission to determine whether "the alternative verification process will be sufficient to avoid waste, fraud, and abuse"); *EBB Program Order*, 36 FCC Rcd at 4642-44, paras. 64-66.

[117] USAC, *Lifeline Business Update*, at 49-52 (Oct. 25, 2021), https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2021/2021.10.25-HCLI-Open-Session-Briefing-Book.pdf.

[118] *See* Broadband Strategy Office for the Hawaii Broadband & Digital Equity Office, State of Hawaii Comments at 1; CETF Comments at 13; NCTA Comments at 33; Starry Comments at 9.

[119] Consolidated Appropriations Act, div. N, tit. IX, § 904 (b)(2)(C).

43. We adopt the proposal that providers with approved EBB Program alternative verification processes can continue to use those processes when enrolling households in the Affordable Connectivity Program in a manner consistent with the Affordable Connectivity Program's revised eligibility criteria.[120] We find support for this proposal in the record.[121] The Infrastructure Act continues to allow providers to use their alternative verification processes based on the provider's eligibility requirements for its existing low-income program[122] and does not require alternative verification processes to verify all of the statutory household eligibility bases for inclusion in the Affordable Connectivity Program.[123] Additionally, the Infrastructure Act does not modify the requirement that an alternative verification process must be sufficient to avoid waste, fraud, and abuse, as required by the Consolidated Appropriations Act. Thus, providers with existing approved alternative verification processes may approve households for the Affordable Connectivity Program if the household meets the criteria for the provider's existing low-income program or the statutory eligibility requirements, and these providers need not seek new Commission approval for their alternative verification processes that already are compliant with these requirements. However, providers with approved alternative verification processes must seek new Commission approval to verify any eligibility criteria not originally contained in prior approved processes or when the provider seeks to update or modify its approved alternative verification process. For example, a provider will need to seek approval from the Commission if it intends to verify in its alternative verification process household participation in the Special Supplemental Nutritional Program for Woman, Infants and Children (WIC) if the provider's approved processes do not specify WIC or if WIC is not a qualifying program for the provider's own low-income program.

44. *Alternative Verification Process Application Requirements.* We maintain the EBB Program application requirements for use of an alternative verification process. Participating providers seeking to use alternative verification processes must collect a prospective subscriber's: (1) full name, (2) phone number, (3) date of birth, (4) e-mail address, (5) home and mailing addresses, (6) name and date of birth of the benefit qualifying person if different than applicant, (7) basis for inclusion in program (e.g., SNAP, SSI, Medicaid, school lunch, Pell Grant, income, provider's existing program, etc.) and documentation supporting verification of eligibility, and (8) certifications from the household that the information included in the application is true.[124] The provider is required to describe the processes it (or a third-party) uses to verify the required information and is required to explain why the alternative process would be sufficient to avoid waste, fraud, and abuse.[125] The provider is also required to explain how it trains its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents.[126] If the alternative verification process fails to include any of the required information, the provider is required to explain why such information was not necessary to prevent waste, fraud, and abuse.[127] Finally, a provider must describe why its established program requires approval of an alternative verification process and it is required to explain why it proposes to use an alternative verification process instead of the National Verifier eligibility determinations.[128]

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[120] *ACP Public Notice* at 6, para. 13.

[121] *See* NCTA Comments at 33; Starry Comments at 9.

[122] Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i)(II), § 904(a)(6)(D).

[123] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B).

[124] *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 66.

[125] *Id*.

[126] *Id*.

[127] *Id*.

[128] *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 66.

45. *Timing of Alternative Verification Process Approvals*. As set out by the statute, the "participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement," and the Commission has seven days after receipt of the information to notify the participating provider if the participating provider's "alternative verification process will be sufficient to avoid waste, fraud, and abuse."[129] Accordingly, we delegate to the Bureau the authority to administer an application review process that will consider provider alternative verification process applications meeting the criteria described above. The Bureau will issue decisions regarding the application or otherwise notify the provider of why the application is insufficient within seven business days of the receipt of the application. If the provider's application is incomplete, the seven-business-day timing will not begin until the applicant provides additional information requested from the Bureau. Providers who make changes to approved AVP procedures are required to inform the Commission in writing of those changes by filing a new AVP application documenting the changes.

B. Household Eligibility

1. One-Per-Household Limitation

46. The Affordable Connectivity Program provides "eligible households" a monthly discount on broadband service and a one-time benefit for a connected device.[130] The Consolidated Appropriations Act and the Infrastructure Act do not define "household." As explained in the *ACP Public Notice*, the statutory language is best interpreted to limit the Affordable Connectivity Program connected device and monthly internet service benefit to one per household.[131] The *ACP Public Notice* sought comment on adopting for the Affordable Connectivity Program the definition of "household" used in Lifeline and the EBB Program.[132] The record contains broad support for using this definition of "household," and we adopt this proposal.[133] We acknowledge that some commenters advocate for allowing more than one benefit per household because a household may have more than one member in need of quality broadband

[129] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B).

[130] Consolidated Appropriations Act §§ 904(a)(6), 904(a)(7), *amended by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(l), § 904(a)(6) and secs. 60502(b)(1)(A)(ii), § 904(a)(7)(A) (2021).

[131] *ACP Public Notice* at 13, para. 29. *See also EBB Program Order,* 36 FCC Rcd at 4632, para. 44 & n.14 (citing to section 904(a)(6) which distinguishes between a household and member of a household, and citing to section 904(a)(7) which allows for a monthly discount "for an eligible household," and not for separate members of a household).

[132] *ACP Public Notice* at 13, para. 29. *See also* 47 CFR § 54.400(h) (defining household as "any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians."); 47 CFR § 54.1600(l) (stating same), *EBB Program Order*, 36 FCC Rcd at 4632, paras. 44, 46 (adopting the Lifeline definition of household for the EBB Program).

[133] *See, e.g.*, NCLC/UCC-MJ Comments at 14-15 (stating that using the same definition of household "builds in efficiencies from the established Lifeline and EBB Programs" and raising the concern that adopting a different definition of "household" risks "adding complexity to the administration of the ACP and confusing consumers"); CETF Comments at 13 (supporting this definition of household and noting "this approach appropriately does not limit the number of households that can be limited at a particular address but looks at how many independent economic households are at the same address."); Michigan Public Service Commission (Michigan PSC) Comments at 3; United Ways of California Comments at 9; National League of Cities Comments at 3; City of Los Angeles Comments at 2; New Mexico Public Education Department Reply at 1. *But see* National Rural Electric Cooperative Association Comments at 7 (advocating for defining household based on location and stating "having no limit on the number of participating households at a given address could prove problematic.").

and a connected device.[134] While we recognize the varying needs of households, the statutory language is best interpreted to allow only one ACP monthly broadband benefit and one connected device per household. As the Commission previously explained, section 904(a)(6) distinguishes between a "household" and "member of a household," and section 904(a)(7)(A) (formerly (904(a)(7)) allows for a monthly discount "for an eligible household," and not for separate members of a household.[135] The Infrastructure Act also expressly states that participating providers "may receive reimbursement for no more than 1 connected device per eligible household."[136] Additionally, adopting a one-per-household limitation best ensures that Program funding is available to the largest possible number of eligible households. Consistent with this limitation, we direct USAC to implement measures to ensure that during the 60-day transition period, legacy EBB Program households cannot receive the transition period benefit amount and the ACP benefit amount at the same time, even if they submit a new application for the Affordable Connectivity Program.

47. To facilitate the administration of the one-per-household limitation, we direct the Bureau, in coordination with USAC, to make any necessary revisions to the household worksheet for the Affordable Connectivity Program consistent with the rules and requirements that we adopt in this Order.[137] The household worksheet will be used by households seeking to enroll in the Affordable Connectivity Program that reside at the same address as another household that is already enrolled in the Program. Where a participating service provider seeks to enroll a subscriber whose eligibility was verified through an approved alternative verification process or school-based eligibility verification and that subscriber also resides at the same address as another household enrolled in the Affordable Connectivity Program, the service provider must collect and retain a household worksheet (in either online or paper format) and retain any other subscriber provided documentation relevant to a determination that the household is not receiving more than one ACP benefit under the Program rules.[138] As with the EBB Program, we also require that where a service provider conducts eligibility determinations pursuant to an approved alternative verification process, those processes must include measures to confirm that a household, under the definition we adopt here, is not receiving more than one Affordable Connectivity Program benefit.[139] Consistent with the EBB Program, we also direct USAC to conduct periodic program integrity reviews to confirm that Affordable Connectivity Program subscribers who reside at the same address are in compliance with the one-per-household limitation.[140]

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[134] *See, e.g.*, Tech Goes Home Comments at 5 (advocating for allowing more than one connected device benefit per household); American Association of Service Coordinators Comments at 3 (same). These commenters do not explain how this approach could be reconciled with the actual statutory language.

[135] *See EBB Program Order,* 36 FCC Rcd at 4632, para. 44 & n.14. The Infrastructure Act did not change the relevant language in sections 904(a)(7)(A) (formerly 904(a)(7)) and 904(a)(6) of the Consolidated Appropriations Act that supports the interpretation that only one monthly broadband benefit is permitted per household. *See* Consolidated Appropriations Act §§ 904(a)(6), 904(a)(7), *amended by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(l), § 904(a)(6) and secs. 60502(b)(1)(A)(ii), § 904(a)(7)(A) (2021).

[136] *See* Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(c)(iii). (a)(2)(D) (a)(2)(F), § 904(b)(5)(2021).

[137] In connection with the December 31, 2021 launch of the Affordable Connectivity Program USAC developed a preliminary Affordable Connectivity Program specific household worksheet. As explained above, commenters generally support the household definition we adopt today. Commenters supporting this definition did not oppose the continued use of a household worksheet to help households determine whether they are separate economic households. *See, e.g.*, City of Detroit Comments at 2 (supporting the development of a household worksheet for the Affordable Connectivity Program).

[138] For households whose eligibility is verified through the National Verifier and reside at the same address as another ACP subscriber, the household worksheet is collected and retained in the National Verifier.

[139] *See EBB Program Order,* 36 FCC Rcd at 4632, para. 44. *See also ACP Public Notice* at 13, para. 29 (proposing extending this requirement to the Affordable Connectivity Program).

[140] *See EBB Program Order*, 36 FCC Rcd at 4632, para. 44.

48. The *ACP Public Notice* sought comment on whether the Commission should make clear that participating service providers are required to check their internal records for potential household and individual duplicates.[141] For the Lifeline program, the Commission has previously made clear that providers must search their internal records for potential intra-company duplicates before enrolling a subscriber in the Lifeline program.[142] The record does not contain opposition to this requirement, and we adopt this requirement for service providers participating in the Affordable Connectivity Program. This requirement is consistent with the requirement we adopt today, which is also a requirement for Lifeline and the EBB Program, that participating providers implement policies and procedures for ensuring that a household is eligible under Program rules.[143]

2. Qualifying Income and Eligibility Programs

49. Pursuant to the Infrastructure Act, a household may qualify for the Affordable Connectivity Program if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program (with the modification that the qualifying household income threshold is at or below 200 percent of the Federal Poverty Guidelines for a household of that size);[144] (2) has been approved to receive school lunch benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act, or the school breakfast program under section 4 of the Child Nutrition Act of 1966; (3) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 in the current award year; (4) meets the eligibility criteria for a participating provider's existing low-income program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest; or (5) receives assistance through the WIC Program, established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. § 1786).[145] As explained in the *ACP Public Notice*, in addition to adding WIC as a qualifying program for Affordable Connectivity Program, Congress in the Infrastructure Act raised the maximum income for qualifying based on household income for purposes of the ACP from "135 percent" to "200 percent" of the Federal Poverty Guidelines for a household of that size, and eliminated as qualifying criteria substantial loss of income since February 29, 2020 and participation in a provider's COVID-19 program.[146] We direct USAC to make the necessary changes to the relevant program systems, including NLAD, National Verifier, and LCS, to implement the eligibility criteria for the ACP consistent with the

[141] *ACP Public Notice* at 13, para. 29.

[142] *See, e.g.*, *Lifeline and Link-Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6691, para. 78 (2012) (*2012 Lifeline Reform Order*) (requiring that before enrolling a subscriber in the Lifeline Program an eligible telecommunications carrier "must also search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at that residential address").

[143] *See* 47 CFR §§ 54.410(a), 54.1606(b).

[144] The qualifying benefit programs for the Lifeline program are Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit. For households that reside on qualifying Tribal lands, the qualifying benefit programs also include the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations. *See* 47 CFR § 54.409(a)(2) and (b).

[145] Consolidated Appropriations Act § 904(a)(6)(A-E) (2021), *amended in part and stricken in part by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(I), § 904(a)(6)(A); secs. 60502(b)(1)(A)(i)(II); secs. 60502(b)(1)(A)(i)(III), (IV), § 904(a)(6)(C); secs. 60502(b)(1)(A)(i)(III), (V), § 904(a)(6)(D); secs. 60502(b)(1)(A)(i) (VI), § 904(a)(6)(E). The Infrastructure Act does not change the eligibility criteria for the Commission's longstanding Lifeline program in section 54.409(a)-(c) of the Commission's rules. *See* Consolidated Appropriations Act, div. N, tit IX, § 904(e).

[146] *ACP Public Notice* at 13-14, para. 30.

rules and requirements we adopt in this Report and Order.[147] We also direct USAC to update the acceptable program documentation criteria to reflect the ACP eligibility criteria and the rules and requirements that we adopt in this Order.

50. *Implementation of WIC as a Qualifying Program.* The *ACP Public Notice* sought comment on rules to incorporate WIC as a qualifying program for the Affordable Connectivity Program.[148] We direct the Bureau, in conjunction with USAC, to identify and establish connection(s) with database(s) that could be used to automatically verify eligibility based on participation in WIC. To ensure that households can enroll in the Affordable Connectivity Program based on participation in WIC in the interim, while also promoting program integrity, we direct USAC to develop acceptable documentation criteria for WIC and to make adjustments to those criteria as needed to administer the program and guard against potential waste, fraud and abuse.[149] The WIC documentation requirements should be at least as robust as the documentation requirements that USAC uses for other qualifying programs.[150] We do not anticipate that WIC documentation requirements will significantly impede participation in the Affordable Connectivity Program by households that participate in WIC. Additionally, many households that participate in WIC may also qualify for the Affordable Connectivity Program based on other criteria such income, or participation in SNAP and Medicaid, for which database connections already exist.[151]

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[147] In connection with the December 31, 2021 launch of the Affordable Connectivity Program, USAC has already made changes to the relevant program systems to allow households to enroll in the Affordable Connectivity Program based on participation in WIC or a household income at or below 135% to 200% of the Federal Poverty Guidelines, and removed substantial loss of income since February 29, 2020 and service provider's COVID-19 programs because those are no longer eligible criteria for the Affordable Connectivity Program.

[148] *ACP Public Notice* at 17, para. 38.

[149] *See, e.g.*, USTelecom Comments at 8 (advocating for the Commission to quickly establish documentation requirements for WIC); Altice Comments at 10 (advocating for USAC to establish a manual verification process for verifying household eligibility based on WIC). In connection with the December 31, 2021 launch of the Affordable Connectivity Program, USAC previously developed interim acceptable documentation guidelines for demonstrating participation in WIC.

[150] *See* USAC, Acceptable Documentation Examples, https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/ (last visited Jan. 7, 2021). We do not uniformly allow households to enroll in the Affordable Connectivity Program based solely on a WIC Electronic Benefit Transfer (EBT) Card or a WIC EBT card plus identity documentation as suggested by some commenters because this documentation may not include sufficient information, such as the participant name or the benefit period, to demonstrate that the applicant (or benefit qualifying person as applicable) receives WIC benefits. *See, e.g.*, County of Los Angeles Comments at 2 (acknowledging that "this card may not have detailed identifying information."); Connecticut State Department of Health, CT WIC's eWIC, https://portal.ct.gov/DPH/WIC/eWIC-Frequently-Asked-Questions#EBT (last visited Jan. 7, 2022) ("The eWIC card does not have your name on it however it does have a 16 digit account number."); Texas Department of Health and Human Services, Texas WIC Card, https://texaswic.org/wic-foods-and-recipes/texas-wic-card (last visited Jan. 7, 2022) (including image of sample Texas WIC card without an identifying name or benefit period); New York State Department of Health, More about eWic Card, https://www.health.ny.gov/prevention/nutrition/wic/ewic/ (last visited Jan. 7, 2022) (including image of sample New York WIC card without an identifying name or benefit period). *But see* County of Los Angeles Comments at 2 (proposing allowing households to use a WIC EBT card to enroll, but noting that "this card may not have detailed identifying information."); United Ways of California Comments at 13 (proposing allowing households to qualify based on a WIC EBT and identity documents); California Emerging Technology Fund Comments at 17 (same).

[151] USDA, WIC Eligibility Requirements, https://www.fns.usda.gov/wic/wic-eligibility-requirements (last visited Jan. 7, 2022) (stating that households participating in SNAP or Medicaid with qualifying women, infants or children automatically meet the income criteria for WIC); USDA, WIC Income Eligibility Requirements, https://www.fns.usda.gov/wic/fr-030521 (last visited Jan. 7, 2022) (stating that the income criteria for the WIC

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51. The *ACP Public Notice* also sought comment on whether an annual recertification requirement is sufficient given the shorter-term nature of WIC.[152] Based on the record, the WIC benefit period is typically six months to one year, and the annual recertification requirement we adopt today would be sufficient to verify the continued eligibility of households that qualify for the ACP based on participation in WIC.[153]

52. *Community Eligibility Provision and Similar Provisions Programs, and Acceptable Documentation Period for School Lunch and Breakfast Programs.* For the EBB Program, the Commission allowed households to enroll based on a household member's enrollment in a school or school district that participates in the Community Eligibility Provision (CEP), through which schools or school districts provide free lunch or breakfast to all students without requiring an individual application for a meal benefit.[154] The Commission concluded that this approach was justified because the CEP is used by the nation's highest poverty schools and school districts, and allowing enrollments based on the CEP would efficiently target low-income households, and would make the EBB Program more accessible and reduce the barriers to participation, and would also limit disclosure to less sensitive information of households.[155] The *ACP Public Notice* sought comment on whether the Commission should continue to allow households to qualify based on a current student's enrollment in a school or school district that participates in the CEP, and whether the Commission should restrict enrollment based on the CEP to households that would otherwise qualify for free or reduced price school meals.[156]

53. Available data indicate that a significant percentage of schools and school districts participate in the CEP and nearly 15.5 million students attend a CEP school.[157] Many commenters support continuing to allow households to enroll in the Affordable Connectivity Program based on a household member's enrollment in a school or school district that participates in the CEP, on the grounds that this approach would allow the Affordable Connectivity Program to reach households most in need, removes obstacles to applying for the program, and protects student privacy.[158] While some commenters

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Program is 185%of the federal poverty guidelines). *See also* T-Mobile Comments at 9 (noting the households generally qualify for WIC if they participate in SNAP and Medicaid).

[152] *See ACP Public Notice* at 17-18, para. 38.

[153] *See, e.g.*, City of Los Angeles Comments at 2 ("Despite the possibility of WIC benefits lasting less than one year, we recommend maintaining ACP recertification annually, to reduce confusion for the customer."), United Ways of California Comments at 19. No commenters suggested a shorter recertification period would be justified for households that enroll based on participation in WIC.

[154] *EBB Program Order*, 36 FCC Rcd 4638-39, at paras. 54-56.

[155] *Id.* at para. 56.

[156] *ACP Public Notice* at 14, para. 32.

[157] *See, e.g.*, Food Research & Action Center Community Eligibility: The Key to Hunger-Free Schools School Year 2020–2021 at 3 (June 2021) (stating that nearly 15.5 million students attend CEP schools, 5,479 school districts have one or more schools adopting community eligibility, and 33,171 schools have adopted the CEP), https://frac.org/wp-content/uploads/CEP-Report-2021.pdf.; Congressional Research Service, *Serving Free School Meals Through the Community Eligibility Provision (CEP): Background and Participation*, (May 20, 2020), https://crsreports.congress.gov/product/pdf/R/R46371/3 at summary ("CEP schools now comprise approximately 30% of all NSLP schools, and nearly 13.7 million students nationwide attend a CEP school"); Center for Democracy & Technology Comments at 6 ("As of 2019, 64.6% of all eligible schools had adopted community eligibility meaning that a large number of schools with the most vulnerable student populations no longer collect student-level data on who is eligible for the NSLP.").

[158] *See, e.g.*, NDIA Comments at 8; Next Century City Comments at 6-7; Comments of the City of Boston Massachusetts, Montgomery County, Maryland, Washington, D.C., and the Texas Coalition of Cities for Utility Issues at 7-9 (Local Governments); NCTA Comments at 12; California Emerging Technology Fund Comments at 14-15; Michigan Public Service Commission Comments at 3; Benefits Data Trust Comments at 3; Center for
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express concern that allowing households to qualify based on enrollment in a school or school district that participates in the CEP is overinclusive and could result in potential abuse,[159] other commenters assert that allowing households to qualify based on a current student's enrollment in a school or school district that participates in the CEP would only result in the enrollment of a *de minimis* number of households that would not otherwise individually qualify for free or reduced price school meals.[160] Local government commenters also explain that requiring all households seeking to enroll based on the CEP to demonstrate independent verification "could result in grave harm to the program['s] credibility and momentum."[161]

54. Based on the record and available data concerning enrollment in schools and school districts participating in the CEP, we are persuaded that the benefits of allowing enrollment in the Affordable Connectivity Program based on a household member's enrollment in a CEP school continue to outweigh the risks of being potentially overinclusive. The record indicates that allowing ACP enrollment based on a household member's enrollment in a CEP school targets low-income households and poses a small risk of opening the program to households that would not individually qualify for free or reduced price school meals.[162] We are also persuaded that it would be difficult for households with a student at a CEP school to demonstrate independent verification under the school lunch and breakfast program criteria because they do not individually complete an application for those benefits.

55. The Commission takes seriously its obligation to prevent waste, fraud, and abuse in the Affordable Connectivity Program. In November 2021, the Bureau adopted additional documentation requirements for enrollment based on attendance at a CEP school as an additional safeguard against potential waste, fraud and abuse in response to USAC's program integrity reviews and an FCC Office of

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Democracy & Technology at 5; National League of Cities Comments at 3; Competitive Carriers Association Comments at 10; City of Los Angeles Comments at 2; National Association of Telecommunications Officers and Advisors Comments at 7-8 (supporting the continued use of the CEP to qualify for the ACP and stating "[t]he IIJA did not alter the statutory provision for eligibility based on receiving benefits under the free and reduced price lunch program" and "reinterpreting this eligibility criteria would put an increased burden on households with students enrolled in schools or districts participating in the CEP or similar programs that do not require individual applications."); The Council of Great City Schools Comments at 2-3 (supporting the continued use of CEP and stating "[m]any of the urban students and families that would most benefit from the ACP may not sign up on their own but are more likely to participate when automatic eligibility is granted as a result of attendance at a high poverty school.").

[159] *See* NTCA Comments at 11-12. *See also generally* Reason Foundation Reply (raising concerns about the over inclusiveness of allowing enrollment based on attendance at a CEP school and the apparent waste, fraud and abuse on the part of service providers in connection with enrollments relying on attendance at a CEP school).

[160] *See* Next Century City Comments at 7 ("While using the CEP to automatically approve students may lead to a de minimis number of ineligible households receiving program benefits, there is a far greater risk that eligible households may not be able to overcome enrollment obstacles."); The Council of Great City Schools Comments at 3 ("the importance of supporting the needs of low-income families continues to offset the small possibility that benefits are made available to a sliver of the school population that may not need a free meals" and explaining that schools participating in the CEP "are truly among the poorest in their school districts.").

[161] Local Governments Comments at 9.

[162] While the November 2021 FCC Office of Inspector General advisory raises concerns about the apparent fraudulent use of the CEP eligibility prong, it also acknowledges that "[e]vidence shows this is not consumer-driven fraud—enrollment data directly links certain providers and their sales agents to these enrollments." Advisory Regarding Fraudulent EBB Enrollments Based on USDA National School Lunch Program Community Eligibility Provision at 2 (FCC OIG Nov. 22, 2021), https://www.fcc.gov/document/fcc-inspector-generaladvisory-regarding-ebb-enrollment-fraud. *See also* Council of the Great City Schools Comments at 4 (advocating against increased documentation requirements or excluding CEP eligibility because "the concerning behavior is clearly and squarely on unscrupulous providers and sales agents."). We adopt additional measures in this Order to address potential waste, fraud and abuse by service providers and their sales agents.

Inspector General advisory.[163] Under these requirements, households seeking to enroll based on the CEP are required to identify the CEP school and provide documentation demonstrating that a member of the household attends the identified CEP school.[164] We acknowledge that some commenters raise concerns that requiring this additional documentation could make it harder for households to apply based on enrollment in a CEP school or school district.[165] However, we adopt this documentation requirement and find it is an important program integrity measure, and the benefits of this requirement outweigh any potential additional burden on households seeking to enroll in the Affordable Connectivity Program.[166] As a result, we also decline to require households that apply for the Affordable Connectivity Program based on a household member's enrollment in a CEP school or school district to demonstrate that they would individually qualify for free or reduced price school meals.[167] We also make clear that households seeking to qualify based on a dependent child's attendance at a CEP school should also provide the benefit qualifying person information when submitting their application. We also delegate to the Bureau authority to adopt any additional program integrity measures necessary to prevent waste, fraud and abuse with respect to enrollments based on attendance at a CEP school. We further direct USAC to continue conducting program integrity reviews of a sample of households that enroll on this basis.

56. The *ACP Public Notice* also sought comment on whether the Commission should allow households to qualify for the Affordable Connectivity Program based on a household member's enrollment in a school that participates in USDA Provisions 2 and 3, which, similar to the CEP, allow schools to provide free breakfast or lunch to all students without requiring individual annual applications.[168] While many commenters affirmatively support allowing households to enroll in the Affordable Connectivity Program based on attendance at a CEP school, fewer commenters affirmatively support allowing Affordable Connectivity Program enrollment based on attendance at a Provision 2 or 3 school.[169] While Provisions 2 and 3 have some similar elements as the CEP, the limited record concerning Provisions 2 and 3 does not provide a strong justification for including Provisions 2 or 3 as a qualifying school lunch or breakfast program for purposes of the Affordable Connectivity Program. In contrast to the CEP, which is limited to schools and local education agencies with a minimum 40%

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[163] *See generally CEP Public Notice*; *OIG Advisory* at 2.

[164] *See CEP Public Notice* at 3; USAC, Acceptable Documentation, https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/ (last visited Jan. 7, 2022).

[165] NCLC/UCC-MJ Comments at 16.

[166] *See* NTCA Comments at 12 (advocating for extending to the Affordable Connectivity Program the recently implemented documentation requirements for enrollment based on attendance at a CEP school).

[167] *See* National League of Cities Comments at 3 ("Requiring additional household-specific eligibility documentation for those families is unlikely to prevent substantial waste, fraud, or abuse, but the administrative hurdles are likely to shut out otherwise eligible households from taking advantage of the benefit."); The Council of Great City Schools Comments at 3 (cautioning against "responding with additional requirements that would increase burden, time or expense for school district verification efforts or deter potential beneficiaries from participating").

[168] USDA, Provisions 1, 2, and 3, https://www.fns.usda.gov/cn/provisions-1-2-and-3 (last visited Jan. 7, 2022) (describing Provisions 2 and 3). Provisions 2 and 3 of the National School Lunch Act reduce application burdens and meal counting and claiming procedures, and cover a four-year period after the school's initial eligibility determinations for free and reduced price school meals, with a possibility of an additional extension. The initial eligibility determinations are based on the number of students who qualify for free and reduced price school lunch during the base year, but eligible families are not required to apply each year.

[169] *See, e.g.*, CETF comments at 16; National Association of Telecommunications Officers and Advisors Comments at 7; Next Century Cities Comments at 7; National League of Cities at 3; The Council of Great City Schools Comments at 2; City of Los Angeles Comments at 2. *But see* NTCA Comments at 3 (raising concerns about the potential over inclusiveness of allowing ACP enrollments based on a households member's enrollment in these administrative provisions).

identified student population,[170] Provisions 2 and 3 are not limited to high-poverty schools.[171] Therefore, allowing Affordable Connectivity Program enrollment based on enrollment in a Provision 2 and 3 school presents a greater risk of over inclusiveness compared to the CEP. The record does not provide data on the percentage of schools that use Provisions 2 and 3, or the average percentage of low-income student populations at schools that use Provision 2 or 3.[172] Accordingly, the record does not provide sufficient information to support a conclusion that the potential benefits of allowing enrollment based on Provisions 2 and 3 would outweigh the potential risks. Therefore, we decline to allow households to enroll in the Affordable Connectivity Program based solely on attendance at a Provision 2 or 3 school.[173] We also make clear that participation in the Summer School Food Service Program, which is separate from the school lunch and breakfast program, does not qualify a household to participate in the Affordable Connectivity Program.[174]

57. Finally, the *ACP Public Notice* sought comment on allowing households who seek to enroll based on a current student's participation in a free and reduced price school lunch or breakfast program to qualify based on documentation from the current school year or the school year immediately preceding the application for the Affordable Connectivity Program.[175] This approach would provide households flexibility in the event of school closures or for schools that only require households to apply for free and reduced price school lunch programs every other year.[176] Several commenters support this

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[170] *See* USDA Fact Sheet, Community Eligibility Program https://fns-prod.azureedge.net/sites/default/files/cn/CEPfactsheet.pdf (last visited Jan. 7, 2022). Identified students means students who are certified for free meals without the use of household applications (for example those directly certified through SNAP). *Id.*

[171] We acknowledge that while Provisions 2 and 3 do not have a low-income student population threshold, schools with high low-income populations may find Provision 2 or 3 financially viable. *See, e.g.*, Michigan Public Service Commission Comments at 4 ("schools with high rates of poverty are most likely to use these provisions. Therefore, expanding the eligibility of the ACP to these schools and school districts will have a greater impact on those households in need of broadband assistance."); The Council of Great City Schools Comments at 2 ("many urban schools with high poverty populations no longer collect annual income surveys from families and instead use CEP or the alternative approaches allowed under Provision 2 or 3 to determine NSLA eligibility.").

[172] *But see* The Council of the City of the Great City Schools Comments at 3 ("Due to the high levels of poverty at CEP or Provisions 2 or 3 school sites, we believe the risk to ACP is minimal and similarly does not outweigh the substantial benefits for low-income families.").

[173] Schools that use Provisions 2 or 3 collect individual households applications for free and reduced price school meals during a base year. *See* USDA, Provisions 1, 2, and 3, https://www.fns.usda.gov/cn/provisions-1-2-and-3. Accordingly, some households with a student attending a Provision 2 or 3 school may have an approved individual application for free or reduced price school meals that could be used to enroll in the Affordable Connectivity Program subject to the rules and requirements that we adopt in this Report and Order.

[174] *See ACP Public Notice* at 15, para. 32 & n.64 (proposing to make clear that participation in the Summer Food Service Program would not qualify a household to participate in the Affordable Connectivity Program because that program is separate from the National School Lunch and School Breakfast Program and is not limited to schools. Commenters did not oppose this proposal); USDA, Child Nutrition Programs, https://www.fns.usda.gov/cn (last visited Jan. 7, 2022) (describing the USDA child nutrition programs and listing the Summer Food Service Program separate from the free and reduced price school lunch and breakfast program).

[175] *See ACP Public Notice* at 15, para. 33 & n.67. As explained in the *ACP Public Notice*, Provision 1 of the National School Lunch Act allows eligibility for free and reduced priced school meal benefits to be certified for a two-year period. *See id.* .(citing to USDA Website, Provisions 1, 2, and 3, https://www.fns.usda.gov/cn/provisions-1-2-and-3). Provision 1 is available to schools where at least 80 percent of the children enrolled are eligible for free or reduced price meals. *See* USDA, Provisions 1, 2, and 3 ,https://www.fns.usda.gov/cn/provisions-1-2-and-3 (last visited Jan. 7, 2022).

[176] *See* NCLC/UCC-MJ Comments at 16; CETF Comments at 16 (stating that school lunch documentation from a prior year should also be accepted for one more school year given the pandemic closed schools and students may not

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approach, and we adopt it.[177] We make clear that to qualify based on a household member's participation in a qualifying school lunch or breakfast program, the household member must be a current student at the time the ACP application is submitted. As with the EBB Program, we remind program participants that they must notify their service provider if they are no longer eligible for the Affordable Connectivity Program, such as if no member of the household qualifies for the free and reduced price school lunch or breakfast programs or no member of the household attends school.[178] The annual recertification requirement we adopt today will also ensure the continued eligibility of households that enroll in the Affordable Connectivity Program based on participation in a free or reduced price school lunch or breakfast program.

3. Enrollment of Eligible Households in the NLAD

58. *Use of the National Lifeline Accountability Database.* The *ACP Public Notice* proposed continuing to use the NLAD as a program-wide tool for enrollment, as well as the basis for reimbursement calculations and duplicate checks in all states, territories, and the District of Columbia, regardless of a state's NLAD opt-out status in the Lifeline program.[179] The NLAD has been used to administer both the Lifeline program and the EBB Program, and serves as an important safeguard against duplicate subscribers and limiting service provider reimbursement claims to the actual number of enrolled subscribers. The record does not provide any basis for departing from the use of the NLAD, and we adopt this proposal.[180] Accordingly, participating service providers must enroll all consumers participating in the Affordable Connectivity Program in the NLAD, regardless of whether the subscriber resides in a state that has opt-out status for the Lifeline program. We direct USAC to make changes to the NLAD that are necessary to implement the rules and requirements that we adopt in this Report and Order and to give participating service providers advance notice of any NLAD system changes for the Affordable Connectivity Program so they can make corresponding changes to their system. We delegate to the Bureau the authority to require other NLAD changes that may be necessary for the administration and integrity of the Affordable Connectivity Program.

59. Eligible households can participate in both the Lifeline program and Affordable Connectivity Program for the same or different services.[181] As with the EBB Program, we direct USAC to enable the NLAD to allow subscribers to have separate identifiers for the Lifeline Program and the Affordable Connectivity Program, which can be associated with the corresponding Lifeline provider or Affordable Connectivity Program provider, as applicable.[182]

60. We next adopt the proposal to require providers participating in the Affordable Connectivity Program to submit to the NLAD at the time of enrollment the same types of information that

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have applied for their school lunch or breakfast documentation); Center for Technology & Democracy Comments at 7 (supporting this approach because due "schools may not have collected eligibility applications from families for the current school year" due to the pandemic.").

[177] *See, e.g.*, NCLC/UCC-MJ Comments at 17; CETF at 16; Center for Technology & Democracy Comments at 7.

[178] *See, e.g.*, *Wireline Competition Bureau Expands Emergency Broadband Benefit Program Eligibility*, WC Docket No. 20- 445, Public Notice, DA 21-1119, at 2 & n.7 (WCB Sept. 8, 2021) (citing to 47 CFR § 54.1605 and *EBB Program Order*, 36 FCC Rcd at 4680, para. 146); *CEP Public Notice* at 3 & n.16 (citing to same).

[179] *See ACP Public Notice* at 18, para. 39.

[180] Several commenters affirmatively supported the continued use of the NLAD for the Affordable Connectivity Program. *See* CETF Comments at 17.

[181] *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(e).

[182] For the EBB Program, USAC enabled the NLAD to provide separate subscriber IDs for the EBB Program and the Lifeline program that were associated with the respective Lifeline provider or EBB Program provider as applicable. *EBB Program Order,* 36 FCC Rcd at 4634-35, para. 48.

providers were required to submit to enroll households in the EBB Program.[183] The required information sufficiently identifies the enrolled household for purposes of administering the program, including duplicate checks and verifying the applicant's status as alive, and also provides information on the service, device, method of verifying eligibility and household qualification for the higher Tribal benefit level if applicable. The record does not provide a basis for taking a different approach. Prior to transmitting subscriber information to the NLAD, service providers must also comply with the disclosure and consent requirements that we adopt in this Report and Order. As with the EBB Program and Lifeline program, we continue to require participating service providers to submit changes to subscriber information to the NLAD within 10 business days.[184]

61. As with the EBB Program, we adopt the requirement prohibiting service providers from enrolling or claiming ACP support if USAC cannot verify a subscriber's status as alive, unless the subscriber provides documentation to demonstrate his or her status as alive.[185] We direct USAC to explore additional ways to improve on the process for identifying and notifying service providers about potentially deceased subscribers.[186] We further direct USAC to conduct program integrity reviews to ensure compliance with this requirement.

62. *Coordination With Lifeline Opt-Out States.* As explained in the *ACP Public Notice,* USAC and the three Lifeline opt-out states of Texas, California and Oregon have worked together closely since the start of the EBB Program to streamline the enrollment of Lifeline subscribers in those states into the EBB Program by providing weekly subscriber eligibility listing updates to USAC.[187] To facilitate the enrollment of qualifying households in these states into the Affordable Connectivity Program, the *ACP Public Notice* sought comment on how to improve these processes and proposed making clear that Lifeline-eligible consumers in the three Lifeline NLAD opt-out states can separately apply to the Affordable Connectivity Program through the National Verifier if they choose.[188] Some commenters expressed concern that the process with the Lifeline NLAD opt-out states is still causing delayed enrollment of Lifeline subscribers in these states.[189] To facilitate ACP enrollments in the three Lifeline opt-out states, we direct USAC to continue to work with these three states to explore additional ways to streamline and improve efficiency in the enrollment of Lifeline subscribers in these states into the

[183] *ACP Public Notice* at 18, para. 40. *See also* 47 CFR § 54.1606(d) (requiring service providers to submit the following subscriber information to the NLAD: subscriber's full name; full residential address; date of birth; the telephone number associated with the Emergency Broadband Benefit Program service; the date on which the Emergency Broadband Benefit Program discount was initiated; the date on which the Emergency Broadband Benefit Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Emergency Broadband Benefit Program). USAC has already made interim adjustments to the NLAD to process both legacy EBB Program transfers and new ACP enrollments during the 60-day transition period.

[184] *See* 47 CFR § 54.1606(d)(5); 54.404(b)(8). As explained below, for subscriber de-enrollments from the Affordable Connectivity Program, the service provider must transmit the de-enrollment date to the NLAD within one business day of de-enrollment.

[185] *See ACP Public Notice* at 17, para. 37 (proposing adopting the prohibition against enrolling deceased subscribers to the Affordable Connectivity Program).

[186] *See, e.g.*, NaLA Comments at 36 (advocating for improvements in USAC's notifications concerning potentially deceased subscribers).

[187] *ACP Public Notice* at 18, para. 40.

[188] *ACP Public Notice* at 18, para. 40.

[189] *See, e.g.*, NaLA Comments at 3-4; T-Mobile Comments at 17-81; CETF Comments at 51.

Affordable Connectivity Program.[190] We also make clear that consumers in the Lifeline opt-out states can separately submit an ACP application.[191]

4. Verifying Subscriber Eligibility and Identity

63. The Infrastructure Act maintained for the Affordable Connectivity Program, the three methods for verifying household eligibility: the National Verifier, an approved service provider alternative verification process, and school-based eligibility verifications.[192] In this section we address the requirements for each eligibility verification method as well as identity verifications for the Affordable Connectivity Program. Legacy EBB Program households who qualified under eligibility criteria that are still applicable to the Affordable Connectivity Program and households participating in Lifeline do not need to submit a new application or new eligibility documentation to participate in the Affordable Connectivity Program. However, existing Lifeline subscribers who do not already participate in the EBB Program will be required to affirmatively consent to participation in the Affordable Connectivity Program pursuant to the consumer consent and disclosure requirements outlined in this Order. Legacy EBB Program households would not be required to provide new consent to continue the same service through the Affordable Connectivity Program with their current provider, except as may be required for the applicable transition path for that household.

64. *Lifeline National Eligibility Verifier.* The National Verifier is a system of systems with connections to state and federal eligibility databases that can automatically check and confirm a household's eligibility electronically,[193] followed by manual review of eligibility documentation for any applicants whose eligibility cannot be verified using an automated data source.[194] The National Verifier has already been modified to make eligibility determinations based on the eligibility criteria that were added (WIC and income at or below 200% of the Federal Poverty Guidelines) and removed (substantial loss of income since February 29, 2020) in the Infrastructure Act for purposes of the Affordable Connectivity Program. Where possible, we direct USAC to continue to enable database connections through computer matching agreements with the respective government entities for the qualifying programs for the Affordable Connectivity Program. Where not possible, we will continue to allow eligible households to submit documentation so that USAC can manually process the eligibility information for inclusion in the National Verifier. We delegate authority to the Bureau to direct USAC in these efforts and to provide any additional interpretations of the relevant statutory language for using the National Verifier for the Affordable Connectivity Program. Unless and until such database connections have been enabled, USAC will verify program eligibility based on manual documentation review, consistent with the guidelines discussed below.

65. The *ACP Public Notice* proposed continuing to use USAC's existing documentation criteria where manual reviews are conducted.[195] These documentation requirements carefully balance

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[190] To the extent that commenters advocate for the Commission to require that all states participate in the NLAD, that is outside of the scope of this Affordable Connectivity Program proceeding. *See, e.g.*, T-Mobile Comments at 17.

[191] To enroll in the Lifeline program, consumers who reside in any of the three opt-out states and file an application for the Affordable Connectivity Program would still need to undergo the applicable state eligibility processes.

[192] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2).

[193] The National Verifier "has federal data connections with the United States Department of Housing and Urban Development (HUD) to verify participation in the Federal Public Housing Assistance program (FPHA) and with the Centers for Medicare and Medicaid Services (CMS) to verify participation in Medicaid," and also has connections with many other state databases. USAC, Eligibility Verification, https://www.usac.org/lifeline/national-verifier/eligibility-verification/ (last visited Jan. 7, 2022).

[194] *EBB Program Order*, 36 FCC Rcd 4635, at para. 50.

[195] *See ACP Public Notice* at 19, para. 41

program integrity needs and burdens on consumers. The record does not provide a basis for taking a different approach, and we adopt this proposal. We direct the Bureau to coordinate with USAC to make changes to the documentation criteria as necessary to administer the Affordable Connectivity Program and promote program integrity.

66. The *ACP Public Notice* also sought comment on allowing applicants for the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation, as was permitted for the EBB Program.[196] Many commenters explained that this flexibility removed obstacles to enrollment and resulted in additional consumers applying for the EBB Program that would not have applied if they were required to provide the last four digits of their social security number.[197] We are persuaded that continuing this approach for the Affordable Connectivity Program is justified because it supports increased program participation. Therefore, we will allow consumers seeking to apply for the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation. However, we continue to encourage consumers to provide the last four digits of their social security number because this significantly reduces the time required for identity and eligibility verifications.

67. The Bureau in conjunction with USAC has already developed approval criteria for acceptable identity documentation, which include a government-issued ID (such as a state ID), passport, U.S. driver's license, U.S. military ID, or Individual Tax Payer Identification documentation.[198] We direct the Bureau to coordinate with USAC to make changes to the identity documentation requirements as necessary to administer the program and promote program integrity and we direct the Bureau to work with USAC to explore whether other systems or databases could be used to verify the identity of consumers who provide alternative documentation instead of the last four digits of their social security number.

68. The *ACP Public Notice* proposed requiring that where the National Verifier is used to conduct eligibility verifications, prospective subscribers must interact directly with the National Verifier as is required for the EBB Program and the Lifeline program.[199] In adopting this requirement for the EBB Program, the Commission explained that the risk to program integrity and potential for waste, fraud and abuse outweigh any potential benefits of allowing service providers to remotely submit information on behalf of consumers.[200] Based on our consideration of the record, and the Commission's lengthy

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[196] *See id.*; *see also EBB Program Order*, 36 FCC Rcd at 4637-38, para. 53.

[197] *See, e.g.*, Common Cause Comments at 3 (explaining that not allowing alternative forms of verifying identity would "confuse and discourage people who are non-citizens, have temporary status like DACA, are members of mixed-immigrant status families, or differently documented from applying."); National Hispanic Media Association Comments at 4 ("NHMC believes allowing identification verification documents outside of a Social Security Number is one of the single most powerful tools the Commission has at its disposal for the ACP" and noting that this approach increases enrollment by households who would have been discouraged from applying if the last four digits of the social security number were required); Asian Americans Advancing Justice Comments at 4; National Digital Inclusion Alliance Comments at 9; Stewards of Affordable Housing for the Future Comments at 2. *See also* National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 17 ("strongly support[ing] the continuation of the identity authentication options permitted with the EBB."); Local Governments Comments at 19 ("Many of our programs have found that complex applications and the fear that the lack of a social security number is fatal to even the simplest of applications: lessons that we hope the Commission will take into consideration."); CETF Comments at 18.

[198] USAC, Acceptable Documentation Examples, https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/ (last visited Jan. 7, 2022).

[199] *ACP Public Notice* at 19, para. 42.

[200] *EBB Program Order*, 36 FCC Rcd at 4638, para. 54.

experience with the Lifeline program, we adopt this requirement for the Affordable Connectivity Program.

69. Some commenters assert that the Commission should grant trusted third parties such as state or local government entities, schools or school districts, or non-profit organizations access to the National Verifier for purposes of remotely submitting applications on behalf of applicants if the applicant is not physically present with the government entity or organization providing assistance.[201] Based on our experience with the Lifeline program, and the need to maintain a high level of program integrity, we decline to allow third parties to remotely submit applications on behalf of applicants who are not physically present with the person providing assistance. Having an applicant be physically present when receiving assistance to complete a program application and sign and certify their application is an important program integrity safeguard—among other things, it requires that the applicant read and affirmatively acknowledge the program certifications. Permitting remote application submissions where the applicant is not physically present with the person providing the application assistance would not provide the same level of assurance that the applicant authorized the submission of the application, and also reviewed and completed the required certifications and submitted the application. Moreover, enabling neutral, third parties to remotely submit applications on behalf of an applicant who is not physically present is not the only pathway for assisting customers with applying for the Affordable Connectivity Program. Today, third parties can assist households with completing a paper or online application, provided that the applicant is physically present and certifies and signs the application. Consumers can also contact the ACP Support Center for assistance with completing applications and understanding the eligibility and documentation requirements as applicable. Service providers can also verify and enroll subscribers using an approved alternative verification process, or school-based eligibility verification.[202] These avenues appropriately allow for consumer assistance during the application process while also maintaining program integrity. In light of these considerations and enrollment assistance options, we decline to allow any third parties, whether a service provider or neutral third party entity, to remotely submit an Affordable Connectivity Program application on behalf of a consumer who is not physically present with the party providing assistance.

70. The record however demonstrates that eligible households may experience difficulty accessing or navigating the National Verifier on their own, and may require assistance to complete and submit an application for the Affordable Connectivity Program.[203] Today, state entities and Tribal partners can request access to the National Verifier to assist applicants who are physically present with completing and submitting an application for the Lifeline program.[204] State or Tribal entity

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[201] *See, e.g.*, EducationSuperHighway Comments at 16-18 (advocating for allowing trusted third parties such as state or local government entities, schools or school districts, or non-profit organizations to remotely assist households with submitting applications when the applicant is not physically present and explaining that consumers may be unable to submit an application via the online National Verifier portal because they do not have broadband service at the time they seek to submit an application.). We acknowledge that some government agencies may allow for remote assistance and remote verification or validation of information. *See, e.g.*, EducationSuperHighway Comments at 16-18 (describing the Internal Revenue Service's Volunteer Income Tax Assistance Program which provides tax filing assistance to assistance to qualified individuals). However, we do not adopt this approach for the Affordable Connectivity Program for the reasons discussed above.

[202] *See* Consolidated Appropriations Act, div. N, tit. IX, 904(b)(2).

[203] EducationSuperHighway Comments at 15; City of Detroit Comments at 2; NTCA Reply 10; NDIA Comments at 8-9.

[204] *See* USAC, How to Use NV, https://www.usac.org/lifeline/national-verifier/how-to-use-nv/ (describing the service provider portal); *See* USAC, Account Types, https://www.usac.org/lifeline/national-lifeline-accountability-database-nlad/how-to-use-nlad/account-types/#State (describing the types of state entities and Tribal partners that can request access to the National Verifier for purposes of assisting consumers with enrollment); USAC, COVID-19 Response (describing the expanded access to the National Verifier (NV) to enable state agencies and Tribal partners in helping consumers apply for the Lifeline program), https://www.usac.org/lifeline/resources/covid-19-response/.

representatives that are granted access to the National Verifier must register in the Representative Accountability Database and indicate their assistance when helping consumers submit an application through the National Verifier.[205] Based on the record, we are persuaded that it may be beneficial to provide access to the National Verifier to a limited number of neutral, trusted third party entities such as schools and school districts, or other local or state government entities for purposes of assisting consumers with completing and submitting an application for the Affordable Connectivity Program, provided that the consumer is physically present with the person providing assistance.[206] We direct the Bureau, in coordination with USAC, to conduct a one year test pilot for granting trusted, access to the National Verifier for purposes of assisting customers with applying for the Affordable Connectivity Program. The Bureau shall determine the scope and duration of this pilot, and the process for identifying potential participants. The Bureau may issue public notices or engage with stakeholders as needed to obtain information necessary to establish this pilot, and may make any necessary changes to the National Verifier to conduct the pilot. Consistent with the current enrollment processes, the Bureau shall make sure that appropriate safeguards are in place for the pilot to protect applicant's personally identifiable information.

71. *Eligibility Verifications Through Approved Service Provider Alternative Verification Processes.* The *ACP Public Notice* sought comment on adopting for the Affordable Connectivity Program the information collection and documentation requirements used in the EBB Program for approved service provider alternative verification processes.[207] These service provider information collection and documentation requirements served as important safeguards for the EBB Program. The record does not support taking a different approach for the Affordable Connectivity Program, and we adopt this proposal. As with the EBB Program, Affordable Connectivity Program providers using an approved alternative verification process must keep all documentation provided to them from the applicant used to make eligibility determinations, and retain that documentation for the document retention period we adopt in this Report and Order.[208] As in the EBB Program, we direct USAC to conduct periodic program integrity reviews to ensure that subscribers enrolled through a provider's approved alternative verification process are eligible for the ACP benefit.[209]

72. *School-Based Eligibility Verifications.* The *ACP Public Notice* sought comment on adopting for the Affordable Connectivity Program the information collection and documentation requirements used in the EBB Program for school-based eligibility verifications.[210] These requirements appropriately balance the need for sufficient information and documentation to validate program eligibility, while also minimizing school burden and permitting Affordable Connectivity Program access through schools. The record does not provide a basis for taking a different approach, so we adopt this proposal. As with the EBB Program, service providers must obtain parental consent for school-based eligibility verifications.[211] As with the EBB Program, we direct USAC to conduct periodic program

[205] *See* USAC, Representative Accountability Database, https://www.usac.org/lifeline/rad/.

[206] *See, e.g.*, City of Detroit Comments at 3; EducationSuperHighway Comments at 16-17 (discussing the utility of having trusted, neutral third parties assist consumers with completing and submitting an Affordable Connectivity Program application, but also requesting permission to do so without the consumer being physically present); NTCA Comments at 10.

[207] *ACP Public Notice*, at 15-16, paras. 34, 36.

[208] *See EBB Program Order*, 36 FCC Rcd 4643-44, paras. 66-67.

[209] *See EBB Program Order*, 36 FCC Rcd at 4644, para. 67.

[210] *See id.* at 4644 para. 68 (requiring service providers relying on school-based eligibility verifications to collect the following information and retain documentation: (1) the school providing the information; (2) the program(s) that the school participates in; (3) the household that qualifies (and qualifying student(s)) and (4) the program(s) the household participates in).

[211] *See EBB Program Order*, 36 FCC Rcd at 4644, para. 68.

integrity reviews to ensure that households enrolled based on school-based eligibility verification process are eligible for the ACP benefit.[212] We do not require a standard parental consent form, but delegate to the Bureau the authority to create such a form if needed to facilitate program administration or promote program integrity.

5. Household Usage Requirements

73. *Non-Usage Period and Cure Period.* The *ACP Public Notice* sought comment on adopting the Lifeline usage rules for the Affordable Connectivity Program.[213] Under those rules, where a provider does not assess or collect a monthly fee from the subscriber for the supported service, the subscriber must use their service at least once every 30 days, and after 30 consecutive days of non-usage, the provider is required to notify the consumer that they will be de-enrolled if they do not cure their non-usage in 15 days.[214] The cure period effectively gives consumers 45 days to use their free to the end-user supported service, and is designed to inform subscribers of the consequences of non-usage and give them an opportunity to demonstrate usage to maintain their benefit. Providers are prohibited from claiming support for a subscriber who has not used their service in the last consecutive 30 days unless the subscriber cures their non-usage within 15 days.[215]

74. Numerous commenters assert that the Commission should instead adopt the EBB Program usage rules for the Affordable Connectivity Program, which prohibited providers from claiming support for subscribers who were not assessed and did not pay a monthly fee for their service and did not use their service during the claims month, but did not mandate the de-enrollment of subscribers for non-usage.[216] Other commenters assert that the Commission should limit subscriber usage requirements to wireless providers,[217] provide a longer non-usage period before requiring de-enrollment,[218] or make clear that providers can de-enroll ACP subscribers after a longer consecutive period of non-usage (such as six months).[219]

75. We acknowledge the comments supporting the use of the EBB Program usage rules and opposing the adoption of the Lifeline subscriber usage rules for free to the end-user service to the Affordable Connectivity Program. However, based on the Commission's lengthy experience administering the Lifeline program, and in consideration of the longer-term nature of the Affordable Connectivity Program and our obligation to use program funds in a fiscally responsible manner, we find that adopting the Lifeline subscriber usage and non-usage de-enrollment rules for the Affordable

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[212] *Id.*

[213] *ACP Public Notice* at 21, para. 48.

[214] 47 CFR §§ 54.407(c)(2); 54.405(e)(3).

[215] *ACP Public Notice* at 21, para. 48; *Bridging the Digital Divide for Low-Income Consumers et al.*, Fifth Report and Order, WC Docket No. 17-287 et al., 34 FCC Rcd 10886, 10937, para. 119 (2019).

[216] *See, e.g.*, CETF Comments at 19; Earthlink Comments at 4-5; T-Mobile Comments at 20; Competitive Carrier Association Comments at 7; AT&T Comments at 19 (opposing extending the Lifeline non-usage rules to the Affordable Connectivity Program and stating that these rules "may simply extend the period of time that a participating provider is unable to receive reimbursement for the ACP benefit that has already been provided to the customer."); CTIA Comments at 20. *But see, e.g.*, Altice Comments (supporting applying the Lifeline non-usage rule to the ACP but advocating for an expanded definition of usage). Other commenters did not take a position on the proposed non-usage requirement for the Affordable Connectivity Program. *See generally, e.g.,* Smith Bagley Inc. Comments, INCOMPAS Comments, WTA Advocates for Rural Broadband Comments.

[217] *See* USTelecom Comments at 20.

[218] *See* CETF Comments at 19.

[219] *See, e.g.*, Verizon Comments at 26; NaLA Comments at 27.

Connectivity Program would provide a better safeguard against potential waste, fraud and abuse.[220] The Commission originally established the Lifeline subscriber usage and related de-enrollment requirements in 2012 to address waste, fraud, and abuse concerns stemming from pre-paid wireless providers receiving support for free to the end-user services that the subscriber was not actually using.[221] In adopting these requirements for the Lifeline program, the Commission took into consideration the potential impact of subscriber de-enrollment for non-usage, and ultimately concluded that for services where the end-user is not assessed and does not pay a fee, a subscriber usage requirement, with a set usage period, cure period and de-enrollment for non-usage, was fiscally responsible and balanced the interests of consumers with the risks associated with potential waste in the Lifeline program.[222] This same rationale supports applying the Lifeline usage and non-usage notice and de-enrollment requirements to the Affordable Connectivity Program, in which the higher discount level increases the potential for waste where non-usage occurs. Accordingly, we adopt the Lifeline subscriber usage requirements to the Affordable Connectivity Program, with any modifications necessary to comport with the rules and requirements of the Affordable Connectivity Program.

76. In 2016, the Commission adopted the current 30-day usage and 15-day cure period for the Lifeline program, for non-use of services where the end-user is not assessed and does not pay a fee and we find that these timeframes would sufficiently balance consumer interests and fiscal responsibility for purposes of the Affordable Connectivity Program. We also find that there are significant benefits to applying a uniform subscriber usage requirement for both the Lifeline program and the Affordable Connectivity Program. The Commission previously explained that using a different approach for the EBB Program was justified given the emergency, shorter term nature of that program.[223] However, having inconsistent usage rules for Lifeline and the longer term Affordable Connectivity Program would likely result in significant consumer confusion and complicate provider compliance given that many

[220] For the EBB Program, because participating providers were prohibited from claiming subscribers who did not use their service during the claims month, providers should already have a system in place for tracking subscriber usage during a given claims month. We acknowledge that some participating providers may need to adjust their systems and processes, or develop new systems and processes to comply with the subscriber usage requirements we adopt for the Affordable Connectivity Program. *See, e.g.,* Verizon Comments at 29. However, the record does not demonstrate that it would be extremely burdensome for participating providers to make these adjustments or develop new systems or processes to comply with the subscriber usage requirements we adopt today. In addition, a number of commenters who oppose applying the Lifeline subscriber usage rules to the Affordable Connectivity Program already participate in the Lifeline program and have already developed and use systems and processes to track usage and notify consumers of non-usage in compliance with the Lifeline rules.

[221] *See Lifeline and Link Up Reform and Modernization et al.,* Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6768-69, paras. 255, 258-59 (2012) (*2012 Lifeline Order*).

[222] *See 2012 Lifeline Order*, 27 FCC Rcd at 6768, at para. 258. In the *2016 Lifeline Order and Notice of Proposed Rulemaking*, the Commission maintained the subscriber usage requirement for the Lifeline program, but reduced the non-usage period from 60 days to 30 days and the cure period from 30 days to 15 days, and also expanded the list of activities that constitute usage to include sending a text message. *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4115, para. 415 (2016) (*2016 Lifeline Order and Notice of Proposed Rulemaking*). While the service provider cannot claim support for subscribers who do not use their service in 30 days or who fail to cure their non-usage in 15 days, the cure period is necessary to ensure that subscribers have an opportunity to cure their non-usage before de-enrollment. In other areas addressed in this Order, including the transition of legacy EBB subscribers to the Affordable Connectivity Program, commenters expressed concerns about the potential impact of de-enrolling ACP households. The same concerns also apply to ACP households subject to the usage requirements who are not using their service. The limited cure period strikes an appropriate balance between fiscal responsibility and consumer interests while also minimizing the time period in which participating providers provide free-to-the-end-user service to an ACP household without receiving reimbursement.

[223] *See EBB Program Order*, 36 FCC Rcd at 4680, para. 145.

households will participate in both Lifeline and the Affordable Connectivity Program and certain households may use both benefits on the same service.[224]

77. We acknowledge comments advocating for limiting the subscriber usage requirements to free-to-the-end-user wireless service.[225] However, we decline to take that approach because it would arbitrarily distinguish between free-to-the-end-user wireline and wireless service, while still allowing service providers to continue receiving an ACP benefit for free-to-the-end-user service where the subscriber is not actually using their service. Accordingly, as with the Lifeline program, the subscriber usage requirements we adopt for the Affordable Connectivity Program apply to all modalities of free-to-the-end-user ACP service.

78. Consistent with our decision to adopt the Lifeline subscriber usage rules for the Affordable Connectivity Program, we also require de-enrollment for non-usage consistent with the Lifeline program. We acknowledge the comments opposed to requiring the de-enrollment of ACP households due to non-usage, and asserting that the EBB Program approach is more consumer friendly because it does not require the de-enrollment of subscribers for non-usage.[226] For the EBB Program, while the Commission adopted a usage rule, the Commission declined to adopt a non-usage de-enrollment requirement due "to the unique circumstances provided by the pandemic, the limited duration of the EBB Program, and the participation of non-ETC providers that may not have already designed processes to comport with the specific Lifeline usage requirements."[227] This approach is not justified for the longer-term Affordable Connectivity Program.

79. We find that there are sound program integrity and administrative reasons for requiring the de-enrollment of households who subscribe to, but are not using, an ACP-supported service that is subject to the usage requirement we adopt for the Affordable Connectivity Program. If de-enrollment for non-usage was not required, these subscribers would remain in the NLAD, leaving open the possibility that a provider could claim support for these subscribers even though it is prohibited from doing so. Requiring the de-enrollment of subscribers pursuant to the non-usage rule provides an important safeguard against such improper claims. Not requiring the de-enrollment of subscribers pursuant to the subscriber usage requirement would also complicate and increase the burdens associated with recertifications and duplicate checks. Absent a de-enrollment requirement, USAC and service providers, where applicable, would be required to annually recertify ACP households who remain in the NLAD even if that household is not using their ACP service. Additionally, not requiring the de-enrollment of ACP households for non-usage would preclude another household member at the same address who would actually use the service from separately applying for and receiving an affordable connectivity benefit, and would also require another household residing at that address to complete a household worksheet, even though the other household is not actually using their service. This would unnecessarily increase

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[224] Where a household uses a Lifeline benefit and an affordable connectivity benefit for the same service from the same provider, to avoid consumer confusion, upon the effective date of the subscriber usage requirements for the Affordable Connectivity Program, the provider should track non-usage using the same rolling 30-day period that it is using to track usage for Lifeline.

[225] *See* USTelecom Comments at 20.

[226] *See, e.g.*, CETF Comments at 19; Earthlink Comments at 4-5; T-Mobile Comments at 20; Competitive Carrier Association Comments at 7; AT&T Comments at 19; CTIA Comments at 20. We note that the subscriber usage requirement we adopt for the Affordable Connectivity Program require de-enrollment to ensure that consumers are not receiving ACP benefits for free to the end-user service that they are not using, but do not mandate that the provider disconnect the subscriber's service. Where a service provider de-enrolls a subscriber from the Affordable Connectivity Program due to non-usage, the Affordable Connectivity Program rules would not prohibit the provider from entering into another billing arrangement with the subscriber and continuing to provide service.

[227] *EBB Program Order* 36 FCC Rcd at 4680, para. 145 (adopting the Lifeline definition of usage to the EBB Program).

consumer burdens. While some commenters suggest that a better approach would be to require de-enrollments only after lengthy consecutive periods of non-usage (e.g., six months),[228] we do not adopt this approach because it would not address the program integrity and administrative concerns discussed above. In addition, given that just over half of EBB Program subscribers qualified for the EBB Program based on qualifying for Lifeline, and in many cases may be applying their affordable connectivity benefit to their Lifeline service, having two different de-enrollment timeframes for the Affordable Connectivity Program and Lifeline would likely cause consumer confusion and complicate participating provider compliance with the non-usage rules across the two programs.[229]

80. We emphasize that if the participating provider bills a subscriber on a monthly basis and collects or makes a good faith effort to collect any money owed within a reasonable amount of time, the subscriber will not be subject to the usage requirements. Participating providers that fail to take such steps and do not de-enroll subscribers pursuant to the non-usage requirements we adopt for the Affordable Connectivity Program may be subject to enforcement action or withholding of support.

81. *Definition of Usage.* The *ACP Public Notice* also proposed adopting the Lifeline definition of usage, which was also used in the EBB Program, for the Affordable Connectivity Program.[230] This definition lists other activities, aside from the subscriber's actual use of the supported free to the end-user service, that are considered "usage" for purposes of the subscriber usage requirement.[231] For the EBB Program, the Commission did not alter the list of activities that could be used to demonstrate "usage."[232]

82. Based on our careful review of the record, we adopt the definition of usage under the EBB Program and Lifeline for the Affordable Connectivity Program.[233] We do not expand the list of activities that constitute usage to include activation of a modem, as some commenters suggest, as a method of demonstrating usage of wireline broadband service.[234] In contrast to the additional activities that the Commission previously determined demonstrate "usage," the activation of a modem without actual usage is not a strong indicator of a subscriber's intention to use their service. On balance, activating a modem without actual usage is more likely an indicator that the subscriber does *not* intend to use the ACP-supported service, and we conclude the risk of waste is too great to justify the expansion of the definition of "usage" to include simply activating a modem without actual use of the supported service. For these reasons we do not expand the definition of usage to include activation of a modem. The record does not provide sufficient information for us to make a determination on whether other

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[228] *See, e.g.*, Verizon Comments at 26; NaLA Comments at 27.

[229] USAC, Additional EBB Program Data Page, https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/additional-ebb-program-data/ (last visited Jan. 7, 2022).

[230] *ACP Public Notice* at 20, para. 45.

[231] 47 CFR § 54.407(c)(2).

[232] *EBB Program Order* at 68, para. 145 (adopting without modification the Lifeline definition of usage for the EBB Program); 47 CFR § 54.1608(c).

[233] *See* 47 § CFR 54.407(c)(2).

[234] *See, e.g.*, Altice Comments at 17 (advocating to expand the list of usage activities to include activation of a modem; Letter from Steven Morris, NCTA to (filed Oct. 13, 2021); Wireless Internet Service Providers Association Comments at 4 (stating "the definition of usage is geared towards mobile broadband providers and is not well suited to fixed broadband providers."); WISPA Reply at 9. Other commenters affirmatively support using the Lifeline and EBB Program definition of "usage" for the ACP. *See, e.g.*, NaLA Comments at 28 (supporting adopting the current definition of usage); Competitive Carriers Association Comments at 7 (same).

activities or payment for non-subsidized services could be considered usage of an ACP-supported service.[235]

83. *Usage Tracking and Documentation Requirements.* The *ACP Public Notice* sought comment on the types of records that service providers should be required to maintain to sufficiently demonstrate subscriber usage of their ACP-supported service during an audit or investigation.[236] In particular, the Bureau asked whether the Commission should mandate the use of a third-party application to track subscriber usage for the Affordable Connectivity Program.[237] Parties commenting on this issue strongly opposed mandating a third-party application to track usage, explaining that this approach would significantly infringe on consumer privacy, could potentially deter consumers from participating in the Affordable Connectivity Program, and is unnecessary given other alternatives for tracking usage of ACP service.[238] Based on the record at this time, we are persuaded that mandating a third party application to track subscriber usage is not necessary. Accordingly, we do not mandate the use of a specific application to track subscriber usage for purposes of the subscriber usage requirement. Likewise, at this time, we also will not require an ACP household to individually contact USAC to confirm they want to continue service.[239] Consistent with the approach in the Lifeline program and EBB Program, service providers are responsible to track subscriber usage and retain appropriate usage documentation for purposes of compliance with the non-usage requirements for the Affordable Connectivity Program.

84. We recognize that participating providers may use a variety of methods to track and document subscriber usage for purposes of the subscriber usage requirements. Therefore, consistent with Lifeline and the EBB Program, we do not prescribe a specific method for tracking subscriber usage or specific documentation that must be provided to document usage for purposes of the non-usage rule. However, we remind providers that they must establish processes to track usage for ACP services that are subject to the subscriber usage requirements, and must also maintain documentation to demonstrate compliance with the usage requirement for individual subscribers. Participating providers must maintain this documentation in accordance with the document retention rules we adopt for the Affordable Connectivity Program. We direct the Bureau, OMD, and USAC to continue to use audits and program integrity reviews to monitor participating provider compliance with the subscriber usage requirements.

85. *Annual Subscriber Recertification Requirement.* The *ACP Public Notice* proposed that the Commission should adopt an annual recertification requirement, consistent with Lifeline, to ensure the

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[235] WISPA advocates for allowing providers to rely on an ACP household being current on its payment for non-subsidized services from its ACP provider to "assume that the customer is using the subsidized broadband service." WISPA Reply at 9. WISPA does not identify what these non-subsidized services are or indicate whether the consumers typically use those nonsubsidized services primarily in connection with the ACP-supported service from the provider, or whether consumers typically primarily use those services with other broadband services, such as a separate mobile broadband connection. Accordingly, the record does not provide sufficient information to evaluate the merits of this proposal.

[236] *ACP Public Notice* at 20, para. 46.

[237] *Id.* at 20, para. 47.

[238] *See, e.g.*, Competitive Carrier Association Comments at 7 (stating "service provider records are generally sufficient for confirming data usage" and raising privacy concerns about the use of a third party application to track subscriber usage); AT&T Comments at 19; Free Press Comments at 17; NDIA Comments at 10; Center for Democracy & Technology Comments at 11; New America's Open Technology Institute Comments at 8; NaLA Comments at 28-29 (stating that "Lifeline and EBB program participants have extensive experience with tracking and documenting service usage" and explaining that requiring ACP household to individually contact USAC to confirm they want to continue service, because this would be overly burdensome, and that using a third-party application to track usage would raise privacy concerns); National League of Cities Comments at 3; AARP Comments at 5.

[239] *See* NaLA Comments at 29.

continued eligibility of participating households given the longer-term nature of the Affordable Connectivity Program.[240] There is broad record support for this proposal,[241] and we adopt the Lifeline annual (i.e., once per calendar year) recertification rules for the Affordable Connectivity Program, with necessary modifications to comport with the statutory requirements and rules governing the Affordable Connectivity Program.[242] As with Lifeline, ACP subscribers will be given 60 days to respond to a recertification effort.[243] Subscribers who do not respond or fail ACP recertification must be de-enrolled consistent with the de-enrollment rules we adopt in this Report and Order.

86. The *ACP Public Notice* also proposed allowing ACP households who are also enrolled in Lifeline to rely on their Lifeline recertification for purposes of the annual recertification requirement for the Affordable Connectivity Program.[244] The record contains support for this proposal because it would reduce administrative burdens for ACP households and participating service providers.[245] We direct USAC to develop a process for allowing ACP households that are also enrolled in the Lifeline to rely on a successful recertification across Lifeline and the Affordable Connectivity Program, where the subscriber successfully recertifies based on eligibility criteria that qualify for both programs.[246] Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program. We direct USAC to develop mechanisms and processes to allow subscribers who are enrolled in both Lifeline and the Affordable Connectivity Program to rely on a successful recertification across the two programs, where the qualifying criterion relied on for the successful recertification is in alignment across the two programs. We also direct USAC to identify

[240] *ACP Public Notice* at 21, para. 49.

[241] *See, e.g.*, California Emerging Technology Fund Comments at 49; WTA—Advocates for Rural Broadband Comments at 8; National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 19; National Digital Inclusion Alliance Comments at 10; NaLA Comments at 30; City of Detroit Comments at 3; AT&T Comments at 22; T-Mobile Comments 8.

[242] *See* 47 CFR § 54.410(f)-(g) (outlining the Lifeline recertification requirements). While we adopt an annual recertification requirement for the Affordable Connectivity Program, we make clear that service providers and USAC may elect to time recertification efforts based on the subscriber's anniversary date, provided that the subscriber recertifies annually (once per calendar year). If USAC or a service provider relies on the subscriber's anniversary date for recertification, the anniversary date for legacy EBB households who do not participate in Lifeline can be the date of enrollment in the EBB Program (or the Affordable Connectivity Program in the event of a transfer or other transaction requiring the consumer to submit a new application after ACP start). For ACP households who are enrolled in the Lifeline program and the ACP, if service providers or USAC rely on the subscriber's anniversary date for purposes of the recertification requirement, they may use either the anniversary date for enrollment in Lifeline or the EBB Program or Affordable Connectivity Program as applicable as long as the household recertifies annually.

[243] *See* 47 CFR § 54.405(e)(4).

[244] *ACP Public Notice* at 22, para. 50.

[245] *See, e.g.*, NaLA Comments at 30; NDIA Comments at 10; AT&T Comments at 22.

[246] While the Lifeline eligibility criteria are also qualifying eligibility criteria for the Affordable Connectivity Program, the following ACP eligibility criteria are not qualifying criteria for Lifeline: (1) income level above 135% but at or below 200% of the Federal Poverty Guidelines for a household of that size; (2) participation in service provider's low-income program; (3) WIC; (4) National School Lunch or Breakfast Program; and (5) Pell Grant. Therefore, a successful ACP recertification based on any of these criteria would not recertify the consumer for Lifeline. Accordingly, there may be situations where a subscriber does not pass recertification for Lifeline and must be de-enrolled from Lifeline, but continues to qualify for and remains enrolled in the Affordable Connectivity Program. For subscribers who are enrolled in both the Affordable Connectivity Program and Lifeline, if the subscriber does not respond or fails recertification for the Lifeline program, the subscriber must be de-enrolled from the Lifeline program consistent with section 54.405(e)(4) of the Lifeline rules.

and implement ways to coordinate consumer recertification outreach for the two programs to minimize consumer response burdens and reduce the potential for consumer confusion.

87. For purposes of the annual recertification requirement, consistent with the approach in Lifeline, USAC will conduct recertifications for ACP subscribers whose eligibility was verified through the National Verifier processes.[247] For these subscribers, the automated database connections in the National Verifier will be used whenever possible to recertify eligibility. Consistent with Lifeline, we direct USAC to make available an online form, paper form, and Interactive Voice Response (IVR) option for recertifying the eligibility of ACP subscribers whose eligibility cannot be verified through the National Verifier automated database connections. For USAC-conducted recertifications, USAC will be responsible for de-enrolling subscribers who do not respond or fail ACP recertification consistent with the de-enrollment requirements we adopt in this Order. For USAC-conducted subscriber recertifications, we direct USAC to develop processes to inform participating providers about the status of USAC's recertification efforts and results for their specific ACP subscribers.

88. For households who enrolled in the Affordable Connectivity Program based on an approved alternative verification process or school-based eligibility verification, service providers will be required to conduct the subscriber recertification in accordance with the rules and requirements that we adopt in this Order.[248] While some commenters support having USAC conduct all ACP household recertifications,[249] given that the National Verifier did not initially verify these subscribers' eligibility, it would be potentially confusing and present administrative challenges to require USAC to recertify these subscribers, particularly where a provider's approved alternative verification process includes eligibility criteria that are unique to the provider's low-income program,[250] or the provider, but not USAC, has already established a process with specific schools to verify subscriber eligibility for free and reduced price school lunch or breakfast. However, in the event that a service provider decides to stop using these non-National Verifier methods to verify subscriber eligibility, the service provider shall notify USAC of that decision and USAC will recertify the impacted subscribers.[251] Service providers conducting recertification based on these non-National Verifier subscriber eligibility verification methods will be required to collect and retain the necessary subscriber eligibility documentation in accordance with the

[247] Commenters generally supported this approach. *See, e,g.*, Altice Comments at 15 (supporting having USAC conduct recertification for subscribers whose eligibility was verified through the National Verifier); WTA Comments at 8; NCTA Comments at 29; AT&T Comments at 22. While we will allow subscribers to rely on a successful recertification across the Affordable Connectivity Program and Lifeline, for purposes of Lifeline recertification, subscribers in the opt-out states, Texas, California, and Oregon, must still be recertified through the state process where the state administrator or agency conducts recertifications. *See* 47 CFR § 54.410(f)(1). However, a successful Lifeline opt-out state recertification could be relied upon for purposes of the ACP recertification requirement.

[248] For households enrolled in both Lifeline and the Affordable Connectivity Program, for purposes of recertifying eligibility for Lifeline, subscribers can only be recertified through the National Verifier or state process for the Lifeline NLAD opt-out states as applicable. *See* 47 CFR § 54.410(f)(1).

[249] *See, e.g.*, Competitive Carriers Association Comments at 10, Letter from Christina Chou, Altice at 2 (filed Dec. 21, 2021) (advocating for directing providers who use an approved alternative verification process that is similar to the National Verifier to elect USAC for subscriber reverification for administrative efficiency and to reduce the burden on consumers and providers).

[250] For example some existing provider low-income programs may include the Low Income Home Energy Assistance Program (LIHEAP) or Temporary Assistance to Needy Families (TANF) as qualifying programs. It would not be an efficient use of ACP administrative funds to require USAC to make system changes or develop processes to verify eligibility for programs that are unique to a provider's low-income program and not actually mandated by the statute, or develop processes with individual schools to recertify consumer eligibility.

[251] We recognize that in these situations, USAC's process may look more like the process that USAC uses for reverification of eligibility given that USAC did not initially verify the subscriber's eligibility.

rules and requirements for the Affordable Connectivity Program, and in compliance with their approved alternative verification process as applicable. In addition, where service providers conduct subscriber recertifications for the Affordable Connectivity Program, they must de-enroll subscribers who do not respond or are no longer eligible, consistent with the de-enrollment rules we adopt today.

89. For purposes of this annual recertification requirement, new ACP subscribers who enrolled on or after December 31, 2021 will not be required to recertify their ACP eligibility until 2023. Legacy EBB subscribers who transitioned to the Affordable Connectivity Program will need to recertify their eligibility for the ACP by December 31, 2022.[252] Legacy EBB Program subscribers who qualified for the EBB Program based on substantial loss of income or a provider's COVID-19 Program and already demonstrated their ACP eligibility before the end of the 60-day transition period will not be required to recertify for purposes of the Affordable Connectivity Program requirements again until 2023.

6. De-enrollments

90. The *ACP Public Notice* proposed adopting the de-enrollment rules for the EBB Program (which also apply to the Lifeline program) to the Affordable Connectivity Program, and continuing to allow USAC to directly process de-enrollment requests from subscribers.[253] The record does not indicate opposition to these proposals, and we adopt them. For general de-enrollments and de-enrollments for duplicative support, service providers must process the de-enrollment within five business days after the expiration of the subscriber's deadline to demonstrate eligibility, or within five business days of notification from the Administrator that the subscriber is receiving more than one benefit per household. For de-enrollments initiated by the subscriber, the service provider must de-enroll the subscriber within two business days after the de-enrollment request.

91. As explained above, we also adopt an annual recertification requirement and subscriber usage requirements for the Affordable Connectivity Program. ACP households who are subject to the usage requirement and do not cure their non-usage within 15 days must be de-enrolled, and subscribers who do not respond or fail recertification must also be de-enrolled. Consistent with the Lifeline program, for de-enrollments for no response or failure to recertify, service providers must de-enroll the subscriber within five business days of the subscriber's time to respond to the recertification efforts.[254] As with the Lifeline and EBB Program, when a service provider de-enrolls a subscriber from the Affordable Connectivity Program, the service provider must transmit to the NLAD the date of the Affordable Connectivity Program de-enrollment within one business day of de-enrollment.[255]

C. Covered Services and Devices

92. The Infrastructure Act permits eligible households participating in the Affordable Connectivity Program to receive a discount off the cost of broadband service and certain connected devices, and participating providers to receive a reimbursement for providing such discounts.[256]

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[252] As explained above, we direct USAC to develop mechanisms and processes for allowing subscribers to use the same recertification across Lifeline and Affordable Connectivity Program, where this is consistent with the eligibility criteria for both programs.

[253] *See ACP Public Notice* at 19, para. 44, & n.87 (discussing the Commission's decision to extend to the EBB Program the Lifeline recertification rules for de-enrollments generally, de-enrollments for duplicative support, and de-enrollments requested by the subscriber respectively).

[254] *See* 47 CFR § 54.405(e)(4).

[255] *See* 47 CFR §§ 54.1606(d)(7); 54.404(e)(b)(4).

[256] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(i), (a)(2)(D), (a)(2)(F), § 904(b)(1) (2021) (Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also

(continued….)

93. *Services.* The Infrastructure Act defines "internet service offering" as broadband internet access service provided to a household by a broadband provider.[257] Broadband internet access service retains the definition provided in section 8.1(b) of the Commission's rules.[258] The Infrastructure Act further provides that the "affordable connectivity benefit" means a "monthly discount for an eligible household applied to the actual amount charged to such household."[259] We interpret the Infrastructure Act's reference to a "monthly discount . . . applied to the actual amount charged" to exclude broadband service products that are based primarily on the data allowance of the product (for example, a purchase of 1 GB of data for $5.00) and are sold separate from a monthly recurring service plan. As with our interpretation in the EBB Program, we clarify that the Infrastructure Act's application of the affordable connectivity benefit as a monthly discount off the actual amount charged to the subscriber means that service plans that are already offered with no fee to the end user—for example, as a result of Lifeline program support or other benefit programs—are not eligible for additional or duplicative support from the Affordable Connectivity Program.[260] Pursuant to the Infrastructure Act, participating providers are required to make available to eligible households a monthly discount off the amount charged for an internet service offering up to $30.00 a month.[261] For households residing on Tribal lands, the monthly discount may be up to $75.00 a month.[262] Participating providers will receive reimbursement from the Affordable Connectivity Program for the discounts provided.

94. The Infrastructure Act adds a requirement that a participating provider "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households."[263] The *ACP Public Notice* sought comment on the meaning of "any internet service offering," including whether it should "include legacy or grandfathered plans or whether it only includes current offerings of a provider to new customers."[264] Some providers commented that "any internet service offering" should not include legacy or grandfathered plans, and providers should only be required to offer generally available or actively sold plans,[265] while legacy or grandfathered plans could be applied voluntarily by providers.[266]

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encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part).

[257] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(a)(8) (2021).

[258] Infrastructure Act, div. F, tit. V, § 60501; Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(1) (*citing* 47 CFR § 8.1(b)).

[259] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(A) (2021).

[260] *See EBB Program Order*, 36 FCC Rcd at 4646, para. 70.

[261] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(A) (2021).

[262] *Id.*

[263] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

[264] *ACP Public Notice* at 23, para. 53.

[265] AT&T *Ex Parte* at 1; Letter from Steven Morris, Vice President & Deputy General Counsel, NCTA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 3;); Letter from David LaFuria, Counsel, Smith Bagley to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (filed Nov. 28, 2021) (Smith Bagley *Ex Parte*); Letter from Patrick R. Halley, Senior Vice President, Policy & Advocacy and General Counsel, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1-2 (filed Dec. 3, 2021) (USTelecom Dec. 3, 2021); ACA Connects Comments at 10; T-Mobile Comments at 12; ; Smith Bagley Comments at 7; NCTA Comments at 14-15; USTelecom Comments at 24; CTIA Comments at 14; AT&T Comments at 9-10; WTA Comments at 6; CCA Comments at 6; Dish Comments at 3-4; Frontier Communications Comments at 6; Verizon Comments at 10; NaLA Comments at 18; Free Press Comments at 12; Letter from Alan Buzacott, Executive Director, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1 (filed Dec. 7, 2021) (Verizon Dec. 7, 2021 *Ex Parte*) until April 1); Verizon Reply at 6-7; CTIA Reply at 12; NTCA Reply at 6; AT&T Reply at 8; CCA Reply at 4

Many providers expressed concern at the extensive technical challenges necessary to include legacy and grandfathered plans.[267] Some commenters offered that providers should have additional time after the adoption of this Report and Order to include plans that are not currently offered, such as legacy and grandfathered plans, so that they can more feasibly implement such plans into the Affordable Connectivity Program.[268] On the other hand, other commenters asserted that "any internet service offering" includes all plans, including those offered to new customers and legacy and grandfathered plans.[269] We conclude that any internet service offering means, for a particular customer, any broadband internet plan in which the customer is currently enrolled (regardless of whether it is a legacy grandfathered plan),[270] as well as any broadband internet plan that a provider currently offers to new customers.

95. USTelecom argues that the Infrastructure Act requirement that providers "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households," implies that ACP-eligible consumers can only apply the benefit to plans that are also available to non-eligible consumers, which would only apply to plans being presently offered.[271] However, we do not view this language as creating a limit on the types of plans for which eligible households can receive discounts. Rather, as discussed in more detail below, we find that the purpose of this provision is to ensure that the eligible households are permitted to apply the affordable connectivity benefit to currently offered plans that are available to non-eligible households, such that eligible households are not limited to choosing from a subset of plans or restricted in some way for such plans. We also do not think that Congress intended to exclude consumers on existing legacy or grandfathered plans from participating in the Affordable Connectivity Program. We further clarify that the requirement that legacy or grandfathered plans be eligible for reimbursement does not require that providers offer such legacy or grandfathered plans to other customers, including ACP-eligible customers, that are not already on such plans.[272] Some commenters also expressed concerns with the application of the affordable connectivity benefit to even some of their generally available or actively sold internet service offerings.[273] As explained above, however, the Infrastructure Act requires that participating providers allow the affordable connectivity benefit to be applied to any internet service offering, and we decline to allow providers to exclude any such plans.

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[266] NCTA Comments at 3; Smith Bagley Comments at 7; NCTA Comments at 15.

[267] INCOMPAS Comments at 4-5; USTelecom Dec. 20, 2021 *Ex Parte* at 1-2.

[268] Verizon Dec. 7, 2021 *Ex Parte* at 1 (until April 1, 2022); CTIA Comments at 13 (at least 180 days); AT&T Comments at 9 (six months); INCOMPAS Comments at 4 (six months); Verizon Reply at 8 (Verizon would need substantially more time than April 1, 2022 to include legacy and grandfathered plans).

[269] VTDPS Comments at 2-3; County of Los Angeles Comments at 3; Cincinnati Bell Comments at 4 (noting however, that providers should not be required to submit documentation for legacy or grandfathered plans); City of Detroit Comments at 3; Broadband Strategy Office for the Hawaii Broadband & Digital Equity Office, State of Hawaii Comments at 2 (State of Hawaii Comments); New York Public Service Commission Comments at 3; National League of Cities Comments at 4; Local Governments Reply at 14.

[270] *See* Free Press Reply at 13.

[271] USTelecom Comments at 24 (citing Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021)).

[272] *See* Verizon Comments at 10.

[273] *See, e.g.*, Letter from Jenny Prime, Senior Director, Regulatory Affairs, Cox Enterprises, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-450, 20-445, at 1-2 (filed Dec. 27, 2021) (asserting that billing issues with its pre-paid Internet present challenges making it technically infeasible to make such products available to consumers); Letter from Jordan Goldstein, SVP Regulatory Affairs, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-450, 20-445, at 2 (filed Dec. 17, 2021) (certain offerings may have different billing systems presenting unique challenges).

96. The *ACP Public Notice* sought comment on how providers expect to manage their available offerings to ensure compliance with statutory requirements[274] and on providers' ability to provide service to ACP households by the December 31, 2021 effective date.[275] Commenters expressed concern with providers' ability to immediately make billing and system changes in time to participate in the Affordable Connectivity Program.[276] USTelecom, a trade association representing providers and suppliers for the communications industry, requested "a minimum of 60 days after the rules have taken effect to make necessary changes to their systems and come into compliance"[277] with respect to currently offered generally available plans. We also take notice of the volume and unique complexities of coding and including legacy or grandfathered plans in the Affordable Connectivity Program.[278] Based on the record, we find that providers should have an additional 60 days after publication of the Order in the Federal Register to complete necessary changes and ensure that the affordable connectivity benefit can be applied to all generally available and currently sold plans. While providers must also allow existing subscribers to apply the affordable connectivity benefit to legacy or grandfathered plans, we consider this requirement satisfied if providers, no later than 60 days after the publication of this Order in the Federal Register, can accommodate requests by existing subscribers to apply the affordable connectivity benefit to legacy or grandfathered plans on a case-by-case basis.

97. The Infrastructure Act no longer includes a "standard rate," which limited internet service offerings eligible for EBB Program support to those available before December 1, 2020 and excluded "taxes and other governmental fees,"[279] With respect to the removal of "standard rate" as a defined term as discussed above, some commenters sought clarification about whether taxes and governmental fees could be included as part of the reimbursable internet service offering, noting that taxes and fees are part of the "amount charged" to a consumer so they should be included.[280] We find persuasive arguments from commenters that by allowing the benefit to be applied to taxes and governmental fees, providers can extend to consumers $30 "all-in" broadband offers that include taxes and governmental fees and can avoid charging small bills for taxes and fees alone.[281] Given that Congress removed the exclusion of taxes and other government fees along with its definition of standard rate used in the EBB Program, we find that providers should be allowed to include taxes and other government fees as part of the actual amount charged to a household for reimbursement, that doing so reduces the need for a provider to generate bills for taxes and fees alone, and reduces the likelihood that a consumer will fall into non-payment for failing to pay bills that may be unexpected for the consumer.

98. As discussed above, the Infrastructure Act requires providers to allow an eligible household to apply the Affordable Connectivity Program benefit to "any internet service offering of the participating provider, at the same terms available to households that are not eligible households," and the *ACP Public Notice* sought comment on this requirement and whether it ensures that eligible households receive competitive broadband service offerings.[282] ACA Connects contends that "same terms" should

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[274] *ACP Public Notice* at 23, para. 53.

[275] *Id.* at 24, para. 56.

[276] INCOMPAS Comments at 4-5 (providers may need six months); AT&T Comments at 9 (six months); CTIA Comments at 13 (six months).

[277] USTelecom Dec. 20, 2021 *Ex Parte* at 1.

[278] INCOMPAS Comments at 4-5; Frontier Communications Comments at 6 (noting that providers should have at least 120 days if required to implement legacy plans).

[279] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(13), struck by Infrastructure Act, div. F, tit. V, §§ 60502(a)(1)(B)(ii), (b)(1)(A)(iv) (2021).

[280] NCTA Comments at 18; AT&T Comments at 8, n.17.

[281] Altice Comments at 11.

[282] *ACP Public Notice* at 24, para. 55; Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

mean "terms that are at least as good," such that providers have the latitude to improve upon their generally available plans for the benefit of ACP-eligible households.[283] We find that this requirement is intended to ensure that providers do not limit the application of the affordable connectivity benefit only to internet service offerings that are only offered to low-income households, and that consumers instead have the ability to apply the affordable connectivity benefit to all internet service offerings of a provider, without any special terms that limit the offerings based on the application of such affordable connectivity benefit. While we remain concerned that providers may introduce or alter plans solely to maximize the reimbursement amount,[284] the Infrastructure Act's requirement that the affordable connectivity benefit can be applied to any internet plan helps ensure that the marketplace will not be limited and consumers can apply the affordable connectivity benefit to a plan of their choosing. We further clarify that this requirement does not preclude providers from making internet service offerings that are only available to ACP subscribers provided that that the terms are at least as good as plans that are available to non-eligible households, and that the same terms requirement only means that providers cannot prevent subscribers from applying the affordable connectivity benefit to other available internet service offerings or restricting such internet service offerings in any way.[285]

99. The EBB Program required providers to make available "at least one EBB Program-reimbursed service to each of its eligible households within its service area," and the *ACP Public Notice* sought comment about whether this requirement is necessary in light of the fact that the benefit can be applied to any internet service offering.[286] California Emerging Technology Fund (CETF) asserts that this requirement is not necessary given the broader offering of plans allowed in the Affordable Connectivity Program.[287] We agree that the requirement that the benefit can be applied to any internet service offering renders this requirement moot. Similarly, the *ACP Public Notice* sought comment on the extent to which geography may affect plan availability.[288] Commenters noted that competition itself would dictate what plans are offered in certain geographic areas, and that providers do not need to offer plans in one location that it does normally offer solely because it does offer that plan in another geographic area.[289] However, to ensure minimal disruption to existing billing systems and processes, we decline to require that providers participating in the Affordable Connectivity Program make available plans not available in a given geographic area that they offer elsewhere.

100. In the *ACP Public Notice*, the Bureau sought comment on whether the Commission should collect the service plan characteristics—such as upload and download speeds, data allowances, and co-payment—associated with a subscriber's service plan to gauge whether the Affordable Connectivity Program is providing value to households beyond what the Lifeline program offers, and whether that value is in-line with market rates for broadband services.[290] Certain commenters agreed that this data would be useful to help evaluate the types of services the Affordable Connectivity Program is

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[283] ACA Connects Comments at 11-12.

[284] *See* County of Los Angeles Comments at 3.

[285] *See* T-Mobile Comments at 12; Altice Comments at 11; Letter from Cristina Chou, Vice President, Federal Affairs, Altice USA, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1-2 (filed Dec. 20, 2021); Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 3 (filed Dec. 20, 2021); ACA Connects Reply at 8.

[286] *ACP Public Notice* at 24, para. 56 (citing *EBB Program Order*, 36 FCC Rcd at 4628, para. 37).

[287] CETF Comments at 22-23.

[288] *ACP Public Notice* at 23, para. 53.

[289] Wavelength Comments at 2-3; CTIA Comments at 14; Free Press Comments at 12; ACA Connects Comments at 10 (Chicago household not entitled to receiving offering that provider exclusively offers in Los Angeles).

[290] *ACP Public Notice* at 47, para. 120.

funding and progress towards the program's goals.[291] We direct the Bureau and OEA, with support from USAC, to determine whether data should be collected and the appropriate avenues to collect this data, such as possible future modifications to NLAD or conducting a provider survey. If such data is collected, it could be compared to ACP-specific consumer complaint data to determine whether there is a need to establish adequate metrics for quality of service received under the Affordable Connectivity Program.

101. *Minimum Service Standards*. In the EBB Program, we declined to institute minimum service standards for internet service offerings,[292] and the *ACP Public Notice* sought comment on whether that should be reconsidered for the Affordable Connectivity Program and whether the Commission had authority to do so under the Infrastructure Act.[293] Many commenters contend that there should be some basic standards, such as broadband that is sufficient to enable telework, remote learning, and telehealth.[294] Others suggested requiring specific minimum download and upload standards.[295] In contrast, some commenters suggest that because "any internet service offering" is to be supported under the Affordable Connectivity Program, then consideration of minimum service standards is unnecessary and not permitted under the Infrastructure Act.[296] Similarly, other commenters note that given the "same terms" requirement as discussed above, there is no need for minimum service standards.[297]

102. Upon review of the record and the new statutory requirements, as with the EBB Program, we decline to apply minimum service standards to covered services for the Affordable Connectivity Program. Congress intended that "any internet service offering" be eligible for support in the Affordable Connectivity Program,[298] and we find that imposing minimum service standards would contradict the Infrastructure Act and is not statutorily supported. As we did with the EBB Program, we find instead that internet service offerings must include a broadband connection (as defined in section 904(a)(8))—fixed or mobile—that permits households to rely on these connections for the purposes essential to telework, remote learning, and telehealth.[299]

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[291] *See, e.g.,* HTTP Comments at 2 (Commission should prioritize collecting data about what plans consumers are selecting as a part of their benefit over what plans are being offered in order to better track consumer preferences and trends); County of Los Angeles Comments at 7 (supportive of the proposal to ask providers to indicate plan characteristics); CETF Comments at 49 (supportive of the proposal to collect data to determine whether ACP is providing value to households); United Ways of California Comments at 36 (same), *but see* Verizon Comments at 28 (Commission should not impose new reporting requirements on providers.).

[292] *EBB Program Order*, 36 FCC Rcd at 4647-48, para. 73.

[293] *ACP Public Notice* at 23, para. 54.

[294] EducationSuperHighway Supplemental Comments at 2-3; Tech Goes Home Comments at 2; CETF Comments at 22.

[295] Starry, Inc. Comments at 10 (prioritize reimbursements for plans with speeds faster than 25/3); County of Los Angeles Comments at 3 (25/3); City of Detroit Comments at 3-4 (symmetrical service is a minimum threshold); Local Governments Comments at 4-5, 15 (100/10); Adtran Comments at 8-9 (25/3, while also suggesting that Section 904(f) permitting the Commission to use its Part 54 authority could be the source of the Commission's legal authority to institute minimum service standards); CPUC Reply at 7 (fixed should be 100/20); Local Governments Reply at 6-7.

[296] USTelecom Dec. 3, 2021 *Ex Parte* at 1; T-Mobile Comments at 13-14; NCTA Comments at 18; USTelecom Comments at 23; CTIA Comments at 16; WTA Comments at 7; WISPA Comments at 3; CETF Comments at 21-22; CCA Comments at 7; Alaska Communications Comments at 4; Verizon Comments at 11; NaLA Comments at 18; USTelecom Dec. 20, 2021 *Ex Parte* at 2; Verizon Reply at 14; CTIA Reply at 7-9; AT&T Reply at 9; CCA Reply at 5-6.

[297] USTelecom Comments at 23; CTIA Comments at 16; CETF Comments at 22.

[298] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

[299] *See EBB Program Order*, 36 FCC Rcd at 4647-48, para. 73.

103. *Bulk purchasing arrangements and Multiple Dwelling Units*. The *ACP Public Notice* sought comment as to whether we should adopt measures to make it easier for residents in multiple dwelling units (MDU) where the broadband is provided through a bulk purchasing arrangement to participate in the Affordable Connectivity Program, as we did with the EBB Program.[300] In the *EBB Program Order*, the Commission determined that eligible households that "live at a single address, such as senior and student living, mobile home parks, apartment buildings, and federal units, that receive service as part of a bulk billing arrangement where the households 'are not directly billed for services by their internet service provider, but instead pay a monthly fee for broadband services to their landlord'" should be permitted to participate in the EBB Program.[301] In those situations, we required that the participating provider claiming reimbursement retain documentation demonstrating that the amount claimed by the provider is fully passed through to the eligible household as a discount off of the monthly price that the eligible household otherwise would have paid to the bulk purchaser.[302] We further required providers to retain documentation demonstrating the identity of the entity or entities through which the discount was passed, the eligible households who received the service, and consent by the eligible household allowing the participating provider to seek reimbursement.[303] Commenters generally agreed with adopting this approach to MDUs from the EBB Program,[304] and we will adopt this flexibility in the Affordable Connectivity Program. We clarify that homeless shelters[305] and school districts and libraries[306] can also be considered bulk purchasers and allowed in the Affordable Connectivity Program, provided that the arrangements are set up in compliance with this Order.

104. In filed comments, EducationSuperHighway sought clarification that reimbursement will be permissible in MDUs (as it is with the typical provider/household relationship) where applying the affordable connectivity benefit to the household's broadband bill will result in the household not having a

[300] *ACP Public Notice* at 24-25, para. 57.

[301] *EBB Program Order*, 36 FCC Rcd at 4633, para. 45.

[302] *Id*.

[303] *Id*.

[304] County of Los Angeles Comments at 3; T-Mobile Comments at 14; Local Governments Comments at 10; CETF Comments at 23; Michigan PSC Comments at 6; City of Detroit Comments at 5; EducationSuperHighway Comments at 9; National League of Cities Comments at 5.

[305] Some commenters asked that we allow homeless shelters to be considered MDUs based on capacity and occupancy and make the centers themselves eligible for the ACP benefit, without regard to the eligibility of individual households, but we will not allow such arrangements. *See, e.g.*, E-Rate Central and SHLB Coalition Comments at 3; CETF Comments at 23); Alexander R. Majewski Comments; Win Himsworth Reply. We note that with respect to homeless shelters, the affordable connectivity benefit is limited to one-per-economic-household, and household is defined as "any individual or group of individuals who are living together at the same address as one economic unit." An economic unit is further defined as "all adult individuals contributing to and sharing in the income and expenses of a household." *See* 47 CFR § 54.1600(l). This definition of household recognizes that more than one economic household can reside at the same address, including in group living facilities such as shelters for unhoused individuals. We note that those living in a group facility such as a homeless shelter who do not share expenses could be considered an individual household that would be eligible for Affordable Connectivity Program. *See* USAC, What is a Household?, https://acpbenefit.org/do-i-qualify/what-is-a-household/ (last visited Jan. 7, 2022).

[306] Commenters also proposed that we allow schools, school district, and libraries to use the affordable connectivity benefit to replace the Emergency Connectivity Fund without requiring households to apply for the Affordable Connectivity Program. *See, e.g.*, E-Rate Central and SHLB Coalition Comments at 5-6; UWCA Comments at 18-19 (the bulk billing entity would certify the eligibility of the student); CETF Comments at 24 (same).

cost for broadband, and we agree and provide that clarification here.[307] In the *EBB Program Order*, the Commission stated that "[i]n cases where the household does not pay a fee for the service, either to the provider or a bulk purchaser/aggregator, but the fee is paid by another entity, the service cannot be claimed for EBB Program support."[308] We maintain that limitation in the Affordable Connectivity Program, and clarify that, consistent with the Infrastructure Act, and as a measure to safeguard program integrity, a household must actually be charged an amount for broadband service prior to application of the affordable connectivity benefit. If the household is not charged for broadband *prior* to the application of the affordable connectivity benefit, for example if the MDU provides broadband for free to all households or if a third party pays for the entirety of the household's broadband leaving the household without any charge, then there is no discount to be applied to a household's bill for which the provider can seek reimbursement, as required by the Infrastructure Act. In those situations, applying the affordable connectivity benefit to the cost of the service offering will not have any actual impact on the consumer's monthly broadband bill. In the latter situation, however, the household can stop having the third party pay for the household's bill and can instead seek the discount through the Affordable Connectivity Program, in which case the provider could then seek reimbursement for the service. For example, if the landlord typically charges the household $25 a month for broadband, but a third party usually pays the $25 on behalf of the household, then that $25 cannot be sought for reimbursement by the provider. If, however, the third party stops paying the $25, and the household now has a $25 a month liability for broadband, then the provider can seek reimbursement for that bill amount if the eligible household wishes to participate in the Affordable Connectivity Program, and that $25 discount will be passed through to the household resulting in no bill to the household.

105. EducationSuperHighway also sought clarification that mass-market Wi-Fi is eligible broadband internet access service for reimbursement,[309] noting that in many cases, an MDU such as a large apartment building may have Wi-Fi deployed to an entire building as the broadband internet available to its residents.[310] We find that such service qualifies as broadband internet access service eligible for reimbursement in the Affordable Connectivity Program. As discussed above, however, eligible households must be charged a monthly fee for such service to be reimbursable.[311] EducationSuperHighway further sought clarification on the documentation requirements for the provider to show that the discount is being passed down to eligible households in an MDU. In particular, EducationSuperHighway seeks guidance on whether a certification by the bulk purchasing entity that the discount from the service provider is fully passed through to the eligible households located in the MDU is sufficient to demonstrate compliance with program rules.[312] Documentation serves a critical role to

[307] *See* EducationSuperHighway Comments at 12; *see also* Letter from Stephanie Weiner, Counsel, #OaklandUndivided Coalition to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, Attach. at 12 (filed Dec. 17, 2021).

[308] *EBB Program Order*, 36 FCC Rcd at 4633, para. 45.

[309] EducationSuperHighway Comments at 13-14; Letter from Evan Marwell, CEO, EducationSuperHighway to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 2-7 (filed Dec. 23, 2021) (ESH Dec. 23, 2021 *Ex Parte*).

[310] EducationSuperHighway Comments at 13-14.

[311] A few commenters asked that we allow other types of specific arrangements as part of what we allow for MDUs, but we decline to allow them, as aspects of them would not be in line with what is permitted by the Infrastructure Act, including that there must be an actual amount charged to a household prior to the application of the affordable connectivity benefit. *See, e.g.*, City of Seattle Comments at 8-9 (seeking that we allow a process where a housing provider automatically includes tenants as part of the ACP, which would impermissibly do away with required individual household applications and necessary consent).

[312] *See* EducationSuperHighway Comments at 13 ("[I]n the situation where the cost of eligible service is covered entirely by the ACP benefit, the service provider or bulk purchaser might not send a monthly bill to the household.

(continued….)

protect against abuse in the program, and documentation requirements are particularly important where there is not a direct relationship between the broadband provider and the eligible household. We therefore decline to allow a certification from the bulk purchaser as evidence that the discount has been passed through to the eligible household.

106. *Bundled Service Offerings*. In the *EBB Program Order*, the Commission found that bundled service offerings such as those offering voice, data, and texting could be eligible for the EBB Program,[313] but the full benefit would not be allowed to be applied to the full price of broadband-bundled video service.[314] The *ACP Public Notice* sought comment on whether we should adopt this proposal for the Affordable Connectivity Program.[315] Most commenters agreed with this proposal,[316] and we adopt it. Some commenters argued that we should allow video bundles to be reimbursed.[317]

107. As we noted in the *EBB Program Order*, however,[318] we do not find that permitting the Affordable Connectivity Program reimbursement to be applied to the full price of a bundle that includes video service is contemplated by the statute. We clarify that reimbursement cannot go toward the whole value of a bundle that includes video and broadband, but the video portion of any bundle must be apportioned out before determining the amount that is reimbursable for broadband purposes of the Affordable Connectivity Program.[319] The apportioned out video rate must be set to the higher of (1) price of the video service when sold unbundled, (2) the difference between the price of a bundle with video and the price of a bundle without video, and (3) the difference between the bundle price and the combined highest price of each stand-alone service (except the video component).[320] Comcast also sought clarification as to whether fixed and mobile bundled services can be supported by the Affordable Connectivity Program, with the understanding that the household would only be entitled to a single $30 benefit or $75 enhanced benefit for such fixed and mobile bundle.[321] We confirm that fixed and mobile bundled services can be supported, with the understanding as Comcast expressed that such households with such bundles will only be entitled to a single benefit.

108. *Associated Equipment and Other Customer Premises Equipment.* The Infrastructure Act updated the definition of "emergency broadband benefit" to reflect the change to an "affordable connectivity benefit" and further struck the limitation that it be "no more than the standard rate for an internet service offering and associated equipment."[322] The prior inclusion of "associated equipment" led

(Continued from previous page)
In these cases, the monthly bill is not available to serve as documentation that a bulk purchaser has passed through the benefit amount to the eligible household, as is required in the EBBP.").

[313] *EBB Program Order*, 36 FCC Rcd at 4649, para. 76.

[314] *Id*.

[315] *ACP Public Notice* at 25, para. 58.

[316] Cincinnati Bell Comments at 6-7; Free Press Comments at 13; CETF Comments at 24.

[317] VTDPS Comments at 4.

[318] *EBB Program Order*, 36 FCC Rcd at 4949, para. 76.

[319] *See* Altice Comments at 13.

[320] Take for example, a bundle price for voice, broadband, and video is $50, the price for video only is $26, for broadband only is $22, for voice only is $10, and for broadband and voice together with no video is $27. The apportioned video amount should be the higher of the price of video service sold unbundled ($26), the difference ($23) between the bundle with video ($50) and the bundle without video ($27), and the difference ($18) between the bundle with video ($50) and the combined highest price of each stand-alone service ($22 + $10). Thus, the apportioned video amount would be $32, and the reimbursable amount would be $18.

[321] Comcast Dec. 17, 2021 *Ex Parte* at 1-2.

[322] Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7) (2020), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(A), (b)(1)(A)(ii) (2021).

the Commission find that it was required to provide the discount for internet service and associated "equipment necessary for the transmission functions of Internet service offerings supported through the EBB Program," which the Commission found includes equipment such as modems, routers, and hotspot devices and antennas.[323] In light of this modification of the definition, the *ACP Public Notice* sought comment on whether monthly rental costs for such associated equipment should be eligible for the affordable connectivity benefit.[324]

109. Commenters who addressed this issue asserted that associated equipment should still be eligible to be reimbursed as part of the service benefit,[325] and we agree. As other commenters have noted, the reference to associated equipment was removed as part of the clause that was removed containing the no longer applicable standard rate, and its removal does not preclude us from applying the benefit to associated equipment that is necessary for the provision of internet service to a household.[326] Congress was aware that the EBB Program funded equipment necessary for the provision of internet service, and we do not believe the removal of the "standard rate" clause, without more, should be read to reflect an intent to change this important feature of the program. Nothing in the legislative history of the statute reflects any such intention.[327]

110. *Connected Devices*. As noted in the *ACP Public Notice*, the Infrastructure Act retains the definition of connected device and the reimbursement rate for such devices used in the EBB Program.[328] As such, participating providers, in addition to providing an ACP-supported broadband service to the household, may be reimbursed up to $100 for a connected device delivered to the household, provided that the "charge to such eligible household is more than $10 but less than $50 for such connected device."[329] A connected device is defined in the statute as a laptop, desktop computer, or a tablet.[330] In the *EBB Program Order*, because the Consolidated Appropriations Act declined to include cellular phones or smartphones in the definition of "connected devices," the Commission found that a connected device could not include "devices that can independently make cellular calls such as large phones or phablets."[331] The *ACP Public Notice* proposed to adopt that approach for the Affordable Connectivity Program and sought comment on that proposal.[332]

111. CTIA argued that cellular capability is not the proper criterion for distinguishing between tablets and non-eligible connected devices, and proposes instead that a "tablet is a mobile device utilizing 4G or later-generation mobile technology; a mobile phone is any earlier-generation mobile device or

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[323] *EBB Program Order*, 36 FCC Rcd at 4650-51, para. 78.

[324] *ACP Public Notice* at 25, para. 59.

[325] New York Public Service Commission Comments at 3-4; Verizon Comments at 10-11; Altice Comments at 11; Michigan PSC Comments at 6; New York PSC Comments at 3; CETF Comments at 24; USTelecom Comments at 27; NCTA Comments at 16-17; T-Mobile Comments at 16; ACA Connects Comments at 10; Asian American Tech Table Comments at 3; MMTC Comments at 4-5; SAHF Comments at 3; Next Century Cities Comments at 15; AASC Comments at 3; UWCA Comments at 19; CETF Reply at 13.

[326] NCTA Comments at 17; Verizon Comments at 10-11.

[327] NCLC and UCC MJ Comments at 23 (arguing that it is not clear whether Congress intended to prohibit reimbursement of associated equipment, and in such cases, the Commission has authority to interpret the provision); CTIA Reply at 11 (echoing that there is no indication Congress intended to change the scope of services covered as related to associated equipment); Common Sense Public Knowledge Reply at 16.

[328] *ACP Public Notice* at 25-26, para. 60.

[329] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

[330] *Id.*

[331] *EBB Program Order*, 36 FCC Rcd at 4651, para. 79.

[332] *ACP Public Notice* at 26, para. 61.

feature phone,"[333] and other commenters agreed.[334] CTIA also argued that as an alternative or in addition, the Commission should consider the definitions employed by the Commission's Office of Engineering and Technology, which treat devices with displays larger than 15 cm diagonal as phablets and devices with displays larger than 20 cm diagonal as tablets, and both should be considered tablets for the Affordable Connectivity Program.[335] Other commenters generally agreed with the proposal in the *ACP Public Notice* distinguishing devices with cellular capabilities as was done in the EBB Program and to continue excluding smartphones or cellphones,[336] and we extend this approach for Affordable Connectivity Program.

112. The Infrastructure Act retained for the Affordable Connectivity Program the definition of a connected device that does not include cellular phones, smartphones, mobile phones, or phablets. Characterizing any mobile device with 4G or later-generation mobile technology as a tablet would ignore the fact that many such devices are mobile, cellular, or smartphones that Congress intentionally did not include in the definition of "connected device." Congress could have easily expanded the definition of connected devices to allow cellular phones and other devices for which households could receive an up to a $100 reimbursement, but it did not modify the definition at all. Limiting connected devices to tablets, desktop computers, and laptop computers suggests that the broadband component of a connected device is what we should be funding. Thus, we decline to depart from our approach in the EBB Program, and we conclude that tablets with cellular capabilities cannot be funded as connected devices by the Affordable Connectivity Program.

113. The *ACP Public Notice* also sought comment on EBB Program household experiences in choosing qualifying connected devices for the EBB Program to determine if there are any other improvements the Commission can make to the Affordable Connectivity Program.[337] The City of Detroit noted that device options were disappointing and that the Commission should "allow for device support from any participating ACP provider and separately, internet support from any participating provider as well."[338] While such an arrangement may result in increased devices available to consumers, the Commission is statutorily prohibited from such arrangements, as the Infrastructure Act makes clear that only the participating provider that supplies the affordable connectivity benefit for service may also be reimbursed for a connected device.[339]

114. *Minimum System Requirements for Connected Devices.* In the *ACP Public Notice*, the Bureau sought comment on whether the Commission should impose minimum system requirements for

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[333] CTIA Comments at 17-19.

[334] NaLA Comments at 19; Competitive Carriers Association Comments at 11; Next Century Cities Comments at 16-17.

[335] CTIA Comments at 19.

[336] CETF Comments at 26; UWCA Comments at 20; NDIA Comments at 12; NRECA Comments at 9; UWCA Comments at 20; NCLC/ UCC-MJ Comments at 23; CETF Reply at 15.

[337] *ACP Public Notice* at 28, para. 67.

[338] City of Detroit Comments at 4; *see also* Hawaiian Hope Org Comments at 3 (refurbishers should be included as providers so that they can provide devices).

[339] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021) (providing that "[a] participating provider that, in addition to providing the affordable connectivity benefit to an eligible household, supplies such household with a connected device" may be reimbursed for the device); *see also EBB Program Order*, 36 FCC Rcd at 4660, para. 96 ("Because the Consolidated Appropriations Act limits the connected device reimbursement to providers who are providing the EBB Program benefit to the household, we require that claims for connected deices must be made concurrent with or after the provider's first reimbursement claim for service for that household.").

connected devices supported by the Affordable Connectivity Program.[340] In the EBB Program, the Commission expected devices to be able to support video conferencing platforms, be Wi-Fi enabled, and have video and camera functions, and to be accessible to and usable by those with disabilities.[341] The record again overwhelmingly supports that, at a minimum, connected devices must be able to support video conferencing and camera functionality and online learning software.[342] Commenters also suggested that the devices must be portable and usable by the household, and not strictly connected to the ownership or control of the service provider.[343]

115. We maintain the requirements of connected devices for the EBB Program that a connected device supported by the Affordable Connectivity Program must support video conferencing platforms and other software essential to ensure full participation in online learning, be Wi-Fi enabled, have video and camera functions, and be accessible to and usable by those with disabilities. We also clarify that the device must be able to connect to all Wi-Fi access points and cannot be limited to use with any specific service provider.[344]

116. *Application of Section 54.10*. The *ACP Public Notice* proposed that the Commission apply the requirements of section 54.10 of the Commission's rules to the Affordable Connectivity Program in the same manner as those requirements are applied in the EBB Program.[345] Section 54.10 states that a "Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service may not be used to" "[p]urchase, rent, lease, or otherwise obtain, any covered communications equipment or service," or "[m]aintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained."[346] Section 54.10 further notes that "covered communications equipment or service" is defined in section 1.50001 as "any communications equipment or service that is included on the Covered List,"[347] and section 1.50001 further defines "communications equipment or service" as "any equipment or service used in fixed and mobile networks that provides advanced communication service, provided the equipment or service includes or uses electronic components,"[348] and any device that is on a Covered List is one that "poses an unacceptable risk to the national security of the United States or the security and safety of United States persons."[349]

117. As discussed above, a connected device supported by the Affordable Connectivity Program includes a laptop, desktop computer, or tablet, and we believe that funds used for such devices could reasonably be considered to be funds for capital expenditures, and further that such capital expenditures could reasonably be considered to be "necessary for the provision of advanced communications service" as defined in section 1.50001 and contemplated by section 54.10. We are not

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[340] *ACP Public Notice* at 28, para. 68.

[341] *Id.* (citing *EBB Program Order*, 36 FCC Rcd at 4653, para. 82).

[342] County of Los Angeles Comments at 3.

[343] *Id.*; CETF Comments at 26.

[344] *See* National League of Cities Comments at 5; NCLC and UCC MJ Reply at 10-11.

[345] *ACP Public Notice* at 28-29, para. 69; *see* USAC, Supply Chain – COVID-19 Broadband Programs, https://www.usac.org/about/reports-orders/supply-chain/covid-19-programs/ (last visited Jan. 7, 2022); USAC, USAC EBB Program Enrollments – EBB Program October Enhancements, https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/EBB_Oct_Enhancements_10_26.pdf (last visited Jan. 7, 2022).

[346] 47 CFR § 54.10.

[347] 47 CFR § 54.10(b).

[348] 47 CFR § 1.50001(c).

[349] 47 CFR § 1.50002(b)(1).

aware of any comments objecting to the proposal to apply the requirements of section 54.10 of the Commission's rules to the Affordable Connectivity Program, and we adopt it. To verify a provider's compliance with this requirement, providers will need to certify that the connected device that they are seeking reimbursement for complies with section 54.10.

D. Reimbursement

1. Reimbursement for the Affordable Connectivity Benefit

118. The Infrastructure Act changed the standard monthly discount and reimbursement rate from $50 to $30 for an internet service offering, and we adopt that requirement.[350] The *ACP Public Notice* proposed that participating providers be reimbursed through a process similar to the EBB Claims System administered by USAC, subject to all the requirements of the Lifeline Claims System, and sought comment on that proposal.[351] The *ACP Public Notice* also sought comment on whether we should continue to use a uniform snapshot date of subscribers that are enrolled in NLAD, and if so, whether it should remain the first day of the month.[352] We are only aware of one comment which suggests moving away from the uniform snapshot date and instead moving to a pro-rated reimbursement process, which we discuss further below.[353]

119. Based on this record and our experience with the Lifeline and EBB Programs, we will continue to use the Lifeline Claims Systems to manage the reimbursement process for the Affordable Connectivity Program. Further, we find that for the reasons stated in the *EBB Program Order*, we adopt the uniform snapshot date approach for capturing the subscribers enrolled in NLAD on the first of the month that are eligible to be claimed for that month.[354] A uniform snapshot date brings efficiencies to the reimbursement process by restricting support to those eligible subscribers that are enrolled in NLAD on the first of each month. We find it most efficient to require providers to claim subscribers that are enrolled in NLAD as of the first of the month regardless of how many days in the month the provider was providing service to the subscriber.

120. The *ACP Public Notice* further sought comment on whether we should accommodate partial month, pro-rated reimbursement.[355] Some commenters supported the ability to do partial month reimbursement.[356] Others, however, cautioned against the complications of a partial month reimbursement that could require expensive and potentially disruptive modifications of USAC systems and provider billing systems.[357] Given the complexity of instituting a partial reimbursement system at the effective date of the rules we adopt for Affordable Connectivity Program, we decline to permit partial reimbursement at this time. Using a uniform snapshot date as described above provides certainty to

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[350] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(A) (2021).

[351] *ACP Public Notice* at 30-31, para. 74. Providers are required to submit a reimbursement request based on the number of subscribers enrolled in NLAD on the snapshot date. Providers must review the snapshot report, validate the subscribers for which they are requesting reimbursement, indicate a reason for any unclaimed subscribers, and review, correct, and certify the requested reimbursement amount. Further information on the Lifeline Claims System can be found on USAC's website at https://www.usac.org/lifeline/reimbursement/lifeline-claims-system/.

[352] *ACP Public Notice* at 31, para. 74.

[353] *See* NaLA Comments at 31.

[354] *EBB Program Order*, 36 FCC Rcd at 4657-58, para. 90.

[355] *ACP Public Notice* at 31, para. 76.

[356] WISPA Comments at 5; Verizon Comments at 23; NaLA Comments at 31; ACA Connects Comments at 8 (allow if de-enroll before the end of the calendar month); NTCA Comments at 14; CPUC Reply at 18 (supporting a weighted average based on number of days in a month providing service); ACA Connect Reply at 9; NaLA Reply at 27-28.

[357] WTA Comments at 8.

consumers and providers about what discounts are going to be applied to the broadband service, while employing a partial reimbursement process would be challenging for USAC to administer, particularly given the tight timeframe of the effective date of this program and new rules to implement. However, we delegate the authority to the Bureau and OMD to determine, in consultation with USAC, whether partial reimbursement can be accomplished consistent with government-wide federal financial statutory requirements and U.S. Treasury procedures and provide additional guidance if partial reimbursement can be adopted.

121. The *ACP Public Notice* sought comment on the proposal to require participating providers that are applying both the Lifeline discount and the Affordable Connectivity Benefit to a household's supported broadband service to apply the full Lifeline discount (including both federal and state support) first before calculating the reimbursement amount claimed under the Affordable Connectivity Program, as was done in the EBB Program.[358] Some commenters did not support prioritizing state Lifeline benefits, arguing that the Infrastructure Act does not support prioritizing state Lifeline benefits in this way, and that the proper application should be (1) federal Lifeline benefit, (2) affordable connectivity benefit, and then (3) the state Lifeline benefit.[359] Commenters also sought clarification on the order of applying benefits, as some states required that the state Lifeline benefit be applied last.[360] Most commenters, however, supported applying the full Lifeline subsidy, including any state Lifeline benefits, prior to applying the affordable connectivity benefit.[361] We further note that the Affordable Connectivity Program allows the affordable connectivity benefit to be applied to any internet service offering, which removes some of the complications of the priority in which benefits should be applied that was present in the EBB Program. We now provide guidance that when applying the affordable connectivity benefit to a Lifeline service, providers should first apply the full Lifeline subsidy, and then the federal affordable connectivity benefit. This approach maximizes the Affordable Connectivity Program funds and is consistent with the requirements of section 54.403(b) of the Commission's rules regarding the application of the Lifeline support amount.[362] We recognize that states may offer their own Lifeline and/or other broadband affordability benefits, and we will defer to any state on how that additional benefit should be applied in conjunction with the federal affordable connectivity benefit.

122. The *ACP Public Notice* also asked for comment on whether the Commission should offer more flexibility regarding the deadline to submit certified reimbursement claims than provided in the EBB Program.[363] In the EBB Program, providers were required to upload and certify their claims by the 15th day of each month, or the following business day in the event the 15th falls on a weekend or holiday.[364] Commenters generally supported providing more time for providers to submit certified

[358] *ACP Public Notice* at 31, para. 75.

[359] T-Mobile Comments at 21; AARP Comments at 6 (states provide benefits as a supplement, and if a state decides that federal funding is sufficient and supplementation by the state is not necessary, they should be able to make that case); CPUC Reply at 4-5 (requiring state Lifeline applied before the ACP benefit would encourage states to reduce or eliminate support in their states)..

[360] INCOMPAS Comments at 9 (noting that, for example, Missouri and Kentucky contradicted the priority set by federal funding rules); USTelecom Comments at 21 (noting that a few states required applying the state Lifeline benefit as the final discount); CCA Comments at 8.

[361] INCOMPAS Comments at 9; CETF Comments at 31; USTelecom Comments at 21; AARP Comments at 5-6 (noting, however, the distinction between Federal and state Lifeline benefits).

[362] E*BB Program Order*, 36 FCC Rcd at 4657-58, para. 90.

[363] *ACP Public Notice* at 32, para. 77.

[364] *ACP Public Notice* at 32, para. 77.

reimbursement claims.[365] To ensure that providers have sufficient time to submit certified reimbursement claims and USAC can administer the program efficiently, we will allow providers six months from the uniform snapshot date, or the following business day in the event six months falls on a weekend or holiday, to submit to USAC their certified reimbursement claims for both service and connected device support for households captured on the snapshot report.

123. We decline to allow providers up to a year to submit claims as is permitted in the Lifeline program. Unlike the Universal Service Fund (which includes the Lifeline program), the Affordable Connectivity Program does not have a permanent indefinite appropriation, and as such we find that a shortened timeline of six months is appropriate and consistent with the limited or definite appropriation. At the same time, the Affordable Connectivity Program has significantly more funding than the EBB Program, and as such we need not require claims within 15 days. Given these factors, we find that six months is an appropriate amount of time for providers to submit certified reimbursement claims, allowing them to become acclimated with new or updated USAC reimbursement procedures and prepare their own billing systems, while balancing USAC's ability to efficiently administer the program.[366] We also delegate to the Bureau and OMD the authority to establish a different timeline to submit certified reimbursement claims as a result of projections and forecasts of when the Affordable Connectivity Fund is winding down,[367] or to the extent necessary to ensure compliance with government-wide federal financial statutes and/or U.S. Treasury procedures.[368]

124. The *ACP Public Notice* also sought comment on whether providers would be able to revise their certified claims.[369] Many commenters supported allowing revisions.[370] We agree that allowing downward and upward revisions would be beneficial.[371] We establish that providers can submit upward or downward revisions within the same six-month time period after the snapshot date that certified reimbursement claims are due. Given the somewhat limited nature of the Affordable Connectivity Program, we find that it is appropriate to limit the amount of time for which providers can submit revisions, similar to the reasoning for submitting certified claims as discussed above. We also clarify that nothing in this Order alters the duty of a provider to disclose non-compliant conduct and return improperly received funds from this Program to the Commission, and providers can submit downward revisions beyond the six-month time period. Moreover, providers cannot delay in contacting USAC about the need to repay improperly received funds or downwardly revise their claims if they become aware of an improper payment. Providers must promptly contact USAC if they are outside of the

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[365] T-Mobile Comments at 19 (up to one year); NCTA Comments at 27; Verizon Comments at 23 (45 days); Altice Comments at 16 (one year); NaLA Comments at 31 (end of the month); CTIA Comments at 10-11.

[366] NaLA also suggested that if a provider submits claims by the 15th of the month, then it should be paid that same month, and if a provider submits claims after the 15th of the month, then it should be paid by the end of the following month. NaLA Comments at 31-32. While the Commission cannot guarantee payment by a particular date, we acknowledge that historically in the EBB Program claims submitted by the 15th of each month were generally processed and payments were disbursed in the same month.

[367] *See* Verizon Comments at 23.

[368] Because the fund for the Affordable Connectivity Program is established in the U.S. Treasury, ultimate approval for payment rests with the Commission through its responsible certifying officer. 31 U.S.C. § 3528. Certifying officers are limited to federal employees. Treasury Financial Manual, Volume I, Part 4A, Chapter 3000, *Requirements for Scheduling Payments Disbursed by the Bureau of the Fiscal Service*.

[369] *ACP Public Notice* at 32, para. 78.

[370] Verizon Comments at 23 (12 months); NaLA Comments at 31 (12 months for upward revisions and unlimited for downward revisions); T-Mobile Comments at 19 (12 months); NCTA (12 months for upward revisions); Altice Comments at 16 (12 months for upward revisions).

[371] Upward revisions, however, cannot exceed the number of claimable subscribers as identified in the NLAD snapshot.

six-month claims/revision window and they have received improperly disbursed funds. We also delegate to the Bureau and OMD the authority to establish a different timeline to submit revisions to certified reimbursement claims as a result of projections and forecasts of when the Affordable Connectivity Fund is winding down or to the extent necessary to comply with government-wide federal financial statutes and/or U.S. Treasury procedures.[372]

125. *Tribal Lands Benefit.* The Affordable Connectivity Program retains from the EBB Program the enhanced, $75 per month subsidy for eligible households located on Tribal lands. We adopt our proposal in the *ACP Public Notice*[373] to use the same definition of Tribal lands as used in the Lifeline and EBB Programs, including certain lands near the Navajo Nation treated as Tribal lands.[374] Many commenters support our proposal to use the Lifeline program's definition of Tribal lands as well as existing USAC processes for verifying eligibility of households on Tribal lands.[375] We find that using the Lifeline definition of Tribal Lands is the best and most efficient approach for households and participating providers in the Affordable Connectivity Program because it will continue to help the Commission quickly address existing impediments to connectivity on Tribal lands and allow providers to offer Affordable Connectivity Program benefits to a wide range of households that will, in turn, increase the number of subscribers of broadband internet access service. We therefore decline to use any other definitions suggested by commenters that would expand upon the established definitions in our Lifeline rules and would accordingly prevent USAC from using the existing Lifeline informational tools to identify whether an applicant resides on Tribal lands. The Michigan Public Service Commission raised

[372] These duties fall within the OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance. 47 CFR §§ 0.11(a)(3)-(4) (stating that the Office of the Managing Director will "[a]ssist the Chairman in carrying out the administrative and executive responsibilities" and "[a]dvise the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest"); 47 CFR § 0.11(a)(8) (stating that the Office of the Managing Director's current responsibility is to "[p]lan and manage the administrative affairs of the Commission with respect to the functions of ... budget and financial management"); 47 CFR § 0.5(e) (requiring Bureau and Office coordination with the Office of the Managing Director on recommendations "that may affect agency compliance with Federal financial management requirements").

[373] *ACP Public Notice* at 29, para. 70.

[374] Tribal lands include "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands - areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412." 47 CFR § 54.400(e). *See Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission's Rules*, WC Docket No. 03-109, Memorandum Opinion and Order, 20 FCC Rcd 7701, 7704-08, paras. 8-17 (2005) (granting Smith Bagley Inc's petition for waiver of section 54.400(e) of the Commission's rules explaining that "[a]lthough the Eastern Navajo Agency is not entirely comprised of Tribal lands under the Commission's definition, the area is almost exclusively populated by Native Americans that suffer from the same conditions present on other federally-recognized Tribal lands"); *Sacred Wind Communications, Inc. and Qwest Corporation, Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc, Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, Order, 21 FCC Rcd 9227, 9239-43, paras. 27-35 (WCB 2006) (clarifying that the 2005 waiver of the Commission's Lifeline and Link-Up eligibility rules to enable eligible residents of the Eastern Navajo Agency to receive enhanced Lifeline and Link-Up support applies to Sacred Wind as well as Smith Bagley, Inc. and granting waiver to permit Sacred Wind and other eligible telecommunications carriers serving the area immediately adjacent to the Eastern Navajo Agency to offer Tier 4 Lifeline and Link-Up benefits to qualified residents).

[375] CETF Comments at 30; Alaska Communications Comments at 2-3; UWCA Comments at 23; Alaska Telecom Association Reply at 1; Alaska Communications Reply at 1.

concerns about Tribal lands not reflecting where Tribal members actually live,[376] but we find that Congress specifically tied the enhancement to Tribal lands and the issue of broadband access and affordability in those areas, not to the Tribal status of individual members.

126. The *ACP Public Notice* also sought comment on whether the off-reservation Tribal land designation process for Lifeline in section 54.412 of the Commission's rules should be adopted and used in the Affordable Connectivity Program.[377] We are not aware of any comments on the off-reservation Tribal land designation process, and we decline to adopt any rules specific to the Affordable Connectivity Program. The definition of Tribal lands from Lifeline includes "any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412." We will include such lands in the definition of Tribal lands for purposes of the Affordable Connectivity Program to include any land designated as part of the Lifeline program.

127. The Infrastructure Act provides for a separate enhanced benefit for households that are served by providers in high-cost areas.[378] We seek comment on the implementation of this enhanced benefit in the Further Notice of Proposed Rulemaking.

128. *Certification Requirements*. The Infrastructure Act retains most of the provider certifications that were required by the EBB Program. Providers are required to certify that: each household for which the provider is seeking reimbursements will not be charged an early termination fee if it later terminates a contract;[379] each household was not subject to a mandatory waiting period;[380] and each household will be subject to a participating provider's generally applicable terms and conditions.[381] Providers are also required to certify that each household for which the provider is claiming reimbursement for a connected device discount has been charged the required co-pay.[382] Providers claiming a household whose eligibility was determined by the provider's alternative verification process must also certify that such households were verified by a process that was designed to avoid waste, fraud and abuse.[383] The *ACP Public Notice* sought comment on the proposal that these certifications accompany each request for reimbursement by participating providers, that each certification be submitted under penalty of perjury, that the certifications model the certifications used in the EBB Program to the extent they are consistent with the rules adopted for the Affordable Connectivity Program, as well as any other certifications that are appropriate to satisfy the new rules.[384] Commenters universally supported these certifications.[385] No commenter objected to them. The *ACP Public Notice* further sought comment on whether a provider should certify that it has not charged or will not charge the household for the amount the provider is seeking for reimbursement.[386] CETF supported such a requirement, and we adopt that certification requirement.[387]

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[376] Michigan PSC Comments at 7.

[377] *ACP Public Notice* at 29, para. 70.

[378] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(B) (2021).

[379] *Id.* at 60502(b)(1)(B), § 904(b)(6)(A)(i) (2021).

[380] *Id*. at 60502(b)(1)(B), § 904(b)(6)(A)(ii) (2021).

[381] *Id*. at 60502(b)(1)(B), § 904(b)(6)(A)(iii) (2021).

[382] *Id.* at. 60502(b)(1)(B), § 904(b)(6)(B) (2021).

[383] *Id.* at 60502(b)(1)(B), § 904(b)(6)(C) (2021).

[384] *ACP Public Notice* at 33, para. 79.

[385] NaLA Comments at 32; CETF Comments at 32.

[386] *ACP Public Notice* at 33, para. 79.

[387] CETF Comments at 32.

129. We find that these certifications, along with the possibility of audits, are a vital tool for managing waste, fraud, and abuse. While the certifications required by the Infrastructure Act address many of the Program requirements, we find that additional certifications are necessary to ensure compliance with Commission's obligations to safeguard against waste, fraud, and abuse in the Affordable Connectivity Program. Accordingly, we direct USAC to make any adjustments necessary to the LCS to ensure that providers are prompted to certify the statements included in section 904(b)(6) of the Infrastructure Act.[388] As discussed below, we also adopt additional certifications to accompany reimbursement claims.

2. Reimbursement for Connected Devices

130. The Infrastructure Act does not alter the requirement that a provider may not receive reimbursement for more than one connected device per household, and we further clarify that a household that received a connected device through the EBB Program may not receive another through the Affordable Connectivity Program.[389] In the *EBB Program Order*, the Commission found that there was no legal basis to allow households to receive more than one connected device through the EBB Program,[390] and the *ACP Public Notice* sought comment on whether we should adopt that limitation in the Affordable Connectivity Program.[391] Some commenters suggested that households should be permitted to receive a new device every year[392] or every two years.[393] The *ACP Public Notice* also sought comment on whether households that received a connected device in the EBB Program should be prohibited from receiving a connected device in the Affordable Connectivity Program (and therefore prohibiting providers from claiming a connected device discount reimbursement for a household enrolled in the Affordable Connectivity Program if that household received a connected device through the EBB Program).[394] Some commenters urged that the Affordable Connectivity Program is different than the EBB Program, and as such it should not matter whether a household already received a connected device in the EBB Program.[395] Others noted that if the Commission allows a device per year or other time period as suggested above, then consumers that received a device in the EBB Program should be allowed to receive a device in the Affordable Connectivity Program based on the expiration of those time periods.[396]

131. As with the EBB Program, we find that households cannot receive multiple connected devices within the Affordable Connectivity Program. The Infrastructure Act did not alter the requirement that "a participating provider may receive reimbursement for no more than 1 connected device per eligible household."[397] As the Affordable Connectivity Program is a modification of the EBB Program, we find that the statute does not allow households that already received a connected device in the EBB Program to receive another connected device in the Affordable Connectivity Program.

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[388] In addition to the certifications required in the reimbursement process, we also require that providers submit an annual certification regarding their policies and procedures for complying with ACP rules. *See supra* Section III.A.2.

[389] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

[390] *EBB Program Order*, 36 FCC Rcd at 4652-53, para 81.

[391] *ACP Public Notice* at 26, para. 61.

[392] NaLA Comments at 23.

[393] CETF Comments at 27

[394] *ACP Public Notice* at 26, para. 61.

[395] Michigan PSC Comments at 6-7; Gregory Guice, Director of Government Affairs, Public Knowledge to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 3 (filed Dec. 17, 2021); Tech Goes Home Comments at 1.

[396] CETF Comments at 27.

[397] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

132. In the *ACP Public Notice*, the Bureau sought comment on whether the Commission should retain the "market value" standard in the EBB Program for the Affordable Connectivity Program,[398] or whether reimbursement should be cost-based.[399] Some commenters argued that reimbursement for connected devices should be limited to the cost to providers,[400] and providers should not profit off of the Affordable Connectivity Program. Others opposed requiring a provider to disclose the cost of a connected device.[401] On balance, we find that it is appropriate to adopt a cost-based approach for reimbursement of connected devices because tying reimbursement to the cost of the connected device will provide objective certainty as to the reimbursement amount, without having to perform subjective market analysis. Moving away from a market-rate approach also reduces the potential for waste in the Affordable Connectivity Program.

133. We will use a cost-plus model for connected device reimbursement, allowing the total reimbursement to be the wholesale cost of the connected device plus a 10% markup to encourage providers to continue offering these connected devices to eligible households.[402] There is wide variation among average operating margins of different industry sectors, as well as between operating margins for particular companies and time periods. Selecting an operating margin among different data points from arguably analogous industry sectors is not subject to precise determination. The Census Bureau's survey of public companies' financial data for the "Telecommunications" sector (517) as defined by North American Industry Classification System (NAICS),[403] shows the average pre-tax operating margin for this industry sector was about 23% between 2020 Q3 and 2021 Q3.[404] However, for the retail trade subsector (NAICS 445), the pre-tax operating margin averaged 6.2% per quarter. Ultimately, we follow the precedent set in the 2017 VRS Report and Order and set an allowable pre-tax operating margin of 10%. We will not net out the co-pay amount paid by the customer from the reimbursement rate. We find that this cost-based approach will reduce the potential of waste while also incentivizing providers to offer a connected device reimbursable through the Affordable Connectivity Program. We will further require that providers seeking reimbursement for a connected device certify, under penalty of perjury, that the reimbursement claim for the connected device reflect no more than the wholesale cost[405] of the connected

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[398] *ACP Public Notice* at 27, para. 63.

[399] *Id.* at 27, para. 64.

[400] CETF Comments at 28; UWCA Comments at 22.

[401] NaLA Comments at 21; Verizon Reply at 13; NaLA Reply at 16-17.

[402] The 2017 VRS Report and Order established a zone of reasonableness of 7.75%-12.35% for average recovery of an operating margin above allowable costs. 10% is the approximate average of two end points of this range.

[403] NAICS is used by U.S. agencies to classify businesses into comparable groups when reporting stats on the U.S. economy.

[404] *See* U.S. Census Bureau, Quarterly Financial Report, https://www.census.gov/econ/qfr/historic.html (last visited January 7, 2022) (U.S. Census QFRs). Data for a particular quarter can be retrieved on this web page by selecting an appropriate quarterly release at "Historical QFR Publication Financial Tables" under the heading "Historical QFR Publication Tables." For example, data for the 3rd and 4th quarter of 2020, as well as the first 3 quarters of 2021, are available from the release for 2021, Quarter 3, at: https://www2.census.gov/econ/qfr/xls/qfr21q3f.xls. Because quarterly results can be revised over time, in compiling this information we used, for each quarter, the most recent available release that included information on that quarter. Within each release, quarterly operating margins for NAICS Telecommunications Subsector 517 were obtained from Table 88.0, "Income Statement for Corporations in NAICS Information Subsector 517, and All Other Information Subsectors, and Total Assets $50 Million and over." Operating margins were derived for each quarter by dividing line 11, "Net income (loss) from operations, by the difference between line 11 and line 7, "Net sales, receipts, and operating revenues."

[405] As discussed above, we adopt the provider certifications that were required in the EBB Program. *See supra* para. 128. These certifications include that the provider "neither received nor paid kickbacks, as defined by 41 U.S.C. 8701, in connection the Emergency Broadband Benefit Program." 47 U.S.C. § 54.1608(e)(12).

device plus 10%. The maximum reimbursement amount will be calculated as 110% of the wholesale price plus the provider will receive the customer's co-pay amount. However, in accordance with the statute, the reimbursement amount is capped at $100. For example, if a connected device costs $90 to the provider, the total reimbursement amount sought is $99 ($90 wholesale cost plus 10% ($9)). In combination with the Infrastructure Act's requirement that a household pay a co-pay, the provider could receive an additional $10.01 to $49.99 from the co-pay in addition to the reimbursement received from the program.

134. For reasons of program integrity, we find that providers seeking to claim reimbursement for connected device discounts must submit information to USAC regarding the device supplied to the household, prior to claiming reimbursement for a connected device. The information to be provided to USAC shall include device type, device make, device model, subscriber ID of the household that received the device, date the device was delivered to the household, method used to provide the device (shipped, in store, or installed by provider), wholesale cost of the device, and amount paid by the household to the provider for the device. Just as in the EBB Program, we decline to require that USAC collect and review documentation demonstrating the accuracy of this information before processing a reimbursement claim for a connected device. However, providers are required to retain any materials that document compliance with these requirements and demonstrate the accuracy of the information provided to USAC consistent with the Commission's recordkeeping requirements for the Affordable Connectivity Program and make them available for inspection upon request.[406]

135. We clarify that participating providers must actually charge the household a co-payment of more than $10 but less than $50 before they can receive reimbursement of up to $100 for a connected device. The *ACP Public Notice* proposed that providers be required to retain documentation proving that the eligible household made a compliant financial contribution towards the cost of the connected device, as well as the amount thereof, before the provider seeks reimbursement, and we sought comment on that approach.[407] NaLA suggests that the Commission not require providers to collect the required co-pay prior to seeking reimbursement, arguing that the Infrastructure Act only requires providers to charge a household, and that providers would be less willing to offer devices if they are required to collect payment first.[408] We disagree with NaLA's view, finding that our proposed approach will help avoid waste, fraud, and abuse by ensuring that households are contributing to the cost of the connected device, as required by the Infrastructure Act. Some commenters contended that providers should be required to submit documentation for review prior to the issuance of payment.[409] We decline to require providers to submit documentation supporting the claim for the connected device prior to USAC processing the claim. We find that a requirement that providers retain documentation showing the amount paid and date payment was made for each subscriber for which a provider claims reimbursement for providing a connected device is sufficient, allowing for a speedy and efficient processing of reimbursement claims, without requiring providers to submit such documentation routinely with every reimbursement request. However, we require providers to update their election notice to include information on device type, device make, device model, and wholesale cost of the device. Moreover, we emphasize that proof of consumer payment of the appropriate co-pay amount must be provided upon request by USAC, the Bureau, the Enforcement Bureau (EB), or any other program auditor or investigator.

136. In the *EBB Program Order*, the Commission adopted a rule prohibiting providers from seeking connected device reimbursement for a household if that household is not receiving EBB service from the same participating provider, and the Commission required that claims for connected devices be

[406] *See* 47 CFR §§ 54.1611, 54.1811.

[407] *ACP Public Notice* at 26, para. 62.

[408] NaLA Comments at 23.

[409] Michigan PSC Comments at 7.

made "concurrent with or after the provider's first reimbursement claim for service for that household."[410] In response to feedback from providers, the Bureau subsequently released an order waiving this rule, explaining that granting the waiver removes a disincentive that could discourage providers from offering connected devices if there is uncertainty about a provider's ability to seek reimbursement for a connected device delivered to a household that transfers its benefit to another provider before the first provider has the opportunity to claim reimbursement for the discounted device.[411] Accordingly, the waiver allows providers to seek reimbursement for a connected device provided to a household that had been receiving an EBB-supported service from that provider at the time the device was supplied to the household, even if the household subsequently transferred their EBB service benefit to a different provider.[412] The *ACP Public Notice* sought comment on whether this waiver should become a rule as part of the Affordable Connectivity Program, and whether other adjustments to the connected device claims process should be considered for the Affordable Connectivity Program. Commenters supported implementing this waiver for the Affordable Connectivity Program.[413] We thus adopt a rule permitting providers to seek reimbursement for a connected device provided to a household that had been receiving an ACP-supported service from that provider at the time the device was supplied to the household, even if the household subsequently transferred their ACP service benefit to a different provider.[414] We also direct USAC to maintain the connected device dispute process implemented for the EBB Program.[415]

E. Consumer Protection

1. Credit Check Prohibition

137. The Infrastructure Act prohibits providers from "requir[ing] the eligible household to submit to a credit check in order to apply the affordable connectivity benefit."[416] The *ACP Public Notice*

[410] 47 CFR § 54.1608(e)(3); *EBB Program Order*, 36 FCC Rcd at 4660, para. 96.

[411] *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-631 (WCB May 28, 2021) (*Connected Device Reimbursement Waiver Order*).

[412] *Connected Device Reimbursement Waiver Order* at 5-6.

[413] NaLA Comments at 24; CETF Comments at 28.

[414] After the adoption of the *EBB Program Order* TruConnect and other providers offering devices in the EBB Program filed petition for reconsideration seeking the Commission to amend the reimbursement claims process for connected devices to require subscribers receiving a connected device from their EBB Program provider to stay with the provider for 45 days before transferring their benefit to ensure that the provider would be able to claim the connected device and the service discount as required by the Commission's rules. *Petition for Reconsideration of TruConnect, et al.,* WC Docket No. 20-445, at 5-6 (filed Mar. 26, 2021). We find that the Bureau, in its *Connected Device Reimbursement Waiver Order* resolved the concerns raised by the Petitioners and allows a process for providers to claim a connected device where the household that received the device then transfers its benefit to another provider before the first provider has had an opportunity to claim the device. We believe that this process provides the relief sought in the *Petition for Reconsideration of TruConnect*, *et al*., and accordingly, we deny the Petition for Reconsideration.

[415] In the EBB Program, USAC developed a dispute process for situations where a provider seeks to claim a connected device for a household that has already been claimed by another provider for a connected device. In order to demonstrate that the household is eligible to be claimed by the second provider for a connected device, second provider must notify USAC that it wishes to initiate the dispute process. Once the second provider files a dispute, USAC will request from the household's previous provider documentation confirming that the connected device was delivered to the household, the household was charged and paid a co-pay of more than $10 but less than $50 toward the purchase price, and the household consented to purchase the device. USAC will then review the response and documentation provided and determine whether the new provider is eligible to receive reimbursement for the connected device for the household. Commenters were supportive of the connected device dispute process for the EBB Program and we direct USAC to make the process available for connected device disputes in the Affordable Connectivity Program. *See* CETF Comments at 28; NaLA Comments at 24-25.

[416] Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv), § 904(b)(7)(A)(ii) (2021).

sought comment on a proposal to prohibit providers from inquiring, requesting, or otherwise causing a consumer to submit to a credit check, or from accessing a consumer's credit information before enrolling the household in the Affordable Connectivity Program. Commenters agree that the Infrastructure Act provides that credit checks cannot be used as a condition for enrollment in Affordable Connectivity Program.[417] Taking into consideration the language in the Infrastructure Act we find that this provision bars providers from considering the results of a credit check before deciding to enroll a household in the Affordable Connectivity Program, but it does not prohibit a provider from running credit checks that are routinely used as part of the provider's sign-up process for all consumers.[418] We also find that the statute prohibits providers from employing credit checks to determine to which ACP-supported internet service plan an eligible household can apply their ACP benefit and we decline to adopt the request from providers to allow credit checks to be used to restrict the type of plans available to a household based on the results of the credit check.[419] Moreover, we clarify that providers cannot use the results of a credit check to decline to transfer a currently enrolled household's affordable connectivity benefit.

138. The *ACP Public Notice* sought comment on whether a credit check may be permitted in certain circumstances, such as to determine which equipment or devices may be offered to a household so

[417] United Ways of California at 24 (strongly supporting the prohibition of credit checks as a condition of applying the ACP benefit to a provider's Internet Service offering); ACA Connects Comments at 27 ("The most straightforward reading of the statute is that ACP providers retain flexibility to use credit checks where doing so is not a condition of receiving an ACP service."); T-Mobile Comments at 22 ("The Commission should clarify that this prohibition on credit checks applies only to the receipt of ACP benefits, meaning that providers may not condition the receipt of ACP discounts on the results of a credit check."); NCTA Comments at 20 ("The thrust of this prohibition is that credit checks should have no bearing on whether an eligible ACP customer can use the benefit for an internet service offering. It does not mean that credit checks—especially those voluntarily generated by a consumer—should be prohibited in all cases, or that providers should be forced to completely change."); USTelecom Comments at 18 (same); .WISPA Comments at 7 (fully supporting the statutory prohibition on credit checks for obtaining the basic ACP benefit); Hawaii Broadband Comments at 2-3; Verizon Comments at 12 ("Verizon requests that the FCC clarify that the credit check restriction prohibits providers from conditioning access to the ACP benefit on the results of a credit check, but it does not prohibit providers from simply performing a credit check or using the results of a credit check for other purposes."); ACA Connects Reply at 27 ("The most straightforward reading of the statute is that ACP providers retain flexibility to use credit checks where doing so is not a condition of receiving an ACP service.").

[418] *See* T-Mobile Comments at 22 (arguing that credit checks conducted in the ordinary course of business, such as to determine whether a consumer qualifies for certain internet service plans or certain devices— should be permissible if they do not subject ACP-eligible households to different treatment than other subscribers); AT&T Comments at 18 ("The Commission's focus in implementing this requirement should be on whether the participating provider is using any credit information from an external source or credit bureau to deny service, require an advance payment, or require a deposit to activate an internet service offering for an ACP eligible customer."); Letter from Jordan Goldstein, Senior VP of Regulatory Affairs, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 3 (filed Dec, 17, 2021) (*Comcast Dec. 17, 2021 Ex Parte*) ("Commission should permit credit checks so long as the result of a credit check does not affect an ACP-eligible consumer's ability to use the benefit for any Internet service offering or require payment of a deposit for the covered Internet service"); CTIA Reply at 13-14 (Providers should be prohibited from using the results of a credit check as a basis to decline to apply the affordable connectivity benefit to an eligible households); NCLC/UCC-MJ Reply Comment at 8 (Credit checks should not be used to keep eligible households out of the Affordable Connectivity Program). This approach is consistent with the guidance on credit checks in the Bureau's *December 30th Guidance Order* in which the Bureau stated that for the interim period between the launch of the Affordable Connectivity Program and the effective date of final ACP rules, the Bureau interpreted the Infrastructure Act as barring providers from considering the results of a credit check before deciding to enroll a household in the Affordable Connectivity Program. *December 30th Guidance Order* at 6.

[419] *See* Smith Bagley, Inc. Comments at 8 (arguing that a provider may offer an eligible household who fails the credit check a service plan that is fully covered by the affordable connectivity benefit in lieu of a service plan in excess of the benefit amount the household seeks).

long as the household has access to the equipment or devices necessary to the ACP-supported service, or for services that are not covered by the ACP benefit if the household selects a bundled service plan.[420] Providers argue that they should be able to employ a credit check for all prospective, new, and existing subscribers seeking to purchase devices or upgrade equipment that do not qualify for ACP-support.[421] Providers also argue that the provision in the Infrastructure Act regarding credit checks does not prohibit the use of credit checks on non-ACP-supported services, including bundles that include non-ACP-supported services.[422] Other commenters argue that the Commission should not allow credit checks on non-ACP supported services and devices, arguing that credit checks present a barrier for low-income households seeking to obtain broadband services.[423]

139. We find that while the language of the Infrastructure Act clearly prohibits providers from considering the results of a credit check in order to apply the benefit to an ACP-supported service, it does not prevent providers from running a credit check or from using the results of the credit check in other circumstances unrelated to the affordable connectivity benefit. We are persuaded by arguments that the credit check provision does not prohibit providers from relying on the results of a credit check for an ACP-eligible household to determine the devices and equipment not supported by the Affordable Connectivity Program that may be offered to the household. Moreover, this provision of the Infrastructure Act only applies to services, equipment, and devices covered under the Affordable Connectivity Program. We further find that the statute does not prohibit providers from using credit checks to determine a household's eligibility to access bundled services so long as the credit check is used to determine eligibility to receive the service that is not eligible for the affordable connectivity benefit and the household can receive the broadband component of the bundle on a standalone basis regardless of the results of the credit check. We find no basis under the text of the statute to prohibit the use of credit

[420] *ACP Public Notice* at 34, para. 82.

[421] *Comcast Dec. 17 2021 Ex Parte* at 3 (Noting that the credit check provision does not mean that credit checks are prohibited in all cases."); T-Mobile Comments at 22 ("Credit checks conducted in the ordinary course of business, however, such as to determine whether a consumer qualifies for certain internet service plans or certain devices—should be permissible if they do not subject ACP-eligible households to different treatment than other subscribers."); AT&T Comments at 14; NCTA Comments at 20; WISPA Comments at 7 (providers should be allowed to use the results of a credit check to determine which other services, equipment, or devices – not supported by the ACP – may be offered to a household so long as the household has access to ACP-supported equipment or devices); Verizon Reply at 12 (arguing that "while a device of some kind may be necessary to use a supported service, the Commission should permit service providers to assess credit risk if a subscriber seeks to finance a costlier device on a device payment plan); Verizon Reply at 9 (allow providers to use credit check to assess credit risk for device purchases that require a payment plan).

[422] ACA Connects Comments at 27 ("In the case of bundles, credit checks should be deemed permissible if the household can receive the broadband component of the bundle on a standalone basis without submitting to a credit check."); Cincinnati Bell Comments at 5-6 (same); Verizon Comments at 12 (nothing in the Infrastructure Act prevents a provider from using the results of a credit check for services that are not covered by the ACP in a bundled service plan"); NCTA Comments at 20 ("The thrust of this prohibition is that credit checks should have no bearing on whether an eligible ACP customer can use the benefit for an internet service offering. It does not mean that credit checks—especially those voluntarily generated by a consumer—should be prohibited in all cases, or that providers should be forced to completely change."); Smith Bagley, Inc. Comments at 8 "While credit checks are prohibited for ACP-discounted Internet service, service providers should have the ability to require credit checks for the portion of a service that is not covered by the discount."); U.S. Chamber of Commerce Reply at 4.

[423] City of Boston, et al. Reply at 13 (credit checks conducted in the EBB Program had a chilling effect on applications and that the providers' proposal to use credit checks on non-ACP services and devices should be prohibited to discourage any upselling); CETF Reply at 17; NDIA Comments at 14 (arguing that the Commission should prohibit providers from using the results of a credit check to determine which plans are made available to an ACP household); .Free Press Comments at 2 (explaining that the prohibition on credit checks as a condition for enrollment "is a key protection that is necessary to overcome the systemic biases against people of color that are built into the entire credit check industry").

checks in all cases for ACP-eligible households, as requested by various commenters.[424] Finally, we agree with commenters that the credit check provision should not be interpreted as preventing providers from running a credit check consistent with the requirements of the Federal Trade Commission's "Red Flag Laws."[425]

2. Non-Payment

140. The Infrastructure Act specifies that "a participating provider [may] terminat[e] the provision of broadband internet access service to a subscriber after 90 days of nonpayment."[426] Various service providers express different views on when this 90-day non-payment period begins: some contend that the 90-day period should be measured from the date an initial invoice is issued,[427] while others characterize the 90-day period as beginning on the invoice's due date, because only then is the bill "past due" or in arrears.[428] Upon a review of the record and further consideration of other practices, we find that tying the 90 days of non-payment to the bill's due date is a consumer-friendly approach that provides transparency to consumers while offering a uniform approach for providers. We conclude the 90 consecutive days of non-payment commences on the due date of the bill where payments made after that point for ACP-supported services would be past due. We conclude that this interpretation is consistent with the statutory phrase "90 days of nonpayment." A bill is not considered "unpaid" – and thus, there is no "nonpayment" – until after the payment due date specified on the bill has passed and the subscriber has failed to satisfy the obligation to pay the bill in a timely manner. We are unpersuaded by some commenters' arguments that linking to the date of the invoice or bill should be adopted because it is more consistent with industry standard practice and easier for providers to administer.[429] Instead, we find that billing practices differ among providers and tying back to the date the amount first becomes past due creates an easily administrable standard for providers. Accordingly, for purposes of section 904(b)(7)(B), the 90-day period of "nonpayment" begins on the due date specified on the bill when the bill may be deemed "unpaid" and late fees may begin to accrue.[430] Providers also argue that this provision should not be applied to prepaid plans because prepaid customers do not receive invoices and are not expected to pay at monthly intervals.[431] We agree that it would be illogical to apply this provision where the ACP-supported plan requires an upfront payment in order to maintain service each month.

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[424] *See supra* n.427.

[425] AT&T Comments at 13-14 ("A participating provider may use systems that include information from credit bureaus to satisfy compliance with the Red Flags Law.").; ACP Providers Reply at 9 (same); USTelecom Comments at 18 (same); CTIA Reply at 18 (same).

[426] Infrastructure Act, div. F., tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(ii) (2021).

[427] *See, e.g.*, AT&T Comments at 12 n.21; Verizon Comments at 14; NCTA Comments at 22; T-Mobile Comments at 23.

[428] *See, e.g.*, NTCA Comments at 15-16; WTA Comments at 9; Letter from Tamar Finn, Kimberly Morning, Counsel to Cincinnati Bell, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Dec. 17, 2021) (Cincinnati Bell *Ex Parte*).

[429] NCTA Comments at 22; T-Mobile Comments at 23.

[430] *Cf.* New York State Public Service Commission, Verizon New York Inc. General Tariff P.S.C. No. 15, rev. 2, sec. 1, para. J.5 (effective July 15, 2014) ("Bills are due on the due date shown on the bill….") (available at https://www.verizon.com/tariffs/PDFViewer.aspx?doc=208316); Verizon Online Terms of Service for Verizon Internet and Value Added Services, § 4 ("A payment received thirty (30) calendar days or more after the invoice date is considered past due. If your charges are billed by your Verizon local carrier, the Late Fee will be equal to the late payment charge that the local exchange carrier applies.") (accessed Dec. 21, 2021).

[431] ACP Providers Reply at 8; T-Mobile Comments at 22; CTIA Reply at 14-15; Cincinnati Bell *Ex Parte* at 2; AT&T Reply at 11.

141. The *ACP Public Notice* sought comment on how to reconcile the provision that allows providers to terminate service after 90 days of non-payment with the requirement that providers cannot decline to enroll an eligible household based on any "past or present arrearages with a broadband provider . . . ."[432] Some commenters have asked that the Commission clarify that the arrearages provision does not apply after a household is terminated for non-payment, arguing that if the Commission does not provide this clarification, there will be no incentive for households to keep accounts current, rendering the non-payment provision ineffective, and that providers will be disinclined to participate if they cannot remove households for non-payment.[433] Other commenters counter that the Commission should not allow providers to decline re-enrollment of a household whose service was terminated for non-payment, arguing that providers will still be able to pursue recovery of the debt and that payment history should not affect a household's eligibility for the Affordable Connectivity Program.[434]

142. Read together, we interpret these requirements to mean that although a provider may terminate a household's broadband service after 90 days of non-payment, the provider cannot deny a household's re-enrollment based on past or present arrearages. We agree with commenters that to allow a provider to decline to re-enroll a household with outstanding debt would disproportionately penalize low-income households who need time to gather the resources to become current on past due accounts, and would deny access to households who not only depend on broadband service but also already face significant barriers to obtaining affordable broadband service.[435]

143. We next clarify that the termination for non-payment is limited to debts associated with any out-of-pocket expenses for the ACP-supported service, and we are not persuaded by arguments from NTCA that providers should consider any non-payment associated with non-ACP supported services, EBB-supported service, or other debt that predates the Affordable Connectivity Program. We find that such a conclusion would be harmful to consumers who previously participated in the EBB Program as they were not made aware that any accumulated debt would be an impediment to their transition to the Affordable Connectivity Program.[436]

144. Commenters support permitting mitigation efforts before termination for non-payment, such as permitting a participating provider to move a delinquent household to a lower-tiered service plan, the cost of which will be fully covered by the affordable connectivity benefit, after non-payment for any amount of time.[437] Commenters indicate this approach is preferred because it reduces the accrual of further debt,[438] maintains the household's broadband connection and provides households much needed

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[432] *ACP Public Notice* at 34, para 83.

[433] ACA Connects Comments at 26; NTCA Comments at 15; USTelecom Comments at 17; Verizon Comments at 14.

[434] NCLC/UCC-MJ Reply at 9 (arguing that providers have other means of collections, and noting that the Consumer Finance Protection Board reports that telecom debt is second only to medical debt in terms of third party debt collections activity); City of Detroit Comments at 4 (If a subscriber is de-enrolled for nonpayment, they should be able to immediately reenroll with the same or different provider. Their eligibility does not change, the initial de-enrollment is the extent of the punitive measure."); Free Press Reply at 11.

[435] *See* City of Detroit Comments at 4; Michigan PSC Comments at 8-9.

[436] *See* NTCA Comments at 15-16.

[437] Verizon Reply at 14 (citing CETF and AT&T, who argue that the Commission should allow a provider to downgrade a consumer's service to a plan that is fully covered by the affordable connectivity benefit as a result of non-payment, but should not be required to); ACA Connects Comments at 27; AT&T Comments at 12; NCTA Comments at 22-23; Smith Bagley, Inc. *Ex Parte* at 3; Smith Bagley Comments at 9; ACP Providers Reply at 8; *but see* NCLC/UCC-MJ Comments at 27 (strongly opposed to allowing a provider to degrade service quality in response to non-payment).

[438] ACA Connects Comments at 26-27.

time to adjust to the reduced benefit amount.[439] We find that providers may transfer a household to a service plan that is fully paid for by the affordable connectivity benefit once the consumer enters a delinquent status after the bill due date to mitigate the non-payment amount. However, a provider may only do so with the household's consent to switch to the lower-priced service plan. We find that this approach balances the need to ensure access to vital broadband services for low-income households while also recognizing the need to empower providers to reduce the amount of debt that can be accumulated by households. Commenters explain that a uniform approach to mitigation may not be feasible for all providers and modification of existing systems to fit a standardized mitigation approach is too burdensome for providers.[440] We agree and decline to require participating providers to mitigate a delinquent household's non-payment.

145. We appreciate there are billing considerations a provider must take into account when applying the affordable connectivity benefit to a household's account that must be balanced against the consumer's need to have the benefit applied in a timely manner.[441] We find that requiring providers to apply the benefit no later than the start of the first billing cycle after the household's enrollment or transfer strikes that balance. Just as in the EBB Program and Lifeline, a provider must pass through the discount in order to claim reimbursement for the discount in the Affordable Connectivity Program.[442] Providers may not, for example, charge a customer for the internet service offering, certify a claim for reimbursement, and then later provide the discount to the customer only after receiving the reimbursement. Failure to comply with these rules may result in administrative forfeitures or other penalties. Moreover, to further protect consumers, providers cannot de-enroll a household for non-payment if the provider has failed to timely apply the benefit to the household's bill consistent with this Order. To track households that could be de-enrolled for non-payment associated with the ACP-supported service, as well as to support tracking households for which would be subject to the non-usage rules, we direct USAC to collect from providers information regarding whether a household is assessed and charged a fee for the ACP-supported service. Providers shall retain documentation demonstrating the pass-through of the benefit to the consumer's account.

146. The *ACP Public Notice* also sought comment on the proposal to require participating providers to give adequate notice to a household of their delinquent status before terminating the household's service for non-payment, and on the frequency timing, and method of communicating that

[439] NCTA Comments at 22-23; Smith Bagley *Ex Parte* at 3.

[440] AT&T Comments at 12-13; Verizon Reply at 14.

[441] *See* Letter from Beth Choroser, Vice President, Regulatory Affairs, Comcast to Marlene H. Dortch, Secretary, FCC, WCC Docket No. 21-450 at 1 (filed Dec. 23, 2021) (arguing that "For providers whose billing cycles do not align with the calendar month and who bill in advance, implementation challenges may arise when immediately applying the credit to an existing, customer's account depending on that particular customer's billing cycle dates and date of enrollment in EBB"); *but see* City of Los Angeles Comments at 5 (arguing that the Commission should require that the benefit be applied immediately and that de-enrollment for non-payment cannot occur before the benefit was applied.); Black Women's Roundtable Comments at 4 (contending that "Black women whose households rely on the EBB for educational requirements, to access social services, search for and maintain employment and telehealth services cannot afford service interruptions or being required to pay the full amount for the internet service because of providers' delay in applying eligible benefits to their accounts.").

[442] *See* 47 CFR § 54.1603(a); (The Emergency Broadband Benefit Program support amount for all participating providers shall equal the *actual discount provided* to an eligible household off of the actual amount charged to such household. . . .") (emphasis added); *see also Broadband Providers Must Apply the Emergency Broadband Benefit Discount Prior to Claiming Reimbursement and Are Reminded of Measures to Protect Against Waste, Fraud, and Abuse*, WC Docket No. 20-445, Public Notice, DA 21-1018 (WCB Aug. 20, 2021) at 2 (*EBB Program Discount Application Public Notice*). Providers must certify, under penalty of perjury, that the affordable connectivity benefit was in fact applied to the households the provider is submitting a claim for reimbursement for. Providers must document and retain proof that the program benefit was in fact applied to the household's account prior to the provider submitting a claim for reimbursement for that household.

notice.[443] Some commenters support notice requirements before service is terminated and recommend providers use several methods of notification.[444] Other commenters do not support notice requirements before terminating a household's service for non-payment and argue such a requirement conflicts with a provider's statutory obligation to apply the program benefit to subscribers on the same terms and conditions as applied to other customers because providers have an existing process to provide notice of delinquency to customers.[445] Upon consideration of the arguments we find that requiring a notice before termination is necessary to inform households that they may be terminated for non-payment. As we found in the *EBB Program Order*, "[p]roviders will have a direct relationship with their customers, and as such, have a responsibility to ensure that these customers have the information they need to make an informed decision."[446] Only a provider can tell the customer if they are at risk of having their service terminated for non-payment and what steps the customer must take to retain the ACP-supported service from the provider. We find notice and documentation requirements before terminating a household's service are necessary to protect consumers. Low-income households may require additional time to obtain the financial resources to make payments on their accounts, and it would be a disservice to enrolled low-income households to allow providers to terminate without clear notice of how non-payment will affect their service. Before a provider may disconnect service for non-payment, the provider must provide the household written notice of the possible termination 60 and 30 days prior to the termination date, which must be set from the due date of the bill. The written notice must include the balance due to the provider, the due date for the outstanding balance, the last date of service if the outstanding balance is not paid, instructions for payment, and the provider's customer service phone number. Notice must also be provided in formats accessible to individuals with disabilities, and may be delivered via email, mail, billing insert or statement, or text message. Providers must retain documentation of notice sent to the household before the household is disconnected for non-payment. Households that dispute an allegation of non-payment with the provider may file a complaint with the FCC's Consumer Complaint Center.[447]

3. Consumer Complaint Process

147. *Dedicated ACP Complaint Process.* The Infrastructure Act requires the Commission to establish a dedicated complaint process for Affordable Connectivity Program participants to file complaints about the compliance of participating providers with program rules and requirements, including complaints "with respect to the quality of service received under the Program."[448] The *ACP Public Notice* proposed adding a dedicated pathway in the FCC's existing Consumer Complaint Center to file ACP-related complaints, including notification to providers that the complaint involves the Affordable Connectivity Program, clear direction to consumers on how to correctly file an ACP complaint, and dedicated FCC staff from the Commission's Consumer and Governmental Affairs Bureau

[443] *ACP Public Notice* at 35, para. 85.

[444] Michigan PSC Comments at 8-9 (notice should be documented by the provider, and that notice should be provided on a 15-day frequency); NDIA Comments at 14 (The Commission should require a series of notices be delivered through multiple mechanisms if people are in arrears with clarification of options for changing service level and payments, and a phone number to get assistance).

[445] Verizon Comments at 14-15; *see also* CTIA Reply at 14 (agreeing that providers should provide such notice; indeed, they will have every incentive to do so in order to retain ACP customers. As a result, there is no need for specific notice requirements).

[446] *EBB Program Order*, 36 FCC Rcd at 4629, para. 38.

[447] FCC, Consumer Complaint Center, https://consumercomplaints.fcc.gov/hc/en-us.

[448] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(A) (2021).

(CGB) to review and process the complaints.[449] Commenters who addressed this topic generally supported this approach.[450]

148. Consistent with the Infrastructure Act and the *ACP Public Notice*, we adopt the proposal to use a dedicated ACP pathway within the existing FCC consumer complaint process. Because the Infrastructure Act contemplates that the dedicated complaint process would receive complaints regarding quality of service, we direct CGB, in coordination with the Bureau, to assess ACP-specific consumer complaints received by the Commission to determine whether there is a need for additional guidance or potential rule changes to address issues such as quality of service.[451]

149. *Provision of Information on the Dedicated ACP Complaint Process.* The Infrastructure Act also requires participating providers to provide Affordable Connectivity Program participants with information on the Commission's dedicated complaint process.[452] The *ACP Public Notice* sought comment on a proposal to require participating providers to prominently display the Commission's contact center phone number and the website address for the Consumer Complaint Center on the subscriber's bill, on the provider's ACP webpage, and on all of the provider's marketing materials.[453] Commenters generally support this approach.[454]

150. Consistent with the Infrastructure Act and the *ACP Public Notice*, we adopt the proposal. We also require participating providers to inform a consumer of their right to file a complaint with the Commission if the consumer makes a complaint to the participating provider regarding an ACP-supported service or any difficulty enrolling with the provider.[455] The record also supports a requirement that participating providers inform consumers of their right to file a complaint with the Commission if the consumer makes a complaint to the participating provider regarding an ACP-supported service or any difficulty enrolling with the provider.[456] We are persuaded that this is the most logical construction of the statute.[457] Accordingly, we adopt a requirement that participating providers inform ACP consumers of their right to file a complaint with the Commission and we adopt the formats proposed in the *ACP Public Notice*.[458]

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[449] *ACP Public Notice* at 35, para. 87.

[450] *See, e.g.*, AT&T Comments at 15; NCTA Comments at 25; T-Mobile Comments at 25; VTDPS at 5; Michigan PSC Comments at 9-10 (supporting use of the existing FCC consumer complaint process with a dedicated ACP pathway without an ETC requirement). *But see* CETF Comments at 35 (recommending a dedicated EBB and ACP complaint department).

[451] VTDPS suggests that service quality can include the speed at which ACP consumer complaints are resolved by a provider, how quickly the provider processes the benefit and reliability of service for customers enrolled in the Program. VTDPS Comments at 5. VTDPS also proposes that service quality include customer outreach metrics. *Id.* at 5.

[452] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(B) (2021).

[453] *ACP Public Notice* at 35-36, para. 89.

[454] *See, e.g.*, AARP Comments at 8-9; MPSC Comments at 10; VTDPS Comments at 5; CETF Comments at 35; CT Office of State Broadband Reply Comments at 9. *But see* NaLA Comments at 37 (suggesting that the FCC only require disclosure of FCC consumer complaint center phone number and website address on the provider's webpage).

[455] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(B) (2021).

[456] *See, e.g.*, UWCA Comments at 28; MPSC Comments at 10. *But see* NaLA Comments at 37 (suggesting that the FCC only require disclosure of FCC consumer complaint center phone number and website address on the provider's webpage).

[457] *See* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(B) (2021).

[458] *ACP Public Notice* at 35-36, para. 89.

151. *Reports Regarding Consumer Complaints.* The Infrastructure Act also requires the Commission to regularly issue public reports regarding consumer complaints alleging provider non-compliance with the Affordable Connectivity Program rules.[459] The *ACP Public Notice* sought comment on what these statutorily mandated reports should include, how frequently they should be issued, and the method by which the reports should be made available to the public.[460] The Public Notice also sought comment on balancing subscriber privacy and Privacy Act[461] obligations with the need for transparency when determining the contents of these reports.[462]

152. The Commission directs CGB, in coordination with the Bureau, to regularly issue public reports regarding consumer complaints alleging provider non-compliance with ACP rules. These reports shall be made available to the public via the FCC website.[463] Commenters supported different reporting intervals and contents of reports.[464] We decline at this time to establish a set reporting schedule; instead, we direct CGB in coordination with the Bureau to assess the frequency and volume of ACP-related consumer complaints and different categories thereof in order to determine the appropriate frequency and content of these reports. The Commission also directs CGB in coordination with the Bureau and the Senior Agency Official for Privacy to ensure that any personally identifiable information (PII) be excluded from complaint reports and data made publicly available to ensure compliance with the Privacy Act.[465]

153. *Investigations and Enforcement.* The Infrastructure Act also requires the Commission to act expeditiously to investigate potential violations of program rules and requirements and to enforce compliance.[466] Moreover, the Commission is permitted to impose forfeiture penalties to enforce compliance.[467] Consistent with the Infrastructure Act, the *ACP Public Notice* proposed using the Commission's existing, statutorily permitted enforcement powers to initiate investigations of program rule violations.[468] We adopt the proposal. The Commission takes seriously its enforcement obligations and, consistent with the Infrastructure Act, we direct EB, in coordination with the Bureau and law enforcement as applicable, to expeditiously investigate potential violations of and enforce the ACP rules.

4. Additional Consumer Protections

a. Administrative Procedure

154. In addition to the consumer protection rules discussed above that are required under other provisions of the statute, section 904(b)(11) of the Infrastructure Act also directs us to promulgate other specific consumer protection rules "after providing notice and opportunity for comment in accordance with [5 U.S.C.] § 553," which sets forth the rulemaking requirements of the Administrative Procedure Act

[459] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(9)(D) (2021).

[460] *ACP Public Notice* at 36, para. 90.

[461] 5 U.S.C. § 552a.

[462] *ACP Public Notice* at 36, para. 90.

[463] *See* CETF Comments at 35-36

[464] CETF Comments at 35-36 (supporting annual reports); County of Los Angeles (supporting quarterly reports, at a minimum); NCLC/UCC-MJ Comments at 27 (supporting monthly reports). CETF and the County of Los Angeles propose that, among other categories, these reports aggregate complaints by provider and location.

[465] 5 U.S.C. § 552a.

[466] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(C)(i)-(ii) (2021).

[467] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(C)(ii) (2021).

[468] *ACP Public Notice* at 35, para. 88.

(APA).[469] At the same time, section 904(h) provides an exemption from APA requirements for "regulation[s] promulgated under subsection (c),"and section 904(c) requires that we "promulgate regulations to implement [Section 904, which includes the consumer protection requirements]" by a date "not later than 60 days after enactment of this Act" and specifies initial comment and reply comment periods of 20 days each.[470]

155. We believe that there is no irreconcilable conflict between these provisions and that, read together, they support the adoption of the section 904(b)(11) consumer protection rules here. By referring to the APA specifically in section 904(b)(11), Congress intended to emphasize that the Commission should carefully consider the input of commenters in crafting the consumer protection rules. Given the tight, statutorily mandated timeframe for standing up the Affordable Connectivity Program and the essentiality of consumer protection rules to the proper functioning of the program, we find that the notice and comment process we have provided, in accordance with section 904(c), is sufficient to satisfy the APA requirements. Moreover, in the alternative, to the extent the procedures required by section 904(c) cannot be squared with the process required by section 904(b)(11), we find "good cause" to depart from the standard APA notice and comment procedures because placing the consumer protection rules on a delayed track would be "impracticable, unnecessary, or contrary to the public interest."[471]

156. Section 553(b) of the APA requires agencies to begin the rulemaking process by publishing in the Federal Register "general notice of proposed rule making" that contains specified content, including "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[472] We find that, in this case, the *ACP Public Notice* satisfies these criteria: it was published in the Federal Register on December 29, 2021,[473] and it contains the information specified in section 553(b)(1)-(3), including detailed questions about the particular inappropriate practices referenced in section 904(b)(11) that the consumer protection rules are intended to address.[474] In this instance, given the requirements in the Act to commence the rulemaking implementing the Affordable Connectivity Program within five days of the enactment of the Act[475] and to adopt program rules within 60 days, and the inextricable relationship between the consumer protection rules and the other components of the program (as discussed below), we find that we have satisfied the notice requirement set forth in section 553(b), as well as the requirements set forth in section 553(c) to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments" and to "consider[] the relevant matter presented" in those submissions when formulating the consumer protection rules.[476]

157. In the alternative, as noted above, even if the notice and comment required by section 904(b)(11) were construed as different from the section 904(c)-mandated procedures we are following here, we find that there is "good cause" to depart from the standard APA-required "notice and procedure

[469] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A) ("The Commission shall, after providing notice and opportunity for comment in accordance with section 553 of title 5, United States Code, promulgate rules to protect consumers" from specified practices).

[470] *Id.*, § 904(c)(1) & (2), (h).

[471] 5 U.S.C. § 553(b)(B).

[472] *Id.* § 553(b), (b)(3).

[473] Federal Communications Commission, *Implementation of the Affordable Connectivity Program*, Proposed Rule, 86 FR 74036 (December 29, 2021).

[474] *ACP Public Notice* at paras. 93-98. While the APA requires "general notice of proposed rule making," 5 U.S.C. § 553(b), it does not specify that the document providing such notice be formally titled a Notice of Proposed Rulemaking. Given the need for expedited action here, as emphasized in the *ACP Public Notice*, we find that the notice required by the APA was appropriately issued at the bureau level in this case.

[475] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(c)(1).

[476] 5 U.S.C. § 553(c).

thereon" because following such procedures to adopt the consumer protection rules would be "impracticable, unnecessary, [and] contrary to the public interest."[477] It would be impracticable and contrary to the public interest to adopt consumer protection rules using procedures that would operate more slowly than those we use to adopt the rules implementing other aspects of the Affordable Connectivity Program. The consumer protection rules are among the core components of the program, and allowing the rest of the program to take effect without having the statutorily-mandated consumer protections in place at the outset of the program would undermine the overall scheme. Unlike the discounts available under the EBB program, the Affordable Connectivity Program will enable eligible consumers to apply the Affordable Connectivity Benefit to "any" internet service offering of a participating provider, and consumers could effectively be denied that entitlement if participating providers were allowed to engage in "harmful business practices" that could "trap consumers in poor service and deny households of the full benefit and freedom to choose an appropriate service."[478] Consistent with this determination, we also find under the Congressional Review Act that there is good cause to put these rules into effect promptly and not to delay their effective date for 60 days pending Congressional review.[479]

158. Thus, we reject the suggestion of some parties that we "defer action" on consumer protection rules to a later "rulemaking separate[] from the program implementation" proceeding.[480] If section 904(c)'s procedural requirements are construed as applying to all components of the program, including the consumer protection rules, then those statutory provisions would compel us to reject this proposal. But even assuming we have discretion to delay the adoption of consumer protection rules, we decline to do so because any benefit of allowing additional time for the development of the record on these rules[481] is heavily outweighed by the detriment of "exposing consumers to harmful business practices" by implementing the rest of the program before putting the consumer protection rules into effect.[482] As discussed above, the consumer protection rules are among the core components of the program, and delaying implementation of these rules while the rest of the program is put into effect would harm the low-income consumers that the program is intended to benefit, undermine the overall scheme, and contravene the intent of Congress.[483]

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[477] *Id.* § 553(b)(B). While the "good cause" exemption does not apply "when notice or hearing is required by statute," *id.*, the relevant statutory provision at issue here does not preclude any application of the exception. Section 904(b)(11) requires us to follow notice and comment procedures "in accordance with section 553," thus effectively incorporating by reference the "good cause" proviso in section 553(b)(B). Thus, the present case can be distinguished from *Union of Concerned Scientists v. NRC*, 711 F.2d 370 (D.C. Cir. 1983), where the D.C. Circuit found that the agency could not rely on the "good cause" exemption (available "except when notice or hearing is required by statute") because the rule concerned a statutory provision that specifically required "thirty days' notice and publication once in the Federal Register" of intent to amend an operating license.

[478] NCLC/UCC-MJ Comments at 29. *Compare* Infrastructure Act, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (empowering consumers to apply the affordable connectivity benefit to "any" internet service offering of a participating provider of their choice) *with id.*, § 904(b)(11)(A) (rules prohibiting business practices that could improperly restrict consumers' ability to freely choose and switch their choices of service offerings and providers).

[479] *See* 5 U.S.C. § 808(2) (notwithstanding other provisions of the Congressional Review Act, a rule "shall take effect at such time as the Federal agency promulgating the rule determines" if the ""agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[480] NCTA Comments at 36, 38; *see also, e.g.,* ACA Connects Comments at 29; U.S. Chamber of Commerce Reply at 3-4.

[481] *See, e.g.*, CTIA Comments at 21.

[482] NCLC/UCC-MJ Comments at 29.

[483] *See supra* para. 157. We disagree with commenters that suggest that either of the alternative interpretations discussed above would render the APA provisions in section 904(b)(11) to be mere "surplusage," *see, e.g.*, CTIA

(continued….)

b. Consumer Protection Requirements Pursuant to Section 904(b)(11)

159. *Upselling and Downselling.* The Infrastructure Act requires the Commission to promulgate rules prohibiting any inappropriate upselling or downselling by a participating provider.[484] In the *ACP Public Notice*, the Bureau sought comment on practices that constitute appropriate and inappropriate upselling or downselling, whether any upselling or downselling practices are beneficial to consumers, and which upselling or downselling practices, if any, the Commission should permit.[485] Several commenters argue upselling in all instances is a practice with no benefit to the consumer and that this practice should not be permitted because the Affordable Connectivity Program is designed to promote access to affordable broadband for low-income households.[486] Some commenters recommend prohibiting providers from requiring a household to change service plans before the benefit will be applied to the household's account,[487] and requiring providers to inform households seeking to enroll with the provider or seeking to change service plans of all plans that are fully covered by the program benefit.[488] Others recommend the Commission clarify that providers are not prohibited from informing prospective or current ACP households of product offerings that the provider presents based on a good faith belief that the suggested plan meets the household's needs.[489] For example, suggesting lower-priced service plans that fit the household's budget or to suggest more robust service that meets the household's bandwidth needs.[490]

160. Based on our careful review of the record, we find that upselling is generally an inappropriate practice in the context of the Affordable Connectivity Program. Inappropriate upselling in the context of the Affordable Connectivity Program is any business practice that pressures a prospective or existing subscriber to purchase a service plan or bundled plan in addition to or that is more expensive than what the subscriber initially sought. For example, requiring a household to select or switch to a higher-cost service plan with their existing provider before the provider will enroll the household or before the provider will apply the affordable connectivity benefit to the household's account constitutes inappropriate upselling and is prohibited. Similarly, if a provider offers a particular broadband service

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Comments at 21, or would transgress the statutory interpretation principle that "the specific governs the general." NCTA Comments at 37. We are not required to follow any part of section 553 when implementing ACP provisions other than the consumer protection rules, *see* § 904(h)(1), so section 904(b)(11)'s specific reference to the section 553 provisions concerning notice and comment make clear that we must make certain determinations or satisfy certain procedural requirements when implementing the consumer protection rules that are unnecessary for the rules implementing other parts of the program. If these consumer protection rules are not subject to the accelerated section 904(c) requirements, then we must determine that there is "good cause" under section 553(b)(B) to forego compliance with the APA's notice and comment requirements in adopting the consumer protection rules. No such analysis or determination is necessary for other rules.

[484] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(i) (2021).

[485] *ACP Public Notice* at para. 93.

[486] CETF Comments at 36; CETF Reply at 17-18 (defining upselling as when a consumer contacts a provider seeking a low-priced plan, but the provider sought to sell a higher priced plan or a bundled plan for a price that is higher than what the consumer intended to spend); Free Press Comments at 21; UWCA Comments at 25; Michigan PSC Comments at 11 (recommending that the Commission adopt rules preventing upselling without the customer's consent).

[487] Next Century Cities Comments at 18-19.

[488] NCLC/UCC-MJ Comments at 31.

[489] Google Fiber Comments at 9; Verizon Comments at 17; Internet Innovation Alliance Reply at 5 ("ACP customers should have the right to opt for higher-capacity plans, even if they are more expensive, determining their family's needs and deciding how much they can personally afford beyond the governmental support.").

[490] Verizon Comments at 16.

offering either as part of a bundled plan with other services or on a stand-alone basis, the provider may not require an eligible household to purchase the bundled plan or any other services included in the bundle as a mandatory condition in order to select that broadband internet access service plan for purchase or application of the affordable connectivity benefit. Nor may the provider exert pressure on the household to purchase the bundled plan or the other services included in such a plan, rather than the individual broadband internet access service on a stand-alone basis. And even if a particular type of modem, router, or other associated equipment is technically necessary in order to use a specific type of broadband internet access service, a participating provider may not compel or pressure an eligible household to purchase or rent such equipment from the provider in conjunction with selecting (or applying the benefit to) that type of service if the needed equipment is also available from other vendors and the household could opt to obtain it from someone other than the provider.[491]

161. However, we clarify that communicating information regarding higher-speed or higher-priced service tiers is not in itself prohibited upselling in the absence of further evidence. In fact, given the monthly subsidy available in the program, a fully informed consumer may choose to subscribe to a more expensive plan that better meets the needs of the household. To ensure that consumers are sufficiently informed of the available options, we require providers to inform prospective and current subscribers seeking to enroll in the Affordable Connectivity Program or seeking to change service plans of all ACP-supported plans available in the household's service area that are fully covered by the affordable connectivity benefit. Such plan information is required to be presented along with the required disclosures a provider must present to households prior to enrollment, described further below. We further clarify that the creation or promotion of new service plans specially priced for eligible households in the Affordable Connectivity Program does not constitute inappropriate upselling.

162. Inappropriate downselling in the context of the Affordable Connectivity Program is any business practice that pressures a subscriber to lower the quality of broadband service (such as reducing bandwidth or speed, or adding or lowering data caps that would not meet the participating household's needs) to the benefit of the provider rather than the consumer. Some commenters support a prohibition on downselling because, in the context of a subsidy program like the Affordable Connectivity Program, some providers may direct households to inferior or inadequate service tiers to the detriment of the household.[492] Other commenters argue that downselling should not be prohibited or even restricted, as consumers are best positioned to determine which service plans or bundled service meets the household's needs without having their choices reduced.[493]

163. We recognize that ACP households are sensitive to cost and would benefit from information about lower-cost services that meet their broadband needs while also minimizing their out-of-pocket costs. Based on our review of the record, we believe that, given the nature of the program, it is unlikely a provider would engage in inappropriate downselling to the detriment of participating households. Thus, we find that that not all downselling should be prohibited. We make clear that merely suggesting or mentioning the availability of a lower-price service plan(s) that would satisfy consumers' broadband needs is permitted. However, we recognize that certain practices may constitute inappropriate downselling and should be prohibited to avoid potential consumer harm. Specifically, we prohibit a

[491] *Cf.* 47 U.S.C. § 562(c)(1) ("A provider of … fixed broadband internet access service may not charge a consumer for … renting, leasing, or otherwise providing to the consumer covered equipment if … the provider has not provided the equipment to the consumer….").

[492] Free Press Comments at 21-22 (arguing that downselling in the context of a subsidy program can be harmful to low income consumers because a provider could push a consumer to a DSL product rather than to a fiber-to-the-home to avoid installation costs or could push a consumer to a lower-priced plan with data caps that could generate revenue through overage fees); NCLC/UCC-MJ Comments at 30-31 (noting that downselling can harm customers because while lower-priced plans may be more affordable for the household, if the service is lower quality it may not meet the needs of the consumer or their household.).

[493] CETF Comments at 37; CETF Reply at 18; United Ways of California Comments at 25-26.

provider from requiring a prospective or current household to change to a lower-cost service plan or to choose from a set of specific low-cost service plans before permitting the household to enroll in the program or before applying the affordable connectivity benefit to the household's account. Inappropriate downselling also includes business practices that aim to benefit the provider (such as minimizing the provider's out-of-pocket expenses) with no actual benefit to the consumer. For example, a practice of suggesting only low-quality service plans with a low data cap or low speed simply to benefit the provider and without regard to consumer need would be an example of prohibited inappropriate downselling.

164. *Extended Service Contracts.* The Infrastructure Act next requires that the Commission promulgate rules that would protect ACP consumers from any inappropriate requirements that a consumer opt-in to an extended service contract as a condition of participating in the Affordable Connectivity Program.[494] The *ACP Public Notice* requested comment on what constitutes an inappropriate opt-in requirement and whether there are circumstances where an extended service contract would be beneficial to low-income consumers.[495] After reviewing the record, while we decline to prohibit all extended service contracts in the Affordable Connectivity Program, we conclude that it is appropriate to prohibit providers from requiring agreement to an extended service plan as a condition of receiving the affordable connectivity benefit. An extended service contract is typically an offer of service at a discount price in exchange for a commitment from the subscriber to remain on that service plan for a set period of time, usually at least a year. Typically, a breach of an extended service contract would result in early termination fees. Congress recognized that consumers should be able to apply the ACP benefit to any available service plan and some participating providers offer plans with extended service contracts. However, we agree with commenters that conditioning a household's enrollment in the Affordable Connectivity Program or application of the program benefit to the household's account on agreement to an extended contract or continuing service with the provider is a practice that must be prohibited as it can trap households and impose additional costs.[496] Therefore, we prohibit providers from instituting such requirements as a condition of receiving the affordable connectivity benefit. We do not restrict providers from offering ACP households plans with an extended service contract, but providers must not require a household to agree to an extended service contract as a condition of enrolling in the Affordable Connectivity Program.[497] Where an ACP household elects an extended service contract, we require the provider to notify the household that it may change its service at any time without incurring an early termination fee, as such fees are prohibited by the Infrastructure Act.[498] In addition, providers must disclose all material terms to ACP households prior to enrollment, including but not limited to the price of service and the conditions for breach.

165. *Restrictions on Switching Service Offerings.* The Infrastructure Act requires the Commission to promulgate rules to protect consumers from inappropriate restrictions imposed by a participating provider on the consumer's ability to switch internet service offerings.[499] The *ACP Public Notice* sought comment on whether the Commission should prohibit providers from limiting their ACP-supported service offerings to new or to existing subscribers.[500] The Bureau also sought comment on how

[494] Infrastructure Act, div. F., tit. V, sec. 60502(a)(3)(B)(ii); § 904(b)(11)(A)(i) (2021).

[495] *ACP Public Notice* at 37-38, para. 94.

[496] United Ways of California Comments at 26; NCLC Comments at 31.

[497] *See* CTIA Comments at 15 (arguing that if the Commission prohibits providers from offering plans with an extended service contract to ACP households, providers should not be required to offer such plans in the Affordable Connectivity Program as those plans would not be offered on the "same terms and conditions" as the same plans made available to non-ACP households).

[498] Infrastructure Act, div. F, tit. V, sec. 60502 (b)(1)(B)(iii)(II), § 904(b)(6)(A)(i) (2021).

[499] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(iv) (2021).

[500] *ACP Public Notice*, at 38, para. 95.

the Commission should determine what constitutes an inappropriate restriction on switching service, the circumstances under which such restrictions would be considered appropriate, and what restrictions the Commission should prohibit or permit. Generally, commenters support prohibiting providers from imposing restrictions on switching internet service offerings.[501]

166. We agree with commenters and find that because of the potential for harm to consumers it is appropriate to prohibit providers from imposing restrictions on eligible households seeking to switch internet service offerings.[502] However, we clarify that it is not inappropriate for a provider to limit a household that is in non-payment status to service plans covered by the full benefit amount as previously discussed.[503]

167. *Restrictions on Switching Providers.* The Infrastructure Act also requires the Commission to promulgate rules to protect consumers from any inappropriate restrictions by a participating provider on the ability of the household to switch participating providers other than a requirement that the household return customer premises equipment provided by the participating provider.[504] The *ACP Public Notice* asked whether there have been practices in the Lifeline or EBB Programs that have the effect of restricting a consumer from transferring their benefit to another provider and what restrictions the Commission should prohibit or permit.[505] Commenters argue that, other than requirements to return customer premises equipment, there should not be any restrictions on ACP households that wish to switch providers.[506]

168. Consistent with the Infrastructure Act, we prohibit any provider practice that is reasonably likely to cause a household to believe that they are prohibited or restricted from transferring their benefit to a different provider. Examples of prohibited activity that would constitute such a restriction include, but are not limited to: misrepresenting or failing to accurately disclose to a household the rules and requirements regarding transfers in the Affordable Connectivity Program as set out further below; charging a fee to the household for transferring their benefit to another provider; or suggesting that the provider may change the consumer's service plan if they transfer their benefit to another provider. We find that these restrictions protect the household's ability to exercise their right to transfer providers in the Affordable Connectivity Program, preserve the integrity of the program, and satisfy the Congressional mandate to prohibit inappropriate restrictions on the ability to transfer service. We decline at this time to prohibit providers from recouping any forgone reimbursements as a result of the consumer transferring to another provider before the snapshot date for that service month, but caution that providers must not impose or threaten to impose any fees or penalties.[507] We find that the action we take in this Order to limit subscribers to one transfer a month, coupled with the strengthening of the consent and disclosure requirements related to transfers, should reduce the number of unwanted transfers and will empower consumers to make an informed decision about whether to transfer their benefit. Therefore, we find that at this time, preventing providers from recovering discounts that are unable to be claimed solely as a result of the transfer is unnecessary to protect consumers from the consequences of the transfer.

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[501] *See* CETF Comments at 37; United Ways of California Comments at 26.

[502] *See* CETF Comments at 37-38; United Ways of California Comments at 26. Commenters also recommend the Commission define an appropriate restriction on switching service plans as restrictions that apply to all ACP and non-ACP households for that internet service offering, and an inappropriate restriction as one that has a disparate impact on the ACP household regardless of the provider's intent. CETF Comments at 37-38; United Ways of California Comments at 26. Implementing rules for non-ACP households is outside the scope of this proceeding.

[503] *Supra* Section III.E.2 (Non-Payment).

[504] Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B)(iii)(II), §§ 904(b)(6)(A)(i)-(iii) (2021).

[505] *ACP Public Notice* at 38, para. 96.

[506] CETF Comments at 38; United Ways of California Comments at 27.

[507] *See* CETF Comments at 38.

169. *Unjust and Unreasonable Practices.* The Infrastructure Act requires the Commission to promulgate rules related to unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program.[508] The *ACP Public Notice* sought comment on additional consumer protection measures the Commission should enact to satisfy this requirement.[509] In particular, the *ACP Public Notice* proposed prohibiting providers from unreasonably delaying the application of the Affordable Connectivity Program discount to the household's bill, and sought comment on how to address provider misconduct, and sought comment on a proposal to consider failure to provide service as advertised and promoted a violation of the program rules.[510]

170. The record supports adopting rules to prohibit additional unjust and unreasonable acts and practices not expressly prohibited in the Infrastructure Act.[511] The National Consumer Law Center supports the Commission's proposal to require providers to enroll eligible households within a set amount of time after the household provides affirmative consent, and recommends that failure to do so be deemed an unjust and unreasonable practice.[512] The National Consumer Law Center also supports the proposal that providers be prohibited from unreasonably delaying the application of the program benefit to the subscriber's bill and that failure to provide the service advertised and promoted should be considered a violation of the program rules.[513] Other commenters recommend the Commission work with law enforcement authorities if a provider is found to be engaging in fraudulent or illegal activity in the program, publish on its website a public list of providers who have been removed from the program, and impose requirements regarding how the program is promoted and advertised with remedies for violations.[514]

171. The Commission takes seriously its obligation to protect ACP households against service provider activities that would undermine the purposes, intent or integrity of the Affordable Connectivity Program. To that end, based on our review of the record, we adopt specific service provider requirements and also prohibit unjust and unreasonable practices that undermine the purpose, intent, or integrity of the Affordable Connectivity Program. We require providers to enroll an eligible household within five business days from the date the provider receives the household's affirmative consent to enroll with that provider for the Affordable Connectivity Program. Providers are further required to apply the affordable connectivity benefit to the household's account consistent with our discussion of the non-payment provision in this Order.[515] In adopting these requirements, we have carefully considered the need to protect consumers and ensure timely access to their ACP-supported service as well as providers' need for adequate time to onboard households.

172. We also make clear that a provider is prohibited from advertising or holding itself out as a participating provider if it is not in fact permitted to participate in the Program. We also prohibit providers from engaging in false or misleading advertising of the Affordable Connectivity Program. We also find that failure to timely provide the service, equipment, or devices that are advertised, promoted, or marketed is an unjust and unreasonable practice and is a violation of the Affordable Connectivity Program rules. Providers must deliver any connected devices under the program within 30 days of affirmative consent to receive the device from the household. We delegate authority to the Bureau to

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[508] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(v) (2021).

[509] *ACP Public Notice*, at 38, para. 97.

[510] *Id*.

[511] *See, e.g.*, Free Press Comments at 23.

[512] NCLC/UCC-MJ Comments at 32.

[513] NCLC/UCC-MJ Comments at 32.

[514] CETF Comments at 38-39; NCLC/UCC-MJ Comments at 32; United Ways of California Comments at 28.

[515] *Supra* Section III.E.2.

provide guidance as needed on any other service provider activities that may be inappropriate because they would undermine the purposes, intent, or integrity of the Affordable Connectivity Program. As described in this Order, misconduct from a participating provider may result in removal from the program.[516]

5. Disclosures and Consumer Consent

173. *General Disclosure Requirements.* The *ACP Public Notice* sought comment on the consumer disclosures and consent requirements for providers participating in the Affordable Connectivity Program before enrolling eligible consumers in the program.[517] Service provider disclosures and consumer consents are important measures for ensuring consumers are fully informed of their rights and consent to a transaction. To that end, in the *EBB Program Order*, the Commission required participating providers to disclose to subscribers prior to enrollment in the EBB Program that the program is a government program that reduces the subscriber's broadband internet service bill, is temporary in nature, that the household will be subject to the provider's undiscounted rates and general terms and conditions at the end of the program if they continue to receive the service, that the household may obtain broadband service support by the EBB program from any participating provider of its choosing, and that the household may transfer its benefit to another provider at any time.[518] In the *EBB Program Order*, the Commission also noted that "[p]roviders play an important role in ensuring that their customers are informed about the EBB Program at the point of application and enrollment" because providers "will have a direct relationship with their customers, and as such, have a responsibility to ensure that these customers have the information they need to make an informed decision about [their EBB-supported service.]"[519]

174. Based on our experience with the EBB Program, we find that a disclosure requirement prior to enrolling consumers in the Affordable Connectivity Program is necessary to ensure that eligible consumers are fully informed of their rights and the terms and conditions for their service before enrollment in the Affordable Connectivity Program.[520] There is general support in the record for extending the disclosure requirements to enrollments in the Affordable Connectivity Program.[521] The disclosure requirements we adopt for the Affordable Connectivity Program must be satisfied before participating providers enroll an eligible consumer in the NLAD, and apply regardless of whether the eligible consumer currently receives service from the provider (such as an existing Lifeline service) or will begin receiving service after enrollment, or after service provider transfer, in the Affordable Connectivity Program.

175. The required disclosures can be provided orally or in writing, and must convey the following information in clear, easily understood terms that: (1) the Affordable Connectivity Program is a

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[516] *Supra* Section III.J.3.

[517] *ACP Public Notice* at 39, para. 99.

[518] *Id.* (*citing EBB Program Order*, 36 FCC Rcd at 4629, para. 38).

[519] *EBB Program Order*, 36 FCC Rcd at 4629, para. 39.

[520] This requirement is separate from and in addition to any broadband information label the requirement the Commission may adopt in response to the Infrastructure Act, 135 Stat. 429, § 60504(a), which directs the Commission "to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband Internet access service plans."

[521] *See, e.g.*, USTelecom Comments at 19; CETF Comments at 39; Michigan PSC Comments at 11; United Ways of California Comments at 29. For legacy EBB households that transition to the Affordable Connectivity Program without changing their current service provider, the current service provider would not be required to make new disclosures or obtain new consent, unless otherwise required for the transition path applicable to that household as outlined in the transition section of this Order.

government program that reduces the customer's broadband internet access service bill; (2) the household may obtain ACP-supported broadband service from any participating provider of its choosing; (3) the household may apply the ACP benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for ACP-supported service; (4) the provider may disconnect the household's ACP-supported service after 90 consecutive days of non-payment; (5) the household will be subject to the provider's undiscounted rates and general terms and conditions if the program ends, if the consumer transfers their benefit to another provider but continues to receive service from the current provider, or upon de-enrollment from the Affordable Connectivity Program; and (6) the household may file a complaint against its provider via the Commission's Consumer Complaint Center. If the provider offers a connected device through the Affordable Connectivity Program, the disclosures must also include language stating that the household does not need to accept the device in order to enroll in the program. Moreover, consistent with the requirements in Section III.E.4b, providers must also inform consumers about the provider's ACP-supported service plans that are fully covered by the applicable affordable connectivity benefit amount to guard against inappropriate upselling. Providers must retain all documentation or recordings of written or oral disclosures made to consumers in connection with ACP enrollment, as well as any other oral or written notifications and consumer disclosures required by the ACP rules consistent with the ACP recordkeeping requirements, and make them available for inspection upon request. Based on our review of the record and experience administering the EBB Program, we recognize that standardized language for the required consumer disclosures would ensure that all providers share the same language with eligible consumers prior to enrollment.[522] Accordingly, we direct the Bureau, in coordination with EB and CGB to adopt a standard disclosure statement that all providers will be required to use.

176. *Consumer Consent to Enroll in the Affordable Connectivity Program.* The *ACP Public Notice* also sought comment on the proposal to require participating providers to obtain a household's affirmative consent once the household has received and reviewed the required disclosures, before enrolling the household in the Affordable Connectivity Program.[523] We find that requiring consumer consent before enrollment is also necessary to protect households from improper enrollment and ensure that eligible households provided informed consent before enrollment in the Affordable Connectivity Program. Therefore, we adopt the requirement that, before enrolling a consumer in the Affordable Connectivity Program, participating providers must obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to enroll with the provider. As with the required disclosures, we find that having uniform text for these consents would ensure that consumers actually affirmatively consented to enroll in the program. We direct the Bureau, in coordination with EB and CGB to adopt a standard consent statement that providers will also be required to use in conjunction with the disclosures before enrolling eligible consumers in the Affordable Connectivity Program. Providers must retain all documentation or recordings of written or oral consents made by ACP households, as well as any other written or oral notifications and consumer consents required by the ACP rules consistent with the ACP recordkeeping requirements, and make them available for inspection upon request.

177. Prior to the launch of the EBB Program, EB issued an advisory in which it noted that providers may be linking EBB Program enrollment to implementation of either technical changes necessary to retain the subscriber's existing service or automatically enrolling subscribers that provided

[522] NCLC/UCC-MJ Comments at 29 (suggesting that the FCC develop a single set of standard disclosures and require those disclosures at every touch point during the ACP application and publicity process); AARP Reply at 14.

[523] *See* CETF Comments at 39 (supporting disclosure and affirmative consent requirements); Google Fiber Comments at 6 (clarifying that it does not object to affirmative consent requirement but requesting the Commission does not require written consent); United Ways of California Comments at 28-29 (supporting an affirmative consent requirement).

information needed for another purpose.[524] As the advisory warns, these practices may be deceptive and threaten the integrity of the program.[525] We find that these practices would also have a deleterious effect on the integrity of the Affordable Connectivity Program. Accordingly, we prohibit participating providers from linking enrollment in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program. As examples, providers are prohibited from: (1) not clearly distinguishing the process of signing up for ACP-supported services and devices from the process of signing up for, renewing, upgrading, or modifying other services, including Lifeline-supported services; (2) suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services; and (3) tying the submission of customer information provided for another purpose (e.g., address verification or equipment upgrade or replacement) to enrollment in the Affordable Connectivity Program.[526] The *ACP Public Notice* sought comment on the proposal to prohibit providers from requiring a consumer to accept a connected device in order to enroll with the provider.[527] Based on our review of the record and experience administering the EBB Program, we find that this practice is deceptive and harmful to consumers as it forces a consumer to accept and contribute a co-payment toward a connected device they may not want.[528] Moreover, given that the ACP connected device benefit is limited to one-per-household, forcing a household to accept an unwanted device to enroll in the Affordable Connectivity Program limits the consumer's ability to choose a desired device at a later date or from another provider if they transfer their benefit. Accordingly, we prohibit participating providers from requiring consumers to obtain an ACP-supported device in order to enroll in the Affordable Connectivity Program.[529]

178. *Timing Limitation on Consumer Disclosure and Consents for Providers with Pending Election Notices or Removal.* The *ACP Public Notice* also sought comment on when participating providers may be permitted to obtain consent to enroll consumers in the Affordable Connectivity Program and proposed, as in the EBB Program, to require providers to have a fully processed election notice before beginning to provide disclosures and collecting consumer consent for ACP enrollment.[530]

179. Having reviewed the record, we find no reason to depart from this approach in the Affordable Connectivity Program. Extending this same approach to the Affordable Connectivity Program will protect consumers from unwitting or improper enrollment, preserve consumer rights and choice, and promote program integrity. Accordingly, we prohibit providers from providing the required disclosures and collecting the required consents to enroll subscribers in the Affordable Connectivity Program until the provider has a fully processed election notice for the Affordable Connectivity Program. To the extent a provider is removed from the program, it must cease providing the required enrollment-based consumer disclosures and consents for the Affordable Connectivity Program immediately upon removal. We clarify that, consistent with the election requirement we adopt in this Order, EBB Program providers that

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[524] *See generally Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Co-Pay for Connected Devices*, Public Notice, 36 FCC Rcd 8324 (EB 2021) (*EBB Program EB Advisory*).

[525] *EBB Program EB Advisory*, 36 FCC Rcd at 8325.

[526] *See EBB Program EB Advisory*, 36 FCC Rcd at 8325.

[527] *ACP Public Notice* at 41, para. 102.

[528] *See* CETF Comments at 40 (supporting prohibiting providers from conditioning enrollment on consumer agreement to accept a connected device because of the potential deterrent effect such a prohibition on predatory practices that maximize the benefit amount while also providing low-quality connected devices).

[529] *See also supra* Section III.E.4.b (this and similar practices are also prohibited because they constitute inappropriate forms of upselling).

[530] *ACP Public Notice*, at 41, para. 103.

transitioned to the Affordable Connectivity Program do not need to submit an ACP election notice in order to make the required consumer disclosures and collect consumer consent for enrollment in the Affordable Connectivity Program.[531]

180. *Transfer-Specific Disclosure and Consent Requirements.* We next adopt consent and disclosure requirements for households that seek to transfer their ACP benefit to another service provider. Households enrolled in the EBB Program were permitted to transfer to a new provider at any time.[532] In the *ACP Public Notice* the Bureau explained that EBB Program rules prohibited a provider from either (1) providing EBB-supported service to, or claiming support for, a household that is currently receiving service from another provider if the household is not seeking to transfer its EBB Program benefit,[533] or (2) transmitting customer data to the NLAD without first obtaining consent.[534] Despite this prohibition, the record indicates that some households enrolled in the EBB Program were transferred to new providers without the household's consent or knowledge of the transfer, or its effect on the household's existing EBB Program service.[535] The Commission also received consumer complaints concerning unwanted or uninformed transfers of their EBB benefit. In some cases, EBB households were transferred multiple times between providers in a given month.[536] The *ACP Public Notice* sought comment on EBB participating providers' experience with transfers between providers and on measures the Commission could implement to ensure households fully consented to transfer their service, including limitations on the household's ability to transfer and an independent transfer verification requirement.[537] The *ACP Public Notice* also proposed to require participating providers to disclose that a transfer transaction will occur and the effect of the transfer on the household's ACP benefit before the provider executes the transfer transaction.[538] Given the large volumes of consumer transfers in the EBB Program, and occurrence of unwanted and uninformed consumer transfers in the EBB Program and the resulting consumer harm, we conclude that it is necessary to adopt transfer-specific consent and disclosure requirements.

181. The record demonstrates that unwanted and uninformed consumer transfers are a significant concern, and we find that multiple approaches are needed to protect ACP households from such transfers. The record confirms that transfer-specific disclosure and consent requirements are two important tools for ensuring ACP households are informed of both the transfer transaction and the effect that the transfer will have on the household's ACP benefit.[539] Accordingly, we require that before initiating a transfer in NLAD, the transfer-in provider must disclose orally or in writing, in clear, easily understood language to the ACP household: (1) that the household will be transferring its ACP benefit to the transfer-in provider; (2) that the effect of the transfer is that the ACP benefit will be applied to the transfer-in provider's service and will no longer be applied to service retained from the transfer-out

[531] *Supra* Section III.A.2.

[532] *EBB Order* at 4629, para. 38.

[533] *ACP Public Notice* at 40, para. 101 *citing* 47 CFR §54.1606(d)(2).

[534] *ACP Public Notice* at 40, para. 101 *citing* 47 CFR §54.1406(d)(6).

[535] Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 1-2 (filed Sept. 27, 2021) (ACA Connects *Ex Parte*); Verizon Comments at 24; NaLA Comments at 38; NDIA Comments at 16; NCTA Comments at 13.

[536] *See, e.g.*, Letter from Brian Hurley, ACA Connects, Docket No. 20-445, at 2 (filed Sept. 27, 2021).

[537] *ACP Public Notice*, at 40, para. 101.

[538] *Id*.

[539] NDIA Comments at 17 (supporting transfer specific disclosure and consent requirements); ACA Connects Comments at 6; NTCA Comments at 13; USTelecom Comments at 19; CETF Fund Comments at 30; Verizon Comments at 24 (supporting requiring consumer consent before every transfer); NaLA Comments at 38.

provider; (3) that the household may be subject to the transfer-out provider's undiscounted rates as a result of the transfer if the household elects to maintain service from the transfer-out provider, and that (4) the household is limited to one ACP-transfer transaction per service month with limited exceptions to reverse an improper transfer or address situations impacting the household's receipt of ACP-supported service from a particular provider.[540]

182. We find that having a clear record of a consumer's consent to transfer their ACP benefit after having reviewed the ACP transfer disclosures is an important tool for preventing uninformed or unwanted ACP benefit transfers. We make clear that the transfer-in provider must obtain the required consumer consent orally or in writing before each ACP transfer transaction, and the consent must indicate that after having reviewed the required transfer disclosures, the household consents to transfer its benefit to the transfer-in provider. Documentation of the consumer's affirmative consent must clearly identify the ACP subscriber name, acknowledge the subscriber was provided the required disclosure language, and that upon receiving the disclosure, the subscriber gave its informed consent to transfer its benefit, and the date consent was given. Participating providers must retain documentation or recordings related to the required disclosures and necessary consents for affordable connectivity benefit transfers consistent with the document retention requirements we adopt in this Order.

183. We next clarify that participating providers must obtain consent from an ACP household for each transfer, and providers may not rely on older consent given for a previous transfer.[541] Each time a provider initiates a transfer-in transaction for an ACP household, it must first provide the household with the required disclosures and obtain consent from the household acknowledging receipt of the disclosures and stating that the household consents to the transfer, even if the household previously received EBB or ACP-supported service from the provider. Consistent with the consents and disclosures required at initial ACP-enrollment, we find that using standardized language for ACP transfer disclosures and consent will better ensure that households are properly informed about and consented to transfer their ACP benefit. Therefore, we direct the Bureau, in coordination with EB and CGB to provide standardized disclosure and consent language that the providers will be required to present to ACP households prior to initiating the transfer.

184. The *ACP Public Notice* also sought comment on whether notice of transfer should be communicated to the household, and whether other requirements, such as additional certification requirements for transfer transactions, are warranted.[542] Given the concerns about improper transfers in the EBB Program, we find additional protections against unwanted and uninformed transfers are necessary. Accordingly, we also require providers to provide written notice of transfer-in transactions to the transferred ACP household within five business days of completing the transfer in the NLAD.[543] The notice of transfer to the ACP household should indicate the name of the transfer-in provider to which the household's ACP benefit was transferred, the date the transfer was initiated, and an explanation of the dispute process if the household believes the transfer was improper. We do not prescribe the specific method for issuing this written notice or prescribe specific language that must be used in this notice.

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[540] This disclosure information reflects the Commission's experience with the EBB Program, including consumer complaints about uniformed or unwanted transfers and comments about the contents of transfer-specific disclosures. *See* ACA Connects Comments at 6 (commenting on the information that providers should be required to provide before transferring a household's ACP benefit). We recognize that the ACP transfer-in provider may not know the identity of the transfer-out provider. Accordingly, for purposes of these disclosures, we do not require the transfer-in provider to specifically name the transfer-out provider in the required transfer disclosures.

[541] *See* ACA Connects Comments at 6 (requesting that the Commission make clear that new consent is required for each transfer transaction); Verizon Comments at 24.

[542] *ACP Public Notice*, at 40-41, para. 102.

[543] *See* NDIA Comments at 17 (urging the Commission to provide consumers with information about transfer activity, including the provider that their benefit has been transferred to, and the process for disputing transfers).

Providers must retain documentation demonstrating compliance with this notice requirement consistent with the document retention requirements adopted in this Order and make such documentation available to the Commission and USAC upon request.

185. Finally, we adopt the proposal to require the transfer-in service provider to certify under penalty of perjury that it has complied with the transfer requirements we adopt in this Order. The record confirms that this certification requirement would further help address unwanted and uninformed ACP consumer transfers.[544] We direct the Bureau in coordination with USAC to identify the appropriate mechanism for capturing this certification from participating providers.

186. *Limiting the Number of ACP Consumer Transfers in a Service Month.* The *ACP Public Notice* also sought comment on whether the Commission should limit the number of times an ACP consumer's benefit can be transferred. Certain commenters support limiting benefit transfers and we adopt this proposal to provide an additional safeguard against unwanted and uninformed benefit transfers.[545]

187. The transfer-specific consent, disclosure and notice requirements we adopt for the ACP are important measures for preventing unwanted and uninformed ACP household transfers between service providers. However, based on our experience in the EBB Program and the concerns raised about unwanted or uninformed EBB Program transfers,[546] we find that limiting ACP household benefit transfers to one per service month, with limited exceptions, is also necessary. This limit on ACP transfers will further protect ACP households against uninformed and unwanted transfers, curb aggressive transfer activity from providers, and also give providers and consumers confidence in the discount amount to be applied to a household's internet service bill. The transfer restriction we adopt is narrowly tailored to protect consumers and provide additional certainty to providers and consumers, without unduly limiting consumer rights to make changes to their ACP-supported service. We direct USAC to make the necessary system changes to implement the limit on ACP household service transfers.

188. We recognize that restricting the number of transfers in a given service month could unfairly preclude subscribers from legitimately transferring their service. For example a household may want to reverse an improper transfer or may no longer be able to receive service from a specific provider. Accordingly, we direct USAC, in coordination with the Bureau, to develop a process for seeking an exception from the one-per-service month transfer restriction in the following circumstances: (1) an improper transfer; (2) the household's service provider ceases operations or fails to provide service (3) the household's current service provider is found to be in violation of ACP rules, and the violation impacts the customer for which exception is sought; and (4) the household changes its residential address to a location outside of the provider's service area for the Affordable Connectivity Program. An improper transfer occurs if the transfer-in provider does not make the required disclosures or obtain the required consent from the household to proceed with the transfer transaction. These exceptions ensure that unwanted transfers can be reversed, and also recognize that circumstances beyond the household's control may impact the provision or receipt of ACP service from a specific provider warranting more than one transfer in a month. We direct USAC to develop and implement processes and procedures to

[544] ACA Connects Comments at 6 (supporting a service provider certification requirements concerning ACP benefit transfers); INCOMPAS Comments at 8. *But see* NaLA Reply at 28 (stating that NaLA does not oppose a certification requirement for benefit transfers but certifications "will not be particularly effective to address the issue").

[545] *See, e.g.*, CETF Comments at 40; NaLA Comments at 39 (supporting a 30-day restriction on transfers with an exception for moves outside of the provider's service area); Verizon Reply at 15.

[546] *See, e.g.*, Letter from Brian Hurley, ACA Connects, Docket No. 20-445, at 2 (filed Sept. 27, 2021); Letter from Brian Ford, NTCA, Docket No. 20-445, at 1 (Nov. 5, 2021); USTelecom Comments at 19; INCOMPAS Comments at 7; NDIA Comments at 16-17; Verizon Reply at 15.

accommodate such requests for an exception to the transfer limit. We further direct USAC to monitor exceptions and conduct program integrity reviews for a sampling of benefit transfers.

F. Outreach, Cross-Agency Collaboration, Advertising, and Public Awareness

189. As with the EBB Program, we recognize that for the Affordable Connectivity Program to achieve its full potential and reach as many eligible households as possible, households must be clearly informed of the program's existence, benefits, eligibility qualifications, and how to apply.[547] The Infrastructure Act recognizes that the Commission, participating providers, other federal agencies, state, local, and Tribal governments, and other program partners and stakeholders play an important role in disseminating information about the Affordable Connectivity Program to the intended population. The Infrastructure Act outlines specific requirements and permissible activities for consumer outreach, which may be funded using Affordable Connectivity Program funding[548] and we recognize the Program will benefit from broad outreach in a variety of languages and methods to reach as many eligible consumers as possible, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality through collaborative outreach on the part of the federal government, participating providers, state, local, and Tribal governments, and other program partners and stakeholders.

1. Commission Outreach Efforts and Cross-Agency Collaboration

190. *Commission Outreach Efforts.* The Infrastructure Act provides that the Commission may conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program. In particular, the Act permits the Commission to facilitate consumer research, conduct focus groups, engage in paid media campaigns, provide grants to outreach partners, and provide an orderly transition for participating providers and consumers from the EBB Program to the Affordable Connectivity Program.[549] The *ACP Public Notice* sought comment on the use of these statutorily authorized outreach tools.[550]

191. Commenters overwhelmingly support the Commission using a wide variety of outreach methods for the Affordable Connectivity Program as permitted under the Infrastructure Act and cite several programs and campaigns as models providing useful lessons for the Commission to implement itself or to provide outreach funding to partners to implement. These programs include the Connect 313 program,[551] the EBB Para Mi national grassroots public engagement campaign,[552] and Los Angeles

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[547] *See, e.g.*, EducationSuperHighway Comments at 5, 8 (stating that only 25% of eligible households have heard of the EBB and recommending that the Commission "invest in proven adoption strategies and leverage data in partnership with state and local governments, trusted institutions, non-profits[,] and community[-]based organizations and "invest in direct outreach to unconnected households" by "leverag[ing] data from K-12 Bridge to Broadband to identify unconnected households").

[548] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(10) (2021).

[549] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(C)(i)-(ii) (2021). The *ACP Public Notice* sought comment on considerations applicable to standing up a grant program in support of consumer outreach. *ACP Public Notice* at 42-43, paras. 109-110, 112. The *ACP Public Notice* also noted the unique statutory and regulatory requirements applicable to grant programs. *See, e.g.*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Uniform Guidance) at 2 CFR Part 200. Part 200 consolidated numerous Office of Management and Budget Circulars pertaining to grants management. Grants.gov provides helpful information regarding federal government grant programs and related overarching statutory and regulatory policies. As further explained in the accompanying Further Notice of Proposed Rulemaking, given the complexity of standing up a grant program, the Commission takes this opportunity to seek further comment a possible grant program to be managed by the Commission in support of consumer outreach as contemplated in the Infrastructure Act.

[550] *ACP Public Notice* at 41-42, paras. 109-112.

[551] City of Detroit Comments at 5.

[552] HTTP Comments at 2.

County's multi-platform, multi-language campaign to inform residents about the sunsetting of the EBB Program, as well as the launch of the Affordable Connectivity Program.[553] Commenters also cite the Commission's Digital Television Transition outreach as an effective public awareness effort.[554] In addition, commenters support the use of paid media, including traditional media (TV, radio, newspaper, billboards) in various languages and locations, as well as social media campaigns, hyperlocal media, and in-person campaigns in order to maximize the public awareness of the program.[555] Commenters also recommend that the Commission engage in consumer research and conduct focus groups on a variety of useful topics.[556] Furthermore, commenters urge the Commission to invest in its language access capacities, including investments in high-quality, culturally competent in-language outreach materials and in increasing the languages in which translations of the ACP application are offered.[557] Commenters also support collaboration with local social services, schools, libraries, and local non-profits.[558] EducationSuperHighway argues that direct outreach strategies targeted to unconnected households would be more effective than general awareness media campaigns.[559] Similarly, Next Century Cities recommends that the Commission use EBB Program and Lifeline data to identify areas with low enrollment and develop targeted outreach.[560]

192. We agree with commenters that a wide range of outreach is needed to best promote awareness of and increase participation in the Affordable Connectivity Program. We are committed to using a variety of outreach tools in the immediate term and for the duration of the program as permitted under the statute. In addition, as in the Further Notice of Proposed Rulemaking, the Commission is exploring the possibility of establishing an outreach grant program, but that would take time to establish in compliance with the applicable federal rules and regulations governing federal grants. Based on the costs associated with the Commission's Digital Television Transition outreach efforts (which included broad paid media campaigns)[561] and current estimates for the anticipated types of outreach activities the

[553] LA County Comments at 6.

[554] *See* Black Women's Roundtable Comments at 3-4 (recommending that the Commission "employ a robust national public awareness and outreach campaign similar in scope to the DTV" with a "broad coalition of nonprofits, media organizations, and corporations, in conjunction with Commission to increase consumer outreach for the national broadcasting switch to digital TV . . . focus[ing] on groups deemed at risk of being unaware of the transition"); CETF Comments at 42, 45; UWCA Comments at 33.

[555] *See, e.g.*, Asian American Tech Table at 2, 4-5; Black Women's Roundtable Comments at 4; CETF at 44; LA County Comments at 6; NCC Comments at 14; NCLC/UCC-MJ Comments at 32; Public Knowledge Ex Parte at 3 (filed Dec. 2, 2021); City of Seattle Comments at 9; UWCA Comments at 31. *But see* City of Detroit Comments at 5 (arguing that the Commission does not need to run any paid media campaigns and should instead fund local governments and coalitions' locally-branded campaigns).

[556] *See, e.g.*, CETF Comments at 42 (recommending focus groups to learn the best advertising tactics and messaging for the Affordable Connectivity Program; Common Cause Comments at 6-7 (recommending focus groups to assist with outreach and enrollment efforts); MMTC Comments at 19 (recommending that the Commission use focus groups with non-profit organizations); NDIA Comments at 17 (recommending focus groups with community-based organizations who have successfully enrolled participants in the EBB Program to learn which outreach efforts they conducted were the most effective); UWCA Comments at 31.

[557] *See, e.g.*, Asian American Tech Table at 2; CPUC Reply at 19; City of Seattle Comments at 10; Common Cause Comments at 6-7; *see also* Groundwork NRG Comments at 2 (stating that promotional materials in multiple languages provided by the Commission for the EBB program were helpful).

[558] *See, e.g.*, Public Knowledge Ex Parte at 3 (filed Dec. 2, 2021); Tech Goes Home Comments at 2.

[559] *See* EducationSuperHighway Comments at 20.

[560] *See* NCC Comments at 12.

[561] *See* Black Women's Roundtable Comments at 3-4 (recommending that the Commission "employ a robust national public awareness and outreach campaign similar in scope to the DTV"); CETF Comments at 42, 45; UWCA Comments at 33.

Commission may undertake pursuant to the Infrastructure Act, we anticipate the need to spend $100,000,000 over the next five years for outreach, including, but not limited to, immediate outreach activities and a potential outreach grant program.

193. We direct the Bureau, CGB, OCBO, OMD, and the Office of Media Relations (OMR) to collaborate on identifying and conducting the Commission's paid outreach efforts to promote program awareness and encourage households to enroll in the Affordable Connectivity Program, using the broad range of outreach tools permitted under the statute. These efforts will complement and build on the extensive outreach undertaken in support of the EBB Program and may include both national and more targeted activities, with particular emphasis on reaching people of color, persons with disabilities, persons who live in rural or Tribal areas,[562] and others who are or have been historically unserved, marginalized, or adversely affected by persistent poverty or inequality. In carrying out this outreach, staff shall also focus on advancing diversity, equity, inclusion, and accessibility.

194. As permitted under the Infrastructure Act, staff may work with USAC and third-party entities to conduct consumer research and focus groups. Consumer research and focus groups may provide meaningful insights into program messaging, including translations, application and enrollment process improvements, program awareness, perceived program value, and other topics that may improve awareness of the program and barriers to participation that could be addressed through outreach, and help drive enrollment. The Bureau in consultation with CGB and OMR, with support from OMD as needed, may also pursue a paid media strategy for the Affordable Connectivity Program. In addition to traditional media and online ads, a paid media strategy may also include paid media in diverse outlets that serve culturally and linguistically isolated communities for which a significant population may qualify for the Affordable Connectivity Program. Such a media strategy may include a mix of national, regional, and hyper-local campaigns designed to reach the intended populations. The Bureau and CGB, with support from OMD as needed, may rely on a third-party media strategy firm to develop a media plan and facilitate paid advertising campaigns.

195. *Commission Collaboration with Other Federal Agencies.* Pursuant to the Infrastructure Act, the Commission must collaborate with relevant Federal agencies to ensure that households that participate in qualifying programs for the Affordable Connectivity Program are provided with information about the Affordable Connectivity Program, including enrollment information.[563] The *ACP Public Notice* sought comment on how the Commission could collaborate with such agencies, on how state and federal agencies that operate qualifying programs can best support eligible households, and on what information about the Affordable Connectivity Program the Commission should distribute to households participating in a qualifying program.[564] Commenters emphasize the importance of collaboration with other agencies[565] and provide suggestions on how the Commission could satisfy this collaboration requirement.[566]

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[562] Sacred Wind Comments at 2 (recommending that Commission policies on ACP outreach efforts should "prioritize and encourage outreach efforts tailored to [T]ribal lands").

[563] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(B) (2021).

[564] *ACP Public Notice* at 41-42, para. 107.

[565] *See, e.g.*, AARP Comments at 11 (stating that "some eligible households may be more accepting of information coming from official government channels, rather than private providers"); NDIA Comments at 11-15.

[566] *See, e.g.*, AARP Comments at 10-11 (suggesting that the Commission encourage a broad range of other federal and state agencies that interact with eligible households to disseminate information about the Affordable Connectivity Program); CETF Comments at 42 (emphasizing the importance of federal agencies with qualifying programs educating qualifying consumers about their eligibility for the affordable connectivity benefit); City of Detroit Comments at 4 (advising streamlined and coordinated ACP communications across state governments and federal government); CTA Reply at 6-7; NCC Comments at (suggesting that the Commission consider hosting virtual town halls for local and state officials and non-profit organizations that can help promote the Affordable

(continued….)

196. We direct the Bureau in conjunction with CGB to collaborate with other relevant federal agencies on efforts designed to ensure that households participating in the relevant qualifying programs are provided with information on the Affordable Connectivity Program, including enrollment information. We direct the Bureau and CGB to identify and engage in specific activities that would best satisfy this collaboration requirement. These activities may include, but are not limited to, developing co-branded awareness campaign materials and coordinating with other federal agencies on email communications about the Affordable Connectivity Program to households participating in qualifying benefit programs.[567]

197. *System of Records Notices Updates.* The Infrastructure Act also requires the Commission to "collaborate with relevant Federal agencies, including to ensure relevant Federal agencies update their System of Records Notices, to ensure that a household that participates in any program that qualifies the household for the Affordable Connectivity Program is provided information about the program, including how to enroll in the program."[568] The *ACP Public Notice* sought comment on how, and whether the Commission has the authority, to compel other agencies to update their System of Records Notices to the extent required to ensure that a household participating in an ACP-qualifying program receives information about the program.[569] The *ACP Public Notice* also sought comment on the steps the Commission could take to ensure that other agencies update their System of Record Notices to allow the use of personally identifiable information in order to share information about the Affordable Connectivity Program.[570]

198. The record does not support a finding that the Commission has the authority to compel other Federal agencies to update their Systems of Records Notices. However, we agree with commenters who note that the statute is sufficient to permit us to collaborate with other agencies.[571] Accordingly, we direct the Bureau, the Office of General Counsel (OGC), and OMD to collaborate with relevant Federal agencies to ensure that households participating in relevant qualifying programs are provided information about the Affordable Connectivity Program, which will include encouraging other federal agencies to update their System of Records Notices to permit information sharing related to the Affordable Connectivity Program.

2. Publication and Outreach Requirements for Participating Providers

199. *Notification to All Internet Service Consumers Upon Subscription or Renewal.* The Infrastructure Act requires participating providers to notify all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll.[572] The *ACP Public Notice* sought comment on the requirement, the meaning of the statutory

(Continued from previous page)
Connectivity Program); UWCA Comments at 31 (urging the Commission to collaborate with other federal agencies to ensure educational promotion of the Affordable Connectivity Program to households who qualify for the program by, for instance, providing flyers and suggested messages to the federal agencies to share in text messages, on their websites, and in consumer-facing field offices).

[567] For the EBB Program, the Bureau coordinated with the Department of Education to outreach Pell Grant recipients and schools concerning the EBB Program. *See* U.S. Department of Education, *Department of Education Launches Outreach Campaign to Millions of K-12 Students and Federal Pell Grant Recipients Now Eligible for Monthly Discounts on Broadband Internet Service* (May 12, 2021),

[568] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(B) (2021).

[569] *ACP Public Notice* at 42, para. 108.

[570] *Id*.

[571] *See* CETF Comments at 42; UWCA Comments at 31.

[572] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(10)(A) (2021).

word "renewing" a subscription[573] for the purposes of this requirement, and effective methods or best practices providers should employ to ensure that such notifications occur.[574] Commenters generally agree that the requirement to notify consumers who "renew" a subscription should be limited to consumers extending a plan that is offered for a fixed term longer than one month and should not apply to consumers on month-to-month contracts.[575]

200. We are persuaded that this is the most logical construction of the statute. As explained below, service providers would still be required to provide notice about the Affordable Connectivity Program to consumers who subscribe to month-to-month internet service at the time the consumer first subscribes to the service and annually thereafter. Accordingly, we conclude that the term "renew" in the relevant section of the Infrastructure Act means extending a fixed-term service contract longer than one month.

201. We require service providers to provide these consumer notices and we adopt the following requirements governing the timing and frequency of the required notices to consumers who subscribe to internet plans about the Affordable Connectivity Program and how to enroll in the program.[576] Specifically, participating providers must notify in writing or orally, in a manner that is accessible to individuals with disabilities, all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll: (1) during enrollment for new subscribers; (2) at least 30 days[577] before the date of renewal for subscribers not enrolled in the Affordable Connectivity Program who have fixed term plans longer than one month; and (3) annually for subscribers not already enrolled in the Affordable Connectivity Program who have month-to-month or similar non-fixed term plans. We clarify that the requirement to notify new subscribers during enrollment also applies to existing subscribers contacting their provider to change service plans.[578] We decline to apply the notice requirement only at the time of initial service enrollment

[573] *ACP Public Notice* at 41, para. 106.

[574] *Id*.

[575] *See* CETF Comments at 41 (stating that "CETF interprets the Infrastructure Act language as providing a way for customers who are either new subscribers or who are re-upping a term contract with a provider to learn about the ACP and have that as a new option if they are eligible"); CTIA Comments at 16 (stating that the renewal notification requirement should not apply to other situations that could be characterized as "subscription" or "renewal," such as customers on month-to-month contracts who "renew" every month and that it would be unnecessarily burdensome to both providers and consumers if providers had to re-inform consumers on month-to-month contracts about the Affordable Connectivity Program each time the customer pays a bill); Google Fiber Comments at 7 (requesting that the Commission define "renewal" as the extension of a long-term service contract); T-Mobile Comments at 24 (stating that the Commission should "confirm that a subscriber only 'renews' a plan that is offered for a fixed term, longer than one month"). As indicated in these comments, requiring this notice each month that a consumer receives month-to-month service would be burdensome to providers and would also likely result in consumer fatigue, rather than meaningful outreach on the Affordable Connectivity Program.

[576] This requirement is separate from, and in addition to, any broadband information label requirement the Commission may adopt in response to the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021), which directs the Commission "to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband Internet access service plans."

[577] Thirty days' notice is consistent with other notice requirements we adopt in this Order.

[578] *See* AT&T Comments at 15 (supporting applying the notice requirement to customers who change their service plans with their existing provider); CETF Comments at 41 (asserting that "[t]he drafters of the Infrastructure Act wisely included this requirement to ensure providers inform their new and continuing subscribers about [the Affordable Connectivity Program]").

for pre-paid customers who typically pay for service on a month-to-month basis.[579] Certain pre-paid customers may experience changed circumstances, such as reduced income or participation in a qualifying program, after they originally subscribed to their Internet service. Requiring providers to annually inform pre-paid customers about the Affordable Connectivity Program would ensure that these consumers remain aware of the Affordable Connectivity Program. Such notifications shall be sent at the specified intervals to coincide with billing cycles or other annual notifications, whichever is more practicable given the nature of the consumer's service plan. Publicly available information (*e.g.*, websites or signage) alone is not sufficient to meet this notification requirement without some form of written or oral communication targeted to the individual subscriber, including but not limited to billing notifications or other emailed or mailed notifications.[580] Providers should also offer these consumer notices in customers' preferred language.[581]

202. The required consumer notice must use clear, easily understood language. We do not prescribe a specific format or language but, to ensure that the notice meaningfully informs consumers about the Affordable Connectivity Program, at a minimum, the notice must indicate: (1) the eligibility requirements for consumer participation; (2) that the Affordable Connectivity Program is non-transferrable and limited to one monthly internet discount and a one-time connected device discount (only if the provider offers ACP discounted devices) per household; (3) how to enroll, such as a customer service phone number or relevant website information; and (4) that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, if it ends, or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions.

203. *Advertising Requirement.* The *ACP Public Notice* proposed that the Commission adopt a service provider advertising requirement for the Affordable Connectivity Program similar to the Lifeline program's advertising requirement.[582] Specifically, the *ACP Public Notice* sought comment on requiring participating providers to indicate on all materials describing the Affordable Connectivity Program: the eligibility requirements for consumer participation; that the Affordable Connectivity Program is non-transferrable and limited to one discount per household; a list of qualifying connected devices, if any, with device specifications; the provider's customer service telephone number, which must be prominently displayed on all promotional materials and on the provider's website; and that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, upon its conclusion or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions.[583] The *ACP Public Notice* also proposed that

[579] *See* Verizon Comments at 19 (requesting that the Commission clarify that providers are not required to send information about the Affordable Connectivity Program to new or renewing subscribers who are already enrolled in the program).

[580] *See* Starry Comments at 23 (requesting that the Commission provide flexibility in how providers notify consumers about the existence of the Affordable Connectivity Program when a customer subscribes to or renews an internet service offering, including, but not limited to, allowing providers to send email notifications or SMS messages, put notices on their website or in bills, or post signage); Verizon Comments at 18-19 (suggesting that the Commission adopt a flexible approach to notice requirements, permitting providers to use their discretion to determine how best to notify their customers and requesting that the Commission permit providers to notify new subscribers about the Affordable Connectivity Program during online ordering processes; by confirmation email, text, or mail; and by in-store display of information).

[581] Several commenters support providing these consumer notices in customers' preferred language. *See* CETF Comments at 41; UWCA Comments at 30; CPUC Reply at 19.

[582] *ACP Public Notice* at 43-44, para. 115; *see* 47 CFR § 54.405(b) (requiring that providers "publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service" using easily understood language).

[583] *ACP Public Notice* at 43-44, para. 115.

providers be required to include in promotional materials how consumers can enroll in the program, including how consumers can best contact the provider in order to enroll in the Affordable Connectivity Program[584] and sought comment on requiring participating providers to clearly display on their website the monetary charges to the customer and the available upload/download speeds and data caps for its internet service offerings.[585] Additionally, the *ACP Public Notice* sought comment on the best methods to publicize the availability of broadband services and connected devices supported by the Affordable Connectivity Program and on whether the Commission should require participating providers to market the Affordable Connectivity Program in the languages spoken in the areas they serve for the ACP.[586]

204. The record reflects some support and some opposition to adopting service provider advertising requirements for the Affordable Connectivity Program.[587] Based on our careful review of the record and in consideration of the importance of disseminating information about the Affordable Connectivity Program, consistent with our approach in the Lifeline program, we adopt a requirement that participating providers publicize the availability of the Affordable Connectivity Program in a manner reasonably designed to reach those consumers likely to qualify and in a manner that is accessible to individuals with disabilities. To comply with these requirements, service providers should utilize outreach materials and methods designed to reach eligible households that do not currently receive service.

205. These service provider advertising requirements are an important complement to the public awareness, consumer notice, and other outreach activities for the Affordable Connectivity Program. Service provider materials describing the Affordable Connectivity Program must include the following information[588] in clear, easily understandable language in a manner that is accessible to individuals with disabilities: (1) the eligibility requirements for consumer participation; (2) that the affordable connectivity benefit is non-transferrable and limited to one monthly internet discount and a one-time connected device discount (only if the provider offers ACP discounted devices) per household; (3) how to enroll, such as a customer service phone number or relevant website information; and (4) that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, if it ends, or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions. We also adopt the proposal to require providers to clearly display on their websites the monetary charges for their current Affordable Connectivity Program service offerings and the available upload/download speeds and data caps for those offerings. As with the EBB Program and Lifeline, providers should develop advertising materials describing the service in the dominant languages of communities they serve through the Affordable

[584] *Id.* at 43, para. 114.

[585] *Id.* at 43-44, para. 115.

[586] *ACP Public Notice* at 43, para. 114.

[587] *See, e.g.*, UWCA Comments at 33-34 (recommending that the Commission provide a list of suggested advertising tactics and require a semiannual report on what advertising was done, dates, times and samples of the advertising); CETF Comments at 45. *But see, e.g.*, CTIA Reply at 6-7; USTelecom Comments at 2 (arguing that the Commission should not create prescriptive rules about how to promote the Affordable Connectivity Program because providers already have market incentivizes to promote the program); Verizon Comments at 20-21 (requesting that the Commission not adopt a Lifeline-style advertising requirement on ACP providers and stating that market forces create significant incentive to advertise the program); Verizon Reply at 13. Many service providers that participate in the Affordable Connectivity Program also participate in the Lifeline program and are already familiar with the advertising requirements that we adopt today.

[588] The term "materials describing the service" includes all print, audio, video, and web materials used to describe or enroll in the Affordable Connectivity Program service offering, including application and certification forms. *See* 47 CFR § 54.405(c).

Connectivity Program.[589] As with the Lifeline program, participating service providers have flexibility in how they satisfy this requirement and must retain documentation sufficient to demonstrate their compliance with this requirement and consistent with the recordkeeping requirements we adopt for the Affordable Connectivity Program.[590]

206. *Public Awareness Campaigns.* Finally, the Infrastructure Act requires participating providers, in collaboration with state agencies, public interest groups, and non-profit organizations, to carry out public awareness campaigns in their areas of service that highlight the value and benefits of broadband internet access service, and the existence of the Affordable Connectivity Program.[591] The *ACP Public Notice* sought comment on the most effective ways for providers to collaborate with state agencies, non-profit organizations, and public interest groups to promote the Affordable Connectivity Program as required under the Infrastructure Act.[592] Commenters provide proposals for collaboration between participating service providers and state agencies, non-profit organizations, and public interest groups.[593]

207. Consistent with the Infrastructure Act, we adopt a requirement that participating service providers carry out public awareness campaigns in their Affordable Connectivity Program areas of service that highlight the value and benefits of broadband internet access service and the existence of the Affordable Connectivity Program in collaboration with state agencies, public interest groups, and non-profit organizations.[594] We give participating providers flexibility as to how they fulfill this requirement.[595] We do not prescribe specific forms of outreach that service providers must use to satisfy the public awareness obligation—activities such as virtual or in-person events and print, electronic, radio and voice communications in collaboration with state agencies, public interest groups, and non-profit

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[589] *See* USAC, Advertise Lifeline, https://www.usac.org/lifeline/rules-and-requirements/advertise-lifeline/ (last visited Jan. 7, 2022); *see also, e.g.*, Black Women's Roundtable Comments at 3.

[590] USAC's website provides a list of activities that would satisfy the Lifeline advertising requirements. USAC, Advertise Lifeline, https://www.usac.org/lifeline/rules-and-requirements/advertise-lifeline/ (last visited Jan. 7, 2022). These same activities would also satisfy the Affordable Connectivity Program advertising requirements. The record indicates the need to give providers flexibility to carry out the advertising requirements. *See* AT&T Comments at 16; USTelecom Comments at 9; Verizon Comments at 20.

[591] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(8) (2021).

[592] *ACP Public Notice* at 43, para. 114.

[593] *See, e.g.*, VTDPS Comments at 7-8 (recommending that participating providers be required to supply printed flyers to each school and food shelf in their service areas and that participating providers work with senior centers, schools, libraries, childcare centers, community action centers, state consumer advocacy agencies, state assistance programs for low-income families, and health clinics to reach the most vulnerable populations eligible for the Affordable Connectivity Program).

[594] The Infrastructure Act specifically references collaboration with state agencies, public interest groups, and non-profit organizations. However, we acknowledge that local social services agencies, schools, and other organizations that administer qualifying government assistance programs are also important program partners and stakeholders for the Affordable Connectivity Program. Accordingly, service provider public awareness activities in collaboration with these entities would also satisfy the service provider public awareness obligation.

[595] The record supports giving providers flexibility rather than being overly prescriptive with respect to the public awareness obligations. *See* ACA Comments at 26 (arguing that the Commission should take account of service provider resources in adopting any requirements on providers to participate in public awareness campaigns and "should only require smaller providers to make best efforts with regard to participation in public awareness campaigns and should not be expected to conduct such campaigns unilaterally in the absence of 'collaboration' partners"); CCA Comments at 10-11 (requesting that the Commission not impose any public awareness requirements more stringent than the existing Lifeline requirements);; *see also* NTCA Reply at 11 (urging the Commission "to recognize the importance of relying on more than providers to advertise the ACP" and stating that "[s]mall providers often have limited workforces that require their staff to 'wear many hats,'" which "limits the time and resources they can dedicate to advertising the [Affordable Connectivity Program]").

organizations are examples of activities that would satisfy the public awareness obligations. We also do not establish a fixed number of activities that service providers must complete in order to satisfy this requirement and do not require service providers to collaborate with specific organizations to fulfill their public awareness obligations. However, participating service providers must frequently engage in public awareness activities focused on participation in the Affordable Connectivity Program and in collaboration with the specified types of organizations. We encourage providers to look to the record for strategies to fulfill their public awareness obligations. Activities that participating providers undertake to comply with the advertising requirements[596] in collaboration with the specified types of organizations may also satisfy the public awareness obligations. Participating providers must retain documentation sufficient to demonstrate their compliance with the public awareness obligations and consistent with the recordkeeping requirements we adopt for the Affordable Connectivity Program.

3. Commission Guidance

208. The Infrastructure Act provides that the Commission may issue guidance, forms, instructions, publications, or technical assistance as necessary or appropriate to carry out the Affordable Connectivity Program, including actions intended to ensure that "programs, projects, or activities" are completed in a timely and effective manner. We direct the Commission staff and USAC to develop comprehensive provider education and training programs, as well as consumer outreach plans. We also direct USAC to develop and implement, under the oversight of the Bureau, CGB, and OCBO, training and provide information necessary to successfully participate in the Affordable Connectivity Program. We direct USAC both to educate service providers on the ACP and to engage in consumer outreach to complement the efforts Commission staff will undertake in response to this Order. We also direct CGB including the Office of Native Affairs and Policy, and OCBO to coordinate with USAC to develop educational and informational communications and materials to advertise the Affordable Connectivity Program, such as a webpage and digital toolkit in a printable format and translated into other languages that can easily be accessed by service providers, organizations, and the public.

G. Data Reporting and Performance Goals

1. Tracking and Reporting of Available Funding

209. In the *EBB Program Order*, the Commission instructed USAC to develop a tracker that reports on disbursements and program enrollment to allow providers and the public to monitor the balance of the Emergency Broadband Connectivity Fund.[597] The *ACP Public Notice* asked for comment on how the stakeholders used the EBB Program data published and whether posting similar enrollment and claims data for the Affordable Connectivity Program would be useful.[598] One commenter reports that it used the EBB enrollment data to "determine efficacy of internet subsidies and to identify areas where additional investments were needed to bridge the digital divide" and it plans to use any ACP enrollment data in a similar manner.[599] Consistent with our approach in the EBB Program, we find that

[596] *See supra* at paras. 204-206.

[597] The Commission committed to create a tracker that, at a minimum, would display 1) the number of EBB Program households enrolled in NLAD; 2) the number of net new households enrolling into the Program each week; and 3) the total dollar amount of the reimbursement claims approved to date, disaggregated by monthly amounts for Internet access service and associated equipment, as well as connected devices, with historical data remaining so that the public can monitor any trends in the disbursement rates between updates. *EBB Program*, 36 FCC Rcd 4162, 4665-66, paras. 111-112. *See also* Press Release, FCC, *Five Million Households Enrolled in Broadband Discount Program* (Aug. 27, 2021), https://docs.fcc.gov/public/attachments/DOC-375271A1.pdf.

[598] *ACP Public Notice* at 45, para. 117.

[599] Los Angeles County Comments at 6; *see also* NCLC/UCC-MJ at 34 (showing support for the data that was released for the EBB Program); United Ways of California Comments at 34-35 (same); City of Seattle Reply at 5 (supporting the availability of data at the 5-digit ZIP code level because "it is at the 5-digit zip level that local partners can best identify efforts that are working in advertising EBB/ACP and tracking program enrollment.").

publishing enrollment data for the Affordable Connectivity Program will empower our outreach partners and promote transparency about the program. Therefore, we direct USAC, subject to oversight of the OEA and the Bureau, to develop a tracker and make it available on either the Bureau's website or USAC's website. In the tracker, USAC should include enrollment data including, enrollee age category, eligibility category, type of broadband service, and enrollment numbers by five-digit ZIP code areas. USAC shall update the posted information regularly.[600] We direct the Bureau and OEA, with support from USAC, to develop a process to mask data as necessary, consistent with the Privacy Act.[601] We further direct OEA and the Bureau to take into consideration the types of data requested by commenters when determining the additional program data, if any, that can be made available.[602]

210. *Performance Measures.* In the *ACP Public Notice*, the Bureau sought comment on what performance measures the Commission should use to determine the success of the Affordable Connectivity Program.[603] Similar to the Lifeline and EBB Program, the Affordability Connectivity Program will subsidize the internet bills of low-income households on a monthly basis; thus, the Commission plans to establish program goals consistent with those of the Lifeline and EBB Programs The Commission establishes three goals for the Affordability Connectivity Program: (1) reduce the digital divide for low-income consumers, (2) promote awareness and participation in the Affordable Connectivity Program and the Lifeline program, and (3) ensure efficient and effective administration of the Affordability Connectivity Program.

211. Narrowing the digital divide has been an ongoing priority for the Commission and is one of the goals for the Lifeline program. We agree with EducationSuperHighway that a primary goals of the Affordability Connectivity Program should be to close the digital divide by reducing the broadband affordability gap.[604] We direct the Bureau and OEA, with support from USAC, to collect as necessary appropriate data and develop metrics to determine progress towards this goal, such as broadband adoption by first-time subscribers,[605] and increasing enrollments in areas with low broadband internet penetration rates.[606]

212. Our second goal is to increase awareness of and participation in the Affordability Connectivity Program. We agree with EducationSuperHighway and Oakland Undivided that the Commission should invest in direct, data-driven outreach to unconnected households to increase

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[600] Tracking and reporting are independent of the statutory reporting and transparency requirements of The Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. No 109-282, (2006), as amended. In the Act Congress required the Office of Management and Budget (OMB) to create a public database to enable tracking of federal funds awarded to the final recipient level. 31 U.S.C. § 6101 note. *See* USAspending.gov (containing a vast array of other information about federal spending and recipients).

[601] 5 U.S.C. § 552a.

[602] United Ways of California at 34-35 (seeking, among other things, data on enrollments by provider, by ZIP Code); NaLA Comments at 34 (requesting data on how well the National Verifier and NLAD are performing and which service providers are best serving ACP beneficiaries); City of Detroit Comments at 6 (seeking enrollment data by Census block groups or tracts, which will allow the "ACP data to be integrated with other Census-level data to help show positive digital equity change over time, as well as promoting a sense of local accountability.") City of Boston, et al. Comments at 22 (requesting county-level data on how subscribers are being connected, i.e. mobile versus fixed broadband versus satellites.).

[603] *ACP Public Notice,* at 46.

[604] EducationSuperHighway Comments at 5-6.

[605] Specifically the Commission intends to capture households subscribing to broadband internet for the first time as well as those subscribing to fixed broadband for the first time.

[606] Penetration rates for Internet Access Services by Census tract are publicly available at https://www.fcc.gov/form-477-census-tract-data-internet-access-services).

awareness of the Affordable Connectivity Program.[607] To meet this goal we will work with community partners to increase consumer engagement with low-income individuals in underserved areas. We direct USAC to continue to publish enrollment data by geographic regions. To measure progress towards this goal, we will monitor the participation over time and by area. Additionally, we direct the Bureau and OEA, with support from USAC, to collect the appropriate data as necessary, including possibly a survey that measures the general public's awareness of the Affordability Connectivity Program.

213. We adopt as our third goal efficient and effective administration of the Affordability Connectivity Program. We will measure success towards this goal by evaluating the speed and ease of the application process and the reimbursement process, and the overall burden of the program on consumers. To measure the first performance metric, we will conduct consumer and provider outreach that will aim to capture program satisfaction. In addition, we will seek feedback from our state, community, and non-profit partners helping to educate consumers on the application process. For our second performance measure, we follow the *2012 Lifeline Report and Order's* proposed measure of consumer burden, which divides the total inflation-adjusted expenditures of the low-income program each year by the number of households in the United States and express the measure as a monthly dollar figure.[608] This calculation will rely on publicly available data and will therefore be transparent and easily verifiable.

H. Transition of Legacy EBB Program Households

214. The Commission takes seriously the need to ensure that legacy EBB Program households that transition to the Affordable Connectivity Program do not experience adverse experiences such as bill shock as a result of the lower $30 non-Tribal benefit under the Affordable Connectivity Program or a downgraded service offering. The *ACP Public Notice* proposed requiring legacy EBB Program households to opt in, or affirmatively request enrollment in the Affordable Connectivity Program after the end of the 60-day transition period, given the differences in the two programs, notably the reduced $30 non-Tribal benefit level.[609] Comments received are mixed, with support for both the opt-in approach as well as an opt-out approach.

215. Based on our careful review of the record, we find that a uniform opt-in approach for all legacy EBB households that transition to the Affordable Connectivity Program is unnecessary and would likely result in significant de-enrollments due to consumer failure to opt in timely rather than a desire not to participate in the Affordable Connectivity Program, and would also frustrate the transition process, create consumer confusion, and increase administrative burdens on service providers and consumers.[610]

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[607] Oakland Undivided Comments at 8; EducationSuperHighway Comments at 19-20.

[608] *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7929-40, paras. 1-40 (2015) (*2015 Lifeline Further Notice*).

[609] *ACP Public Notice* at 47-48, paras. 122-23.

[610] Numerous commenters advocate against any opt-in requirement because of the potential harms that could accompany a uniform opt-in requirement for all legacy EBB Program households. *See, e.g.*, T-Mobile Comments at 5; MMTC comments at 15-16; Verizon Comments at 5; Smith Bagley Inc. Comments at 4-6; ACP Provider Comments at 2-4; NTCA Comments at 7-9; Wireless Internet Service Providers Association at 6; NaLA Comments at 6-9; Dish Wireless Comments at 5; Asian American Tech Table Comments at 3; Letter from Antonio Tijerino, Hispanic Heritage Foundation, and Sindy Benavides, League of United Latin American Citizens at 2-3 (filed Dec. 17, 2021). *But see, e.g.*, National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 (supporting an ACP opt-in requirement only for legacy EBB consumers who would experience an increase in their bill as a result of the reduced $30 non-Tribal ACP benefit); California Emerging Technology Fund Comments at 50; Letter from Jenna Leventoff, Public Knowledge at 1-2 (filed Dec. 2, 2021); Free Press Reply at 7 (advocating for requiring consent before transitioning legacy EBB households to the Affordable Connectivity Program). Many of these commenters opposing an opt-in requirement provide real world examples demonstrating that there is a significantly high risk that large numbers of legacy EBB Program households would not complete an

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We also believe that an across-the-board opt-out approach does not provide consumers enough agency in this decision. Instead, as explained below, we adopt a hybrid approach that takes into consideration the various categories of legacy EBB households, and each category's respective potential level of risk for a negative experience. While we do not adopt a uniform opt-in requirement for all legacy EBB households, as explained below, opting in is one of multiple options that service providers can take to minimize potential bill shock for legacy EBB households that would experience an up to $20 bill increase and have not previously demonstrated a willingness or ability to pay for broadband. The nuanced approach we outline below carefully balances consumer interests and the interest in avoiding large scale de-enrollments simply due to failure to timely complete an opt-in requirement.

216. The record highlights the complexity of this issue and the importance of allowing maximum flexibility. Any solution needs to balance the at-times competing objectives of maintaining a subsidized broadband service to participating households, avoiding bill shock and financial harm to consumers, and consumer confusion, and fully informing participating households so they understand the broadband service options available to them.[611] In arriving at the hybrid approach, we take into consideration these important objectives and the belief that a uniform approach regardless of whether that approach is an opt-in or an opt-out approach, runs a significant risk of subjecting a large percentage of the enrolled households to an adverse experience.

217. There are multiple categories of legacy EBB households that would have very different experiences as a result of the reduction to the $30 non-Tribal benefit amount given their varied circumstances. As commenters explain, many legacy EBB Program households will not experience a rate change because their supported Internet service already costs $30 or less a month or because they reside on qualifying Tribal lands and the Tribal benefit level has not changed.[612] Other legacy EBB Program households are unlikely to face unexpected financial harm as a result of an up to $20 bill increase because they previously demonstrated to their current provider a willingness to pay something for their broadband service, such as by paying some fee for an EBB-supported internet service, being the provider's existing paying customer for internet service before enrolling in the EBB Program, or consenting to the provider's general terms and conditions if they continued to receive their current service after the end of the EBB Program.[613] However, for households who have not previously demonstrated a willingness to pay for continued internet service, there may be a stronger risk of potential bill shock from an up to $20 bill increase as a result of a reduced benefit amount.

218. As noted above, we do not adopt a uniform opt-in requirement for legacy EBB Program households that transition to the Affordable Connectivity Program because in some cases the consumer may not experience a bill change, and for other consumers the significant potential for consumer harm is far greater than an up to $20 bill increase.[614] After careful consideration of the record, we adopt a hybrid

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opt-in requirement even if doing so would be beneficial to the household. *But see, e.g.,* National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 (supporting an ACP opt-in requirement only for legacy EBB consumers who would experience an increase in their bill as a result of the reduced $30 non-Tribal ACP benefit); California Emerging Technology Fund Comments at 50; Letter from Jennifer Leventoff, Public Knowledge at 1-2 (filed Dec. 2, 2021); NaLA Reply at 8 (stating "opt-in should only be required if the EBB subscriber would incur an additional expense or co-pay such that 'bill shock' could occur.").

[611] Letter from Asian Americans Advancing Justice et al. (filed Dec. 22, 2021).

[612] *See, e.g.*, Smith Bagley Inc. Comments at 3-4; T-Mobile Comments at 5; MMTC Comments at 15.

[613] Letter from Brian Hurley, ACA Connects at 3 (filed Dec. 23, 2021) (explaining that some households have demonstrated their willingness to pay for broadband service).

[614] *See, e.g.*, Asian American Tech Coalition Comments at 3 ("It would be more detrimental to households who had been previously relying on a $50 dollar subsidy for broadband service to lose the entirety of that benefit rather than seeing a reduction of $20 dollars and also having the option to change plans or cancel at any time."); NTCA Comments at 8 ("[O]n balance, it is far more important that subscribers not be de-enrolled and suddenly facing an

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approach tailored to the unique concerns and needs of each legacy subscriber category, with opting-out being an appropriate approach for most legacy EBB subscribers, and opting-in being one of several options for certain legacy EBB households most likely at risk of potential bill shock as a result of the reduced subsidy amount.[615]

219. The first subscriber category we address is legacy EBB households that would not experience a bill change as a result of the reduction of the non-Tribal benefit level to $30. This category includes subscribers whose current supported internet service cost is equal to or less than $30 per month, as well as subscribers who reside on qualifying Tribal lands and will continue to receive the same $75 benefit level. We will not require this category of subscribers to opt-in to continue to participate in the Affordable Connectivity Program after the end of the transition period. Based on the record, given that these subscribers would not experience any bill change as a result of the reduced non-Tribal benefit amount, requiring these subscribers to opt-in to continue participation in the Affordable Connectivity Program after the transition period is not warranted and would likely be significantly detrimental.[616] The notices that have already been issued to all legacy EBB subscribers sufficiently advise this category of subscribers of the change in the program name, retention of the $75 Tribal benefit amount and reduction of the non-Tribal benefit to $30.[617] For this category of legacy EBB households, participating providers must retain documentation sufficient to demonstrate that this is the applicable transition path, consistent with the document retention requirements we adopt in this Order.

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inability to afford their broadband service due to the complete lapse of any benefit."). *But see, e.g.*, National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 (supporting an ACP opt-in requirement only for legacy EBB consumers who would experience an increase in their bill as a result of the reduced $30 non-Tribal ACP benefit); California Emerging Technology Fund Comments at 50; Letter from Jennifer Leventoff, Public Knowledge at 1-2 (filed Dec. 2, 2021); NaLA Reply at 8 (stating "opt-in should only be required if the EBB subscriber would incur an additional expense or co-pay such that 'bill shock' could occur.").

[615] *See, e.g.*, Asian American Tech Coalition Comments at 3 ("It would be more detrimental to households who had been previously relying on a $50 dollar subsidy for broadband service to lose the entirety of that benefit rather than seeing a reduction of $20 dollars and also having the option to change plans or cancel at any time."). We recognize that the approaches we adopt today for the transition of legacy EBB households to the Affordable Connectivity Program differ from the sunset requirements we initially adopted for the end of the EBB Program. To prevent consumer bill shock after the end of the EBB Program, the EBB Program rules required participating providers to obtain consumer consent to continue service at a higher discount level after the end of the EBB Program before those consumers could be charged a higher rate as a result of the end of the EBB Program, and to also provide monthly disclosures that the EBB Program benefit was temporary and consumers would be subject to the provider's general terms and conditions if they choose to continue receiving service after the end of the EBB Program. *See* 47 CFR § 54.1610(d) (waived by the Bureau in November 2021 in Emergency Broadband Benefit Program; Affordable Connectivity Program, WC Docket No. 20-445 and 21-450, Order, DA 21-1477 (WCB Nov. 26, 2021)); *EBB Program* Order, 36 FCC Rcd at 4671, para. 128. Those requirements were adopted before the establishment of the Affordable Connectivity Program which continues to provide qualifying households a broadband benefit albeit at a reduced $30 non-Tribal monthly benefit (or $75 for households residing on qualifying Tribal lands). Accordingly, the transition of legacy EBB households to the Affordable Connectivity Program warrants a different approach.

[616] *See, e.g.*, Letter from Julie Veach, counsel to GCI (filed Dec. 23, 2021); Letter from Alan Buzacott, Verizon at 2 (filed Dec. 23, 2021) (opposing an opt-in requirement and stating "many EBB households will continue to receive broadband service at no cost after the transition period ends"); National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 (supporting an opt-out transition "if the consumer is on a product that will not incur any cost in the transition from a $50 EBB benefit to a $30 ACP benefit."); MMTC Comments at 15 (noting that some households receive free-to-the-end-user service and "if they fail to opt-in, their monthly bill will increase from $0 to $30 per month, which could be particularly devastating if the household does not realize the change and accumulates months' worth of additional fee.").

[617] *See December 8th Guidance Order* at 7-8, para. 20 (discussing service provider and USAC notices to legacy EBB Program households about the program changes).

220. Next, we address the category of legacy EBB Program households that would experience a bill increase as a result of the reduction of the non-Tribal discount to $30 but have already expressed to their current EBB provider a willingness and an ability to pay for broadband. This category includes EBB households that (1) were existing paying internet service customers with the broadband provider when the household enrolled in the EBB with that provider; (2) previously consented to the provider's general terms and conditions if they continued to receive service at the end of the EBB Program; or (3) currently pay a fee for their supported internet service.[618] This category of households has demonstrated to their current provider a willingness to pay for internet service; therefore, we find that there is little risk of unexpected financial harm even if their bill may potentially increase up to $20. Moreover, these customers have a pre-existing relationship with their broadband provider and thus are more accustomed to notices, changes in their service plans or bills, and are familiar with how to contact their provider. Based on the record, we are persuaded that for this category of subscribers, the ability to opt out of the Affordable Connectivity Program or change their service is sufficient because there is little risk that any increased costs for these subscribers are unexpected, and any increased costs these subscribers incur would be smaller than the potential costs these subscribers would incur if they failed to timely opt in.[619] The prior consumer notices issued to all legacy EBB Program households, and the additional notice expectations described in this section, informed this category of legacy EBB Program households about the reduced $30 non-Tribal benefit amount, the 60-day duration of the limited transition period with the continued $50 EBB Program benefit level, and their ability to change service or to opt-out of the Affordable Connectivity Program.[620] As explained below, we strongly encourage service providers to continue to inform legacy EBB households about the reduced $30 non-Tribal benefit and their ability to opt out or change their service even after the March 1, 2022 end of the transition period. For this category of legacy EBB households, participating providers must retain documentation sufficient to demonstrate that this is the applicable transition path, including any consumer consent to continue service at a higher rate after the end of the EBB Program, consistent with the document retention requirements we adopt in this Order.

221. Finally, we address the category of legacy EBB Program households that would experience a bill increase as a result of the reduction of the non-Tribal discount to $30 but *have not* indicated to their current provider a willingness or an ability to pay for broadband either generally or at the end of the EBB Program. This third category includes households that did not have a pre-existing

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[618] *See, e.g.*, Letter from Brian Hurley, ACA Connects at 3 (filed Dec. 8, 2021) (explaining that legacy EBB Program households that expressed a willingness to pay for broadband would most likely want to keep their service even with a reduced discount, and are more likely to benefit from an opt-out rather than an opt-in approach).

[619] *See* Letter from Steven Morris, NCTA at 2 (filed Dec. 22, 2021) (stating "Opt-in particularly does not make sense given that many existing EBB participants were paying the non-discounted price for their service before the EBB program began."); MMTC Comments at 16 ("the monthly payment of EBB Program-enrolled households currently on a plan that provides greater than a $30 benefit would be less than what it would be if they were required to opt-in and failed to do so"); Verizon Reply at 3 (stating that "many existing EBB customers that have already provided affirmative opt-in to keep their current service after the EBB program ends"); Common Sense Media and Public Knowledge Reply at 5 (supporting opt-out rather than opt-in "[i]f the subscriber was a customer of the ISP prior to enrolling in the EBB program and, when signing up for the EBB, expressed (through an opt-in selection) a willingness to continue paying for service should the EBB program end."); ACA Reply at 7. ACA states that an opt-out approach should also apply to households that would only experience a minimal bill increase. *See* ACA Reply at 7. However, determining the transition approach based on the amount of bill increase is problematic because each household has unique financial circumstances and as a result may be impacted differently by the same rate increase. Therefore, we decline to adopt this proposal.

[620] Participating providers and USAC have already issued notices to legacy EBB Program households about the change from the EBB Program to the Affordable Connectivity Program, the monthly benefit levels provided under the Affordable Connectivity Program, and the consumer's ability to change their service. *See December 8th Order*, at 7-8, para. 20.

paying customer relationship with their current provider and have not consented to the providers' general terms and conditions if they continued service after the end of the transition period, or do not currently pay a fee for their EBB Program service. Given that households in this third category of legacy EBB households have not indicated to their current provider a willingness or ability to pay for broadband, we are concerned that there is a higher potential for bill shock and financial harm for this category of legacy EBB Program households. We are also concerned that, for this category of subscribers, solely providing a reminder of the right to opt out or change service may not be sufficient to mitigate the potential for unexpected financial harm. While an opt-in requirement could protect these consumers from potential bill shock,[621] we are persuaded that requiring opt-in as the only transition path for this category of legacy EBB Program households could have an even greater financial impact on these households.[622]

222. To minimize the potential unexpected financial impact for this third category of legacy EBB households, we conclude that the better approach is to give providers multiple transition options: (1) switch the household to an internet service that costs $30 or less a month after providing advance notice in advance of this change;[623] (2) continue to provide the current level of service without increasing the household's bill if the provider has internet service options priced at $30 per month or less; or (3) obtain the consumer's opt-in to continue to receive its current service with the $30 benefit level before the first increased bill after the March 1, 2022 end of the transition period.[624] Providing three options for this category gives participating providers flexibility to pick the transition path that is the least burdensome for the particular provider and its customers and least likely to result in bill shock and consumer de-enrollments, while also providing time to obtain consumer opt-ins if the provider chooses that path. Where a service provider elects to switch a household to a $30 or lower priced service after notice, the household can contact the provider and affirmatively request a different service, at which time it would be informed of the out-of-pocket costs associated with that different service.[625] Given that providers may choose from one of three transition path options for this category of legacy EBB households, we do not anticipate this approach will be extremely burdensome to providers, and also anticipate that many providers would elect a consumer opt-in is as a last resort. Many participating providers already offer a

[621] *See, e.g.*, National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 (supporting an ACP opt-in requirement only for legacy EBB consumers who would experience an increase in their bill as a result of the reduced $30 non-Tribal ACP benefit); California Emerging Technology Fund Comments at 50; Letter from Jennifer Leventoff, Public Knowledge at 1-2 (filed Dec. 2, 2021); NaLA Reply at 8 (stating "opt-in should only be required if the EBB subscriber would incur an additional expense or co-pay such that 'bill shock' could occur."); Common Sense Media and Public Knowledge Reply at 6 (advocating for an opt-in requirement for consumers whose bill would increase, except in limited circumstances).

[622] *See, e.g.*, Asian American Tech Coalition Comments at 3 ("It would be more detrimental to households who had been previously relying on a $50 dollar subsidy for broadband service to lose the entirety of that benefit rather than seeing a reduction of $20 dollars and also having the option to change plans or cancel at any time.").

[623] *See, e.g.*, NDIA Comments at 20 (advocating for requiring providers to switch legacy EBB Program households to lower-priced plans to otherwise avoid a bill increase); Letter from Brian Hurley, ACA Connects Comments at 3 & n.5 (filed Dec. 23, 2021) (indicating that providers have the option to switch consumers to a lower-priced plan to avoid a bill increase); Black Women's Roundtable Reply at 3 (supporting NDIA's hybrid proposal); Verizon Reply at 3 (stating that the Commission should not require providers to switch households to a $30 or lower priced service but "[t]he Commission should make clear that service providers may move an existing EBB customer to a lower-priced service, including a service that is fully covered by the $30 ACP benefit, after providing notice to the customer."). We further note that in this instance, switching the consumer to a $30 or lower priced-plan is being done to prevent potential bill shock in connection with the reduced benefit amount and, therefore, would not violate the prohibition against improper downselling that we adopt in this Order.

[624] *See* Letter from Brian Hurley, ACA Connects at 3 & n.5 (filed Dec. 23, 2021) (indicating that for some legacy EBB Program households, the provider would cover the difference between the two discount levels).

[625] We acknowledge consumer's right to select their service, but allow switching the consumer's service as an option due to the significant risk of bill shock for this consumer group.

$30 per month or less internet service or indicated an intent to do so for the Affordable Connectivity Program.[626] Certain providers have also indicated that they would waive the $20 monthly bill increase for legacy EBB households who transitioned to the Affordable Connectivity Program until they are able to move those subscribers to a $30 monthly service.[627] Where a provider elects to switch legacy EBB Program households to a supported internet service that costs $30 or less, the provider must first give the household advance notice as soon as practicable before changing their service and in that notice remind the household that it has the right at any time to opt-out of the Affordable Connectivity Program or change its ACP service or ACP provider. For providers that elect to obtain household opt-ins for this third category of legacy EBB households, the provider must use clear, easily understood language that informs the household of the increased rate amount, that it will be de-enrolled from the program if they do not opt in within thirty days of the opt-in request, that it have the right to opt-out of the Affordable Connectivity Program, cancel or change its service or provider at any time. Participating providers must retain documentation concerning the transition path they took for this third category of legacy EBB Program households, including any household opt-ins, consistent with the document retention requirements we adopt in this Order.

223. *Additional Notices for Legacy EBB Households About the Reduced Non-Tribal Benefit and Ability to Opt-Out.* We find that it is important continue to provide notifications about program changes to legacy EBB Program households for at least one month after the transition period ends on March 1, 2022 about the program changes, particularly for participating households whose bill increases as a result of the reduced monthly non-Tribal benefit under the Affordable Connectivity Program.[628] As the Commission has previously acknowledged, service providers play an important role in communicating with their subscribers about important program changes.[629] We encourage participating providers to continue to disseminate information to their legacy EBB subscribers whose bill increased as a result of the reduced $30 monthly non-Tribal benefit, including: (1) a reminder that the non-Tribal ACP benefit is $30 per month; (2) a reminder that the household has the right to cancel or change its service, or switch providers without incurring an early termination fee; and (3) a reminder that the household has the

[626] *See* Letter from A.J. Burton, Frontier Communications at 1 (filed Dec. 23, 2021) (noting Frontier's "competitive low-income offerings of $19.99 for speeds up to 50 Mbps."); National Consumer Law Center and United Church of Christ Media Justice Ministry Reply at 6 (stating "virtually all providers seek to automatically enroll consumers into the new ACP, and in most cases are willing to transition those customers to a lower-cost option covered by the ACP benefit in order to do so"); Letter from Jenny Prime, Cox at 1 (filed Dec. 27, 2021) ("Cox's goal is to continue to provide a fully subsidized option for customers seeking ACP wherever possible despite the lower ACP support level of $30."). Certain commenters note that all participating providers may not have a $30 or less Internet plan and oppose a requirement that service providers switch legacy EBB households to a $30 or less plan. *See* Verizon Reply at 3; AT&T Reply at 6. As noted above, switching a legacy EBB household's plan is not the only transition option we provided for this third category of legacy EBB households.

[627] *See* Letter from Jenny Prime, Cox at 2 & n.3 (filed Dec. 27, 2021) (stating that Cox intends to waive the $20 bill increase "for the limited number of existing EBB customers with pre-paid service after the 60-day transition period until other options, such as migrating them to post-paid services, are available.")

[628] *See* Letter from Asian Americans Advancing Justice et al. (filed Dec. 22, 2021) (requesting that the Commission ensure that legacy EBB Program households "receive clear and repeated notice that the program is transitioning, and they may opt out or choose an alternative provider at any time" with special attention given to consumers who " might face new or increased out-of-pocket costs by the transition in March."); National Consumer Law Center and United Church of Christ Media Justice Ministry Reply at 8 (advocating for at least four consumer notifications over the 60-day period, preferably using multiple channels of communication); National Consumer Law Center and United Church of Christ Media Justice Ministry Comments at 36 ("All EBB participants should receive clear and repeated notice that the program is transitioning and they may opt out or choose an alternative provider at any time."); Common Sense Media and Public Knowledge Comments at 9 (supporting multiple consumer notices).

[629] *EBB Program Order*, 36 FCC Rcd at 4670, para.125.

right to opt out of the Affordable Connectivity Program at any time.[630] If a service provider is already offering or intends to offer an ACP service that would eliminate or lessen the rate increase, it would also be useful for service providers to include that information. To maximize the potential consumer outreach on these issues, we also strongly encourage participating providers to post this information on their website in a location that is highly visible for legacy EBB Program households. These notices, along with the additional notices that have already been issued concerning the change from the EBB Program to the Affordable Connectivity Program, will ensure that legacy EBB Program households whose bills increased as a result of the reduced ACP non-Tribal benefit amount are aware of the actions they can take to avoid paying a higher rate for their ACP-supported internet service.

224. *Legacy EBB Program Household Reliance on Prior Household Worksheet for the EBB Program.* We will not require legacy EBB Program households who transition to the Affordable Connectivity Program to submit a new household worksheet if they reside at the same address as another ACP subscriber.[631] The record demonstrates that this requirement is unnecessary given that these households already completed a household worksheet less than a year ago to participate in the EBB Program, and that requiring these households to complete a new household worksheet would impose significant burdens for consumers and providers without providing any real programmatic benefit.[632] However, we delegate authority to the Bureau to require legacy EBB Program households who reside at the same address as another ACP household to complete a new household worksheet if the Bureau determines that this would be necessary to promote program integrity, facilitate the administration of the Affordable Connectivity Program, or otherwise support program goals.

225. *Reverification of Legacy EBB Subscribers.* The Bureau previously provided guidance concerning the reverification requirements for legacy EBB Program households who qualified for the EBB Program based on substantial loss of income since February 29, 2020 or a service provider's COVID-19 program which are no longer qualifying programs for the Affordable Connectivity Program.[633] These reverification efforts are underway and will be completed by March 1, 2022.[634] One commenter requested that these reverification efforts be delayed and instead completed as part of any annual recertification requirements the Commission adopts for the Affordable Connectivity Program rather than by March 1, 2022.[635] However, this approach is in direct conflict with the statute as it would result in these households continuing to receive an Affordable Connectivity Program benefit well beyond

[630] This notice expectation content reflects our consideration of the record and appropriately balances consumer interests and service provider interests. *See, e.g.,* Verizon Comments at 6 (expressing concerns about the timing of the benefit amount change and potentially overly prescriptive notice requirements); City of Seattle Comments at 6 (providing recommendations on the content of the consumer notices); ACP Provider Comments at 4-5 (same); USTelecom Comments at 9 (same); Common Sense Media and Public Knowledge Comments at 9 (same).

[631] *See ACP Public Notice* at 47, para. 122 (proposing to require legacy EBB Program households to complete a new household worksheet if they reside at the same address as another Affordable Connectivity Program household). Consistent with the one-per household limitation and recertification requirements we adopt today, legacy EBB households may still be required to complete a new household worksheet if they change their address to an address shared by another ACP household, or as indicated in the recertification rules we adopt for the Affordable Connectivity Program.

[632] *See* NaLA comments at 10; Alaska Communications Inc. Comments at 3-4. *But see* California Emerging Technology Fund Comments at 50 (supporting requiring completion of a new household worksheet and expressing concern that some service providers do not allow more than one benefit even when the household worksheet shows more that there is more than one economic household at an address). We remind participating providers of their obligation to comply with the household definition under the Affordable Connectivity Program rules.

[633] *See December 8th Guidance Order* at 6-7, paras. 16-20.

[634] *Id.* at 6-7, paras. 15-19.

[635] *See* T-Mobile Comments at 8.

the 60-day transition period mandated in the Infrastructure Act, despite relying on eligibility criteria that no longer apply to the Affordable Connectivity Program. Accordingly, we do not modify the Bureau's prior guidance concerning reverification for certain legacy EBB Program households.

226. *Duration of Continuing the Non-Tribal EBB Benefit Level for Legacy EBB Subscribers.* Section 60502(b)(2) of the Infrastructure Act provides for a 60-day transition period, during which time EBB subscribers who were enrolled prior to December 31, 2021 and would otherwise see a reduction in their benefit under the Affordable Connectivity Program will continue to receive a benefit at the $50 non-Tribal EBB Program benefit level.[636] The Bureau has previously explained that this transition period ends on March 1, 2022.[637] The *ACP Public Notice* sought comment on the relationship between the "shall continue to have access to an affordable service offering" language in section 60502(b)(3)" and the 60-day transition period under section 60502(b)(2).[638] Several commenters assert that in addition to the 60-day transition period, the Infrastructure Act provides for a separate transition period for legacy EBB Program subscribers who were enrolled before the November 15, 2021 effective date of the Infrastructure Act, and that legacy EBB Program subscribers who qualify for this additional transition period would continue to receive the $50 EBB Program benefit level until EBB Program funding is exhausted or March 1, 2022, whichever is later.[639] In support of this position, these commenters cite to the language in section 60502(b)(3) stating that "an eligible household that was participating in the [EBB] Program….on the date of enactment of this Act and qualifies for the Affordable Connectivity Program…shall continue to have access to an affordable service offering."[640] These commenters also explain that "affordable service offering" referenced in section 60502(b)(3) is distinct from the "benefit" referenced in section 60502(b)(2).[641]

227. It is a well-settled rule of statutory construction that the plain language of a statute must not be applied in a manner that produces results that are inconsistent with the clear intent of Congress. To the extent that a statutory provision is reasonably subject to more than one interpretation, we must choose the one that produces results most consistent with the underlying statutory purpose.[642] We conclude that

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[636] Infrastructure Act, div. F, tit. V. sec. 60502(b)(2). The Infrastructure Act does not change the $75 monthly benefit for Tribal consumers.

[637] *December 8th Guidance Order* at 6, para. 15.

[638] *ACP Public Notice* at 48, at para. 125.

[639] *See, e.g.*, T-Mobile Comments at 7-8; MMTC Comments at 10-11; CTIA Comments at 7-8; NaLA Reply at 8. Other commenters assert that the statute allows for a longer transition period or advocate for a delayed start of the transition period, without citing to or providing an analysis of the statute. *See, e.g.,* Hispanic Technology & Communications Partnership Comments at 5 (advocating for providing the $50 non-Tribal EBB Program benefit level until EBB Program funds are exhausted and starting the 60-day transition period after the establishment of the ACP rules rather than December 31, 2021, but does not cite to specific statutory provisions to support this position); California Emerging Technology Fund Comments at 51 ("This Legislative intent suggests that a longer transition period and multiple notices to the households should be undertaken to ensure the household does not lose its service suddenly.").

[640] *See, e.g.*, T-Mobile Comments at 7-8; MMTC Comments at 10-11; CTIA Comments at 7-8.

[641] *See, e.g.*, T-Mobile Comments at 7-8; MMTC Comments at 10-11; CTIA Comments at 7-8.

[642] *See, e.g.*, *Public Citizen v. United States Department of Justice*, 491 U.S. 440, 454-455 (1989) ("where the literal reading of a statutory term would compel an odd result, we must search for other evidence of congressional intent to lend the term its proper scope."); *United States v. American Trucking Associations*, 310 U.S. 534, 543 (1967) ("even when the plain meaning [of statutory language] d[oes] not produce absurd results but merely an unreasonable one plainly at variance with the policy of the legislation as a whole this Court has followed that purpose, rather than the literal words."). The United States Courts of Appeals and this Commission have followed these precedents. *See, e.g., Environmental Defense Fund v. Environmental Protection Agency*, 82 F.3d 451, 468-469 (D.C. Cir.), amended on other grounds, 92 F.3d 1209 (D.C. Cir. 1996) ("because this literal reading of the statute would actually frustrate the congressional intent supporting it, we look to the EPA for an interpretation of the statute more true to Congress's

(continued….)

the plain language of the statute is best read to only provide for legacy EBB Program households to continue receiving the $50 EBB benefit level for a 60-day transition period that ends on March 1, 2022. Section 60502(b)(2) expressly provides for a 60-day transition period for qualifying legacy EBB Program households.[643] In contrast, section 60502(b)(3) does not include any time limitation or specific discussion of the $50 EBB Program benefit level. If Congress intended for legacy EBB subscribers to continue to receive the $50 EBB Program benefit level for longer than 60 days after December 31, 2021, it would not have been necessary to include language in section 60502(b)(2) specifying a 60-day transition period.[644] These commenters' assertions that the "benefit" referenced in section 60502(b)(2) is distinct from the "affordable service offering" referenced in section 60502(b)(3), and that the Commission has discretion to determine the benefit level for this "affordable service offering," are also not supported by the plain language of the statute.[645] Congress' funding of the Affordable Connectivity Program and establishment of specific benefit amounts for the Affordable Connectivity Program ensures that legacy EBB Program households who qualify for the Affordable Connectivity Program "shall continue to have access to an affordable service offering," and reflects Congress' assessment of the appropriate benefit level to make broadband service more affordable for participating households. If Congress intended for the Commission to have discretion to determine a separate amount for "an affordable service offering," Congress would have made this clear in the statute. Given Congress' establishment of the Affordable Connectivity Program, interpreting "affordable service offering" in 60502(b)(3) to refer to the availability of an affordable connectivity benefit for broadband service, and not a separate additional transition period benefit level, is the most reasonable interpretation of this language and would still give full effect to this language.

228. Additionally, policy and administrative considerations do not support these commenters' proposed interpretation that the Infrastructure Act provides for two separate periods for continuing to provide the $50 EBB benefit level to legacy EBB Program subscribers. These commenters' interpretation would require USAC, as well as service providers, to track, apply and validate the correct benefit amount for three separate non-Tribal subscriber groups after the start of the Affordable Connectivity Program: (1) subscribers who enrolled in the Affordable Connectivity Program on or after December 31, 2021 and would only be eligible to receive a $30 monthly benefit; (2) subscribers who enrolled in the EBB Program prior to the enactment date (November 15, 2021) and remained eligible for the Affordable Connectivity Program and would continue to receive the $50 EBB Program benefit level until the EBB Program funds were exhausted; and (3) subscribers who enrolled in the EBB Program on or after November 16, 2021 through December 30, 2021 and would continue to receive the $50 EBB Program benefit level through

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purpose."); *Red River Broadcasting Co. v. Federal Communications Commission*, 98 F.2d 282, 287 (D.C. Cir.), cert. denied, 305 U.S. 625 (1938) ("a well-settled rule of statutory construction enjoins courts not to attribute to the Legislature a construction which leads to absurd results").

[643] Infrastructure Act, div. F, tit. V. sec. 60502(b)(2) (stating that subscribers who qualified for the EBB Program before December 31, 2021 and would otherwise see a reduction of their benefit under the Affordable Connectivity Program "shall, during the *60-day period* beginning on the effective date, be eligible for that benefit in the amount in effect with respect to that household, as of the day before that effective date.") (emphasis added).

[644] While these commenters assert that the purported additional transition period in section 60502(b)(3) continues until EBB Program funding is exhausted or March 1, 2022, whichever is later, section 60502(b)(3) does not reference either date. *See* Infrastructure Act, div. F, tit. V. sec. 60502(b)(3). It does not stand to reason that if Congress did in fact contemplate a separate period for continuing the $50 EBB Program non-Tribal benefit level for certain legacy EBB Program households, it would not have set a time limit. To conclude otherwise would be in conflict with Congress' decision to fund the longer-term Affordable Connectivity Program with a lower $30 monthly non-Tribal benefit.

[645] *See* T-Mobile Comments at 7; MMTC Comments at 11-12; CTIA Comments at 7-8.

the end of the 60-day transition period on March 1, 2022.[646] The statutory language does not indicate that Congress intended to treat legacy EBB Program households differently for purposes of continuing to receive a limited, transitional continuation of the $50 EBB Program benefit level based on whether the household enrolled in the EBB Program before the effective date of the Infrastructure Act, or from November 15, 2021 through December 30, 2021, the last day enrollments were accepted for the EBB Program. Commenters supporting this interpretation have not identified any sound policy or administrative rationale for distinguishing between these two groups of legacy EBB Program households other than potentially to extend the period during which certain legacy EBB households would continue to receive the higher $50 EBB Program benefit level if EBB Program funds remain after March 1, 2022. However, in funding the Affordable Connectivity Program, Congress already provided a long-term solution to address qualifying households' need for affordable broadband, and determined that a lower $30 non-Tribal monthly benefit was appropriate. The availability of the Affordable Connectivity Program benefit and administrative and policy considerations must be considered in interpreting the language in sections 60502(b)(2) and 605052(b)(3).

229. For all of the above reasons, we find that the plain language of the Infrastructure Act is best interpreted to provide for a single 60-day transition period ending on March 1, 2022, during which legacy EBB Program households who were fully enrolled in the EBB Program as of December 31, 2021 would continue to receive the $50 EBB benefit level.

I. Sunsetting Provisions

230. The *ACP Public Notice* sought comment on the end of the Affordable Connectivity Program, including whether the Commission can benefit from the sunsetting rules established for the EBB Program and whether and how much the Commission should delegate to the Bureau the responsibility for setting the requirements for the wind-down of the Affordable Connectivity Program.[647] The *ACP Public Notice* also sought comment on a proposal to require providers, in the event the Affordable Connectivity Program ends, to collect an affirmative opt-in from participating households before the household can be charged an amount higher than the household would pay under the full ACP benefit.[648] The *ACP Public Notice* also sought comment on when providers may begin collecting this affirmative opt-in from households, when providers should give notice of the rate change, and on any other measures to protect consumers from unwanted or undiscounted broadband rates.[649]

231. Commenters generally agreed that the Commission should delegate to the Bureau authority for setting requirements for the wind-down.[650] Commenters also suggested that the Commission use projections to forecast the end of the Program, including through annual reporting on funds remaining and estimates on the Program's longevity.[651] Commenters also had varied suggestions of how much notice should be provided to consumers[652] and to providers[653] about the end of the Program. Given the

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[646] *See* CTIA Comments at 8. These commenters assert that the purported additional transition period includes households that qualified for the Affordable Connectivity Program which necessarily excludes households that qualified for the EBB Program based on eligibility criteria that do not apply to the Affordable Connectivity Program. *See id.*

[647] *ACP Public Notice* at 49, para. 128.

[648] *Id.* at 41, para. 104.

[649] Certain commenters request the Commission permit providers to seek opt-in to continue service after the end of the Affordable Connectivity Program at the time of enrollment for newly enrolled households. *See* Competitive Carriers Association Comments at 8-9; NCTA Comments at 26.

[650] CETF Comments at 51;

[651] CETF Comments at 51; NaLA Comments at 40.

[652] CETF Comments at 51 (60 days); County of Los Angeles Comments at 7 (90 days); SAH Comments at 6.

expanded funding for the Affordable Connectivity Program, we find that it is not necessary to establish sunsetting rules at this time. Instead, we delegate authority to the staff to establish procedures for the wind-down of the Program.

232. Specifically, we direct the Bureau, in coordination OMD, OEA, and USAC to develop a forecast of the depletion of the funding appropriated by Congress to the Commission to fund the Affordable Connectivity Program. Moreover, we delegate to the Bureau, when developing wind-down procedures for the Affordable Connectivity Program, to identify a process for notifying the public of the timing of the end of the Affordable Connectivity Program as the funds are nearing depletion. As we found in the *EBB Program Order*, requiring providers to obtain an affirmative opt-in from households before they can be charged an amount higher than they would pay under the full reimbursement amount was necessary to "guard against unexpected charges by reducing the likelihood that households will receive broadband service absent the EBB Program benefit without their permission."[654] While the Affordable Connectivity Program will be longer-term than the EBB Program, we recognize the potential for bill shock for low-income consumers remains if Affordable Connectivity Program ceases. Accordingly, we find that an affirmative opt-in following appropriate consumer notice is generally a good measure for avoiding consumer bill shock and ensuring the household is informed. Accordingly, we adopt the proposal to require a provider to obtain the household's affirmative opt-in, either orally or in writing, to continue providing the household broadband service after the end of the Affordable Connectivity Program and to charge a higher rate than the household would pay if it were receiving the full discount permitted under Affordable Connectivity Program rules. We delegate to the Bureau the authority to establish specific timeframes for such consumer opt-ins and the appropriate consumer notice. The wind-down procedures delegated to the staff must also consider how the remaining funds will be distributed in the final month of the Affordable Connectivity Program, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind-down the program.

233. While the Commission and USAC did not have to implement the winddown provisions we adopted for the EBB Program because we were statutorily required to cease the EBB Program while there were sufficient funds to fully pay out reimbursement claims for the final month of the EBB Program,[655] we find that it would be prudent for us to consider how to address any potential uncertainty about the subsidy level in the final month of the Affordable Connectivity Program. In the *EBB Program Order* we were concerned that uncertainty about the subsidy amount in the final month presented challenges to providers and households and we recognize the potential for the same uncertainty in the Affordable Connectivity Program.[656] Therefore, we direct the Bureau to implement similar procedures adopted in the *EBB Program Order* for reimbursement in the final month of the Affordable Connectivity Program in the event reimbursement claims exceed the amount of remaining funds, but in no circumstances will reimbursements be less than 50% of the provider's claim for that final month.[657] As discussed in the *EBB Program Order*, for example, if based on the forecast of the depletion of funding established above, the remaining balance in the Affordable Connectivity Fund is sufficient to pay out 80% of each reimbursement claim submitted in the final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund and ending the Affordable Connectivity Fund. If, however, projections from USAC indicate that less than 50% of claims can be paid out on a pro-rata basis for the expected final month of the Affordable Connectivity Program, then USAC shall immediately notify the Bureau, OEA, and OMD. If staff agree with USAC's projections, then USAC will pause the reimbursement process for the final month, and instead staff will determine how best to use the remaining

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[653] CETF Comments at 51 (four months); NaLA Comments at 40 (six months); SAHF Comments at 5-6;

[654] *EBB Program Order*, 36 FCC Rcd at 4673, para. 132.

[655] *November 26, 2021 Guidance Order* at 3, para. 6.

[656] *EBB Program Order*, 36 FCC Rcd at 4668-69, para. 119.

[657] *Id.* 36 FCC Rcd at 4668-69, paras. 118-19.

funds consistent with the Infrastructure Act.

J. Audits, Enforcement, and Removal of Providers

1. Audits

234. The Infrastructure Act leaves unchanged the requirement that the Commission adopt audit requirements to ensure participating providers are in compliance with the program requirements and to prevent waste, fraud, and abuse.[658] Within one year of the date of enactment of the Infrastructure Act, the Commission's Office of Inspector General is required to conduct an audit of the disbursements to a representative sample of providers.[659] The *ACP Public Notice* sought comment on whether the Commission should delegate authority to the OMD to develop and implement an audit process of participating providers, for which it may obtain the assistance of third parties, including but not limited to USAC. We adopt this proposal and clarify that such ACP audits would be in addition to any audits conducted by the Commission's Office of Inspector General. We also adopt the documentation retention requirements used in the EBB Program for the Affordable Connectivity Program.[660] The record does not justify taking a different approach with respect to the document retention requirements.

235. We clarify that section 0.231(l) of the Commission's rules delegates authority to OMD, upon receiving approval from the Office of General Counsel, to issue subpoenas that directly relate to OMD's oversight of audits of the Affordable Connectivity Program.[661] By granting OMD with this specific, limited and discrete subpoena authority, we will ensure that OMD has the necessary tools to obtain all relevant documentation in a timely manner to complete audit findings and implement corrective actions for the Affordable Connectivity Program and the Emergency Broadband Benefit Program, where audits are ongoing. Absent this delegation, there is the potential that an audited entity may resist providing essential data to confirm that entity is operating consistent with program rules. Providing OMD with this specific, limited and discrete subpoena authority therefore strengthens OMD's ability to effectively review and evaluate the Affordable Connectivity Program in a timely manner and further protect these programs against waste, fraud, and abuse.

236. *USAC Program Integrity Reviews*. In the EBB Program, the Commission directed USAC to conduct program integrity reviews of oversubscribed addresses,[662] of a sample of households qualifying based on a member of their household's enrollment in a CEP school,[663] and a sample of households enrolled through an alternative verification process,[664] in addition to other areas determined by the Bureau and USAC to deter waste, fraud, and abuse in the Program. Program integrity reviews are a valuable tool for combatting waste, fraud, and abuse as they allow USAC and Commission staff the flexibility to target reviews based on trends and target areas where there may be an increased likelihood

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[658] Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(B)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(12) (2021).

[659] Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(D), § 904(b)(13) (2021).

[660] 47 CFR § 54.1611.

[661] We also find it appropriate to clarify OMD's subpoena authority includes other programs for which OMD was assigned audit oversight responsibility since section 0.231(l) of the Commission's rules was adopted in 2012. These programs include the Emergency Broadband Benefit Program, the Emergency Connectivity Fund, Connected Care Pilot Program, Covid-19 Telehealth Program, and the Secured and Trusted Communications Networks Program. *See* 47 C.F.R. § 0.231(l); In the Matter of Amendment of Parts 0 and 54 of the Commission's Rules, 27 FCC Rcd 13754 (2012) (delegating subpoena authority to the Managing Director for the USF programs, the interstate telecommunications relay services fund, the North American numbering plan, regulatory fee collection, FCC operating expenses, and debt collection).

[662] *EBB Program Order*, 36 FCC Rcd at 4634, para. 46.

[663] *Id*. at para. 56

[664] *Id.* at para. 67.

for risk. We direct USAC to develop a plan to conduct program integrity reviews to address the requirements of this Order and areas where trend analysis, complaint data, or other information shows a need for such reviews to determine provider and consumer compliance with ACP rules. This plan will be subject to OMD and Bureau approval.

2. Enforcement

237. The Infrastructure Act leaves intact the declaration that a violation of section 904 or any regulation promulgated under that section "shall be treated as violation of the Communications Act of 1934 or a regulation promulgated under such Act."[665] The Commission is compelled to enforce the portion of the Infrastructure Act establishing the Affordable Connectivity Program and associated regulations "in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated or made a part of this section."[666] Moreover, the Infrastructure Act expressly grants the Commission the authority to impose forfeiture penalties to enforce compliance.[667] The *ACP Public Notice* sought comment on a proposal that the Commission use its existing, statutorily permitted enforcement powers to initiate investigations of program rule violations for the Affordable Connectivity Program. Additionally, the Commission currently has an open suspension and debarment rulemaking proceeding that proposes rules that would be applicable to conduct under the USF programs, Telecommunications Relay Service, and the National Deaf-Blind Equipment Distribution Program.[668] The *ACP Public Notice* also sought comment on whether an extension of any suspension and debarment rules that may be adopted in that proceeding (when finalized) to the Affordable Connectivity Program, as well as any ACP outreach grant program, is desirable to prevent waste, fraud, and abuse.[669] Given that there are no objections on the record we adopt these proposed approaches for the Affordable Connectivity Program.

238. The Infrastructure Act leaves unchanged the safe harbor provision in the Consolidated Appropriations Act stating that the Commission may not enforce a violation of the Act using sections 501, 502, or 503 of the Communications Act or any rules of the Commission promulgated under such sections, if a participating provider demonstrates that it relied in good faith on information provided to such provider to make any verification required by section 904(b)(2).[670] Section 904(b)(2) imposes a duty on providers to verify whether a household is eligible to receive discounted service and a connected device through the program, and the Commission in the *EBB Program Order* established that the safe harbor will apply to providers who use the National Verifier for eligibility determinations or any alternative verification process approved by the Commission.[671] The Commission provided that the safe harbor applies to providers who act in good faith with respect to the eligibility verification processes and that the Commission has extensive experience evaluating the good faith actions of regulated entities.[672] The *ACP Public Notice* sought comment on the proposal that the Commission adopt this application of the safe harbor adopted in the *EBB Program Order* to providers participating in the Affordable Connectivity Program and that providers that reasonably rely on documentation regarding eligibility determinations provided by eligible households or an eligibility determination from the National Verifier

[665] Consolidated Appropriations Act, div. N, tit. IX, § 904(g).

[666] *Id.*

[667] Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(C)(ii) (2021).

[668] *Modernizing Suspension and Debarment Rules*, GN Docket No. 19-309, Notice of Proposed Rulemaking, 34 FCC Rcd 11348 (2019).

[669] *ACP Public Notice* at 50-51, para. 131.

[670] Consolidated Appropriations Act, div. N, tit. IX § 904(j).

[671] *EBB Program Order*, 36 FCC Rcd at 4629-30, para 40.

[672] *Id.*

will be able to avail themselves of this statutory safe harbor with respect to their compliance with the Affordable Connectivity Program rules. Given that there are no objections to this approach on the record, we adopt this proposed application of the safe harbor adopted in the *EBB Program Order* to the Affordable Connectivity Program.

3. Removal of Participating Providers from the Affordable Connectivity Program

239. *Involuntary Removal*. In the *ACP Public Notice*, the Bureau sought comment on its proposal that the Commission formalize a process for removing providers from the Affordable Connectivity Program where there are concerns of waste, fraud, and abuse.[673] The Bureau asked whether a provider should be removed if there is "a trend of troubling complaints" that suggests that the provider is not complying with the ACP rules.[674] Commenters agree that providers should be removed from the program if necessary,[675] and we find that it is essential that the Commission have the flexibility necessary to quickly respond and remove providers that are violating program rules or threatening the integrity of the Affordable Connectivity Program while also ensuring that a provider has a fair opportunity to respond prior to being removed from the program.

240. In the *EBB Program Order*, the Commission extended the existing suspension and debarment rules for Universal Service Fund programs to participating providers.[676] The Commission's rules permit suspension and debarment only upon conviction or civil judgment for statutorily defined offenses associated with the existing universal service programs.[677] We find that the size of the Affordable Connectivity Program,[678] the expected longer term of the program, the significant financial benefits available to providers, and the program's goal of connecting a vulnerable, low-income population to internet services require that the Commission has additional tools to be able to promptly remove providers for program rule violations to protect the public interest, preserve program funds, and protect both participating households and prospective consumers from bad actors.

241. A participating provider may be removed from the Affordable Connectivity Program for violations of program rules of the Affordable Connectivity Program, the EBB Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or other Universal Service Fund (USF) programs. In addition, a provider may be removed from the Affordable Connectivity Program for committing any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm

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[673] *ACP Public Notice* at 10, para. 22.

[674] *Id*.

[675] City of Detroit Comments at 2 (arguing that providers should be removed from the program if there are repeated complaints); Broadband Strategy Office for the Hawaii Broadband & Digital Equity Office, State of Hawaii Comments at 3 (recommending that the Commission formalize a process for the removal of providers due to complaints and concerns of waste, fraud, and abuse).

[676] *EBB Program Order*, 36 FCC Rcd at 4678, para. 141

[677] 47 U.S.C. § 54.8(c).

[678] To date, approximately 90,000 households have enrolled in the Affordable Connectivity Program and more than 9 million EBB Program households entered into a 60-day transitioned to the Affordable Connectivity Program period where they and will continue to receive affordable broadband through this newly launched program the EBB monthly support amount through March 1, 2022. There are over 1200 providers that are eligible to offer ACP-supported service. *See* USAC, EBB Program Enrollment and Claims Tracker, https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/ (last visited Jan 7, 2022) and FCC, EBB Program Participating Providers, https://www.fcc.gov/emergency-broadband-benefit-providers (last visited Jan. 7, 2022).

prospective or existing program participants, including fraudulent program enrollments. Moreover, a provider may be removed for conviction or civil judgment for attempt or commission of fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, making false claims, obstruction of justice, or similar offense, that arises out of activities related to the Affordable Connectivity Program, the EBB Program, the Emergency Connectivity Fund or successor programs, or any of the USF programs.

242. If the Commission develops information from Commission-led or sponsored investigations or receives consumer complaints, information obtained through program integrity reviews and audits, whistleblower reports, or information shared by law enforcement or from other credible sources that yields credible allegations of misconduct, the Bureau Chief or the Chief of EB, after consultation with USAC, OMD, and CGB, as appropriate, will initiate a proceeding to consider removal of the provider. The relevant Bureau will provide notice of the proceeding to the participating provider via electronic mail and/or U.S. mail using the contact information provided in the election notice filed with USAC or other sources if there is reason to suspect that the information on file with USAC is not up-to-date. Such notice will include the legal and factual bases for the initiation of the removal proceeding and indicate that the provider will have thirty (30) days to respond to the Bureau and to provide any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the provider should not be removed from the Affordable Connectivity Program. Concurrent with the issuance of the notice or at any time before a final determination is rendered by the Bureau Chief or Chief of EB, as the case may be, such Chief may direct on an interim basis that the provider be removed from the Commission's listing of providers,[679] from USAC's Companies Near Me tool, or any other similar records, but only after determining that immediate action is necessary to protect the public interest.[680] The Bureau Chief may also direct that a funding hold (or partial hold) be placed on the provider if there is adequate evidence that the provider's misconduct is likely to cause or has already resulted in improper claims for ACP reimbursement. The relevant Chief may also direct that a funding hold (or partial hold) be placed on the provider if, based on the circumstances of a particular case, there is adequate evidence that the provider's material misconduct is likely to cause or has already resulted in improper claims for ACP reimbursement. The relevant Chief may also direct USAC to temporarily suspend the participating provider's ability to enroll or transfer in new subscribers during the pendency of the removal proceeding upon a determination that such immediate action is necessary to protect the public interest.

243. Once a timely response is received from the provider, the relevant Chief will have thirty (30) days to make a removal determination and issue an order, which shall provide a detailed explanation for the determination.[681] After review of any response submitted by the provider and all available credible evidence, if the relevant Chief determines that there has been a rule violation or other conduct warranting removal, the provider's authorization to participate in the Affordable Connectivity Program will be revoked, and the provider will be removed from the program. Similarly, failure by the provider to respond or provide the requested evidence within thirty days of the date of the notice also will result in a finding against the provider, removal from the program, and revocation of the provider's authorization to participate in the Affordable Connectivity Program. However, if the relevant Chief determines that there has been no rule violation or other conduct warranting removal from the program, such Chief will take appropriate steps to reinstate the provider to the listing of providers and USAC's Companies Near Me tool, if the provider had previously been delisted, advise USAC to permit the provider ability to enroll or transfer in new subscribers (if previously blocked), and lift any funding hold (unless otherwise

[679] FCC, Affordable Connectivity Program Participating Providers, http://fcc.gov/emergency-benefit-program-providers (last visited Jan. 7, 2022).

[680] USAC, Companies Near Me Tool, https://acpbenefit.org/companies-near-me/ (last visited Jan. 7, 2022).

[681] This 30-day period may be extended an additional 15 days if circumstances warrant.

warranted). A former participating provider removed from the Affordable Connectivity Program will be barred from seeking to rejoin, or participating in, the Affordable Connectivity Program as a participating provider for at least five years, or for such additional period as the relevant Chief considers to be warranted based on the circumstances of the case.[682] Moreover, any providers removed in this manner from the Affordable Connectivity Program will be similarly barred from participation in any ACP successor program during the removal period determined by the relevant Chief.

244. We recognize the impact the sudden removal of a provider from the Affordable Connectivity Program would have on low-income consumers who, through no fault of their own, could lose their discounted internet services. To avoid this scenario and to allow consumers served by the removed provider an opportunity to transfer their benefit to another participating provider, removed providers will be required to continue providing service to their existing enrolled households for sixty (60) days after removal, unless otherwise directed by the relevant Bureau. The provider will be eligible to receive reimbursement for any valid claims for discounts passed through to ACP households during this 60-day period. The removed provider must send written notice to its consumers within 30 days of the final determination in the removal proceeding notifying the consumers that the provider will no longer be participating in the Affordable Connectivity Program. Notice to the enrolled households must include a statement that the provider will be removed from the program; the effective date of removal; that the household cannot continue to receive the ACP benefit from its current provider and that if the household seeks to continue receiving ACP support it must transfer to a new participating provider; instructions on how to request a transfer to a new provider and how to find another participating provider; the contact information for the USAC ACP Support Center; the amount the household would be charged if the household continues to subscribe to internet service from the provider after the effective date of removal; and other information as determined by the Bureau to help enable consumers to make informed decisions about their internet service. The removed provider shall also send a second written notice to consumers at least 15 days before the date by which the provider can no longer offer ACP-supported service. Failure to provide service during the 60-day period or to provide the above-referenced information to existing households may result in further enforcement action. We also direct USAC to provide notice to consumers enrolled with the removed provider after the final determination in the removal proceeding.

245. We delegate to the Wireline Competition Bureau and OMD the authority to modify the provider removal process as set forth in this section as may be necessary and appropriate in response to trends in the Affordable Connectivity Program, using appropriate notice and comment procedures. Any modified removal process shall continue to strike an appropriate balance between protecting consumers and the integrity of the Affordable Connectivity Program and ensuring that providers have a meaningful opportunity to respond to the allegations.

246. *Voluntary Withdrawal*. Participation in the Affordable Connectivity Program is voluntary, just as it was in the EBB Program.[683] While a qualified provider can elect to participate in the Affordable Connectivity Program, we recognize that a provider may also opt to leave the Affordable Connectivity Program. However, we also recognize that a provider's decision to leave the program will impact any households receiving ACP-supported service from that provider, and care must be taken to ensure that those households have an opportunity to transfer their benefit to another ACP provider. The voluntary withdrawal process we adopt balances the public interest in maintaining access to broadband

[682] A provider may request reconsideration of the decision or submit a request for review by the full Commission of the Bureau Chief's determination pursuant to the Commission's rules. *See* 47 CFR §§ 1.106, 1.115. If the Commission declines the provider's request for review or if the Commission upholds the Bureau Chief's determination, then the provider will be permanently suspended and its authorization to participate in the Affordable Connectivity Program permanently revoked.

[683] *ACP Public Notice*, at 4, para. 7.

for low-income households with a provider's right to withdraw from the program before the anticipated program end date.[684]

247. A participating provider may withdraw its election to participate in the Affordable Connectivity Program at any time. Providers seeking to withdraw from the program must first notify USAC in writing at least 90 days before the effective date of withdrawal. The notice to USAC must contain the final date the provider will provide ACP-supported service to households and a statement confirming that as of the date of the notice to USAC the provider will cease enrolling new households, that the provider will cease advertising and marketing its participation in the Affordable Connectivity Program, and that the provider will notify its existing ACP households of its intent to exit the program. Upon receipt of this written notice, USAC and the Commission will remove the provider from the provider listings on the FCC's website and the Companies Near Me tool.[685] As an initial matter, participating providers that were automatically transitioned from the EBB Program to the Affordable Connectivity Program must file an opt-out notice to USAC within 90 days of publication of this Order in the Federal Register; otherwise they will be considered to be affirmatively participating in the Affordable Connectivity Program.

248. The provider must also notify its existing ACP households of its intent to exit the program. Notice must be in writing, provided in formats accessible to individuals with disabilities, and sent to existing ACP households 90 days, 60 days, and 30 days before the effective date of withdrawal from the program. Notice to households must include the final date of service, the amount the households will be expected to pay if they remain with the provider after the provider exits the program, the effective date of such charges, and an explanation that once the provider exits the program, the ACP benefit will no longer be applied to the account, unless the subscriber transfers its benefit to a different participating provider. The notice must also include instructions detailing how to find and select a new participating provider, instructions on how to transfer to a different provider, the web address for the Commission's listing of participating providers and to USAC's Companies Near Me tool, the telephone number and email address of USAC's ACP Support Center, and the provider's customer service telephone number. During this period, the provider must continue to provide ACP-supported service to enrolled subscribers until the effective date of withdrawal from the program. Providers must retain records demonstrating compliance with the notice requirements.

K. Administration of the Affordable Connectivity Program

249. As with the EBB Program, the Commission will rely on USAC as the administrator of the Affordable Connectivity Program[686] and we will rely on the use of the USAC-administered systems, including but not limited to, the National Verifier, NLAD, RAD, and the Lifeline Claims System for the

[684] *See* Verizon Comments at 22 (noting that while providers should not need to obtain prior approval from the Commission in order to withdraw from the Affordable Connectivity Program, it would be reasonable for the Commission to require the withdrawing provider withdrawing to send notices to its subscribers and to USAC, after which the provider would stop enrolling new ACP subscribers and continue providing benefits to existing customers for a transitional period so that subscribers would have time to transfer their ACP benefit to another provider if they so choose.)

[685] We decline to adopt for the Affordable Connectivity Program a relinquishment process similar to the one used in Lifeline where ETCs can relinquish their ETC designation in any area served by more than one ETC so long as all customers served by the relinquishing carrier will continue to receive service, but instead establish rules to ensure that consumers receive notice of the provider's removal and instruction on how to transfer their benefit to another provider. *See* 47 U.S.C. § 214(e).

[686] *See ACP Public Notice* at 5, para. 153. In Section 904 of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Act, Congress authorizes the Commission to use the services of USAC to administer the Affordable Connectivity Fund, including developing and processing reimbursements and distributing funds to participating providers. Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(C), (a)(2)(E) § 904(i)(3) (2021).

provider reimbursement process, call centers for program support, provider and consumer outreach, and conducting program integrity reviews.[687] USAC has extensive experience administering both Lifeline and the EBB Programs and as such can facilitate the orderly implementation and administration of the Affordable Connectivity Program.[688] Additionally, we believe relying on USAC to administer the Affordable Connectivity Program would also minimize provider and consumer confusion.[689] We further find that the use of the USAC administered systems will facilitate implementation and enrollment processes while serving as a safeguard against waste, fraud, and abuse. There is support in the record for continuing to rely on USAC for the administration of the Affordable Connectivity Program.[690] We therefore adopt the continued use of USAC and USAC administered systems for the Affordable Connectivity Program.[691]

250. *Administrative Cap*. By Congressional mandate, the Commission is subject to an administrative cap for the Affordable Connectivity Program. In the Infrastructure Act, Congress made available to the Commission no more than 2% of the Affordable Connectivity Fund for the administration of the Affordable Connectivity Program.[692] The overall cap on administrative costs is $348 million.[693] Given the longer-term nature of the Affordable Connectivity Program, it will be prudent for the Commission and USAC to monitor the administrative budget to ensure that these resources will be available for the length of the program. Therefore, we direct USAC, in coordination with OMD, to regularly report to OMD its projected budget for administration of the Affordable Connectivity Program at a frequency to be determined by OMD. Based upon the initial estimates provided to OMD, which included costs associated with business process outsourcing, project management, IT professional fees, call center activities, and other costs, USAC's Affordable Connectivity Program administrative costs are estimated to be under the 2 percent cap.

251. The Commission must authorize payments from the Affordable Connectivity Fund prior to the disbursement of those funds in the United States Treasury to providers who have submitted valid claims for reimbursement. Here, we provide guidance on steps participants must be prepared to take to ensure timely payment of reimbursement claims from the Affordable Connectivity Fund.

252. *FCC Red Light Rule*. As the Bureau proposed in the *ACP Public Notice*, participating providers in the Affordable Connectivity Program will be subject to the red light rule that the

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[687] *EBB Program Order*, 36 FCC Rcd at 4681, para. 149.

[688] *ACP Public Notice* at 51, para 133.

[689] *ACP Public Notice* at 51, para 133.

[690] CETF Comments at 52; Ting Comments at 2 (commending the Bureau, FCC, and USAC on the rollout of the EBB Program, but urges that USAC hire more staff to respond to handle surges in provider and consumer inquiries expected in the Affordable Connectivity Program).

[691] We adopt for purposes of the Affordable Connectivity Program the Commission's rules contained in Subpart I regarding a path for recourse to parties that are aggrieved by USAC decisions. 47 CFR §§ 54.719-725.

[692] Infrastructure Act, div. F. tit. V, secs 60502(a)(2)(C), (a)(2)(E), § 904(i)(3) (2021).

[693] *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company Regarding the Affordable Connectivity Program,* at 2 (Nov. 16, 2021), https://www.fcc.gov/sites/default/files/affordable-connectivity-program-mou-fcc-usac-11162021.pdf (providing USAC's expenses for the administration of the Affordable Connectivity Program as outlined in the Memorandum of Understanding (ACP MOU) shall not exceed $50 million plus any of the unspent $48 million allocated to USAC under the EBB Program MOU. *See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company Regarding the Emergency Broadband Benefit Program* (Feb. 3, 2021), https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf (EBB MOU). Pursuant to the ACP MOU, the Commission will authorize additional funding to USAC as needed for the administration of the Affordable Connectivity Program.

Commission implemented to satisfy the requirements of Debt Collection Improvement Act of 1996.[694] Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt.[695] If the delinquent debt remains unpaid or other arrangements have not been made within 30 days of being notified of the debt, the Commission will dismiss any pending applications.[696] Consistent with practices in the Lifeline program and other programs such as the Telecommunications Relay Service, the red light rule is not waived for the Affordable Connectivity Program. If a prospective participant is on red light, it will need to satisfy or make arrangements to satisfy any debts owed to the Commission before its application and/or election notice will be processed. We direct the Bureau and OMD to ensure that a process is in place to check an entity's red light status prior to processing an application, election notice, disbursement, or other request from the entity consistent with the red light rule.

253. *Treasury Offset.* As in the EBB Program, ACP participating providers will be subject to Treasury Offset.[697] The Treasury has several collection tools, including its offset program, known as the Treasury Offset Program (TOP), through which it collects delinquent debts owed to federal agencies and states by individuals and entities, by offsetting those debts against federal monies owed to the debtors. ACP providers that owe past-due debt to a federal agency or a state may have all or part of their ACP payments offset by Treasury to satisfy such debt. Prior to referral of its debt to Treasury, a provider is notified of the debt owed, including repayment instructions.[698] If the referred debt of an ACP participating provider remains outstanding at the time of a payment from the ACP to that provider, the provider will be notified by Treasury that some or all of its ACP payment has been offset to satisfy an outstanding federal or state debt. ACP providers are required to pass the ACP discount to the customer for the service or connected device claimed even if Treasury offsets the payment for such service or device against debt owed by the provider. ACP providers that owe past due federal or state debts are encouraged to resolve such debts and in doing so, consult the TOP Frequently Asked Questions for the Public, available at https://fiscal.treasury.gov/top/faqs-for-the-public.html, for delinquent debt that has been referred to Treasury, and for delinquent debt that the Commission has not yet referred to Treasury, consult https://www.fcc.gov/general/red-light-frequently-asked-questions.

254. *Additional Requirements.* To be eligible to receive disbursements from the Affordable Connectivity Fund, providers must obtain and report an FCC Registration Number (FRN). Persons or entities doing business with the Commission are required to obtain an FRN, a unique identifier that is obtained through the Commission Registration System (CORES).[699] Participating providers must obtain an FRN if they do not already have one and report it as directed by USAC or the Commission.

255. All entities that intend to provide service through the Affordable Connectivity Program must also register with the System for Award Management (SAM). SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's partners in support of federal awards, grants, and electronic payment processes. With data in SAM the Commission has an authoritative source for information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and

[694] *ACP Public Notice* at 52-53, para. 136.

[695] *Amendment of Parts 0 and 1 of the Commission's Rules/Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 2004); 47 CFR § 1.1910.

[696] 47 CFR § 1.1910(b)(3).

[697] *See EBB Program Order*, 36 FCC Rcd at 4663, para. 106; *ACP Public Notice* at 53, para. 137.

[698] *See* 31 CFR § 285.5(d)(6)(ii).

[699] 47 CFR § 1.8001. To register for or look-up an FRN, providers are directed to visit https://www.fcc.gov/licensing-databases/commission-registration-system-fcc.

Transparency Act of 2006 ,as amended by the Digital Accountability and Transparency Act of 2014 (collectively the Transparency Act or FFATA/DATA Act).[700] Only ACP providers registered in SAM will be able to receive reimbursement from the Affordable Connectivity Fund. ACP providers already registered with SAM do not need to re-register with that system in order to receive payment from the Affordable Connectivity Fund. Broadband providers not yet registered with SAM may still elect to participate in the program, enroll eligible customers and receive program commitments. However, to receive a payment from the Affordable Connectivity Program, an eligible provider must have an active SAM registration.[701] Furthermore, participating providers may be subject to reporting requirements. To the extent that participating providers subaward the payments they receive from the Affordable Connectivity Program, as defined by FFATA/DATA Act regulations, such providers may be required to submit data on those subawards.[702]

256. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019 (PIIA), the Commission must ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any federal funds.[703] To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the Treasury's Bureau of the Fiscal Service as it did for payments disbursed in the EBB Program.[704] If a check of the Do Not Pay system results in a finding that an ACP provider should not be paid, the Commission will withhold issuing commitments and payments. USAC may work with the ACP provider to give it an opportunity to resolve its listing in the Do Not Pay system if the provider can produce evidence that its listing in the Do Not Pay system should be removed. However, the ACP provider will be responsible for working with the relevant agency to correct its information before payment can be made by the Commission.[705]

257. *Database Connections for the Affordable Connectivity Program.* As the Bureau explained in the *ACP Public Notice*, "[a]ccess to program databases for automated eligibility verification is essential to an optimal household application experience in the National Verifier."[706] To facilitate increased opportunity for automatic eligibility verification, USAC and the Commission have executed computer matching agreements (CMAs) with state and federal partners for the EBB Program that allow USAC to continue to utilize those connections for the Affordable Connectivity Program, and we direct USAC to continue to engage with state and federal agencies with which there is no existing CMA for the

[700] Pub. L. No. 109-282, 120 Stat. 1186 (2006) and Pub. L. No. 113-101, 128 Stat. 114 (2014), codified as 31 U.S.C. § 6101 note. In August 2020, the Office of Management and Budget updated the rules governing compliance with the Transparency Act as part of wider ranging revisions to title 2 of the Code of Federal Regulations. 85 FR 49506 (published Aug. 13, 202) (including revisions to 2 CFR Parts 25, 170, 183, and 200). OMB explained that the SAM registration requirements were expanded "beyond grants and cooperative agreements to include other types of financial assistance" to ensure compliance with FFATA. 85 Fed. Reg. 49506 at 49517.

[701] It is strongly recommended that unregistered providers start that registration process immediately because it may take up to 10 business days for the registration to become active and an additional 24 hours before the registration information is available in other government systems. To register with the system, go to https://www.sam.gov/SAM/ and provide the requested information.

[702] 2 CFR Part 170, App. A.

[703] Payment Integrity Information (PIIA), Pub. L. No. 116-117, 134 Stat. 113 (2019). PIAA recodifies and amends the prior improper payment statutes (*i.e.*, The Improper Payments Information Act of 2002, Pub. L. 107-300; The Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 112-248; and The Fraud Reduction and Data Analytics Act of 2015, Pub. L. No. 114-186.

[704] *EBB Program Order*, 36 FCC Rcd at 4664, para. 109; For additional information, see https://fiscal.treasury.gov/DNP.

[705] For additional information, see https://fiscal.treasury.gov/dnp/privacy-program.html#data-correction-process.

[706] *ACP Public Notice* at 49, para. 126.

Affordable Connectivity Program.[707] In particular, we expect USAC to continue to pursue establishing connections with eligibility databases for WIC, a new eligibility program under the Affordable Connectivity Program. The Infrastructure Act also requires the Secretaries of the Department of Health and Human Services (HHS), USDA, and the Department of Education to enter into a Memorandum of Understanding with USAC to share National Verifier data.[708]

1. Application of Other Part 54 Regulations

258. In enacting the Affordable Connectivity Program, the Infrastructure Act did not make any substantive changes to section 904(f), which permits the Commission to apply rules contained in part 54 of the Commission's rules to the Affordable Connectivity Program.[709] Therefore, we use the authority granted by the Infrastructure Act to apply portions of part 54 of title 47, Code of Federal Regulations—pertaining to definitions, de-enrollment, program integrity, and the use of USAC—to the Affordable Connectivity Program.[710]

259. *Subpart E*. The Commission also sought comment on applying the regulations contained in subpart E of part 54 to the Affordable Connectivity Program, specifically, to the extent that those rules do not conflict with the Affordable Connectivity Program parameters established by the Infrastructure Act.[711] Due to similarities between the programs and the use of certain USAC Lifeline systems to administer the Affordable Connectivity Program, we will apply select portions of the regulations that control the Lifeline and EBB Program to the Affordable Connectivity Program. Specifically, we apply the following definitions in section 54.400 to the Affordable Connectivity Program, subject to the further interpretations expounded upon in this Order: (f) income; (g) duplicative support; (h) household; (i) National Lifeline Accountability Database or Database; (j) Qualifying assistance program; (k) Direct service; (l) Broadband Internet access service; (o) National Lifeline Eligibility Verifier; and (p) Enrollment representatives.[712] Maintaining uniform definitions across these programs will continue the efficient administration of the Program for the Commission, USAC, and participating providers. We limit the application of the Lifeline rules to those specifically enumerated in this Order to balance the need of ensuring that the Affordable Connectivity Program has adequate guidelines and parameters with the concern of chilling participation by providing a complex framework that may be unfamiliar to new providers or serve as a bar to participation in this program.

260. For subscriber non-usage, the Commission will continue to require providers to submit a certification in their reimbursement claim that every subscriber claimed has used their supported service, as defined in section 54.407(c)(2) of the Lifeline rules we adopt for the Affordable Connectivity Program, in the last thirty days from the snapshot date for the relevant claims month or has timely cured their non-usage.[713] Providers must retain documentation demonstrating the subscriber monthly usage to support

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[707] Specifically, the National Verifier has connections to the Centers for Medicare Services and the Department of Housing and Urban Development, allowing automated eligibility verification for recipients of Medicaid and Federal Public Housing Assistance. USAC and FCC have entered into agreements with 19 states/territories for access to SNAP data of confirming eligibility for the EBB program. More information on these agreements can be found at FCC | Privacy Act Information | https://www.fcc.gov/privacy-act-information#matching (providing a table of the FCC's Computer Matching Agreements, their corresponding Federal Register Notices, and the FCC's Annual Computer Matching Reviews and Reports).

[708] Infrastructure Act, div. F, tit. V, sec. 60502(e).

[709] *See* Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(D), § 904(f) (2021).

[710] *See* Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(D), § 904(f).

[711] *ACP Public Notice* at, para. 138.

[712] 47 CFR §§ 54.400(f), (g), (h), (i), (j), (k), (l), (o), and (p).

[713] *See also supra* Section III.B.

this certification. Additionally, we require all participating providers to implement policies and procedures for ensuring that their ACP households are eligible to receive the affordable connectivity program benefit.[714] Accordingly, a provider may not provide a consumer with an activated device that it represents enables use of affordable connectivity benefit supported service, nor may it activate service that it represents to be an ACP-supported service, unless and until it has: (1) confirmed that the household is an eligible household pursuant to section III.B of this Order, and; (2) completed the eligibility determination and certification required by section III.B; and, (3) any other necessary enrollment steps expounded upon in this Order. We find that these preventative measures provide a front-end guard against the improper use of the limited funds provided by the Infrastructure Act, and protect against waste, fraud, and abuse.

261. To further bolster program integrity, we apply the following sections of the Lifeline rules to the Affordable Connectivity Program: section 54.407(a), (c)(2)(i)-(v), (d) and (e), pertaining to the number of participants as of the first of the month (snapshot), the definition of service usage, reimbursement certifications, and records; section 54.417, pertaining to recordkeeping requirements; and, section 54.419, pertaining to the validity of e-signatures.[715] We note that these rule sections, as applied to the Affordable Connectivity Program, are the subject of more detailed discussions in this Order.[716] We also require participating providers that use enrollment representatives to comply with the Representative Accountability Database registration requirement established in sections 54.400(p) and 54.406(a) of the Commission's Lifeline program rules.[717] Requiring registration for employees, agents, contractors, or subcontractors of participating providers or their third-party entities prior to those personnel providing information to the USAC systems will bolster the security of the system and help monitor for suspected non-compliance in program activity.

262. Consistent with the EBB Program, we also elect to apply relevant subsections of section 54.404, outlining carrier interactions with the NLAD, and portions of section 54.405 of the Commission's rules to the Affordable Connectivity Program concerning carrier obligations and de-enrollment. Specifically, we apply rule 54.405(e)(1), (2), and (5), for de-enrollments generally, de-enrollments for duplicative support, and de-enrollments requested by the subscriber, respectively.[718] As with the EBB Program, we direct USAC to accept and process de-enrollment requests directly from Affordable Connectivity Program subscribers, and to notify the subscriber's provider when such a de-enrollment occurs.[719] This additional method for de-enrollment by subscribers will assist in administering funds efficiently.

263. *Subpart H*. We adopt our proposal to apply sections 54.702(c) of the Commission's rules prohibiting USAC from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress.[720] Additionally, we grant USAC the authority to conduct program audits of contributors and providers, as provided in section 54.707.[721] This grant, however, is subject to our further direction in this Order.

264. *Subpart I.* Lastly, we provide a path for recourse to parties aggrieved by decisions issued by USAC. Specifically, we require review of decisions issued by USAC to follow the requirements set

[714] *See* 47 CFR § 54.410.

[715] 47 CFR §§ 54.407(a), 54.417, and 54.419.

[716] *See, e.g.*, *supra* Section III.B.

[717] 47 CFR §§ 54.400(p), 54.406(a).

[718] 47 CFR §§ 54.405(e)(1), (2), and (5).

[719] EBB Program Order,

[720] *ACP Public Notice* at 54, para 138; 47 CFR § 54.702(c).

[721] 47 CFR § 54.707.

forth in Subpart I.[722] We find these existing processes sufficient to provide meaningful review of decisions issued by USAC during the Affordable Connectivity Program.

2. Delegations to the Bureaus and Office of Managing Director

265. We delegate authority to the Bureau and OMD to make necessary adjustments to the program administration and to provide additional detail and specificity to the requirements of the Affordable Connectivity Program to conform with the intent of this Order and ensure the efficient functioning of the program.

266. We previously delegated financial oversight of the EBB program to the Commission's Managing Director and directed OMD to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. We affirm that such delegation continues in the Affordable Connectivity Program. These duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.[723] Such financial oversight must be consistent with the rules adopted in this Order. OMD performs this role with respect to USAC's administration of the Commission's Universal Service programs,[724] the Covid-19 Telehealth program,[725] and the Emergency Connectivity Fund Program,[726] and we anticipate that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 904, to ensure the efficient and effective management of the program. Finally, OMD is required to consult with the Bureau on any policy matters affecting the program, consistent with section 0.91(a) of the Commission's rules. OMD, in coordination with the Bureau, may issue additional directions to USAC and program participants in furtherance of its responsibilities.

267. In its administration of the Program, USAC is directed to comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security standards and requirements, such as the Privacy Act, [727] relevant provisions in the Federal Information Security Modernization Act of 2014,[728] National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

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[722] 47 CFR § 54.719-25.

[723] 47 CFR § 0.11(a)(3)-(4) (stating that OMD will "[a]ssist the Chairman in carrying out the administrative and executive responsibilities" and "[a]dvise the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest"); 47 CFR § 0.11(a)(8) (stating that OMD's current responsibility is to "[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management"); 47 CFR § 0.5(e) (requiring Bureau and Office coordination with OMD on recommendations "that may affect agency compliance with Federal financial management requirements").

[724] *See, e.g.*, Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Dec. 19, 2018) https://www.fcc.gov/sites/default/files/usac-mou.pdf (stating that the Commission is responsible for the effective and efficient management and oversight of the USF, including USF policy decisions, and USAC is responsible for the effective administration of the programs).

[725] *See COVID-19 Telehealth Program*, WC Docket No. 20-89, Report and Order, FCC 21-24, para. 8 (rel. February 2, 2021).

[726] *See generally Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, FCC 21-58 (rel. May 11, 2021).

[727] 5 U.S.C. § 552a.

[728] The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002), was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. §§ 3551 *et seq*.

268. We recognize that, once implementation of the Affordable Connectivity Program begins, the Commission or USAC may encounter unforeseen issues or problems with the administration of the Affordable Connectivity Program and we delegate to Commission staff the authority to address and resolve such issues consistent with the requirements adopted by the Commission.

269. Finally, before the launch of the Affordable Connectivity Program, the Bureau issued a final guidance order providing a roadmap of the rules that would govern the Affordable Connectivity Program in the interim period between the launch of the program and when the new rules adopted by the Commission would become effective.[729] To efficiently administer the Affordable Connectivity Program and to implement the requirements we adopt herein, we adopt the Bureau's *December 30th Guidance Order*. Accordingly, the EBB Program rules shall continue to control, except where otherwise noted in the Bureau's final guidance order, until the rules we adopt today become effective, as set forth in the Ordering Clauses below.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

270. Finally, we seek comment on other aspects of the Infrastructure Act. Specifically we seek comment on structuring an outreach grant program and implementing a mechanism for determining the application of the enhanced benefit for those serving high-cost areas, as to be determined by the National Telecommunications Information Administration (NTIA).

271. *Grant Programs*. The Affordable Connectivity Program will rely heavily on outreach efforts to make eligible households aware of and informed about the program. As evidenced in the record, certain segments of eligible households that would benefit from the program currently have low participation rates. To that end, the Infrastructure Act provides that the Commission may conduct various outreach efforts to encourage households to enroll in the Affordable Connectivity Program.[730] The *ACP Public Notice* sought comment on the use of these statutorily authorized outreach tools, including the authority to provide grants to outreach partners.[731] As explained in the Report and Order, the Commission endeavors to use a variety of outreach tools permitted under the statute to reach eligible consumers, including but not limited to people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality. In addition to the Commission's own outreach efforts, outreach partners also play an important role in disseminating information about the Affordable Connectivity Program and funding would help expand these outreach efforts and improve their effectiveness.

272. Any agency establishing a grant program must do so in strict compliance with Title 2 of the CFR and other regulations and statutes applicable to federal grants.[732] However, as discussed in the *ACP Public Notice*, while we typically administer various types of federal financial assistance programs, the Commission does not have experience with the unique statutory and regulatory requirements applicable to federal grant programs.[733] While the present record evinces strong support for the establishment of a grant program to promote awareness of and enrollment in the Affordable Connectivity

[729] *See generally Dec. 30th Guidance Order*.

[730] *See* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(C)(i)-(ii) (2021).

[731] *ACP Public Notice* at 42-43, paras. 109-110, 112.

[732] *See* 2 CFR 200.100(a)(1), 200.1 (Part 2 establishes uniform requirements for Federal awards of financial assistance to non-Federal entities, which includes grants); *see generally* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Uniform Guidance) at 2 CFR Part 200. Part 200 consolidated numerous Office of Management and Budget Circulars pertaining to grants management. Grants.gov provides helpful information regarding federal government grant programs and related overarching statutory and regulatory policies.

[733] *ACP Public Notice* at 42, para. 110.

Program and identifies several potential uses of outreach funds,[734] the structure and implementation of such a program requires further exploration due to the unique statutory and regulatory requirements of a federal grant program, which the Commission has not previously administered. Accordingly, in this Further Notice of Proposed Rulemaking (FNPRM), we seek additional comment and feedback on structuring an outreach grant program to be managed by the Commission in support of consumer outreach concerning the Affordable Connectivity Program as permitted in the Infrastructure Act.

273. Several commenters support the establishment of an outreach grant program[735] and offer various recommendations and relevant insights. For instance, EducationSuperHighway cites the Internal Revenue Service's (IRS) Volunteer Income Tax Assistance (VITA) Program as a useful example that the Commission should look to as a model.[736] Are there other analogous federal outreach grant programs the Commission should consider as good models for establishing an outreach grant program besides those already identified in the record? We especially encourage interested parties who have experience serving people of color, persons with disabilities, persons who live in rural or Tribal areas and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, including state, local and Tribal governments, non-profits, and community-based organizations, to identify federal grant programs that they have found to be helpful in those efforts.

274. We first seek comment on the duration and budget for a potential outreach grant funding program. We propose to create a multiple-year outreach grant program to align with the expectation that the Affordable Connectivity Program will extend for multiple years. Should this multi-year program require grantees to submit a new application periodically? Should the Commission instead consider establishing a one-time, limited duration outreach grant program? We also seek comment on the appropriate funding amount for a grant program.

275. As reflected in the record, commenters support the Commission using a wide variety of outreach methods to take advantage of the statutory tools provided in the Infrastructure Act, including the establishment of an outreach grant program.[737] Are there particular types of outreach activities toward

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[734] Commenters cite several programs as models providing useful lessons for the Commission to implement itself or to provide outreach funding to partners to implement. *See, e.g.*, City of Detroit Comments at 5 (discussing Connect 313); HTTP Comments at 2 (discussing the national grassroots public engagement campaign EBB Para Mi); LA County Comments at 6 (discussing its multi-platform, multi-language campaign to inform residents about the sunsetting Emergency Broadband Benefit as well as the upcoming [Affordable Connectivity Program]); UWCA Comments at 32 (suggesting that the Commission create a two-tier outreach grant program with (1) organizations that will raise awareness of the Affordable Connectivity Program and (2) organizations that will facilitate enrollment, with organizations working on digital equity for 2-5 years being eligible for grants); VTDPS Comments at 6-7 (suggesting that, with grant funding, outreach partners could assist participating providers with their outreach efforts and directly advertise the Affordable Connectivity Program and that grant funding could be used to temporarily increase outreach partners' resources with additional staff or hotlines dedicated to the Affordable Connectivity Program);

[735] *See, e.g.*, AARP Comments at 10; CETF Comments at 44; Common Cause Comments at 6-7; EducationSuperHighway Comments at 9 (stating that the Commission should provide grants to "trusted institutions, non-profits and [community-based organizations] to conduct outreach and provide enrollment assistance"); Groundwork NRG Comments at 1-2

[736] *See* EducationSuperHighway Comments at 18 (discussing the IRS's Volunteer Income Taxpayer Assistance (VITA) Program which provides free tax preparation to underserved communities, such as "low- and moderate-income individuals, persons with disabilities, the elderly, and limited English proficient taxpayers.") VITA services are provided by over 300 primarily non-profit, educational and government organizations and funded by matching grants from the IRS, which are used for tax preparation operations as well as outreach to underserved communities. *Id.*

[737] Commenters cite several programs as models providing useful lessons for the Commission to implement itself or to provide outreach funding to partners to implement. *See, e.g.*, City of Detroit Comments at 5 (discussing Connect 313); HTTP Comments at 2 (discussing the national grassroots public engagement campaign EBB Para Mi); Los

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which the Commission should consider targeting outreach grant funds? Tech Goes Home emphasizes the importance of ensuring adequate resources are provided to local outreach partners to prevent additional financial burdens.[738] How much funding might grantees need in order to execute effective outreach efforts? We seek comment on estimated ranges of outreach grant awards, taking into consideration the range of costs that may be associated with outreach efforts, including those identified in the record, and on potential per application funding caps. We also seek comment on types of support and outreach material the Commission could provide to help outreach partners.

276. We next seek comment on eligible entities for an outreach grant funding program. The record reflects support for relying on non-profit organizations and trusted community organizations as outreach partners for the Affordable Connectivity Program.[739] AARP recommends that "preference in grant awards should be given to organizations with established public interest credentials, preferably non-profit organizations, that have strong ties with key communities, including multi-cultural communities" and that grant applicants be required to provide examples of successful past outreach initiatives.[740] LA County recommends that the Commission consider awarding grants to local governments, including counties, cities, and other entities, to further develop hyper-local campaigns, taking into consideration language needs, digital literacy, social media trends, relevant linear media, and other local factors.[741] We seek comment on the types of entities that should be deemed eligible to receive potential outreach grant funding.[742] If non-profit organizations are eligible for funds, should eligibility be limited to non-profit organizations with 501(c)(3) status? Should state, local, and Tribal governments, including associated social service agencies, school districts, and libraries, be eligible to receive potential grant funds? Are there other types of organizations that should be considered eligible for a potential outreach grant program? Grantees would be required to adhere to applicable federal grantee regulations, including but not limited to "tak[ing] all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible."[743] Should use of outreach grant funds be limited to the named grant recipient, or should funding recipients be permitted to use subgrantees? Would allowing subgrantees significantly complicate the administration of an outreach grant program? Do other outreach grant programs typically permit subgrantees?

277. We also seek comment on the application process, reporting and other requirements for a potential outreach grant program. Interested parties should refer to the Uniform Administrative Requirements, Cost Requirements, and Audit Requirements for Federal Awards, 2 CFR Part 200, as well as the general reporting requirements in 2 CFR Parts 25 and 170. The National Digital Inclusion Alliance requests that the application process, reporting requirements, and financial requirements be as minimally burdensome as possible and that, wherever possible, the Commission should "limit barriers to participation in the grant program for small organizations who are trusted in their communities but have

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Angeles County Comments at 6 (discussing its multi-platform, multi-language campaign to inform residents about the sunsetting EBB Program as well as the upcoming Affordable Connectivity Program, deploying traditional linear media campaigns, social media campaigns, and hyperlocal media and in-person campaigns in order to maximize the public awareness of the program).

[738] Tech Goes Home Comments at 2.

[739] *See, e.g.*, EducationSuperHighway Comments at 18; NHMC Comments at 11-12

[740] *See* AARP Comments at 10.

[741] *See* LA County Comments at 6.

[742] *See also* Local Government Reply at 17 (supporting VTPDS comments regarding the value of grant funding for outreach efforts into low-income communities with whom outreach partners are in regular contact and asking the Commission to establish that local governments are eligible for support).

[743] See 2 CFR §§ 200.321(a).

limited capacity to participate in large, federal grant programs."[744] We invite commenters who have received federal grants to address the grantee experience, including the grant application process and their use of grant funds, and best practices best practices with respect to financial and reporting requirements for grant recipients, particularly for outreach grants. Should the application and selection process for a potential outreach grant program be competitive? We seek comment on how the Commission could structure an application and evaluation process to maximize the potential reach and effectiveness of outreach grant funding.

278. An outreach grant program should maximize the number of eligible consumers participating in the ACP. We seek comment on whether awarding funding to applicants from a range of organization types and sizes (e.g., nationwide, regional, local, and smaller organizations) and ensuring diversity in geographic areas and intended outreach populations will best serve the underlying goal of increasing enrollment in the ACP. In order to effectively encourage eligible households to enroll in the Affordable Connectivity Program, the Commission would also have a strong interest in selecting grant applications that would target underserved populations and areas where the funding will have the most impact on increasing awareness of and, consequently, enrollment in the Affordable Connectivity Program.[745] Should special consideration be given to prior experience working with or conducting outreach to such communities? We seek comment on what types of information should be sought from applicants in order to allow the Commission to make informed decisions about the merits of the applications, including the reach of applicant organizations and the populations that they target. What metrics should the Commission take into account when considering applicants and selecting grantees?

279. We next seek comment on establishing goals and metrics for a potential outreach grant program, and tracking performance of those goals. As noted above, outreach is an important tool for promoting awareness and enrollment by eligible households. Increasing enrollments in the Affordable Connectivity Program is one potential goal of an outreach grant program. What metrics could track performance towards this goal? What other measurable goals and metrics would be appropriate for a potential outreach funding program? We also seek comment on establishing appropriate performance metrics and milestones for potential grantees. Consistent with the statutory and regulatory requirements of grant programs, what factors could the Commission require grantees to track to help measure the real impact of supported outreach activities? What would be an appropriate performance period (e.g., one year, three years) and reporting period(s) (e.g., annually, semi-annually)?

280. *Government-Wide Statutes and Regulations Applicable to Grant Programs*. Any agency establishing a grant program must do so in compliance with Title 2, Subtitle A, *Office of Management and Budget Guidance for Grants and Agreements*, of the CFR and other regulations and statutes applicable to federal grants. Because the FCC has not previously implemented a grant program, however, we must through adoption of rule or delegation to the Bureau and OMD, take steps to ensure our compliance with the government-wide requirements applicable to grant programs. Those requirements include relevant portions of Title 2, Subtitle A, of the CFR. Specifically, we propose to apply Parts 25,[746] 170,[747] 175,[748] 180,[749] 182,[750] and 200[751] of 2 CFR Title 2 to the outreach grant program. We also note

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[744] NDIA Comments at 17-18; *see also* Groundwork NRG Comments at 2.

[745] *See* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(C)(i)-(ii) (2021).

[746] Part 25, *Universal Identifier and System for Award Management,* provides for establishment of a unique entity identifier as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct sub recipients, as required by FFATA and for establishes the System for Award Management (SAM) as the repository for standard information about applicants and recipients. Part 25 places obligations on federal agencies and allows the agency to implement its notification obligations through – (1) each notice of funding opportunity, (2) regulation, or (3) other issuance containing instructions for applicants.

[747] Part 170, *Reporting Subaward and Executive Compensation Information,* provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of executive compensation information and information on subawards as required by the FFATA. Part 170 places obligations on federal

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that appropriation riders may also impose conditions on grant programs.[752] Parties are encouraged to comment on the Commission's implementation of those requirements, especially in light of the objectives of the outreach grant program and the fact that this will be the Commission's first experience in implementing a grant program.

281. *High-Cost Areas.* The Infrastructure Act provides for a separate enhanced benefit for households that are served by providers in high-cost areas (the high-cost areas provision).[753] The Infrastructure Act requires the Commission to establish a mechanism by which a participating provider in a high-cost area, as defined in a separate section of the Infrastructure Act and to be determined by the National Telecommunications Information Administration (NTIA) in consultation with the Commission, may receive an enhanced benefit of up to $75 per month for broadband service "upon a showing that the applicability of the lower limit under subparagraph A [the $30 rate] to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network."[754] The *ACP Public Notice* sought comment on what the mechanism should be, and what a provider should

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agencies including notification requirements and allow the agencies to implement the notification requirements through – (1) each notice of funding opportunity, (2) regulation, or (3) other issuance containing instructions for applicants.

[748] Part 175 establishes a Governmentwide award term for grants and cooperative agreements to implement the requirement in paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).

[749] Part 180 establishes a governmentwide debarment and suspension system for agency nonprocurement programs and activities. As noted above in the *Report and Order*, in a separate rulemaking proceeding, the Commission is considering whether to adopt this system for its USF and TRS programs, as well as the National Deaf-Blind Equipment Distribution Program; as proposed in the *ACP Notice*, we will extend any suspension and debarment rules that may be adopted in that proceeding (when finalized) to the ACP outreach grant program to prevent waste, fraud, and abuse.

[750] Part 182, *Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),* provides guidance to agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707, as amended) that applies to grants.

[751] *See* 2 CFR 200.100(a)(1), 200.1 (Part 2 establishes uniform requirements for Federal awards of financial assistance to non-Federal entities, which includes grants); *see generally* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Uniform Guidance) at 2 CFR Part 200. Part 200 consolidated numerous Office of Management and Budget Circulars pertaining to grants management. In its present form, Part 200 is organized into five subparts with each designated as having distinct authority and 12 appendixes. 2 CFR § 200.103 (listing the statutory authority for each Subpart). Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB. 2 CFR § 200.106, Agency implementation. Subpart A, Acronyms and Definitions (§§ 200.0 - 200.99) provides definitions used in the remaining Subparts. Subpart B, General Provisions (§§ 200.100 - 200.113) explains how Part 200 functions. Grants.gov provides helpful information regarding federal government grant programs and related overarching statutory and regulatory policies.

[752] *See, e.g.*, Division E—Financial Services and General Government Appropriations Act, 2021, Consolidated Appropriations Act, 2021, Public Law No: 116-260 (12/27/2020), Sections 724 (relating to implementation of part 200 of title 2, CFR); 738 (limitations on defraying conference expenses), 742 (limitations on the use of confidentiality agreements that prohibit the reporting of waste fraud or abuse); 744 (limitation on awarding grants to entities with unpaid Federal tax liability) and 745 (limiting award of grants to entities that have been convicted of a felony criminal violation under any Federal law within the preceding 24 months).

[753] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(B) (2021).

[754] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(B) (2021).

be required to show a "particularized economic hardship."[755] While the present record provides some comments on this high-cost provision and what areas should be high-cost areas,[756] the establishment of this mechanism requires further exploration given the interplay with other areas of the Infrastructure Act, including the definition of high-cost areas as defined in section 60102(a)(2).[757] Accordingly, in this FNPRM, we seek additional comment and feedback on the high-cost areas provision.

282. As a preliminary matter, the high-cost areas provision states that a "high-cost area" is as defined in section 60102(a)(2) of the Infrastructure Act.[758] Section 60102(a)(2) in turn states that "'high-cost area' means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States,"[759] and that the term unserved area "means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations."[760] In relying on this definition of "high-cost area" for purposes of the Affordable Connectivity Program, we seek comment on whether such high-cost areas need to be unserved high-cost areas, as defined in the Infrastructure Act, or if they can all be high-cost areas generally, whether served or unserved by an existing broadband provider.

283. We seek additional comment on the mechanism by which a provider can show particularized economic hardship. Commenters generally agreed that the Commission should set clear standards or benchmarks for providers on what constitutes particularized economic hardship.[761] NTCA said that the standard for particularized economic hardship should be "where a High-Cost support recipient participating in the [Affordable Connectivity Program] can demonstrate that end-user revenues plus the level of high-cost USF support received fail to cover the cost of serving ACP-eligible customers at a rate that is available to low-income consumers in urban areas."[762] Similarly, Conexon asserts that

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[755] *ACP Public Notice* at 30, paras. 71-73.

[756] *See, e.g.*, NCTA Comments at 17 (should look to existing USF high-cost support); USTelecom Reply at 10-11 (should be lined up with existing USF high-cost support); Alaska Communications Reply at 2-6 (all of Alaska should be high-cost areas).

[757] Infrastructure Act, div. F, tit. I, § 60102(a)(2)(G)(i) ("The term "high-cost area" means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States (as determined by the Assistant Secretary, in consultation with the Commission), incorporating factors that include—(I) the remote location of the area; (II) the lack of population density of the area; (III) the unique topography of the area; (IV) a high rate of poverty in the area; or (V) any other factor identified by the Assistant Secretary, in consultation with the Commission, that contributes to the higher cost of deploying broadband service in the area. (ii) UNSERVED AREA.—For purposes of clause (i), the term "unserved area" means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.").

[758] Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(A), (b)(1)(A)(ii), § 904(a)(7)(B) (2021).

[759] Infrastructure Act, div. F, tit. I, § 60102(a)(2)(G)(i) (noting that this would be as "determined by the Assistant Secretary, in consultation with the Commission), incorporating factors that include—(I) the remote location of the area; (II) the lack of population density of the area; (III) the unique topography of the area; (IV) a high rate of poverty in the area; or (V) any other factor identified by the Assistant Secretary, in consultation with the Commission, that contributes to the higher cost of deploying broadband service in the area").

[760] Infrastructure Act, div. F, tit. I, § 60102(a)(2)(G)(ii). The terms "location" and "broadband-serviceable location" "have the meanings given those terms by the Commission under rules and guidance that are in effect, as of the date of enactment of" the Infrastructure Act; and "the term 'unserved location' means a broadband-serviceable location, as determined in accordance with the broadband DATA maps, that (i) has no access to broadband service; or (ii) lacks access to reliable broadband service offered wit (I) a speed of not less than (aa) 25 megabits per second for downloads; and (bb) 3 megabits per second for uploads; and (II) a latency sufficient to support real-time, interactive applications. *See* Infrastructure Act, div. F, tit. I, §§ 60102(a)(2)(H), 60102(a)(1)(A)

[761] ACA Connects Comments at 28.

[762] NTCA Comments at 17; *see also* USTelecom Reply at 11-12.

economic hardship can be found where service "to locations where the subscriber revenue alone does not cover depreciation expense, operating expense, the cost of capital, and other associated expenses . . . thereby making it uneconomic to maintain the operation of that part of its network," i.e., "in those areas, where a $30 monthly subsidy per subscriber would not cover operating losses, the $75 enhanced subsidy should be available."[763] Conexon further contends that in areas where a $30 subsidy in addition to subscriber revenue is insufficient to "justify the incremental private investment," the enhanced high-cost subsidy should be available to providers.[764]

284. Both NTCA and Conexon contend that providers may face particularized economic hardship when the expected revenue from a substantial number of eligible households does not cover the cost of serving the designated high cost area even when high-cost USF support is taken into consideration. We seek comment on whether this is the best method of determining whether providers face a particularized economic hardship. If so, what constitutes a substantial number of eligible households? What considerations should be used to determine a provider's expected revenues? When a provider has a depressed take-rate, how can we determine the cause is because households in that area cannot afford internet? How can we assess the financial needs of providers who need to maintain the operation of the network serving households in the designated high-cost areas? We also seek comment on other standards and tests the Commission should consider to make this determination.

285. We next seek additional comment on the specific information that providers should provide in order to show particularized economic hardship.[765] What information (such as revenues, cost models, capital expenditures, etc.) should a provider be required to submit to show that increased subsidies from the Affordable Connectivity Program are necessary for the provider to maintain their network? Alternatively, is there a level of poverty that could be applied in all high-cost areas to determine where carriers face particularized economic hardship? What information is publicly available for the Commission to consider in making such a determination? Should the Commission take into consideration other subsidies and financial benefits used by provider in determining a provider's request for high-cost treatment in the Affordable Connectivity Program?

286. The *ACP Public Notice* sought comment on who should decide whether the provider met the standard for this enhanced benefit and we seek further comment on how this review process should be implemented. What else should the Commission consider when setting up the process for making determinations about a household's eligibility to receive this enhanced subsidy?

287. The Commission, as part of its continuing effort to advance digital equity for all,[766] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[767] and benefits (if any) that may be

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[763] Conexon Comments at 5.

[764] *Id.* at 7.

[765] *See* ACP Providers Reply at 11 (stating that commercial mobile carriers should be able to "demonstrate that one or more cell sites may be decommissioned in the absence of a higher ACP benefit, or alternatively, would not be decommissioned if the higher ACP benefit is provided," and that such submissions can take the form of a waiver request without specific guidelines).

[766] Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[767] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual,

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associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

V. SEVERABILITY

288. All of the ACP rules that are adopted in this Order are designed to work in unison, and with existing Lifeline rules where noted, to implement the Affordable Connectivity Program, to offer discounts to eligible low-income households off of the cost of broadband service and certain connected devices, and to strengthen and protect the integrity of the program's administration. However, each of the separate ACP rules we adopt here serve a particular function toward these goals. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

VI. PROCEDURAL MATTERS

289. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis "whenever an agency promulgates a final rule under [5 U.S.C. § 553], after being required by that section or any other law to publish a general notice of proposed rulemaking."[768] Pursuant to the Consolidated Appropriations Act, as extended by the Infrastructure Act, section 553 generally does not apply to the rulemaking proceeding implementing the Affordable Connectivity Program.[769] Furthermore, as discussed above, we find "good cause" under 5 U.S.C. § 553(b)(B) to adopt the consumer protection provisions enumerated under section 904(b)(11) without strictly following the notice procedures specified in section 553(b), to the extent necessary, because following such procedures would be "impracticable, unnecessary, [and] contrary to the public interest."[770] Accordingly, no Final Regulatory Flexibility Analysis is required for this Report and Order.

290. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the Affordable Connectivity Program are a "major rule" under the Congressional Review Act, 5 U.S.C. § 804(2). By exempting this rulemaking proceeding, in most respects, from the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. § 553(b), we conclude that Congress has determined notice and public procedure under the Administrative Procedure Act to be impracticable, unnecessary, or contrary to the public interest.[771] In addition, the exemption of this proceeding from the Administrative Procedure Act requirement that rules cannot become effective until 30 days after publication in the Federal Register, 5 U.S.C. § 553(d), demonstrates Congressional intent that the rules we adopt shall become effective without delay. Furthermore, with respect to the consumer protection provisions enumerated under section 904(b)(11), we find good cause, to the extent necessary, to adopt these rules without notice and public procedure because implementing the rest of the program without these statutorily mandated consumer protections would undermine the overall scheme. Accordingly, the Commission finds for good cause that notice and public procedure on

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transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[768] 5 U.S.C. § 604(a).

[769] *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(h)(1).

[770] 5 U.S.C. § 553(b)(B); *see supra*, Section III.E.4a.

[771] *See supra* Section III.E.4a (applicable law authorizes adoption of consumer protection rules pursuant to section 904(b)(11) using procedures that depart in some respects from the standard notice and comment process mandated by section 553(b)).

the rules adopted herein are impracticable, unnecessary, or contrary to the public interest, and therefore this Report and Order will become effective upon publication in the Federal Register pursuant to 5 U.S.C. § 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

291. *Paperwork Reduction Act.* Pursuant to section 904(h)(2) of the Consolidated Appropriations Act, as extended by the Infrastructure Act, the collection of information sponsored or conducted under the regulations promulgated in this Report and Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.[772]

292. *Initial Paperwork Reduction Act of 1995 Analysis*. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13.[773] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4),[774] we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[775]

293. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended,[776] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Further Notice of Proposed Rulemaking (Further Notice), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. The IRFA is in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[777] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[778]

294. *Comment Filing Procedures*. Pursuant to section 1.419 of the Commission's rules, 47 CFR § 1.419, interested parties may file comments on or before [30 days after publication in the Federal Register] and reply comments on or before [60 days after publication in the Federal Register].[779] All filings should refer to WC Docket No. 21-450. Filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically via ECFS: http://www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

[772] *See id.* § 904(h)(2).

[773] Public Law 104-13.

[774] Public Law 107-198.

[775] 44 U.S.C. § 3506(c)(4).

[776] *See* 5 U.S.C. § 603.

[777] *See* 5 U.S.C. § 603(a).

[778] *See id.*

[779] *See* 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

- Filings can be sent by commercial overnight courtier or by first-class or overnight U.S. Postal Service mail.[780] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

295. *People with Disabilities*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

296. *Ex Parte Rules*. The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[781] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's *ex parte* rules.

297. *Contact Person.* For further information, please contact Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1543 or by email at eric.wu@fcc.gov.

VII. ORDERING CLAUSES

298. Accordingly, IT IS 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, as amended by Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), this Report and Order and Further Notice of Proposed Rulemaking, IS ADOPTED and shall take effect upon publication in the Federal Register, except to the extent provided herein and expressly addressed below.

[780] In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[781] *See* 47 CFR §§ 1.1200(a), 1.1206.

299. IT IS FURTHER ORDERED, that Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective upon publication of the text or summary thereof in the Federal Register, except for sections 54.1802(b), 54.1803(b), 54.1804, 54.1807(b), 54.1809(c), and 54.1810(b)(3) which shall be effective (60) days after publication of the text or summary thereof in the Federal Register; section 54.1810(a),(b)(1)-(2), which shall be effective (30) days after publication of the text or summary thereof in the Federal Register.

300. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

301. IT IS FURTHER 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, as amended by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-5, 135 Stat. 429 (2021), and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration filed by United States TRUCONNECT COMMUNICATIONS, AMERICAN BROADBAND AND TELECOMMUNICATIONS CO., GLOBAL CONNECTION OF AMERICA dba STANDUP WIRELESS, and AMERIMEX COMMUNICATIONS dba SAFETYNET WIRELESS LLC on March 26, 2021 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

The authority for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601-1609, unless otherwise noted.

Add subpart Q to read as follows:

Subpart R—Affordable Connectivity Program

Sec.

54.1800 Definitions

54.1801 Participating providers

54.1802 Affordable connectivity benefit

54.1803 Affordable Connectivity Program support amounts

54.1804 Participating provider obligation to offer the Affordable Connectivity Program

54.1805 Household qualification for Affordable Connectivity Program

54.1806 Household eligibility determinations and annual recertification

54.1807 Enrollment representative registration

54.1808 Reimbursement for providing affordable connectivity benefit

54.1809 De-enrollment of subscribers from the Affordable Connectivity Program

54.1810 Consumer protection requirements

54.1811 Recordkeeping requirements

54.1812 Validity of electronic signatures

§ 54.1800 Definitions.

(a) *Administrator.* The term ‘‘Administrator’’ means the Universal Service Administrative Company.

(b) *Affordable connectivity benefit*. The term ‘‘affordable connectivity benefit’’ means a monthly discount for an eligible household, applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than $30, or, if an Internet service offering is provided to an eligible household on Tribal land, not more than $75.

(c) *Broadband Internet access service*. The term ‘‘broadband Internet access service’’ has the meaning given such term in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.

(d) *Broadband provider*. The term ‘‘broadband provider’’ means a provider of broadband Internet access service.

(e) *Commission*. The term ‘‘Commission’’ means the Federal Communications Commission.

(f) *Connected device*. The term ‘‘connected device’’ means a laptop or desktop computer or a tablet.

(g) *Designated as an eligible telecommunications carrier*. The term ''designated as an eligible telecommunications carrier'', with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. § 214(e)).

(h) *Direct service.* As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(i) *Duplicative support*. "Duplicative support" exists when an Affordable Connectivity Program subscriber or household is receiving two or more Affordable Connectivity Program services concurrently or two or more subscribers in a household have received a connected device with an Affordable Connectivity Program discount.

(j) *Eligible household*. The term ''eligible household'' means, regardless of whether the household or any member of the household receives support under subpart E of this Part, and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(1) at least one member of the household meets the qualifications in subsection (a)(2) or (b) of section 54.409 of title 47, Code of Federal Regulations (or any successor regulation);

(2) the household's income as defined in §54.1800(k) is at or below 200% of the Federal Poverty Guidelines for a household of that size;

(3) at least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. § 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. § 1773), or at least one member of the household is enrolled in a school or school district that participates in the Community Eligibility Provision (42 U.S.C. §1759a);

(4) at least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. § 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under section 54.1806(a)(2) of title 47, Code of Federal Regulations;

(5) at least one member of the household meets the eligibility criteria for a participating provider's existing low-income program, subject to the requirements of section 54.1806(a)(2) of title 47, Code of Federal Regulations; or

(6) at least one member of the household receives assistance through the special supplemental nutritional program for women, infants and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. § 1786).

(k) *Enrollment representative*. ''Enrollment representative'' means an employee, agent, contractor, or subcontractor, acting on behalf of a participating provider or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment.

(l) *Household*. A "household" is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(m) *Income*. "Income" means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 et seq.

(n) *Internet service offering*. The term ''Internet service offering'' means, with respect to a broadband provider, broadband Internet access service provided by such provider to a household.

(o) *Lifeline qualifying assistance program*. A "Lifeline qualifying assistance program" means any of the federal or Tribal assistance programs the participation in which, pursuant to 47 CFR § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

(p) *National Lifeline Accountability Database*. The "National Lifeline Accountability Database" is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(q) *National Lifeline Eligibility Verifier or National Verifier*. The "National Lifeline Eligibility Verifier" or "National Verifier" is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and Affordable Connectivity Program, as directed by the Commission.

(r) *Participating provider*. The term ''participating provider'' means a broadband provider that—

(1) (A) is designated as an eligible telecommunications carrier; or

(B) meets the requirements established by the Commission for participation in the Affordable Connectivity Program and is approved by the Commission under section 54.1801(b); and

(2) elects to participate in the Affordable Connectivity Program; and

(3) has not been removed or voluntarily withdrawn from the Affordable Connectivity Program pursuant to section 54.1801(d).

(s) *Tribal lands.* For purposes of this subpart, "Tribal lands" include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands - areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of subpart E of part 54 of title 47, Code of Federal Regulations (or any successor regulation) pursuant to the designation process in 47 CFR § 54.412.

§ 54.1801 Participating providers.

(a) *Eligible telecommunications carriers*. A broadband provider that is designated as an eligible telecommunications carrier may participate in the Affordable Connectivity Program as a participating provider.

(b) *Other broadband providers.* A broadband provider that is not designated as an eligible telecommunications carrier may seek approval from the Wireline Competition Bureau to participate in the Affordable Connectivity Program as a participating provider.

(1) The Wireline Competition Bureau shall review and act on applications to be designated as a participating provider on an expedited basis. Such applications shall contain:

(A) the states or territories in which the provider plans to participate;

(B) the service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an eligible telecommunications carrier; and,

(C) certifications of the provider's plan to combat waste, fraud, and abuse.

(2) Notwithstanding subparagraph (1), the Wireline Competition Bureau shall automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers Internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse. Such applications seeking automatic approval shall contain:

(A) the states or territories in which the provider plans to participate;

(B) the service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an Eligible Telecommunications Carrier; and,

(C) a description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Affordable Connectivity Program.

(c) *Election notice*. All participating providers must file an election notice with the Administrator. The election notice must be submitted in a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator. All participating providers must maintain up-to-date contact and other administrative information contained in the election notice as designated by the Wireline Competition Bureau and the Administrator. These updates shall be made within 10 business days of the change in designated information contained in the election notice. The election notice shall be made under penalty of perjury or perjury and at a minimum should contain:

(1) the states or territories in which the provider plans to participate in the Affordable Connectivity Program;

(2) a statement that, in each state or territory, the provider was a "broadband provider;"

(3) a list of states or territories where the provider is an existing Eligible Telecommunications Carrier, if any;

(4) a list of states or territories where the provider received Wireline Competition Bureau approval, whether automatic or expedited, to participate, if any;

(5) whether the provider intends to distribute connected devices and documentation detailing the equipment and applicable wholesale costs of the connected devices; and,

(6) any other information necessary to establish participating provider in the Administrator's systems.

(d) *Voluntary withdrawal or involuntary removal of participating providers from the Affordable Connectivity Program*.

(1) *Definitions*. For purposes of this subsection 54.1801(d),

(i) *Removal*. Removal means involuntary discontinuation of a provider's participation in the Affordable Connectivity Program pursuant to the process outlined in subsection 54.1801(d)(2)(ii)-(iii).

(ii) *Suspension*. Suspension means exclusion of a participating provider from activities related to the Affordable Connectivity Program for a temporary period pending completion of a removal proceeding.

(2) *Suspension and removal*.

(i) *Suspension and removal in general*. The Commission shall suspend and/or remove a participating provider for any of the causes in clause (ii) of this paragraph. Suspension or removal of a participating provider constitutes suspension or removal of all its divisions, other organizational elements, and individual officers and employees, unless the Commission limits the application of the suspension or removal to specifically identified divisions, other organizational elements, or individuals or to specific types of transactions.

(ii) *Causes for suspension or removal.* Causes for suspension or removal are any of the following:

(A) Violations of the rules or requirements of the Affordable Connectivity Program, the Emergency Broadband Benefit Program, Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs;

(B) Any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including without limitation fraudulent enrollments.(C)A conviction or civil judgment for attempt or commission of fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, making false claims, obstruction of justice, or similar offense, that arises out of activities related to the Affordable Connectivity Program, the Emergency Broadband Benefit Program, Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs.

(iii) *Suspension and removal procedures.* The following procedures apply to the suspension and removal of a participating provider:

(A) The Chief of the Wireline Competition Bureau or Enforcement Bureau) will commence a removal proceeding by providing to the participating provider a notice via electronic mail and/or U.S. mail setting forth the legal and factual bases for the initiation of the removal proceeding and informing the provider of its duty to respond within 30 days of the date of the notice.

(B) Concurrent with the issuance of such notice commencing the removal proceeding, or at any time before a final determination in the proceeding is rendered, the Chief of the Wireline Competition Bureau or Enforcement Bureau) may direct that the participating provider be removed from the Commission's list of providers and from USAC's Companies Near Me Tool, and also may direct USAC to temporarily suspend the provider's ability to enroll or transfer in new subscribers during the pendency of the removal proceeding, but only after determining that immediate action is necessary to protect the public interest. In addition, the Chief of the Wireline Competition Bureau or Enforcement Bureau may also direct that an interim funding hold (or partial hold) be placed on the provider upon a determination that there is adequate evidence that the provider's misconduct is likely to cause or has already resulted in improper claims for ACP reimbursement.

(C) The participating provider must respond within 30 days of the date of the notice commencing the removal proceeding with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the provider should not be removed from the Affordable Connectivity Program. Failure to respond or to provide evidence in a timely manner will result in a finding against the provider, removal from the program, and revocation of the provider's authorization to participate in the Affordable Connectivity Program.

(D) Within 30 days of receiving the response, the Chief of the Wireline Competition Bureau or Enforcement Bureau) will make a determination and issue an order providing a detailed explanation for the determination. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines there has not been conduct warranting removal, then any measures taken under subparagraph (B) of this clause (iii) will be discontinued immediately. However, a funding hold may be continued at the discretion of Chief of the Wireline Competition Bureau or Enforcement Bureau) if it is determined that such a hold is otherwise warranted, based on relevant credible evidence. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines that there has been conduct warranting removal, the provider's authorization to participate in the Affordable Connectivity Program will be revoked, and the provider shall be immediately removed from the program. Upon removal from the program, the former participating provider shall be barred from seeking to rejoin, and from participating in, the Affordable Connectivity Program for at least 5 years, or such longer period as provided for in the order, based upon review of all relevant circumstances. Any such providers will be similarly barred from participation in any ACP successor program during the removal period determined under the Order.

(3) *Voluntary withdrawal*. A participating provider may withdraw its election to participate in the Affordable Connectivity Program by submitting a written notice of voluntary withdrawal to the Administrator at least 90 days before the intended effective date of the withdrawal. The notice of voluntary withdrawal shall include statements that the provider is complying with each of the transition provisions set forth in paragraph (d)(4) of this section.

(4) *Transition provisions for participating providers that are removed or that voluntarily withdraw from the program and their subscribers*.

(A) A participating provider shall cease to enroll or transfer in new households or to advertise or market the discounted rates for its services subject to the affordable connectivity benefit—

(i) immediately upon the effective date of the final removal determination, unless the provider has already been precluded on an interim basis from transferring in or enrolling new households; or

(ii) at least 90 days before the effective date of the provider's voluntary withdrawal from the program.

(B) A participating provider must provide notices regarding its removal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(i) The provider must issue the first notice within 30 days of the removal determination and the second notice at least 15 days before the effective date of the provider's removal from the Affordable Connectivity Program.

(ii) Such notices must include—

(I) a statement that the participating provider will be removed from and no longer be participating in the Affordable Connectivity Program;

(II) the effective date of the provider's removal from the Affordable Connectivity Program;

(III) that upon the effective date of the removal, the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(IV) the amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the discounted rate is no longer available;

(V) an explanation that in order to continue receiving internet service with an affordable connectivity benefit after the provider has been removed from the program, the eligible household must transfer its affordable connectivity benefit to a different participating provider;

(VII) information on how to locate providers participating in the Affordable Connectivity Program, including the web address for USAC's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable

(VII) instructions on how to find and select a new participating provider and to request such a transfer;

(VIII) the provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center; and

(IX) other information as determined by the Bureau .

(C) A participating provider must provide written notices regarding its voluntary withdrawal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(i) The provider must issue such notices 90 days, 60 days, and 30 days before the effective date of the provider's voluntary withdrawal from the program.

(ii) Such notices must include—

(I) the date when the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(II) the amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the affordable connectivity program discount is no longer available and the effective date of the new rate;

(III) an explanation that in order to continue receiving internet service with an affordable connectivity program discount after the provider withdraws from the Affordable Connectivity Program, the eligible household must transfer its affordable connectivity benefit to a different participating provider;

(IV) instructions on how to find and select a new participating provider and to request such a transfer;

(V) information on how to locate providers participating in the Affordable Connectivity Program, including the web address for USAC's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable; and

(VI) the provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center.

(D) A provider shall continue providing service to its existing eligible household subscribers at discounted rates subject to the affordable connectivity benefit—

(i) until the date 60 days after the effective date of the removal or order; or

(ii) until the effective date of its voluntary withdrawal from the program.

(E) A provider that has been removed or that has voluntarily withdrawn from the program may continue to request and receive reimbursements from the Administrator for the amount of the affordable connectivity benefit discounts that it provided to eligible household subscribers during the required 60 days following removal or until voluntary withdrawal, subject to the deadline for filing reimbursement claims.

(F) The provider shall retain records demonstrating its compliance with these transition requirements.

(e) *Annual Certification by Participating Providers*. An officer of the participating provider who oversees Affordable Connectivity Program business activities must annually certify, under the penalty of perjury, that the participating provider has policies and procedures in place to comply with all Affordable Connectivity Program rules and procedures. This annual certification shall be made in a manner prescribed by the Bureau and the Administrator. At a minimum, the annual certification requires an officer of the participating provider attest to:

(1) the participating provider having policies and procedures in place to ensure that its enrolled households are eligible to receive the ACP support;

(2) the participating provider having policies and procedures in place to ensure it accurately and completely provides information to required administrative systems, including the National Verifier, National Lifeline Accountability Database, Representative Accountability Database, and other Administrator Systems; and,

(3) the participating provider acknowledging that (i) it is subject to the Commission's enforcement, fine, or forfeiture authority under the Communications Act, (ii) failure to be in compliance and remain in compliance with the Affordable Connectivity Program rules and orders, or for its agents, contractors, or representatives failure to be in compliance, may result in the denial of funding, cancellation of funding commitments, and the recoupment of past disbursements, and (iii) failure to comply with the rules and orders governing the Affordable Connectivity Program could result in civil or criminal prosecution by law enforcement authorities.

§ 54.1802 Affordable connectivity benefit.

(a) The Affordable Connectivity Program will provide reimbursement to a participating provider for the monthly affordable connectivity benefit on the price of broadband internet access service (including associated equipment necessary to provide such service) it provides to an eligible household plus any amount the participating provider is entitled to receive for providing a connected device to such a household under § 54.1803(b).

(b) A participating provider shall allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household that includes broadband internet access service or a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both.

§ 54.1803 Affordable Connectivity Program support amounts.

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household but not more than $30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(q).

(b) A participating provider that, in addition to providing a broadband internet access service subject to the affordable connectivity benefit to an eligible household, supplies such household with a connected device may be reimbursed by an amount equal to the wholesale cost that the provider pays for the device plus 10%, but no more than $100.00 for such connected device.

(1) A participating provider that provides a connected device to an eligible household must charge and collect from the eligible household more than $10.00 but less than $50.00 for such connected device; and

(2) an eligible household may receive, and a participating provider may receive reimbursement for, no more than one (1) connected device per eligible household; and

(3) the eligible household shall not receive such a discount for a connected device, and the participating provider may not receive reimbursement for providing the device at such a discount, if the household or any member of the household previously received a discounted connected device from a participating provider in the Emergency Broadband Benefit Program or in the Affordable Connectivity Program.

§ 54.1804 Participating provider obligation to offer the Affordable Connectivity Program

All participating providers in the Affordable Connectivity Program must:

(a) Make available the affordable connectivity benefit to eligible households.

(b) Publicize the availability of the Affordable Connectivity Program in a manner reasonably designed to reach those likely to qualify for the service and in a manner that is accessible to individuals with disabilities.

(1) Indicate on all materials describing the Affordable Connectivity Program, using easily understood language:

(A) The eligibility requirements for consumer participation;

(B) That the affordable connectivity benefit is non-transferable and is limited to one monthly internet discount and a one-time connected device discount per household;

(C) how to enroll, such as a customer service phone number or relevant website information;

(D) that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, if the Program ends or when a household is no longer eligible, subscribers will be subject to the provider's regular rates, terms, and conditions.

(2) Clearly display on their websites the monetary charges for their current Affordable Connectivity Program service offerings and the available upload/download speeds and data caps for those offerings.

(3) Retain documentation demonstrating their compliance with this requirement.

(4) All participating providers in the Affordable Connectivity Program are encouraged to develop advertising materials describing the service in the dominant languages of communities they serve through the Affordable Connectivity Program.

(c) Notify all consumers who either subscribe to or renew a subscription to an Internet service offering about the Affordable Connectivity Program and how to enroll.

(1) Providers shall deliver a notice in writing or orally, in a manner that is accessible to persons with disabilities:

(A) during enrollment for new subscribers;

(B) at least 30 days before the date of renewal for subscribers not enrolled in the Affordable Connectivity Program who have fixed-term plans longer than one month; and

(C) annually for subscribers not already enrolled in the Affordable Connectivity Program who have month-to-month or similar non-fixed term plans.

(2) The notice shall, at a minimum, indicate;

(A) the eligibility requirements for consumer participation;

(B) that the Affordable Connectivity Program is non-transferable and limited to one monthly internet discount and a one-time connected device discount per household;

(C) how to enroll, such as a customer service phone number or relevant website information; and

(D) that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, if the Program ends, or when a household is no longer eligible, subscribers will be subject to the provider's regular rates, terms, and conditions.

(d) Frequently carry out public awareness campaigns in their Affordable Connectivity Program areas of service that highlight the value and benefits of broadband internet access service and the existence of the Affordable Connectivity Program in collaboration with state agencies, public interest groups, and non-profit organizations and retain documentation sufficient to demonstrate their compliance with the public awareness obligations.

§ 54.1805 Household qualifications for Affordable Connectivity Program.

(a) To qualify for the Affordable Connectivity Program, a household must constitute an eligible household under the definition in § 54.1800(h).

(b) In addition to meeting the qualifications provided in paragraph (a) of this section, in order to qualify to receive an affordable connectivity benefit from a participating provider, neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider.

(c) The following factors are not relevant to, and may not be considered in, the determination of whether a household qualifies as an eligible household:

(1) Whether the household or any member of the household receives Lifeline support under subpart E of this Part; and

(2) Whether the household or any member of the household has any past or present arrearages with a broadband provider.

§ 54.1806 Household eligibility determinations and annual recertification.

(a) *Eligibility verification processes.* To verify whether a household is an eligible household, a participating provider shall—

(1) use the National Verifier; or

(2) rely upon an alternative verification process of the participating provider, if—

(A) the participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(B) not later than 7 days after receiving the information required under clause (a)(2)(A), the Wireline Competition Bureau—

(i) determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(ii) notifies the participating provider of the determination under subclause (a)(2)(B)(i); or

(3) rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program as described in § 54.1800(h)(3). The participating provider must retain documentation demonstrating the school verifying eligibility, the program(s) that the school participates in, the qualifying household, and the program(s) the household participates in.

(b) All participating providers must implement policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit. A provider may not provide a consumer with service that it represents to be Affordable Connectivity Program-supported service or seek reimbursement for such service, unless and until it has:

(1) Confirmed that the household is an eligible household pursuant to § 54.1805;

(2) Completed any other necessary enrollment steps, and;

(3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with § 54.1811.

(c) *One-Per-Household Worksheet*. If the prospective household shares an address with one or more existing Affordable Connectivity Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule set forth in § 54.1805(b)(2) prior to initial enrollment.

(d) *The National Lifeline Accountability Database*. In order to receive Affordable Connectivity Program support, participating providers must comply with the following requirements:

(1) All participating providers must query the National Lifeline Accountability Database to determine whether a prospective subscriber is currently receiving an Affordable Connectivity Program supported service from another participating provider; and whether anyone else living at the prospective subscriber's residential address is currently receiving an Affordable Connectivity Program-supported service.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber who is not seeking to transfer his or her affordable connectivity benefit, is currently receiving an Affordable Connectivity Program-supported service, the participating provider must not provide and shall not seek or receive Affordable Connectivity Program reimbursement for that subscriber.

(3) Participating providers may query the National Lifeline Accountability Database only for the purposes provided in paragraphs (e)(1) and (e)(2) of this section, and to determine whether information with respect to its subscribers already in the National Lifeline Accountability Database is correct and complete.

(4) Participating providers must transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Affordable Connectivity Program subscriber's full name; full residential address; date of birth; the telephone number associated with the Affordable Connectivity Program service; the date on which the Affordable Connectivity Program discount was initiated; the date on which the Affordable Connectivity Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Affordable Connectivity Program.

(5) All participating providers must update an existing Affordable Connectivity Program subscriber's information in the National Lifeline Accountability Database within ten business days of receiving any change to that information, except as described in paragraph (e)(7) of this section.

(6) All participating providers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program, and that failure to provide consent will result in subscriber being denied the Affordable Connectivity Program.

(7) When a participating provider de-enrolls a subscriber from the Affordable Connectivity Program, it must transmit to the National Lifeline Accountability Database the date of Affordable Connectivity Program de-enrollment within one business day of de-enrollment.

(8) All participating providers must securely retain subscriber documentation that the participating provider reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by National Lifeline Accountability Database or National Verifier processes, which require, inter alia, verification of eligibility, identity, address, and age.

(9) A participating provider must not enroll or claim for reimbursement a prospective subscriber in the Affordable Connectivity Program if the National Lifeline Accountability Database or National Verifier cannot verify the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(e) *Connected device reimbursement and the National Lifeline Accountability Database*. In order to receive Affordable Connectivity Program reimbursement for a connected device, participating providers must comply with section 54.1803(b)(1) and the following requirements:

(1) Such participating provider must query the National Lifeline Accountability Database to determine whether a prospective connected device benefit recipient has previously received a connected device benefit.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber has received a connected device benefit, the participating provider must not seek a connected device reimbursement for that subscriber.

(3) Such participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the affordable connectivity benefit for service provided by the same participating provider, except that a participating provider may seek reimbursement for a connected device provided to a household if the household had been receiving an Affordable Connectivity Program-supported service from that provider at the time the connected device was supplied to the household, but the household subsequently transferred its benefit to another provider before the provider had an opportunity to claim the connected device.

(4) Where two or more participating providers file a claim for a connected device reimbursement for the same subscriber, only the participating provider whose information was received and processed by the National Lifeline Accountability Database or Lifeline Claims System first, as determined by the Administrator, will be entitled to a connected device reimbursement for that subscriber.

(5) All participating providers must obtain from each subscriber consent to transmit the information required under paragraph (e)(1) of this section. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program connected device benefit, and that failure to provide consent will result in the subscriber being denied the Affordable Connectivity Program connected device benefit.

(f) *Annual eligibility re-certification*.

(1) Participating providers must re-certify annually all Affordable Connectivity Program subscribers whose initial eligibility was verified through the participating provider's approved alternative verification process or through a school. except where the Administrator using the National Verifier is responsible for the annual recertification of Affordable Connectivity Program subscribers. The Administrator using the National Verifier will re-certify the eligibility of all other Affordable Connectivity Program subscribers. Affordable Connectivity Program subscribers who are also enrolled in Lifeline may rely on a successful recertification for the Lifeline program to satisfy this requirement.

(2) In order to recertify a subscriber's eligibility for the Affordable Connectivity Program, a provider must confirm a subscriber's current eligibility to receive an affordable connectivity benefit by following the eligibility process and requirements under § 54.1806(b)(1)-(3) and must also follow the requirements and processes for either its alternative verification processes approved under § 54.1806(a)(2) or the eligibility verification processes and requirements for school-based eligibility verifications in § 54.1806(a)(3), confirming that the subscriber still meets the program or income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review.

(3) Where the Administrator is responsible for re-certification of a subscriber's Affordable Connectivity Program eligibility, the Administrator must confirm a subscriber's current eligibility to receive Affordable Connectivity Program service by:

(A) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review; or

(B) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review.

(4) If the subscriber's program-based or income-based eligibility for the Affordable Connectivity Program cannot be determined by accessing one or more eligibility databases, then the Administrator must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database the Administrator must obtain both an approved Annual Recertification Form and acceptable documentation demonstrating eligibility from that subscriber to complete the recertification process. (4) Where the Administrator is responsible for re-certification of subscribers' Affordable Connectivity Program eligibility, the Administrator must provide to each provider the results of its annual re-certification efforts with respect to that provider's subscribers.

(5) If a provider is unable to re-certify a subscriber or has been notified by the Administrator that it is unable to re-certify a subscriber, the provider must comply with the de-enrollment requirements provided for in § 54.1809(d).

(6) One-Per-Household Worksheet. At re-certification, if the subscriber resides at the same address as another Affordable Connectivity Program subscriber and there are changes to the

subscriber's household relevant to whether the subscriber is only receiving one affordable connectivity benefit per household, then the subscriber must complete a new Household Worksheet. Providers must retain the one-per-household worksheet for subscribers subject to this requirement at re-certification who share an address with an existing Affordable Connectivity Program subscriber, as reported by the National Lifeline Accountability Database.

§ 54.1807 Enrollment representative registration and compensation.

(a) *Enrollment representative registration*. A participating provider must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, participating providers must require that all enrollment representatives provide the Administrator with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

(A) Accessing the National Lifeline Accountability Database;

(B) Accessing the National Verifier;

(C) Accessing any eligibility database; and

(D) Completing any Affordable Connectivity Program enrollment or verification forms.

(2) Participating providers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Affordable Connectivity Program subscribers, recertify Affordable Connectivity Program subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Participating providers must ensure that enrollment representatives shall regularly recertify their status with the Administrator to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Participating providers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(b) *Prohibition of commissions for enrollment representatives*. A participating provider shall not offer or provide to enrollment representatives, their direct supervisors, or entities that operate on behalf of the participating provider, any form of compensation that is—

(1) based on the number of consumers or households that apply for or are enrolled in the Affordable Connectivity Program with the participating provider;

(2) based on revenues that the participating provider has received or expects to receive in connection with the Affordable Connectivity Program, including payments for connected devices.

§ 54.1808 Reimbursement for providing monthly affordable connectivity benefit

(a) Affordable Connectivity Program support for providing a qualifying broadband Internet access service shall be provided directly to a participating provider based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first day of the calendar month.

(b) For each eligible household receiving the affordable connectivity benefit on a broadband internet access service, the reimbursement amount shall equal the appropriate support amount as described in 47 CFR § 54.1803. The participating provider's Affordable Connectivity Program reimbursement shall not exceed the actual amount charged by the participating provider.

(c) A participating provider offering a service subject to the affordable connectivity benefit that does not require the participating provider to assess and collect a monthly fee from its subscribers shall not receive

support for a subscriber to such service until the subscriber activates the service by whatever means specified by the provider; and

(1) After service activation, shall only continue to receive reimbursement for the affordable connectivity benefit on such service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.1809(c); and

(2) Must certify that every subscriber claimed has used their service subject to the affordable connectivity benefit, as "usage" is defined by 47 CFR § 54.407(c)(2), at least once in the last 30 consecutive days or has cured their non-usage as provided in § 54.1809(c), in order to claim that subscriber for reimbursement for a given service month.

(d) A participating provider that, in addition to providing the affordable connectivity benefit to an eligible household, provides such household with a connected device may be reimbursed in the amount and subject to the conditions specified in sections 54.1803(b) and 54.1806(e)(3).

(e) In order to receive Affordable Connectivity Program reimbursement, an officer of the participating provider must certify, under penalty of perjury, as part of each request for reimbursement, that:

(1) the officer is authorized to submit the request on behalf of the participating provider;

(2) the officer has read the instructions relating to reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statue, rules, requirements, and orders governing the Affordable Connectivity Program;

(3) the participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;

(4) the participating provider has obtained valid certification and application forms as required by the rules in this subpart for each of the subscribers for whom it is seeking reimbursement;

(5) the amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;

(6) each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit—

(A) has not been and will not be charged for the amount the provider is seeking for reimbursement;

(B) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract;

(C) was not, after the date of the enactment of the Consolidated Appropriations Act, 2021 as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and

(D) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other subscribers.

(7) each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and paid more than $10.00 but less than $50.00 for such connected device;

(8) if offering a connected device, the connected device claimed meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount does not exceed the wholesale cost of the connected device plus 10%, and that the connected device has been delivered to the household;

(9) if the participating provider used an alternative verification process to verify that each household is eligible for the Affordable Connectivity Program, the verification process used was designed to avoid waste, fraud, and abuse;

(10) if seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement;

(11) all documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the provider.

(12) the provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. § 8701, in connection with the Affordable Connectivity Program;

(13) the information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

(14) the officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other documented submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343) or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812);

(15) no service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any other federal or state program;

(16) all enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and

(17) the provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all states, territories, and the District of Columbia.

(f) In order to receive Affordable Connectivity Program reimbursement, a participating provider must keep accurate records of the revenues it forgoes in providing Affordable Connectivity Program-supported services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart.

(g) In order to receive reimbursement, participating providers shall submit certified reimbursement claims through Lifeline Claims System within six months of the snapshot date in subsection (a) above, or the following business day in the event the 1st is a holiday or falls on a weekend. If the participating provider fails to submit a certified reimbursement claim by the six-month deadline, the reimbursement claim will not be processed.

§ 54.1809 De-enrollment from the Affordable Connectivity Program.

(a) *De-enrollment generally*. If a participating provider has a reasonable basis to believe that an Affordable Connectivity Program subscriber does not meet or no longer meets the criteria to be considered an eligible household under § 54.1805, the participating provider must notify the subscriber of

impending termination of his or her affordable connectivity benefit. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. The participating provider must allow a subscriber 30 days following the date of the impending termination letter to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the National Verifier or the participating provider consistent with the participating provider's approved alternative verification process. A participating provider must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's deadline to respond.

(b) *De-enrollment for duplicative support*. Notwithstanding paragraph (a) of this section, upon notification by the Administrator to any participating provider that a subscriber is receiving the affordable connectivity benefit from another participating provider, or that more than one member of a subscriber's household is receiving the affordable connectivity benefit and that the subscriber should be de-enrolled from participation in that provider's Affordable Connectivity Program, the participating provider must de-enroll the subscriber from participation in that provider's Affordable Connectivity Program within five business days. A participating provider shall not claim any de-enrolled subscriber for Affordable Connectivity Program reimbursement following the date of that subscriber's de-enrollment.

(c) *De-enrollment for non-usage.* Notwithstanding paragraph (a) of this section, if an Affordable Connectivity Program subscriber fails to use, as "usage" is defined in § 54.407(c)(2), for 30 consecutive days an Affordable Connectivity Program service that does not require the participating provider to assess and collect a monthly fee from its subscribers, the participating provider must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Affordable Connectivity Program service within the 15-day notice period will result in service termination for non-usage under this paragraph.

(d) *De-enrollment for failure to re-certify.* Notwithstanding paragraph (a) of this section, a participating provider must de-enroll an Affordable Connectivity Program subscriber who does not respond to the provider's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.1806(f); or who fails to provide the annual one-per-household re-certifications as required by § 54.1806(f)(6). Prior to de-enrolling a subscriber under this paragraph, the provider must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber must be given 60 days to respond to recertification efforts. If a subscriber does not respond to the provider's notice of impending de-enrollment, the provider must de-enroll the subscriber from the Affordable Connectivity Program within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(e) *De-enrollment requested by subscriber*. If a participating provider receives a request from a subscriber to de-enroll from the Affordable Connectivity Program, it must de-enroll the subscriber within two business days after the request.

§ 54.1810 Consumer protection requirements.

(a) *Disclosures and consents for enrollment*. Prior to enrolling a consumer in the Affordable Connectivity Program, participating providers must obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to enroll with the provider.

(1) The disclosures that shall be presented to the consumer must convey in clear, easily understood terms that:

(A) the Affordable Connectivity Program is a government program that reduces the customer's broadband internet access service bill;

(B) the household may obtain Affordable Connectivity Program-supported broadband service from any participating provider of its choosing;

(C) the household may apply the affordable connectivity benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for Affordable Connectivity Program-supported service;

(D) the provider may disconnect the household's Affordable Connectivity Program-supported service after 90 consecutive days of non-payment;

(E) the household will be subject to the provider's undiscounted rates and general terms and conditions if the Affordable Connectivity Program ends, if the consumer transfers their benefit to another provider but continues to receive service from the current provider, or upon de-enrollment from the Affordable Connectivity Program; and

(F) the household may file a complaint against its provider via the Commission's Consumer Complaint Center.

(2) If standard disclosure and consent language has been provided by the Commission, providers must present that language to consumers prior to enrollment.

(b) *Transfers in the Affordable Connectivity Program*. Participating providers shall comply with the following requirements for transferring an eligible household's affordable connectivity program benefit between providers.

(1) Disclosures and subscriber consent:

(A) Prior to transferring an eligible household's affordable connectivity program benefit, participating providers must obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to transfer its benefit to the transfer-in provider.

(B) The oral or written disclosures must be provided in clear, easily understood language and convey the following information:

(i) That the subscriber will be transferring its affordable connectivity program benefit to the transfer-in provider;

(ii) That the effect of the transfer is that the subscriber's affordable connectivity program benefit will be applied to the transfer-in provider's service and will no longer be applied to service retained from the transfer-out provider;

(iii) That the subscriber may be subject to the transfer-out provider's undiscounted rates as a result of the transfer if the subscriber elects to maintain service from the transfer-out provider; and

(iv) That the subscriber is limited to one affordable connectivity program benefit transfer transaction per service month, with limited exceptions for situations where the subscriber seeks to reverse an unwanted transfer or is unable to receive service from a specific provider.

(C) The household's oral or written consent must:

(i) Clearly identify the subscriber name;

(ii) Acknowledge the subscriber was provided the disclosure language required under section 54.1810(a);

(iii) Indicate that having received the required disclosures, the subscriber gave its informed consent to transfer its benefit to the transfer-in provider; and

(iv) Indicate the date of the subscriber's consent.

(D) Participating providers shall use any standard consent and disclosure language provided by the Commission.

(E) Participating providers must satisfy the disclosure and consent requirements for each transfer transaction.

(2) Within five business days of completing a subscriber transfer in the NLAD, the transfer-in provider shall provide written notice to the transferred subscriber that indicates the following:

(A) The name of the transfer-in provider to which the subscriber's affordable connectivity program benefit was transferred;

(B) The date the transfer was initiated; and

(C) An explanation of the dispute process if the subscriber believes the transfer was improper.

(3) Participating subscribers can only transfer their affordable connectivity benefit between providers once in a given service month, with the following limited exceptions:

(A) The subscriber's benefit was improperly transferred;

(B) The subscriber's service provider ceases operations or fails to provide service;

(C) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought;

(D) The subscriber changes its location to a residential address to a location outside of the provider's service area for the Affordable Connectivity Program.

(c) *Credit Checks*.

(1) A participating provider shall not:

(A) Consider the results of a credit check as a condition of enrollment in the Affordable Connectivity Program.

(B) Consider the results of a credit check to determine to which Affordable Connectivity Program-supported internet service plan a household may apply the affordable connectivity.

(C) Use the results of a credit check to decline to transfer a household's Affordable Connectivity Program benefit.

(d) *Non-payment*.

(1) Bill payment date means the due date for payment specified on a bill for service charges.

(2) A participating provider shall not terminate an eligible household's service subject to the affordable connectivity benefit on the grounds that the household has failed to pay the charges set forth on a bill for such service unless 90 consecutive days have passed since the bill's payment due date.

(e) *Upselling and downselling*.

(1) *Prohibition of inappropriate upselling and downselling*. A participating provider and its agents shall not exert pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan that is more costly, less costly, affords different features, provides higher or lower speed or bandwidth, is subject to higher or lower data caps, or is bundled with additional services, equipment, or features, or fewer services, equipment, or features, than the service or plan that the household is already purchasing or has inquired about purchasing through the Affordable Connectivity Program.

(2) Prohibited activities include, but are not limited to:

(A) requiring, as a condition of enrolling the household or applying the affordable connectivity benefit, that the household select a service, bundled plan, or equipment, other than the service or bundled plan that the eligible household subscriber is already purchasing or using or has inquired about.

(B) pressuring an eligible household to purchase a service or bundled plan to benefit the provider but not the household.

(3) Provided that they do not exert pressure on existing or prospective eligible household subscribers, participating providers—

(A) may communicate information regarding tiers of service that afford higher or lower speeds or bandwidth, are available at higher or lower prices, or have features that differ from a service or plan that an eligible household is already purchasing or has inquired about for the Affordable Connectivity Program; and

(B) may create or promote service plans that are specially priced or designed to meet the needs of eligible households.

(f) *Extended service contracts and early termination fees*

(1) Definitions

(A) An extended service contract is typically an offer of service at a discount price in exchange for a commitment from the subscriber to remain on that service plan for a set period of time, usually at least a year.

(B) Early termination fees are fees that a subscriber is obligated to pay if it purchases a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(2) An eligible household may elect to purchase and apply the affordable connectivity benefit to a participating provider's service plan subject to an extended service contract.

(3) Notwithstanding the provisions that apply to subscribers to extended service contracts who are not eligible households, an eligible household shall not be liable for early termination fees if it purchases and applies its affordable connectivity benefit to a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(g) *Restrictions on switching service offerings*.

(1) A participating provider shall not impose any restrictions on a household's ability to switch Internet service offerings, unless, once the consumer enters a delinquent status after the bill due date, the provider limits available service plans to offerings that are covered by the full benefit amount, and the household consents to switch service plans.

(h) *Restrictions on switching providers*.

(1) A participating provider shall not engage in any practice that is reasonably likely to cause a household to believe it is prohibited or restricted from transferring its benefit to a different participating provider.

(2) A participating provider shall not:

(A) Misrepresent or fail to accurately disclose to a household the rules and requirements pertaining to transfers to another participating provider in the Affordable Connectivity Program;

(B) Charge a household a fee to transfer their benefit to another participating provider;

(C) Suggest or imply that the provider may change the household's service plan if it transfers the benefit to another participating provider

(i) *Unjust and unreasonable acts or practices*

(1) Providers are prohibited from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program.

(2) Such unjust and unreasonable acts or practices include, but are not limited to:

(A) Advertising or holding itself out as a participating provider if it is not authorized to participate in the Affordable Connectivity Program;

(B) Engaging in false or misleading advertising of the Affordable Connectivity Program;

(C) Failing to timely provide service, equipment, or devices that are advertised, promoted, or marketed as part of the Affordable Connectivity Program;

(D) Failing to enroll an eligible household within 5 business days of the date the provider receives the household's affirmative consent to enroll with that provider;

(E) Failing to apply the affordable connectivity benefit to such household on or before the start of the household's next billing cycle;

(F) Failing to deliver a supported connected device within 30 days of obtaining the household's affirmative consent to receive such device; and

(G) Violating any Program rule.

§ 54.1811 Recordkeeping requirements.

Participating providers must maintain records to document compliance with all Commission requirements governing the Affordable Connectivity Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator, or their designee, upon request. Participating providers must maintain the documentation related to the eligibility determination and reimbursement claims for an Affordable Connectivity Program subscriber for as long as the subscriber receives the Affordable Connectivity Program discount from that participating provider, but for no less than the six full preceding calendar years.

§ 54.1812 Validity of electronic signatures.

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (*FNPRM*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided on the first page of the item. The Commission will send a copy of the *FNPRM* , including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (ACP), which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices.[4] The Affordable Connectivity Program is to fund an affordable connectivity benefit consisting of a $30.00 per month discount on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a $75.00 per month discount on such prices in Tribal areas.[5] The Commission establishes rules governing the affordable connectivity benefit and related matters in Report and Order accompanying the FNPRM to which this IRFA applies.

3. The Infrastructure Act also establishes a separate, enhanced affordable connectivity benefit for eligible households served by participating providers in certain high-cost areas. Specifically, the Infrastructure Act makes available an enhanced benefit of up to $75.00 per month for broadband service offered by participating providers in certain areas where the cost of building broadband facilities is relatively high, upon a showing that the lower $30.00 per month benefit "would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network."[6] In the instant *FNPRM*, we seek further comment on rules to implement this enhanced benefit.

4. By way of background, in the *ACP Public Notice*, the Bureau sought comment on the mechanism that should be utilized and the requirements that should be adopted for a provider to demonstrate a "particularized economic hardship" in order to qualify for the enhanced benefit in a particular geographic area.[7] In comments on the *ACP Public Notice*, some commenters argued that, where a provider can demonstrate that subscriber revenues plus the level of high-cost USF support it receives does not cover the cost of serving eligible households at a rate that is available to low-income

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id.*

[4] Infrastructure Investment and Jobs Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904 (2021) (Infrastructure Act) (revising Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904).

[5] *Id.*, sec. 60502(a)(3)(B), § 904(a)(7)(A), (b)(1), (b)(4).

[6] *Id. See also id.*, sec. 60502(a)(2)(G)(i)-(ii) (definitions of "high-cost area" and other relevant terms).

[7] *ACP Public Notice* at 30, paras. 71-73.

consumers in urban areas, it should be deemed to have shown economic hardship.[8] Commenters also asserted that where a $30 monthly subsidy per subscriber would not cover operating losses, the $75 enhanced subsidy should be available.[9]

5. The *FNPRM* seeks comment on the definition and identification of high-cost areas and the standards that a participating provider would need to satisfy and the information it would need to submit to make the required showing of particularized economic hardship.[10] In light of the above proposals and similar comments, and in order to formulate the appropriate rules, the Commission seeks information on other types of standards and tests we should consider to determine when a particularized economic hardship is present. We inquire about what specific financial information including but not limited to revenues, cost models, and capital expenditures should be required for a showing of particularized economic hardship. We also seek further information on how to implement the review process to determine that a provider has met the standards we adopt for the enhanced benefit.

6. The Infrastructure Act also requires the Commission to conduct outreach efforts to inform potentially eligible households about the Affordable Connectivity Program and encourage them to enroll in the program, and it authorizes the Commission to provide grants to outreach partners in order to carry out this responsibility.[11] With the expectation that the Affordable Connectivity Program will extend for multiple years, we propose to create a multiple-year outreach grant program and seek comment on the duration and application processes for a potential outreach grant funding program. Further, consistent with the Congressional directive, the *FNPRM* seeks comment on the implementation of a program to make grants to non-profit organizations and to state, local, and Tribal governments, including associated social service agencies, school districts, and libraries, that voluntarily seek to use such grant funds to act as outreach partners with the Commission in providing information about the Affordable Connectivity Program to consumers who may be eligible for benefits under the program.[12]

7. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the Affordable Connectivity Program efficiently, with minimal burden on eligible households, participating providers, and outreach partners. These actions are consistent with our ongoing efforts to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband Internet access service.

B. Legal Basis

8. The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(a)(7)(B) and (b)(10)(C).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[13] The RFA generally defines the term ”small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”[14] In addition, the term “small business” has the

[8] NTCA Comments at 17; *see also* USTelecom Reply Comments at 11-12.

[9] Conexon Comments at 5.

[10] *See supra* paras. 284-289.

[11] Infrastructure Act, sec. 60502(a)(3)(B), § 904(b)(10)(C).

[12] *See supra* paras. 272- 283.

[13] 5 U.S.C. § 603(b)(3).

[14] *See id.* § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[15] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).[16]

10. *Small Business, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[17] First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[18] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[19]

11. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[20] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[21] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[22]

12. Finally, the small entity described as a "small governmental jurisdictions" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[23] U.S. Census Bureau data from the 2017 Census of Governments[24] indicate that there were 90,075 local governmental jurisdictions in the United States, including general purpose governments (county, municipal, and town or township) and special purpose

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[15] *See id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[16] *See* 5 U.S.C. § 632.

[17] *See id.* § 601(b)(3)-(6).

[18] *See* SBA, Office of Advocacy, "What's New With Small Business?", https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf. (Nov 2021).

[19] *Id.*

[20] 5 U.S.C. § 601(4).

[21] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file,."

https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[22] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[23] 5 U.S.C. § 601(5).

[24] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five years compiling data for years ending with "2" and "7". See also Census of Governments, https://www.census.gov/programs-surveys/cog/about/html.

governments (special districts and independent school districts).[25] Of this number, there were 36,931 general purpose governments with populations of less than 50,000[26] and 12,040 special purpose governments (including independent school districts with enrollment populations of less than 50,000).[27] Accordingly, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."

13. *Wired Broadband Internet Access Service Providers*. The U.S. Census Bureau's lists of broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure and fall in the industry of Wired Telecommunications Carriers.[28] Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[29] Transmission facilities may be based on a single technology or a combination of technologies.[30] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[31] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.[32] Of this total, 3,083 operated with fewer than 1,000 employees.[33] Consequently, under the SBA size standard the majority of firms in this industry can be considered small.

14. *Wireless Broadband Internet Access Service Providers*. Providers of wireless broadband internet access service generally fall within the category of wireless carriers and service providers, but neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable is industry with a SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[34] The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[35] For this

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[25] *See* U.S. Census Bureau, 2017 Census of Governments – Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.

[26] *See id.*, Table 5 (County Governments by Population-Size Group and State: 2017) [CG1700ORG05] and Table 6 (Subcounty General-Purpose Governments by Population-Size Group and State: 2017) [CG1700ORG06]; *see also* Table 2 (Notes_Local Governments by Type and State_2017) [CG1700ORG02].

[27] *See id.*, Table 4 (Special-Purpose Local Governments by State Census Years 1942 to 2017) [CG1700ORG04] and Table 10 (Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017) [CG1700ORG10]. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only independent school districts' data are included in this category.

[28] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[29] *Id.*

[30] *Id.*.

[31] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[32] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series – Estab & Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSZ5&hidePreview=false.

[33] *Id.* The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard.

[34] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[35] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[36] Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more.[37] Thus, under the SBA size standard, the Commission estimates that the majority of firms in this industry are small. According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services.[38] Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees.[39] Thus, using available data, we estimate that the majority of these service providers can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

15. *Enhanced Benefit in High-Cost Areas.* The portion of the FNPRM concerning the enhanced affordable connectivity benefit for eligible households served by participating providers in high-cost areas seeks comment on, *inter alia*, the standard that a participating provider must satisfy to make a showing of individualized economic harm and the types of information needed to make such a showing. Depending on the specific rules ultimately adopted, providers of wireline or wireless broadband internet access services, including small businesses, that voluntarily seek to qualify for the enhanced benefit may need to report and retain certain data about their operations. The precise nature of the necessary data cannot be ascertained at this time, but they will likely include the costs of deploying and maintaining broadband internet access networks in particular unserved geographic areas, including the cost of capital, depreciation expenses, operating costs, and other associated expenses. These costs may vary, in part, depending on the topological features, population distribution, and other conditions in such areas. Other relevant factors may include estimates of consumer demand and likely revenues from providing broadband internet access services, as well as the number of low-income households that might qualify for the affordable connectivity benefit. Importantly, no entity will be required to report or retain such data as a general matter.

16. Any recordkeeping or reporting requirements adopted in this proceeding will apply only to those providers that choose to participate in the ACP and that voluntarily seek to provide service that qualifies for the enhanced benefit in high-cost, unserved areas where the benefit may be available. Moreover, because participation is entirely optional, we believe it is highly likely that providers that voluntarily avail themselves of the enhanced benefit component of the Affordable Connectivity Program will enjoy benefits that far exceed the reporting and recordkeeping costs.

17. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the potential rule changes that may be adopted, and is not in a position to determine whether the proposals in the *FNPRM* will require small entities to hire professionals in order to comply. The Commission seeks comment on its proposals and their likely costs and benefits as well as alternative approaches. We expect the comments we receive will include information on the costs and benefits, service impacts, and other relevant matters that should help us identify and evaluate

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[36] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[37] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[38] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[39] *See id*.

relevant issues for small entities, including compliance costs and other burdens (as well as countervailing benefits), so that we may develop final rules that minimize such costs.

18. *Grants to Consumer Outreach Partners*. As the *FNPRM* points out, the Commission, like all other federal agencies, must comply with government-wide requirements governing grant awards, codified primarily in Title 2 of the Code of Federal Regulations (2 CFR), that apply to all federal agencies.[40] Those uniform federal grant-related requirements, developed based on guidance provided over a number of years by the Office of Management and Budget (OMB), were codified in an interim final rule that OMB and over 30 other federal agencies jointly adopted and published in the Federal Register on December 19, 2014 (*Uniform Guidance*).[41] In adopting their own rules to implement these standardized grant-making requirements, some agencies that joined in the issuance of the *Uniform Guidance* – including the Department of Commerce, whose rules apply to sub-agencies including the National Telecommunications and Information Administration, and the Small Business Administration (SBA) – incorporated OMB's guidance without change.[42] Other agencies that joined in the issuance of the *Uniform Guidance*, including the Department of Agriculture's Rural Utilities Service (RUS), adopted additional language in their own regulations to provide more detail with respect to how they intended to implement the policy and to clarify any pertinent exceptions to the general rules.[43]

19. OMB and all the other agencies that joined in issuing the *Uniform Guidance* in 2014 concluded that, under the standards of Regulatory Flexibility Act (RFA), the requirements regarding grant awards would not have a significant economic impact on a substantial number of small entities.[44] These agencies reached this conclusion based on the fact that largely identical generic requirements were already in place, and the *Uniform Guidance* simply codified them without any incremental impact on a substantial number of small entities.[45]

20. The Commission anticipates that any grant-related rules that it adopts on the basis of the pertinent portion of the *FNPRM* will follow the *Uniform Guidance* that applies to all federal agencies, potentially with additional details on how it will implement the policy. Like OMB, SBA, and the other agencies that joined in issuing the *Uniform Guidance* in 2014, the Commission does not anticipate that any such rules will have a significant economic impact on a substantial number of small entities.

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[40] FNPRM, para. 281.

[41] Executive Office of the President, Office of Management and Budget, *et al.*, *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Interim Final Rule, 79 FR 75872 (Dec. 19, 2014) (*Uniform Guidance*).

[42] *See, e.g., id.* at 76050 (Department of Commerce); *id.* at 76080 (SBA).

[43] *See id.* at 76001-05 (RUS).

[44] *Id.* at 75877.

[45] *Id*. *See also* Executive Office of the President, Office of Management and Budget, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Final Guidance, 78 FR 78590 (Dec. 26, 2013) (providing guidance and seeking comments on which the *Uniform Guidance* was based). Notably, the Department of Commerce concluded, in its Final Rule incorporating the *Uniform Guidance* into its regulations, that, "[b]ecause notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared." Department of Commerce, *Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Final Rule, 80 FR 44829, 44829 (July 28, 2015).

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[46]

22. *Enhanced Benefit in High-Cost Areas.* A core determination surrounding providers that voluntarily participate in the Affordable Connectivity Program is determining whether and when providers serving high-cost areas face particularized economic hardship. While the Commission received relevant information on this matter in response to the *ACP Public Notice,* we believe that, to minimize any economic impact for small entities and other providers that choose to participate in the Affordable Connectivity Program, we require additional information on matters such as how a provider can show particularized economic hardship, what financial and other information providers should be required to submit to make such a showing, and the review and implementation process for determining when the required showing has been met. Consequently, rather than adopting rules and requirements on these subjects in the accompanying Report and Order, we seek comment for additional information on these matters in the *FNPRM*.

23. The rules and requirements that we ultimately adopt will be explicitly designed to accommodate and provide structure for the particularized showings of economic hardship that all applicants, including small entities, will need to submit. The particularized nature of each of these showings will inherently accommodate the particular circumstances of each applicant, including any small entity that chooses to apply for the benefit. Indeed, the FNPRM's requests for comment are based in large part on suggestions and comments submitted at an earlier stage of the proceeding by entities that primarily represent small businesses (including cooperatives) that provide service to households in rural areas.[47] Therefore, the Commission is hopeful that the comments it receives will further address matters impacting small entities and will include information, data and analyses relating to these matters. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *FNPRM*. Further, these comments will inform the final alternatives the Commission considers, the final conclusions we reach, and the actions we ultimately take in this proceeding to minimize any significant economic impact that may affect small entities that opt to participate in the Affordable Connectivity Program.

24. *Grants to Consumer Outreach Partners*. Because we conclude that the proposed rules are not likely to have any impact on nonprofit organizations and government agencies that voluntarily opt to apply for outreach grants, it would not be possible to devise rules with even less impact on small entities. Moreover, we believe it would be difficult to develop rules or grant award criteria that differ based on the size of the entities that apply for or receive such grants, while still complying with the government-wide *Uniform Guidance*, which necessarily will be the foundation of our rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

25. None.

[46] 5 U.S.C. § 603(c)(1)–(4).

[47] *See, e.g.*, *supra* at para. 284 (citing comments of NTCA and Conexon).