

FCC FACT SHEET*
Affordable Connectivity Program
Sixth Report and Order – WC Docket No. 21-450

Background: The Infrastructure Investment and Jobs Act (Infrastructure Act), in establishing the Affordable Connectivity Program (ACP), directs the Commission to establish a mechanism by which ACP providers may provide a higher monthly discount to ACP households in qualifying high-cost areas to ensure that low-income households in rural and insular areas can obtain discounted broadband services. Specifically, the Infrastructure Act requires the Commission to permit ACP providers to offer a high-cost area benefit of up to \$75 per month, in high-cost areas where the provider demonstrates that the standard up-to-\$30 per month benefit would cause the provider particularized economic hardship so the provider may not be able to maintain the operation of all or a part of its broadband network. Congress separately directed the National Telecommunications and Information Administration (NTIA) to determine, in consultation with the Commission, the high-cost areas in the United States that will be used to determine eligibility for the enhanced ACP high-cost area benefit.

This Report and Order, if adopted, will implement the Infrastructure Act’s requirement by creating a mechanism for facilities-based providers to demonstrate particularized economic hardship in a high-cost area to qualify to offer the high-cost area benefit of up to \$75 per month. If adopted, this item is expected to incentivize providers to participate in the ACP or remain in the ACP in rural and insular areas, further narrowing the digital divide. The high-cost area benefit implemented in this item complements and supports other federal initiatives, including those in the Infrastructure Investment and Jobs Act, to spur deployment and adoption in rural areas by strengthening the business case for providers to deploy broadband in rural and insular areas.

What the Report and Order Would Do:

- Adopts the rules necessary to implement the up-to-\$75 monthly ACP benefit in high-cost areas as defined by NTIA and as required by the Infrastructure Act.
- Defines “particularized economic hardship” to mean that a provider is unable to cover the costs of maintaining the operation of all or part of its broadband network at the standard discount level in a high-cost area where the provider seeks to offer the high-cost area benefit.
- Establishes the showing that ACP providers must make to demonstrate they are experiencing a particularized economic hardship in a high-cost area.
- Sets the processes for reviewing and making determinations on providers’ economic hardship submissions, and appealing those determinations.
- Creates a requirement for providers who are approved to offer the high-cost area benefit to annually resubmit an economic hardship showing to continue offering the high-cost area benefit.
- Outlines the steps providers must take to provide advance notice and a transition path for ACP consumers if the provider no longer qualifies to offer the high-cost area benefit.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket Nos. 21-450 which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of
Affordable Connectivity Program
WC Docket No. 21-450

SIXTH REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

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I. INTRODUCTION

1. In this Sixth Report and Order (Order), as required by the Infrastructure Investment and Jobs Act (Infrastructure Act), the Federal Communications Commission (Commission) adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the Affordable Connectivity Program (ACP). The Infrastructure Act recognizes that in certain high-cost areas of the country, offering broadband service to ACP eligible households at the standard up-to-\$30 monthly benefit level could lead providers to experience particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network.¹ To address this, the Infrastructure Act allows for providers to provide an up-to-\$75 monthly

* This document has been circulated for tentative consideration by the Commission at its August 3, 2023 open meeting. 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 interest of promoting the public’s ability to understand the nature and scope of 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). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

¹ See 47 U.S.C. § 1752(a)(7).

benefit to ACP eligible households in high-cost areas upon a showing of such particularized economic hardship in a given high-cost area.² The steps we take today to implement this provision will help narrow the digital divide by ensuring that more low-income households throughout the country, including households in rural and insular areas, have access to discounted broadband services. In particular, the high-cost area benefit will maximize provider participation in the ACP, by encouraging additional providers to participate in the ACP in high-cost areas and incentivizing existing ACP providers experiencing an economic hardship in high-cost areas to continue participating in the program. The high-cost area benefit also complements and supports other federal initiatives, including those in the Infrastructure Investment and Jobs Act, to spur deployment and adoption in rural areas by strengthening the business case for providers to deploy broadband in rural and insular areas.

II. BACKGROUND

2. On November 15, 2021, the Infrastructure Act became law, directing the Commission to establish the ACP.³ With an appropriation of \$14.2 billion, the ACP supports discounted broadband service to qualifying low-income households by providing a monthly benefit of: (1) up to \$30 per month;⁴ (2) up to \$75 per month for eligible households on qualifying Tribal lands;⁵ or (3) up to \$75 per month for eligible households in high-cost areas.⁶ We adopted rules establishing the standard benefit and the Tribal lands enhanced benefit in January 2022.⁷

3. Congress specifically directed the Commission to “establish a mechanism by which a participating [ACP] provider in a high-cost area . . . may provide an affordable connectivity benefit in an amount up to [\$75] . . . upon a showing that the applicability of the lower [\$30] limit . . . 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.”⁸ Congress separately directed the National Telecommunications and Information Administration (NTIA) to determine, in consultation with the Commission, the high-cost areas in the United States that will be used to determine eligibility for the ACP high-cost area benefit.⁹

4. On November 18, 2021, the Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on implementation of the ACP.¹⁰ The Bureau specifically sought comment on how the high-cost area benefit should be applied in the eligible high-cost areas identified by NTIA. The Bureau asked, among other things: (1) how the Commission can best administer this provision with a minimum burden on qualifying households and providers; (2) what a provider should be required to show to establish that there would be a “particularized economic hardship”; (3) whether the Commission should adopt a specific standard or test for such hardship; (4) who should decide whether a provider has met the

² *See id.*

³ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (Infrastructure Act).

⁴ 47 U.S.C. § 1752(a)(7).

⁵ *Id.*

⁶ 47 U.S.C. § 1752(a)(7)(B).

⁷ *See Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (rel. Jan. 21, 2022) (*ACP Report and Order and Further Notice*).

⁸ 47 U.S.C. § 1752(a)(7)(B).

⁹ 47 U.S.C. §§ 1702(a)(2)(G), 1752(a)(7)(B).

¹⁰ *See WCB Seeks Comment on the Implementation of the Affordable Connectivity Program*, DA 21-1453 (WCB rel. Nov. 18, 2021) (*ACP Public Notice*).

standard; and (5) how aggrieved providers should appeal decisions related to this standard.¹¹ Four commenters addressed these questions.¹²

5. On January 21, 2022, in a *Further Notice* issued with the Order adopting final rules for the ACP, we again sought comment on how to implement the ACP high-cost area benefit.¹³ Specifically, we requested comment on the mechanism for implementing the high-cost area benefit and the proposals of previous commenters for determining whether a provider would incur a “particularized economic hardship” without the high-cost area benefit.¹⁴ We also asked about the type of information providers should be required to provide to make this showing or alternatives such as using poverty levels or other publicly available information instead of requiring specific information from providers.¹⁵ Moreover, the Commission further asked about: (1) whether the Commission should take into account other subsidies or financial benefits received by the provider; (2) how the review process should be implemented; (3) who should decide whether a showing is met; and (4) what steps the Commission should consider when setting up the process for making determinations about a household’s eligibility.¹⁶ Nine responsive comments were received.¹⁷

III. DISCUSSION

6. We now establish the requirements to implement the ACP high-cost area benefit as required by the Infrastructure Act. In this section, we discuss determining high-cost areas that will be eligible for the high-cost area benefit, eligibility to receive the high-cost area benefit, requirements to make a showing of economic hardship, as well as other administrative aspects necessary to implement the high-cost area benefit.

A. Determination of High-Cost Areas

7. Pursuant to the Infrastructure Act, for purposes of the ACP high-cost area benefit, the Commission must use the definition of high-cost areas established by the NTIA for its Broadband Equity, Access, and Deployment (BEAD) grant program.¹⁸ The ACP statutory provisions specifically reference NTIA’s determination of high-cost areas under the BEAD program in defining a high-cost area for the

¹¹ See *id.* at 30, para. 73.

¹² See ACA Connects Comments, WC Docket No. 21-450, at 28 (rec. Dec. 8, 2021) (ACA Connects *ACP Public Notice* Comments); Conexon, LLC and Conexon Connect LLC (Conexon) Joint Comments, WC Docket No. 21-450, at 5-9 (rec. Dec. 8, 2021) (Conexon Joint *ACP Public Notice* Comments); NTCA—The Rural Broadband Assoc. (NTCA) Comments, WC Docket Nos. 21-450 and 20-445, at 16-17 (rec. Dec. 8, 2021) (NTCA *ACP Public Notice* Comments); USTelecom Reply Comments, WC Docket No. 21-450, at 11-12 (rec. Dec. 28, 2021) (USTelecom *ACP Public Notice* Reply Comments).

¹³ See *Further Notice*, 37 FCC Rcd at 605-614, paras. 270-93.

¹⁴ See *id.* at 613, para. 289.

¹⁵ See *id.* at 614, para. 291.

¹⁶ See *id.* at 614, paras. 291-92.

¹⁷ See ACA Connects Comments, WC Docket Nos. 21-450 and 20-445, at 1-9 (rec. Mar. 16, 2022) (ACA *Further Notice* Comments); Aleut Tribal Government Comments, WC Docket No. 21-450, at 1 (rec. Mar. 16, 2022); Cities of Boston, Mass. *et al.* Reply Comments, WC Docket Nos. 21-450 and 20-445, at 29 (rec. Apr. 15, 2022) (Local Governments *Further Notice* Reply Comments); Lauren Flannigan Comment, WC Docket No. 21-450, at 1 (rec. Feb. 28, 2022) (Flannigan *Further Notice* Comments); Mississippi Center for Justice Comments, WC Docket No. 21-450, at 3-4 (rec. Apr. 14, 2022) (Mississippi Center for Justice *Further Notice* Comments); New York State Public Service Commission Comments, WC Docket No. 21-450, at 4 (rec. Mar. 16, 2022) (New York PSC *Further Notice* Comments); NTCA Comments, WC Docket Nos. 21-450 and 20-445, at 1-5 (rec. Mar. 16, 2022) (NTCA *Further Notice* Comments); SANDAG *Further Notice* Comments at 6-7; Wireless Internet Service Providers Assoc. (WISPA) Comments, WC Docket No. 21-450, at 1-4 (rec. Mar. 16, 2022) (WISPA *Further Notice* Comments).

¹⁸ Compare 47 U.S.C. § 1752(a)(7)(B) with 47 U.S.C. § 1702(a)(2)(G).

ACP high-cost area benefit.¹⁹ As such, the high-cost areas used by the Commission for the ACP high-cost area benefit will be the same as the high-cost areas used for the BEAD program as determined by NTIA.

8. The statute establishing the BEAD program requires NTIA, “on or after the date on which the [Commission’s] broadband DATA maps are made public,” to allocate funding to eligible States for the high-cost areas within the State.²⁰ By definition, a “‘high-cost area’ [as determined by NTIA in consultation with the Commission] 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.”²¹ For purposes of defining “high-cost area,” the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.²²

9. On June 26, 2023, NTIA announced the State allocations for the BEAD grant program.²³ As part of BEAD, NTIA has made State allocations in part based on the determined “high-cost areas” within each State.²⁴ Pursuant to the Infrastructure Act,²⁵ we therefore make the ACP high-cost area benefit available in those high-cost areas identified by NTIA consistent with the Infrastructure Act’s definition of “high-cost area,” and subject to the provider’s demonstration of particularized economic hardship, as described in further detail below.²⁶

B. Eligibility for the High-Cost Area Benefit

10. We next address the requirements for participating providers seeking to offer a high-cost area benefit to eligible households located in designated high-cost areas served by the provider. Specifically, we define “particularized economic hardship,” clarify that the benefit is limited to facilities-based providers, and address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship in a given high-cost area. We also prescribe the process for submitting, reviewing, and taking action on such showings, and for requests for review of

¹⁹ The statute states “[t]he Commission shall . . . establish a mechanism by which a participating provider in a high-cost area (as defined in section 1702(a)(2) of this title) may provide an affordable connectivity benefit[.]” 47 U.S.C. § 1752(a)(7)(B). Section 1702(a)(2) specifies definitions for NTIA’s BEAD program, including the definition of “high-cost area.” *Id.* § 1702(a)(2).

²⁰ State is defined to mean “any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, [and] the Northern Mariana Islands.” 47 U.S.C. §§ 942(e)(8), 1702(2)(m).

²¹ 47 U.S.C. § 1702(a)(2)(G)(i).

²² 47 U.S.C. § 1702(a)(2)(G)(ii). A “Location” means a business or residential location in the United States at which fixed broadband internet access service is, or can be, installed. *See* 47 U.S.C. § 1702(a)(2)(H) (“The terms ‘location’ and ‘broadband-serviceable location’ have meanings given those terms by the Commission under rules and guidance that are in effect, as of November 15, 2021.”); *Establishing the Digital Opportunity Data Collection et al.*, WC Docket Nos. 19-195 and 11-10, Third Report and Order, 36 FCC Rcd 1126, 1175-76, para. 126 (2021). “Broadband-serviceable location” means “all locations where a broadband connection can be installed. *See* *Establishing the Digital Opportunity Data Collection et al.*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7484, para. 54 (2020) (*Broadband Data Collection*).

²³ Press Release, NTIA, Biden-Harris Administration Announces State Allocations for \$42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (June 26, 2023), <https://ntia.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>.

²⁴ *Id.*

²⁵ *See* 47 U.S.C. §§ 1752(a)(7)(B), 1702(a)(2)(G) (defining “high-cost area” and describing NTIA’s role in determining high-cost areas).

²⁶ *See* 47 U.S.C. § 1752(a)(7)(B).

adverse decisions. Lastly, we clarify the interplay between the qualifying Tribal land and high-cost area benefits by interpreting the Infrastructure Act to mean that participating providers can either offer one or the other, but not both simultaneously, to eligible households located on both a Tribal land and in a designated high-cost area.

11. *Particularized Economic Hardship*. First, consistent with the Infrastructure Act, we will require a participating provider to demonstrate economic hardship to be eligible for the high-cost area benefit. The Infrastructure Act directs the Commission to establish a mechanism whereby a “participating provider” in a high-cost area “may provide” an enhanced monthly benefit up to \$75 “upon a showing that the applicability of the lower [\$30] limit . . . 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.”²⁷ We implement this directive by requiring a participating provider seeking application of the high-cost area benefit to demonstrate the economic hardship to which it would be subject if only the standard \$30 monthly discount were applied to its provision of ACP service in a high-cost area(s). This approach to implementing the statute is consistent with the positions taken by several commenters in the record.²⁸

12. Next, we define particularized economic hardship by focusing on the provider’s operating costs and revenues in the high-cost area(s) where the provider seeks approval to offer the high-cost area benefit.²⁹ We find that a provider that demonstrates it is unable to cover the costs of maintaining the operation of all or part of its broadband network in a high-cost area where it seeks to offer the high-cost area benefit as described below meets the “particularized economic hardship” standard.³⁰ Hereafter, we describe such a provider as operating at a loss. To establish “particularized economic hardship,” we will require providers to submit documentation, such as an income statement, showing that they are unable to cover the costs of maintaining the operation of all or part of their broadband network for each high-cost area for which the high-cost area benefit is being sought.³¹ Aside from required documentation, we will also require each provider to certify to and explain how the economic hardship limits its ability to “maintain the operation of all or part of its broadband network” in each high-cost area for which it seeks to offer the high-cost area benefit.³²

²⁷ 47 U.S.C. § 1752(a)(7)(B).

²⁸ See ACA Connects *Further Notice* Comments at 5-6; Conexon Joint *ACP Public Notice* Comments at 5; Flannigan *Further Notice* Comments at 1; see also The Local Governments *Further Notice* Reply Comments at 29 (“According to the [Infrastructure Act], the high cost benefit may be provided where providers show an economic hardship”); NTCA *ACP Public Notice* Comments at 16-17 (“The Commission . . . is directed to establish the showing that an individual provider would need to make to demonstrate they would face a ‘particularized economic hardship’”).

²⁹ 47 U.S.C. § 1752(a)(7)(B).

³⁰ See, e.g., ACA Connects *Further Notice* Comments at 5-6 (“[T]he provider should be given flexibility that, when evaluated holistically in the context of the provider’s overall resources and financial position, the loss . . . would be impactful on the maintenance of the operations of its broadband network on a going forward basis.”); Laura Flannigan Comment at 1 (“[I]nformation such as a providers revenue and capital expenditures should be required to prove that providers need additional subsidies in order to maintain their network.”); NTCA *ACP Public Notice* Comments at 17 (“[W]here a High-Cost support recipient participating in the ACP 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 . . . , this by definition would seem to be a ‘particularized economic hardship.’”); Conexon Joint *ACP Public Notice* Comments at 5 (“Service to locations where the subscriber revenue alone does not cover depreciation expense, operating expense, the cost of capital, and other associated expenses will cause particularized economic hardship to any provider, thereby making it uneconomic to maintain the operation of that part of its network.”).

³¹ See *infra* paras. 19–22.

³² 47 U.S.C. § 1752(a)(7)(B).

13. We find this standard to be consistent with the language and intent of the statute, as well as the record. Congress did not provide details on the nature of the showing of economic hardship providers must make to obtain the high-cost area benefit. The statute provides that the provider must show that the applicability of the basic \$30 benefit would cause “particularized economic hardship . . . such that the provider may not be able to maintain the operation of part or all of its broadband network.”³³ We sought comment on the mechanism by which providers can show particularized economic hardship.³⁴ Because a provider operating at a loss in the high-cost area for which it seeks the high-cost area benefit may be unable to maintain broadband network operations in that area, we find this standard to be consistent with the language and intent of the statute. For purposes of this standard, the provider will need to factor in the standard monthly \$30 ACP benefit as well as subsidies and other financial benefits received by the provider, including Universal Service Fund (USF) high-cost support, as they are directly relevant when evaluating the overall costs and revenues of the provider. No commenter opposed the Commission’s proposal in the *Further Notice* of including subsidies and other financial benefits in the economic hardship analysis.³⁵

14. We reject ACA Connects’ suggestion to interpret “particularized economic hardship” to mean those instances where the provider’s administrative costs of participating in the ACP exceeds the benefits received, and where the provider shows that in the context of its overall financial position, that net loss would affect its ability to maintain part of its broadband network.³⁶ A provider could be profitable overall and willing to maintain network operations even if the costs of voluntarily participating in the ACP exceeded the benefits received. Conversely, a provider could be unprofitable overall, but the administrative costs of ACP participation could be less than the benefits received. Accordingly, we find ACA Connects’ suggested approach would not provide a meaningful indication of whether a provider can “maintain the operation of part or all of its broadband network” when just the standard \$30 benefit is available to eligible households in the designated high-cost areas it serves.³⁷

15. We also decline to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service territory, as suggested by ACA Connects.³⁸ We did seek comment on this approach in the *Further Notice* in response to earlier comments by NTCA and Conexon.³⁹ However, we received no comments that would help us determine how to apply a standard under a threshold-based approach to determine whether a provider may not be able to maintain the operation of part or all of its broadband network without the high-cost area benefit. Furthermore, we believe that a subscriber threshold-based approach would be at odds with Congress’s directive to require a showing of “particularized” economic hardship. We interpret the meaning of “particularized” in the context of the high-cost area benefit to mean that a provider must show that it is individually experiencing economic hardship.⁴⁰ A subscriber-based threshold approach is inconsistent with this interpretation because it would necessarily assume that all providers that met the threshold were experiencing sufficiently similar circumstances to merit access to the high-cost area benefit, without regard to whether each provider’s specific circumstances demonstrated that the provider would experience economic hardship absent the application of the high-cost area benefit. Accordingly,

³³ 47 U.S.C. § 1752(a)(7)(B).

³⁴ *ACP Further Notice*, 37 FCC Rcd at 613-614, paras. 289-91.

³⁵ *See id.* at 614, para. 291.

³⁶ ACA Connects *Further Notice* Comments at 3-6.

³⁷ 47 U.S.C. § 1752(a)(7)(B).

³⁸ ACA Connects *Further Notice* Comments at 7-8.

³⁹ *See Further Notice*, 37 FCC Rcd at 614, para. 290.

⁴⁰ Particularize is defined as “to state in detail” or to “specify”. *See* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/particularize> (last visited July 11, 2023).

we find that the statute requires us to define particularized economic hardship based on an individualized showing so that each provider can account for its own particularized cost and revenue structure.

16. To the extent that NTCA suggests an approach that allows providers to qualify for the high-cost area benefit based solely on the receipt of USF high-cost support, we decline to adopt such an approach.⁴¹ Recipients of USF high-cost support receive subsidies to provide reasonably comparable services at rates reasonably comparable to those in urban areas.⁴² Indeed, those subsidies are a way for providers to cover certain costs of operating and maintaining their networks, which may, if anything, make it less likely that a provider would be suffering a particularized economic hardship in the geographic area where it receives high-cost support. Therefore, receipt of USF high-cost support, in and of itself, does not show the provider is experiencing a “particularized economic hardship” in general, or as defined herein. To bolster its argument, NTCA attempts to tie the ACP high-cost area benefit to the role USF high-cost support plays in enabling “‘affordable’ broadband services for all rural consumers, regardless of income level.”⁴³ NTCA contends that the “‘enhanced’ ACP subsidy can make up for [the] ‘gap’ between ‘reasonable comparability’ and ‘affordability’ that the High-Cost USF program does not close on its own.”⁴⁴ However, this argument does not address the specific language of the statute, which focuses on a provider’s inability to “maintain the operation of part or all of [a provider’s] broadband network” rather than on whether the service at issue is affordable to subscribers with the standard ACP benefit.⁴⁵ Accordingly, we reject this proposal.

17. We also disagree with WISPA’s position that small Internet service providers “lack the administrative resources to establish their specific costs to provide broadband service in an area,” and that it is unnecessary to examine an individual operator’s cost of doing business.”⁴⁶ Instead, WISPA asserts that all areas eligible for the Connect America Fund or Rural Digital Opportunity Fund, as well as any census block identified as a high-poverty area on the map created by the Department of Agriculture and NTIA, should be designated as high-cost areas eligible for the \$75 subsidy.⁴⁷ WISPA’s suggested approach would seem to read the “particularized economic hardship” showing out of the statute entirely. As discussed above, the statute’s particularized economic hardship requirement is separate from and in addition to the requirement that this enhanced support only be made available in “high-cost areas,” and the determination of those high-cost areas will be made by NTIA. Moreover, we expect that any business, regardless of size, will have knowledge of the costs and revenues associated with its business operations, at least to the extent necessary to determine if the provider is experiencing particularized economic hardship in a high-cost area.

18. *Facilities-Based Provider Limitation.* Pursuant to the Infrastructure Act’s direction that a provider show that particularized economic hardship may impair its ability “to maintain the operation of part or all of *its broadband network*,” we clarify that only facilities-based providers will be eligible for the

⁴¹ NTCA *Further Notice* Comments at 2; Letter from Michael Romano, Exec. V.P., NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1-2 (filed Nov. 29, 2022). The approach suggested by NTCA in its *Further Notice* comments differs somewhat from its earlier position on determining hardship, i.e., “where a High-Cost support recipient participating in the ACP 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” NTCA *ACP Public Notice* Comments at 16-17.

⁴² 47 U.S.C. § 254(b)(3).

⁴³ NTCA *Further Notice* Comments at 3.

⁴⁴ *Id.* at 4.

⁴⁵ 47 U.S.C. § 1752(a)(7)(B).

⁴⁶ WISPA *Further Notice* Comments at 2.

⁴⁷ *Id.* at 3.

high-cost benefit.⁴⁸ We find that the Act directs us to prohibit non-facilities-based providers from receiving a high-cost area benefit as such providers would not experience an inability to maintain their network absent the application of the high-cost benefit. For purposes of this Order, we define facilities-based provider consistent with the Commission’s rules regarding the Form 477 collection, to include provider owned physical facilities, and wireless spectrum.⁴⁹

19. *Showing to Support Request for Approval to Offer the High-Cost Area Benefit.* Our objective is to administer the high-cost area benefit consistent with the statutory language requiring, among other things, a showing of particularized economic hardship by the ACP provider balanced with “a minimal burden on qualifying households and providers.”⁵⁰ In implementing this approach, we seek safeguard program integrity while also minimizing the administrative burden for a provider seeking to demonstrate it is unable to cover the costs of operating and maintaining all or part of its network operations in the high-cost area(s) absent the high-cost area benefit.

20. We outline the type of documentation that we expect would be sufficient for a provider to demonstrate that it is experiencing “particularized economic hardship” for purposes of the high-cost area benefit. It would be sufficient for participating providers to demonstrate particularized economic hardship by submitting an affidavit supported by an income statement demonstrating the provider is currently operating at a loss in each high-cost area(s) for which the provider is seeking approval to offer the high-cost area benefit.⁵¹ To facilitate the administration of the benefit and minimize provider burdens, providers may submit a single application with supporting documentation for all of the high-cost areas where they are seeking approval to offer the high-cost area benefit. To protect program integrity, and consistent with other submissions made to justify the receipt of a federal benefit, such an affidavit shall be made under penalty of perjury from a company officer with knowledge of the provider company’s costs and revenues.⁵² The affidavit must describe in sufficient detail the methodology used for determining that the annualized expenses of maintaining the operation of the provider’s broadband network in a particular high-cost area exceeds the provider’s expected total revenues in that high-cost area.⁵³ This should include an allocation of provider broadband Internet access service revenues and costs for the relevant high-cost area(s) if the income statement is too broad to demonstrate that the provider is operating at a loss relative to providing broadband Internet access service in the high-cost area(s) in

⁴⁸ 47 U.S.C. § 1752(a)(7)(B) (emphasis added); *see also* ACA Connects ACP Public Notice Comments at 28 (“[T]he statu[t]e is clear that only providers that own or operate ‘broadband network[s]’ in high-cost areas should be eligible to claim the enhanced benefit.”).

⁴⁹ *See* 47 CFR § 1.7001(2)(i)-(v) (defining facilities-based provider).

⁵⁰ *See* ACP Public Notice at 30, para. 71.

⁵¹ The income statement must, at a minimum, include detailed information on the provider’s net income, operating revenue and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses. To promote program integrity, to the extent that a provider has an audited income statement, the provider shall provide the audited income statement, rather than an unaudited income statement, to support their affidavit.

⁵² *See, e.g., Medicare Enrollment Application for Eligible Ordering/Certifying Physicians and other Eligible Professionals*, available at: <https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms855o.pdf> (those applying to offer this benefit must certify under penalty of perjury, that among other things, the contents of the application are true, correct and complete); *Application for Supplemental Social Security Income*, available at: https://www.ssa.gov/legislation/Attachment%20for%20SSA%20Testimony%207_25_12%20Human%20Resources%20Sub%20Hearing.pdf (application for disability benefits that requires applicants certify to the contents of the application under penalty of perjury); 47 CFR § 54.1808(e) (ACP certification requirement).

⁵³ Revenues considered must be those that are associated with the provision of broadband, including broadband/voice bundled service, which are eligible to be supported by the ACP benefit. For customers that are subscribed to bundled service that includes broadband but also includes cable or other non-voice services ineligible to be supported by the ACP benefit, revenue from the cable or other non-voice service must be excluded.

question. The affidavit should also factor in payments from customers for broadband Internet access service as well as the up-to-\$30 ACP benefit and additional subsidies and other financial benefits received, including USF high-cost support related to providing broadband Internet access service.⁵⁴ The affidavit must also include an explanation as to how the economic hardship resulting from the operating loss may limit the provider's ability to maintain the operation of all or part of its broadband network in the high-cost area(s) for which it seeks to offer the high-cost area benefit. Additionally, in the affidavit, each provider must explain when and why the provider originally began operating in the high-cost area(s).

21. To support its affidavit, the provider must include a copy of its most recent income statement(s) covering the previous fiscal year of operations or the last six quarters of operations, and separately identify, in the method determined by the Bureau, the high-cost areas, as designated by NTIA, that the provider serves and in which it is seeking to provide the high-cost area benefit. An income statement, otherwise known as a profit and loss statement, showing the provider's revenue, expenses, gains, and losses during the required time period, strikes the appropriate balance between ensuring the high-cost area benefit is appropriately limited and minimizing the administrative burden on providers. An income statement is a routine financial statement prepared by companies,⁵⁵ and thus most providers already prepare such statements in the normal course of business. We delegate authority to the Bureau, in consultation with the Office of Economics and Analytics (OEA) as appropriate, and consistent with the standard established in this Order, to further specify or modify the types of documentation that providers must submit to show "particularized economic hardship."

22. To demonstrate that a provider is operating at a loss, the income statement, and cost-allocation as applicable, must show that the provider's broadband revenue has been below broadband expenses in at least four of the last six fiscal quarters or for the last full fiscal year for each relevant high-cost area. If the income statement includes costs and revenues for broadband network operations outside of the high-cost areas for which the provider seeks approval to offer the high-cost area benefit, then the provider will need to allocate the costs and revenues associated with the relevant high-cost area(s) and provide the cost and revenue allocation for the high-cost area(s) in the supporting affidavit. To determine the share of the provider's total operating costs that are associated with its broadband network operations in the relevant high-cost area(s), the provider must use a reasonable cost assignment and/or cost-allocation method. Where possible, a provider should first attempt to directly assign costs to broadband Internet access services and to the relevant high-cost area(s). Costs that are not directly assignable (*e.g.*, common or shared costs) should be allocated to the broadband Internet access service and to each relevant high-cost area. A reasonable cost-allocation of operating expenses may be based on factors such as, for the relevant high-cost area(s), the share of a provider's total investments, total locations served, or in proportion to the share of directly assignable investments or expenses for the relevant high-cost area(s). Different cost allocators may be used to allocate different shared costs, and must be sufficiently described in the supporting affidavit. For providers applying for multiple high-cost areas, the cost allocation methods should be consistent for all relevant high-cost areas to the extent feasible. To determine the share of the provider's total revenues associated with its broadband network operations in the relevant high-cost area(s), the provider must calculate and allocate revenue for the relevant time periods based on revenues for the applicable high-cost area(s), and account for any subsidies received by the provider or other financial benefits, including USF high-cost support.

⁵⁴ In the *Further Notice*, we sought comment on the specific information that providers should provide in order to show particularized economic hardship. See *Further Notice*, 37 FCC Red at 614, para. 291.

⁵⁵ We note that providers that are publicly traded companies are required to file financial information with the Securities and Exchange Commission. See U.S. Securities and Exchange Commission, *Beginners' Guide to Financial Statements* (Jan. 12, 2014), <https://www.sec.gov/oiea/reports-and-publications/investor-publications/beginners-guide-financial-statements>); U.S. Securities and Exchange Commission, "Form 10-K.", <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-k>.

23. To maximize flexibility, we will allow a provider to choose the reasonable cost and revenue allocation method(s) that it will use rather than prescribe one. To mitigate any program integrity issues that this discretion might introduce, however, we require providers to identify and justify their chosen allocation method(s).⁵⁶ Allowing providers to choose reasonable cost and revenue allocation method(s) will allow even those providers with limited financial expertise to submit a showing based on their records that meets the standards adopted herein. We direct the Bureau to develop a process for determining, in consultation with OEA, whether the provider's allocation method and justification are reasonable.

24. Notwithstanding our recognition that the needs to minimize the burden on participating providers and to encourage provider participation in the ACP are paramount, we require the filing of documentation showing that a provider will experience particularized economic hardship, which may include the filing of both an affidavit with the information outlined above, along with the required income statement.⁵⁷ An income statement alone would not provide sufficient assurances that a provider has satisfied the standard for offering the high-cost area benefit in a given high-cost area. The affidavit is an important safeguard for ensuring that the high-cost area benefit is appropriately limited to providers that are facing "particularized economic hardship" such that they will be unable to maintain part or all of their broadband network if they can only offer the standard \$30 ACP benefit. We recognize that providers may not routinely prepare cost-allocations specific to the relevant high-cost areas. However, for income statements that are not specific to the relevant high-cost areas, cost allocations are necessary to satisfy the statute's requirement that the high-cost area benefit only be made available in high-cost areas where the provider experiences economic hardship. As noted earlier, to minimize the burden associated with cost-allocations, we allow providers to use any reasonable cost-allocation method. An affidavit accompanying an income statement strikes the appropriate balance between protecting program integrity while minimizing the burden on providers.

25. Commenters stressed the importance of the Commission choosing a means for "qualification that imposes the least administrative burdens on providers, while protecting against waste, fraud, and abuse."⁵⁸ We agree, although we also conclude that proposals that effectively eliminate the need for any showing altogether are at odds with the statute.⁵⁹ Similarly, we find that a mere certification as to a provider's particularized economic hardship in the high-cost area(s) it serves, as suggested by ACA Connects, is insufficient to satisfy the express "showing" mandated by Congress and impedes the Commission's ability to ascertain whether the provider is, in fact, experiencing a particularized economic hardship.⁶⁰

26. We decline to adopt the suggestion from the Mississippi Center for Justice that the Commission require service providers to submit additional speed and coverage tests before allowing a broadband service provider to receive the high-cost area benefit.⁶¹ While we are sympathetic to concerns about whether a provider's asserted coverage and speed matches actual network performance, the Infrastructure Act is clear that the only criterion the Commission may consider when deciding whether a

⁵⁶ Consistent with the documentation retention requirements in 47 CFR § 54.1808(e)(12), providers must retain all underlying documentation supporting their cost allocation and must make that documentation available upon request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General or other local, state or Federal agency with jurisdiction over the provider.

⁵⁷ See U.S. Securities and Exchange Commission. "Form 10-K", <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-k>.

⁵⁸ WISPA *Further Notice* Comments at 2.

⁵⁹ See NTCA *Further Notice* Comments at 2-3; WISPA *Further Notice* Comments at 2-3.

⁶⁰ See ACA Connects *Further Notice* Comments at 7.

⁶¹ Mississippi Center for Justice *Further Notice* Comments at 3-4.

provider can receive the high-cost area benefit, is whether the absence of an high-cost area benefit would cause a particularized economic hardship to the provider.⁶² Furthermore, the Commission has taken steps in other proceedings to address service quality concerns and the reporting of accurate coverage and speed data.⁶³ Accordingly, we decline to require participating providers to perform these additional tests.

27. *Additional Information Required for High-Cost Area Benefit Application.* To facilitate the evaluation of a provider request for approval to offer the high-cost area benefit and to help protect program integrity, we direct the Universal Service Administrative Company (USAC) to communicate with the provider about its request and collect information, as part of the application for approval to offer the high-cost area benefit, sufficient to identify the provider and the nature of the services it offers in the relevant high-cost areas, such as: contact information; FCC Registration Number; Unique Entity Identifier; Federal Tax ID Number; Service Provider ID Number; whether the provider is facilities-based in the relevant high-cost areas; and the nature of the provider's broadband network technology in the relevant high-cost area(s).⁶⁴ Finally, a provider's submission must include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that: (1) all information submitted is true and correct to the best of the filer's knowledge; (2) the provider will comply with all applicable statutes and the Commission's rules and orders; and (3) the provider will use any reimbursed funds received for its intended purpose of providing discounted broadband Internet access services to eligible low-income households.⁶⁵

28. *Submission and Review of Showings and Appeals.* We direct USAC, under the oversight of the Bureau and the Office of the Managing Director (OMD), to develop a mechanism to enable participating providers to electronically submit the requisite particularized economic hardship showings. We further direct USAC, under the oversight of the Bureau and OEA, to produce provider education and training materials concerning seeking approval to offer the high-cost area benefit and we direct the Bureau to provide additional guidance to providers on the submission process. All provider submissions will be treated as presumptively confidential and will not be available for routine public inspection consistent with the Freedom of Information Act and the Commission's rules.⁶⁶ While the actual content of the provider filings will remain confidential, we direct USAC to publicly issue information identifying which providers are approved to offer the high-cost area benefit and the high-cost areas where they are approved to offer it. We further direct the Bureau to release a Public Notice within 90 days after NTIA's determination of high-cost areas, announcing the date upon which providers can start to submit applications requesting authority to offer the high-cost area benefit. The Bureau shall have the discretion to determine whether to establish an initial deadline for provider requests or accept applications on a rolling basis.

29. We direct USAC to review each economic hardship submission for completeness and then either approve or deny each submission pursuant to guidance and oversight by the Bureau and OEA. Each decision by USAC shall be made in writing, provide a written explanation of the basis for the

⁶² 47 U.S.C. § 1752(a)(7)(B).

⁶³ See generally *Broadband Data Collection*, 35 FCC Rcd at 7460.

⁶⁴ See 47 CFR § 54.1801(c); USAC, <https://www.usac.org/wp-content/uploads/about/documents/acp/ACP-Election-Form.pdf> (last visited July 11, 2023). To the extent that this information is already collected from providers participating in the ACP, we direct USAC to explore potential ways to minimize the need for providers to re-provide information that they may have previously provided in other ACP submissions.

⁶⁵ See 47 CFR § 54.1808(e) (setting forth the certification that the officer of the ACP participating provider must make when submitting a reimbursement claim).

⁶⁶ See 5 U.S.C. § 552(b)(4) (stating that "trade secrets and commercial or financial information obtained from a person and privileged or confidential" are exempt from the Freedom of Information Act requirements); 47 CFR § 0.457 (discussing records not routinely available for public inspection, including "trade secrets and commercial or financial information obtained from any person and privileged or confidential.").

decision, and provide the approval period for the high-cost area benefit as appropriate. Each USAC decision will be subject to the restrictions of section 54.702(c) of the Commission's rules which prohibits USAC from making policy, interpreting unclear provisions of the statute or rules, or from interpreting the intent of Congress.⁶⁷ Any provider aggrieved by an action taken by USAC may seek review of that action, as set forth in Subpart I of the Commission's rules.⁶⁸ While review of that action is pending, a provider will be able to submit claims for up to the \$30 standard monthly benefit. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in 47 CFR § 54.1808. The provider may only submit revised claims for up to \$75 per month per eligible subscriber for the snapshot dates from the start of the period of approval, and the provider will be responsible for passing the full benefit amount on to subscribers as a discount off the price of their monthly bills before seeking reimbursement for the high-cost area benefit amount.⁶⁹

30. We direct USAC to make updates to ACP systems, including to the National Lifeline Accountability Database, as appropriate, to allow providers that are approved to receive reimbursement for the high-cost area benefit to enroll households with the high-cost area benefit or to update existing ACP subscribers' records to reflect the designated high-cost areas associated with the participating provider's approved showing. We further direct USAC, with Bureau oversight, to develop provider training materials on how to enroll or update subscriber information to reflect the high-cost area benefit and to seek reimbursement for the enhanced benefit for eligible households in the relevant high-cost areas.

31. *Annual Resubmission Requirement.* To account for changing financial circumstances, participating providers approved to offer the high-cost area benefit must annually resubmit a showing of particularized economic hardship to demonstrate continued eligibility to offer the high-cost area benefit. We direct the Bureau to determine any modifications providers should make to the financial showing for the resubmission, consistent with the statutory language and standard outlined in this Order, as well as the deadline for such resubmissions. The deadline shall allow sufficient time for review and a determination on the renewal submission, and provider notification to households of any benefit level changes as appropriate, before the expiration of the prior approval period. We direct USAC to issue reminders to providers with current approvals of the renewal submission requirements within at least 30 days and at least 15 days of the deadline the Bureau announces for resubmissions. These reminders shall also inform providers that failure to make a resubmission will result in the loss of their approval to offer the high-cost area benefit and the date on which the provider must cease offering and can no longer claim the high-cost area benefit if it does not timely make a renewal submission. We direct the Bureau to ensure that the renewal resubmissions are reviewed and a determination is issued in a reasonable timeframe.

32. There may be instances where a provider fails to submit the renewal submission, or does not satisfy the criteria to offer the high-cost area benefit based on its renewal submission. We recognize that the loss of the high-cost area benefit may cause a financial burden to low-income households that would be transitioned to the standard discount rather than the higher subsidy. To mitigate financial hardship and to avoid an accrual of household debt related to the loss of the high-cost area benefit, we adopt several protections for ACP households where the provider is no longer approved to offer the high-cost ACP benefit. If a provider fails to submit the renewal submission by the deadline, the provider shall provide written notice to its ACP households receiving the high-cost area benefit at least 30 days prior to the last date that the provider is approved to offer the high-cost benefit and a second notice at least 15 days before the last date that the provider is approved to offer the high-cost area benefit. If USAC

⁶⁷ 47 CFR § 54.702(c).

⁶⁸ See 47 CFR §§ 54.719-54.725; *ACP Report and Order*, 37 FCC Rcd 604, para. 264.

⁶⁹ See 47 CFR § 54.1803(a) (requiring providers to certify that they have passed on the full benefit amount for which they are seeking reimbursement).

determines that a provider no longer qualifies for the high-cost area benefit based on its renewal submission, the provider shall also follow the same customer notification process and deadlines as providers that fail to submit the renewal submission by the deadline. Such notices shall include: (1) a statement that the provider will no longer be offering the high-cost benefit; (2) the effective date of the loss of the high-cost area benefit; (3) a statement that upon the effective date of the loss of the high-cost area benefit, the ACP-supported service purchased by the household will no longer be discounted at the higher subsidy amount; and (4) the amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

33. We find that providers may transition a household to a lower-priced service plan once the provider is no longer eligible to offer the high-cost area benefit upon advance notice to the household and after offering a reasonable opportunity for the household to agree to retain its current service plan or switch to another service plan.⁷⁰ If the provider offers to transition the eligible household to a lower-priced plan, the offer to transition must be included in the required 30-day and 15-day notices, and must: (1) provide details about the new plan and monthly price; (2) inform the subscribers they can opt out of the transition and retain their current service plan or change to a different service plan than the lower-priced plan the service provider identified; (3) provide instructions for opting out of the transition or switching plans; and (4) provide the deadline for opting out of the transition or switching plans. We believe this approach minimizes the potential for bill shock by allowing providers to transition eligible subscribers to a lower-priced plan, while also giving them an opportunity to opt out of the transition and either remain on their current service plan or choose another service plan. We clarify that moving eligible subscribers to a lower-priced plan upon advance notice and reasonable opportunity for subscribers to opt out of such a transition where the high-cost area benefit is no longer available does not constitute inappropriate downselling.⁷¹

34. *Subscriber Initial Notice Concerning High-Cost Area Benefit.* We require providers to seek annual approval to continue offering the high-cost area benefit. Accordingly, there is a potential for ACP subscribers receiving the high-cost area benefit to experience financial difficulty if their provider ceases being eligible to offer the high-cost area benefit.⁷²

35. To promote transparency and avoid the potential for subscriber confusion, participating providers approved to offer the high-cost area benefit must provide written notice to the subscriber when the provider first applies the high-cost area benefit to the subscriber's bill, stating:⁷³ (1) that the subscriber is receiving an high-cost area benefit and specifying the difference between the standard ACP benefit and the high-cost area benefit being applied to the subscriber's ACP service; (2) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the high-cost area benefit; (3) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and (4) that the provider is required to provide

⁷⁰ *ACP Report and Order*, 37 FCC Rcd at 584-858, para. 220 (finding that allowing consumers that expressed an ability and willingness to pay for broadband to opt out rather than requiring consumers to opt-in for the continuation of non-discounted broadband with a reduced benefit amount mitigates bill shock while ensuring that subscribers are able to continue receiving broadband internet service).

⁷¹ *See id.*; 47 CFR § 54.1810(e).

⁷² *See supra* paras. 31-32. As explained in the *ACP Report and Order*, in connection with the transition from the Emergency Broadband Benefit Program (EBB Program) to the ACP, which has a lower standard benefit amount, numerous commenters expressed concern about the potential for subscriber confusion and bill shock stemming from the transition from the EBB benefit level to the ACP benefit level. *See ACP Report and Order*, 37 FCC Rcd at 581-587, paras. 214-223. The potential removal of the high-cost area benefit raises similar concerns.

⁷³ This approach is similar to the customer notice approach in connection with the transition from the EBB Program (which had a higher monthly benefit amount) to the Affordable Connectivity Program. *See ACP Report and Order*, 37 FCC Rcd at 586, para. 222 (finding that allowing EBB households to transition to lower cost service plans after providing notice in advance of the change in price would be sufficient to mitigate bill shock).

the subscriber advance notice of any changes to the subscriber's ACP service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

36. *Program Integrity.* To ensure that providers are only seeking reimbursement for households that are eligible to receive the ACP high-cost area benefit, we direct USAC to conduct program integrity reviews of claims related to the area high-cost benefit. We recognize that there is a risk that providers receiving the high-cost benefit could attempt to raise rates or push ACP subscribers to higher priced plans to maximize their reimbursement for the high-cost area benefit claims. We remind providers that they are required to offer the same services to ACP households on the same terms and conditions as non-ACP households and inappropriate upselling is a violation of the ACP rules.⁷⁴ In addition to USAC's program integrity reviews, the Bureau, in coordination with OEA, shall also use available data from ACP providers to maximize program integrity with respect to the high-cost area benefit, including, but not limited to, inflating rates, or claiming the high-cost area benefit for a greater number of households than the number of the provider's broadband serviceable locations in a given high-cost area. We further direct the Bureau, in coordination with USAC, to provide additional details and procedures, as necessary, in conformance with this Order to ensure the efficient functioning of the high-cost area benefit.

37. Lastly, we remind providers that the Infrastructure Act allows eligible households to apply the ACP benefit to "any internet service offering of the participating provider, at the same terms available to households that are not eligible households."⁷⁵ The Commission has found this requirement will help "ensure the marketplace will not be limited, and consumers can apply the affordable connectivity benefit to a plan of their choosing."⁷⁶ This, in turn, will help minimize concerns that "providers may introduce or alter plans solely to maximize the reimbursement amount."⁷⁷ However, as the Commission clarified, providers are not precluded "from making internet service offerings that are only available to ACP subscribers provided that the terms are at least as good as plans that are available to non-eligible households..."⁷⁸

38. *Clarification of the Scope of Both ACP Enhanced Benefits.* The statute is silent on whether a household that is both eligible for the ACP high-cost area benefit and the ACP enhanced qualifying Tribal land benefit may receive both benefits simultaneously. However, there is no indication that Congress intended for households in this scenario to be eligible to receive more than one ACP enhanced benefit. Further, allowing households to receive both enhanced ACP benefits at the same time would not be a fiscally responsible use of limited ACP funds. Absent Congressional intent to the contrary, we clarify that the ACP enhanced benefits are not cumulative and thus, a participating provider can only offer and seek reimbursement for one ACP enhanced benefit to eligible households in such situations. Accordingly, a participating provider is allowed to seek reimbursement for the enhanced qualifying Tribal land or the high-cost area benefit per eligible household up to the maximum benefit amount of \$75 per month, not both.

IV. PROCEDURAL MATTERS

39. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA)⁷⁹ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings,

⁷⁴ 47 U.S.C. § 1752(b)(7)(A)(i); 47 CFR § 54.1810(e)(1)-(2).

⁷⁵ 47 U.S.C. § 1752(b)(7).

⁷⁶ *ACP Report and Order*, 37 FCC Rcd 586, para. 98.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). (FRFA)

unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁸⁰ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and/or policy changes contained in this *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix B.

40. *Paperwork Reduction Act.* Pursuant to 47 U.S.C. section 1752(h)(2) the collection of information sponsored or conducted under the regulations promulgated in this Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.⁸¹

41. *Congressional Review Act.* The Commission will submit this Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will also send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

42. 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 Section 60502 of the Infrastructure Investment and Jobs Act and codified at 47 U.S.C. § 1752, this Sixth Report and Order, IS ADOPTED and shall be effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

43. 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 thirty (30) days following publication of the text or summary thereof in the Federal Register.

44. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Sixth 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).

45. IT IS FURTHER ORDERED that the Commission’s Office of Secretary, Reference Information Center, SHALL SEND a copy of this Sixth Report and Order including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁰ 5 U.S.C. § 605(b).

⁸¹ 47 U.S.C. § 1752(h)(2).

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

AUTHORITY: 47 U.S.C. §§ 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 403, 1004, 1302, 1601-1609, 1752, unless otherwise noted.

Subpart R—Affordable Connectivity Program

* * * * *

1. Section 54.1803 is amended by revising paragraph (a) to read as follows:

§ 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(s), 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 in a high-cost area, as defined in § 54.1814(a) and is approved to offer the enhanced high-cost benefit in that high-cost area pursuant to the process in § 54.1814(b).

* * * * *

2. Add § 54.1814 to subpart R to read as follows:

§ 54.1814 High-Cost Area Benefit

(a) For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, the term “high-cost area” means an area as defined by 47 U.S.C. §1702(a)(2)(G) as determined by the National Telecommunications and Information Administration.

(b) *High-cost Area benefit approval process.* A facilities-based ACP participating provider in a high-cost area (as defined in § 54.1814(a)) may provide an affordable connectivity benefit in an amount up to \$75.00 for a broadband Internet access service offering in a high-cost area upon a showing that the applicability of the standard up to \$30.00 benefit under § 54.1803(a) 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 in that high-cost area.

- (1) A participating provider seeking approval to provide the high-cost area benefit must first electronically file a request with the Universal Service Administrative Company by the deadline established by the Wireline Competition Bureau.

- (2) The participating provider’s request shall include the documentation required to demonstrate particularized economic hardship. Acceptable documentation includes an income statement and supporting affidavit which, if applicable, includes revenue and cost allocations and a description of the methodology, demonstrating that the provider was operating at a loss related to providing broadband Internet access service in the relevant high-cost area(s) for at the last fiscal year or in at least four of the last six fiscal quarters, or other acceptable documentation determined by the Wireline Competition Bureau in consultation with the Office of Economics and Analytics.

(c) *Review process.* The Administrator, under oversight of the Wireline Competition Bureau and the Office of Economics and Analytics, shall review each participating provider request to offer the high-cost

area benefit and determine whether the provider has demonstrated a particularized economic hardship in the high-cost areas for which it is requesting to offer the high-cost area benefit. If the Administrator finds the particularized economic hardship showing is satisfied in accordance with the Commission's rules and orders, and any guidance from the Wireline Competition Bureau and the Office of Economics and Analytics, then the Administrator will approve the request and notify the participating provider. Otherwise, the Administrator will deny the request and provide the participating provider a written explanation of the basis for the denial.

(1) The Administrator will review applications within a timeline to be determined by the Bureau.

(2) Providers may appeal the Administrator's determination as set forth in Part 54, subpart I of the Commission's rules.

(3) Providers may only submit claims for up to the \$30.00 standard benefit amount while an appeal of an Administrator's determination is underway. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in § 54.1808. The provider may submit revised claims for up to \$75.00 only from the start of the approval period indicated in the appeal determination letter.

(d) *Annual renewal process.* A participating provider that has been approved to provide the high-cost area benefit must request approval annually thereafter to continue to provide the enhanced benefit to eligible households in a subsequent year. The participating provider will need to demonstrate particularized economic hardship in the renewal submission, through the documentation specified by the Wireline Competition Bureau. The deadline for submitting the renewal request shall be determined by the Wireline Competition Bureau.

(e) *Notice to eligible households.*

(1) Participating providers approved to offer the high-cost area benefit shall provide Affordable Connectivity Program subscribers written notice when the provider begins applying the high-cost area benefit to the subscriber's bill. The written notice must state:

- (i) that the subscriber is receiving an high-cost area benefit and the difference between the standard benefit amount and the enhanced high-cost benefit being applied to the subscriber's supported service;
- (ii) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the enhanced high-cost area benefit;
- (iii) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and
- (iv) that the provider is required to provide the subscriber advance notice of any changes to the subscriber's supported service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

(2) If a participating provider fails to timely submit the renewal submission by the deadline or no longer qualifies to offer the high-cost area benefit based on its annual resubmission, then the participating provider shall provide written notice to its Affordable Connectivity Program customers receiving the high-cost area benefit at least 30 days and at least 15 days before the expiration of its approval to offer the high-cost area benefit. Such subscriber notices shall include:

- (i) A statement that the provider will no longer be offering the high-cost area benefit in the relevant high-cost area;
- (ii) The effective date of the end of the high-cost area benefit;
- (iii) A statement that upon the effective date of the loss of the high-cost area benefit, the

Affordable Connectivity Program supported service purchased by the household will no longer be discounted at the higher subsidy amount; and

- (iv) The amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.
- (3) If a participating provider is no longer authorized to offer the high-cost area benefit, the provider may transition an eligible household to a lower-priced ACP service plan once the high-cost area benefit is no longer available, upon advance notice to the household and an opportunity for the household to opt out of the change and remain on its current service plan or select another service plan. Participating providers must include the advance transition notice in the required written notice about the end of the provider's approval to offer the high-cost area benefit. The advanced notice must:
- (i) Provide details about the new plan and monthly price;
 - (ii) State that the subscriber may remain on its current plan or choose another plan;
 - (iii) Provide instructions on how the subscriber can opt out of the transition or change its service plan;
 - (iv) Provide the deadline for the subscriber to notify the provider that the subscriber would like to remain on its current plan or choose another plan.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) released in March 2021.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (or 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 funds an affordable connectivity benefit consisting of a per month discount up to \$30 on the price of broadband Internet access services that participating providers supply to eligible households in most parts of the country and a per month discount up to \$75 on such prices for households on qualifying Tribal lands.⁵ The Commission established rules governing the affordable connectivity standard \$30 benefit and the enhanced Tribal lands benefit in the *ACP Report and Order* adopted on January 14, 2022.

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 per month for broadband Internet access 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 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 earlier *Further Notice* to which the IRFA applied, we sought comment on the rules to implement this enhanced benefit.

4. In the Order, the Commission adopts the rules necessary to implement the enhanced benefit in high-cost areas the National Telecommunications and Information Administration (NTIA) designated in consultation with the Commission. Specifically, the Commission addresses the rules and procedures for participating providers that are facilities-based to offer an high-cost area benefit to eligible households located in designated high-cost areas served by the provider. We define “particularized economic hardship” for purposes of determining eligibility for the high-cost area benefit. We then address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship. We also prescribe the process for submitting, reviewing, taking action on such showings, and for requests for review of adverse decisions.

¹ See 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 *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-94 and 15-91, *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 21-36 (March 17, 2021) (*Notice*).

³ See 5 U.S.C. § 604.

⁴ 47 U.S.C. § 1752.

⁵ *Id.* § 1752(a)(7)(A), (b)(1), (b)(4).

⁶ *Id.*; see also *id.* § 1752(a)(7) (defining “high-cost area” and other relevant terms).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments raised that specifically addressed the rules and policies set forth in the IRFA. WISPA cautioned the Commission to “be mindful that procedures posing excessive administrative burdens on small providers thwart the central purpose of the Infrastructure Act” and that “ISP companies with . . . limited staffing lack the internal administrative resources to establish their specific costs to provide broadband service in an area.”⁷ ACA Connects also encouraged the Commission to only require a certification for small providers with fewer than a Commission-defined subscriber threshold to presumably minimize the administrative burden on such entities.⁸

6. The Commission is constrained by the plain language of the statute to require a participating provider, including small entities, to make a showing of “particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network” to offer the high-cost area benefit.⁹ Such a showing inevitably involves a measure of a provider’s costs and revenues. We have, however, taken steps to minimize the burden on small entities. In areas where a participating ACP provider is present, the provider will need to submit an affidavit asserting it will incur a “particularized economic hardship” and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, then the provider would need to provide additional information to allocate costs and revenues to the high-cost areas where it seeks to offer the high-cost benefit. This will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small entity providers, by minimizing the need to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service area, but determined that this approach was inconsistent with the statutory language, as discussed in section III.B. of the *Order*.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.¹⁰

8. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the 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.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the

⁷ WISPA *Further Notice* Comments at 2.

⁸ See ACA Connects *Further Notice* Comments at 7-8.

⁹ 47 U.S.C. § 1752(a)(7)(B).

¹⁰ 5 U.S.C. § 604(a)(3).

¹¹ 5 U.S.C. § 603(b)(3).

¹² See *id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.¹³ 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).¹⁴

10. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁵ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁶ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁷

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.”¹⁸ 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.¹⁹ Nationwide, for tax year 2020, there were approximately 447,689 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.²⁰

12. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²¹ U.S. Census Bureau data from the 2017 Census of Governments²² indicate there were 90,075 local governmental jurisdictions consisting of general

¹³ See *id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632).

¹⁴ See 15 U.S.C. § 632.

¹⁵ See 5 U.S.C. § 601(3)-(6).

¹⁶ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁷ *Id.*

¹⁸ See 5 U.S.C. § 601(4).

¹⁹ 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. See 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.

²⁰ 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 businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

²¹ See 5 U.S.C. § 601(5).

²² See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

purpose governments and special purpose governments in the United States.²³ Of this number, there were 36,931 general purpose governments (county,²⁴ municipal, and town or township²⁵) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²⁶ with enrollment populations of less than 50,000.²⁷ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁸

13. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²⁹ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.³⁰ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.³¹ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.³² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³³ Of this number, 2,964 firms operated with fewer than 250 employees.³⁴

²³ 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>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²⁴ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁵ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁶ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁷ 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 data from independent school districts is included in the special purpose governments category.

²⁸ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

³⁰ See 47 CFR § 1.7001(a)(1).

³¹ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

14. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.³⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report*,³⁶ we believe that the majority of wireline Internet access service providers can be considered small entities.

15. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.³⁷ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"³⁸ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.³⁹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁴⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁴² Of that number, 2,837 firms employed fewer than 250 employees.⁴³

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<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

³⁴ *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.

³⁵ See *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

³⁶ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 44, paras. 34-35, Figs. II.B.2-4, 6. (2020) (*2020 Communications Marketplace Report*).

³⁷ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

³⁸ Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 (*IAS Status 2018*), Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

³⁹ See 47 CFR § 1.7001(a)(1).

⁴⁰ 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>.

⁴¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁴³ *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.

16. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁴⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,⁴⁵ as well as on terrestrial fixed wireless broadband providers in general,⁴⁶ we believe that the majority of wireless Internet access service providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. *High-Cost Area Benefit.* Providers of wireline or wireless broadband Internet access services, including small businesses, that voluntarily seek to qualify for the enhanced benefit will need to report and retain certain data about their operations. The necessary data include the costs of deploying and maintaining broadband Internet access networks in particular high-cost 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. Importantly, no small entity will be required to report or retain such data as a general matter.

18. The 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 areas where the benefit may be available. Moreover, because participation is entirely optional, we believe 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.

19. We therefore find the cost of compliance for small entities will be minimal given the steps taken to minimize the administrative burden as discussed in section B of this FRFA.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its 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 or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."⁴⁷

21. The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below

⁴⁴ See *IAS Status 2018*, Fig. 30.

⁴⁵ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13. (2020) (*2020 Communications Marketplace Report*).

⁴⁶ *Id.* at para. 91.

⁴⁷ 5 U.S.C. § 604(a)(6).

we discuss actions we take in the *Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

22. *High-Cost Area Benefit.* As discussed in section B of this FRFA, the Commission is constrained by the plain language of the statute to require a participating provider to make a showing of “particularized economic hardship” to offer the high-cost area benefit.⁴⁸ Such a showing inevitably involves a measure of a provider’s costs and revenues. We have, however, taken steps to minimize the burden on small entities. A provider will only need to submit an affidavit asserting it will incur a “particularized economic hardship” and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, would the provider need to submit information, in addition to the income statement and an affidavit, to allocate costs and revenues to the high-cost areas it intends to serve. These steps will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small providers, by eliminating the need, in the first instance, to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service area, but determined this approach was inconsistent with the statutory language, as discussed in section III.B. of the *Order*.

G. Report to Congress

23. The Commission will send a copy of this Sixth Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁹ In addition, the Commission will send a copy of the Sixth Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁵⁰

⁴⁸ 47 U.S.C. § 1752(a)(7)(B).

⁴⁹ See 5 U.S.C. § 801(a)(1)(A).

⁵⁰ See *id.* § 604(b).