

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

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

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (Infrastructure Act or Act), which modified and extended the Emergency Broadband Benefit Program

1 Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), available at https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf (Infrastructure Act).

(EBB Program)<sup>2</sup> to a longer-term broadband affordability program called the Affordable Connectivity Program (ACP).<sup>3</sup> The Infrastructure Act also mandates that the Commission issue final “broadband transparency rules” regarding the annual collection of information about the price and subscription rates of internet service offerings received by households enrolled in the Affordable Connectivity Program. Consistent with the directive to adopt rules no later than one year after enactment of the Act,<sup>4</sup> we herein seek comment on the data to be collected, mechanism for collecting this data, and format for the data’s publication.

## II. BACKGROUND

2. Consistent with statutory requirements, on December 31, 2021, the EBB Program ended and the Affordable Connectivity Program began accepting applications and enrollments.<sup>5</sup> Congress made several changes to the EBB Program to transform it from an emergency program designed to respond to a public health crisis to a longer-term broadband affordability program, and appropriated to the Commission an additional \$14.2 billion to implement those changes and fund the program.<sup>6</sup> More specifically, Congress removed pandemic-related eligibility criteria, added Special Supplemental Nutritional Program for Woman, Infants, and Children (WIC) as a qualifying program, and increased the threshold for those seeking to qualify by income from 135% of the Federal Poverty Guidelines to 200%. The Infrastructure Act also reduced the benefit amount from up to \$50 per month to up to \$30 per month for low-income households residing on non-Tribal lands. The Act retained the enhanced benefit of up to \$75 per month for households residing on qualifying Tribal lands and the one-time discount of up to \$100 for a tablet, laptop, or desktop, provided that the household contributes between \$10 and \$50 toward the price of the device. Among other things, Congress also modified the program requirements to allow consumers to apply the benefit to any internet service offering of a participating provider, which is reflected in the Commission’s rules adopted on January 14, 2022.<sup>7</sup> As of May 16, 2022, there were over 11.8 million households enrolled in the Affordable Connectivity Program.

3. Congress also in the Infrastructure Act instructed the Commission to initiate a new ACP transparency data collection.<sup>8</sup> In addition to conducting an annual collection of data relating to the price and subscription rates of each internet service offering of a participating provider to which an eligible household subscribes,<sup>9</sup> Congress also directed the Commission to revise the rules of the collection to verify the accuracy of the data submitted no later than 180 days after final rules are issued.<sup>10</sup> Then, once the final rules for the collection are promulgated, the Commission must make data from the annual

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<sup>2</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), *available at* <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf> (Consolidated Appropriations Act).

<sup>3</sup> Infrastructure Act, div. F, tit. V, § 60502(a)(2).

<sup>4</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>5</sup> *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450 and 20-445, FCC 22-2, at 1, para. 2. (rel. Jan. 21, 2022) (*ACP Order*).

<sup>6</sup> Infrastructure Investment and Jobs Act, div. F, tit. V, § 60502; *id.* div. J, tit. IV. The \$14.2 billion appropriation is contained in Division J, *Appropriations*, Title IV – *Financial Services and General Government*, of the Infrastructure Act. The statutory changes to the EBB Program are contained in Division F, *Broadband*, Title V, *Broadband Affordability*, Section 60502, *Broadband Affordability*, of the Infrastructure Act. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752, *Benefit for broadband service*.

<sup>7</sup> *ACP Order* at 1, para. 2.

<sup>8</sup> Infrastructure Act, div. F, tit. V, § 60502(c).

<sup>9</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>10</sup> *Id.* § 60502(c)(2).

collection publicly available in a commonly used electronic format while also protecting personally identifiable information and proprietary information.<sup>11</sup>

4. The Commission is also undertaking a separate rulemaking to implement additional transparency measures as required by the Infrastructure Act, which intersects with the ACP transparency data collection.<sup>12</sup> In the *Broadband Labels Notice*, the Commission sought comment on the Infrastructure Act's direction that the Commission promulgate rules requiring the display of broadband consumer labels disclosing information regarding broadband internet access service plans.<sup>13</sup> In that proceeding, we proposed to require that service providers display labels disclosing information about prices, introductory rates, data allowances, fees, broadband speeds, and network management practices.<sup>14</sup> The Infrastructure Act also required the Commission to “rely on the price information displayed on the broadband consumer label . . . for any collection of data . . . under section 60502(c) [the ACP transparency data collection].”<sup>15</sup>

### III. DISCUSSION

#### A. ACP Transparency Data to be Collected

5. *Price and Subscription Rate Information.* The Act requires an “annual collection by the Commission of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program . . . to which an eligible household subscribes.”<sup>16</sup> We first seek comment on the collection of price information. We propose that the price information include the monthly charge for the internet service offering that a household would be charged absent the application of the affordable connectivity benefit. How should we collect promotional pricing or introductory rates? Should other price characteristics, such as whether the internet service offering is pre-paid or post-paid, be collected? Should taxes and fees be collected as part of price? If so, what price information should be included, and how can we distinguish between the components of the price? For example, should the values of promotional discounts such as for streaming service (e.g., Disney+, Spotify, Netflix, etc.) or modem rental, military discounts, or paperless billing discounts be collected? Should the collected price information reflect any discounts provided to households receiving a service offering under an extended service contract? Should whether a plan is designated as a plan for a low-income household be collected? Should the prices for associated equipment, such as modems or routers, be collected? How should the price of service bundles (for example, voice/broadband or voice/broadband/cable) be collected? For those households who exceed their monthly data cap, should the cost of additionally purchased data be considered? Are there any other indicators of price that should be collected?

6. We next seek comment on the collection of subscription rates. We interpret “subscription rate” as the total program subscribership to a unique internet service offering over time, and seek comment on this approach.<sup>17</sup> In other words, we propose to collect the number of ACP households that subscribe to each unique internet service offering, where offerings are differentiated by price and service characteristics. Should we collect the number of households of an internet service offering as of a certain moment in time (e.g., as of a particular day), or should the Commission collect data on the number of

<sup>11</sup> *Id.* § 60502(c)(4).

<sup>12</sup> See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (Jan. 27, 2022) (*Broadband Labels Notice*).

<sup>13</sup> Infrastructure Act, div. F, tit. V, § 60504(a), (b)(1).

<sup>14</sup> *Broadband Labels Notice* at Appendices B and C (displaying sample consumer labels for fixed and mobile broadband service).

<sup>15</sup> *Id.* at 7, para. 25 (citing Infrastructure Act, div. F, tit. V, § 60504(b)(2)).

<sup>16</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>17</sup> See *id.*

households receiving the offering over a given period of time (e.g., over a multiple month period)? What is the meaning of the statutory wording “subscription rate”? Should we require providers to submit annually such subscription rate data disaggregated by month or quarter? Will either of these approaches better enable the Commission to calculate the “take rate” (i.e., the fraction of subscribers selecting the plan from those who could select the plan) and identify changes in the rate over time? Should the Commission collect any other data related to the growth or churn rate, which would show the net additions or drop-offs from plans over time? We seek comment on other interpretations of “subscription rate.”

7. Some providers offer plans nationwide. How should that be taken into account when collecting subscription rate information? Should the subscription rate be for a particular geographic location if plans are offered nationally or across large geographic regions, such as statewide? Are large geographic regions (e.g., state) most appropriate or would it be beneficial to collect this information on a more granular geographic level? If so, what geographic level (e.g., study areas, designated market areas) would be most appropriate?<sup>18</sup> What other information should the Commission collect about the subscription rate? Do providers collect and maintain household demographic information or information on a subscriber’s past internet access, and if so should that information be collected here? We propose to have providers enrolling households in the Affordable Connectivity Program through an FCC-approved alternative verification process be required to submit information about how the household qualified for the Affordable Connectivity Program, and we seek comment on this proposal.

8. *Plan Characteristics.* In the *ACP Order*, the Commission determined that collecting data on service plan characteristics, including upload and download speeds, data allowances, and co-payments could help determine the value the Affordable Connectivity Program provides to households.<sup>19</sup> Given the utility of such data, the Commission directed the Bureau and the Office of Economics and Analytics (OEA), with assistance from the program administrator, the Universal Service Administrative Company (USAC), to determine the appropriate way to collect service plan characteristics while minimizing the burden to service providers.<sup>20</sup> The Infrastructure Act also anticipates that the Commission may engage in other data collection activities, specifically including a redundancy avoidance provision stating that nothing “shall be construed to require the Commission . . . to duplicate an activity that the Commission is undertaking as of the date of enactment” of the Act if “the Commission refers to the activity in the” final broadband transparency rules issued by the Commission, if “the activity meets the requirements of” the broadband transparency rules, and if “the Commission discloses the activity to the public.”<sup>21</sup> We seek comment on whether and how this provision affects the collection of service plan characteristic data.<sup>22</sup> Plan characteristics data arguably falls within the scope of “data relating to the price and subscription rates” of internet service offerings to which households subscribe. We thus seek comment on using this

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<sup>18</sup> A study area is a term used by the Universal Service Administrative Company to describe a provider’s service area. USAC, Join Lifeline as an ETC, <https://www.usac.org/lifeline/get-started/join-lifeline-as-an-etc/#Obtain> (last visited June 7, 2022). A designated market area (DMA) is used to define radio and television markets. See *Communications Marketplace Report*, GN Docket No. 20-60, FCC 20-188 (2020) at n.609.

<sup>19</sup> The Commission recognized the utility of plan characteristic information in informing the Commission of the preferences of ACP subscribers and allowing the Commission to evaluate whether ACP plans are providing subscribers value. In paragraph 100, the Commission directed WCB and OEA along with USAC to determine the method for collecting plan characteristic information (NLAD modification, survey, future planned data collections, etc.) and the plan characteristics to be collected. *ACP Order* at 50, para. 100.

<sup>20</sup> *ACP Order* at 50, para. 100.

<sup>21</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(3).

<sup>22</sup> The Infrastructure Act acknowledges that the Commission may engage in data collection activities separate from that required by section 60502(c). *Cf., e.g.,* Infrastructure Act, div. F, tit. V, § 60502(c)(3) (providing § 60502(c)(1) data collection should not be construed as requiring Commission to duplicate existing activities).

ACP transparency annual data collection to collect information on plan characteristics, as required by the Commission in the *ACP Order*.

9. We seek comment on what ACP plan characteristics we should collect. We first propose to collect upload and download speeds. For upload and download speeds, should we collect the advertised or maximum speeds? Are there other speed measurements we should consider collecting instead? Should we collect information about ACP service plan data caps,<sup>23</sup> including the amount of the data cap and the number of subscribers who have reached their cap? What about information concerning associated equipment, including whether or not a plan includes or requires a modem or router rental? For bundled service plans should we collect information concerning the characteristics of the bundle, including whether voice is included in the bundle, voice characteristics (e.g., total minutes), whether video is included, video characteristics (e.g., total channels, channels included)? Are there other plan characteristics that the Commission should collect as part of the ACP transparency data collection?

10. *Broadband Consumer Labels*. We also seek comment on the interplay between the ACP transparency data collection and broadband consumer labels. The Infrastructure Act provides that the Commission “shall rely on the price information displayed on the broadband consumer label under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c).”<sup>24</sup> This language may mean that the Commission must incorporate *price information* from broadband consumer labels in the section 60502(c) ACP transparency data collection but that this category of price information data is not coterminous with the data *related* to price that is referenced in section 60502(c). Are there alternative interpretations? For example, should we interpret the “shall rely” language as meaning that the Commission should only rely on data contained in the broadband labels to meet the statutory requirement that we collect data relating to price? Does the redundancy avoidance provision in section 60502(c) support this interpretation? We seek comment on this language and request that commenters also suggest ways in which the Commission can use broadband label information as part of the ACP transparency data collection. We also seek comment on whether the redundancy avoidance language could be interpreted to mean that the Commission could rely on price information contained in consumer broadband labels. Does USAC collect any information about subscription rates to satisfy the ACP’s other statutory requirements, rather than conducting a new data collection?

11. As proposed, the broadband labels may include information concerning plan pricing, performance, and data caps<sup>25</sup> and will be required to be displayed at the point of sale.<sup>26</sup> How should we structure the ACP transparency data collection to take advantage of information contained in the broadband labels? The *Broadband Labels Notice* sought comment about whether the Commission should directly collect the information contained in the broadband labels with each plan having a unique identifier, or whether we should require all participating internet service providers to make plan information publicly available via an Application Programming Interface (API) or other machine-

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<sup>23</sup> We use the term “data cap” to mean data usage restrictions on both pre-paid and post-paid plans.

<sup>24</sup> Infrastructure Act, div. F, tit. V, § 60504(b)(2). The required label must include information about whether the offered price is an introductory rate, and, if so, the price the consumer will be required to pay following the introductory period. *Id.* § 60504(b)(1).

<sup>25</sup> As proposed, the fixed broadband labels would include information on pricing, monthly data allowances, overage charges, equipment fees, “other” monthly fees, one-time fees, early termination fees, and performance metrics. The mobile broadband labels, as proposed, would include all of the information contained in the fixed labels as well as bring your own device information and “other included services/features.” See *Broadband Labels Notice* at 5-6, paras. 16-22. The Broadband Labels rulemaking process is currently ongoing, and the Commission is seeking comments in a separate proceeding about the contents of the broadband labels. See generally *Broadband Labels Notice*.

<sup>26</sup> *Broadband Labels Notice* at 8, para 26.

readable format.<sup>27</sup> If we require labels in a machine-readable format, how would we be able to match the labels to ACP subscribers? As a practical matter, is it possible for the information included in the broadband labels to meet the statutory requirement in section 60502(c) to collect price information for “each internet service offering of a participating provider . . . to which an eligible household subscribes?” If a provider is to submit a unique identifier for each plan, what naming convention should be used to identify the plan? Should there be a standardized naming convention used across providers, and if so, what should that format be? Absent a data collection of broadband labels or required availability of plan information via an API, can price information be obtained from the label on the provider’s marketing materials? How could the Commission link the price information from the provider’s marketing materials to the “eligible household”? If available, would this price information accurately reflect the prices applicable to ACP subscribers? We seek comment on these approaches to leveraging information for the broadband labels and alternative approaches we should consider in this proceeding. Should the Commission consider public sources for plan information? If so, how should the Commission link rate and plan characteristic information on a website label to an ACP subscriber?

12. *Performance Metrics.* We propose to use information in the ACP transparency data collection for the evaluation of the performance of the Affordable Connectivity Program in achieving the goals set in the *ACP Order*. Those goals are to (1) reduce the digital divide for low-income consumers, (2) promote awareness and participation in the Affordable Connectivity Program, and (3) ensure efficient and effective administration of the Affordable Connectivity Program.<sup>28</sup> We seek comment on this proposal. What information should we collect in the ACP transparency data collection to measure the performance of the Affordable Connectivity Program? Should we collect information about whether a subscriber is a first-time subscriber to the provider? A first-time subscriber for fixed or mobile broadband? Whether a household subscribes to another broadband service? Should we collect data on a subscriber’s plan characteristics prior to ACP service to help identify the impact of the ACP benefit or information from providers on how many subscribers changed their data usage or plan once they received their ACP benefit? Is there information about subscribers that is not currently collected that would be helpful to evaluate the performance of the program? Should we collect information concerning how a customer became aware of the Affordable Connectivity Program? What other information should we collect to measure effectiveness in increasing awareness and participation in the Affordable Connectivity Program? What information should we collect to measure the administrative efficacy of the program or otherwise help measure the performance of the Affordable Connectivity Program?

## **B. Collection Structure**

### **1. Data Collection Systems**

13. To allow providers to efficiently submit information for the ACP transparency data collection, we propose using the National Lifeline Accountability Database (NLAD) or other USAC systems to collect subscriber-level data. The NLAD is a centralized database through which all ACP providers must enter information about households to enroll them in the Affordable Connectivity Program.<sup>29</sup> We seek comment on this approach. For example, providers currently submit to NLAD information regarding a subscriber’s residential address, other contact information, whether the subscriber is receiving an ACP connected device from the provider, service type (cable, DSL, fiber, fixed wireless, mobile broadband, satellite), among other information necessary to administer the program and to prohibit members of the same household from receiving the affordable connectivity benefit at the same time. Both USAC and providers have experience using NLAD to submit and retrieve information about

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<sup>27</sup> *Broadband Labels Notice* at 7-8, para. 25.

<sup>28</sup> *Id.* at 97, para 210.

<sup>29</sup> NLAD is a database used in the Lifeline program and the Affordable Connectivity Program as a tool for enrollment, reimbursement calculations, and a safeguard against duplicate subscribers. *See ACP Order* at 32, para. 58. Providers are required to use NLAD to enroll or transfer subscribers.

households' ACP service, and using this system for the collection would prioritize ease-of-use for service providers and minimize administrative burdens. Given the statutory constraints and need to collect this information quickly and efficiently after the final rules are adopted, using a system that is already familiar and that already contains information about the households enrolled in the Affordable Connectivity Program will benefit providers, the Commission, and USAC. We seek comment on these views and welcome comment on other data collection mechanisms. We believe it will be less burdensome for providers to update their connections to NLAD and to continue to use a system they are familiar with to submit data collection information rather than requiring them to modify their processes and systems to transfer data to a new and unfamiliar system. We seek comment on this assumption. Additionally, receiving data from NLAD will allow the Commission to determine the rate of subscriptions of different plans, which otherwise could not be obtained in a static, aggregate collection. Are there alternative USAC-managed data upload systems that could be used for a subscriber-level collection? Would the creation of a new USAC-managed system be most appropriate for this data collection?

14. If we were to collect the data at an aggregated level, and not at the subscriber level, what collection mechanism should we use? It may be difficult to modify NLAD to collect data on an aggregated level within the time necessary to launch the ACP data collection and, thus, USAC or the Commission may have to develop a new system. We seek comment on this view. We also seek comment on the ways that USAC could modify NLAD or another existing system to collect aggregate plan data. Are there ways that USAC could collect subscriber level information via NLAD and aggregate that data? Should the Commission collect this aggregated data instead of USAC? Developing a new system and standing up a collection of this magnitude would require significant resources, so we seek comment on the feasibility of the Commission hosting this collection. Finally, we seek comment on how the level of aggregation impacts the collection mechanism the Commission should employ. Commenters are encouraged to explain whether their suggested collection mechanism is particular to a specific level of aggregation, or if it can accommodate a wide swath of possible aggregation levels.

## 2. Data Filers

15. We next seek comment on which providers will need to submit data to the ACP transparency data collection. The Infrastructure Act requires collecting data “relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program . . . to which an eligible household subscribes.”<sup>30</sup> We view the Infrastructure Act as requiring every provider participating in the Affordable Connectivity Program to provide such data, regardless of the number of enrolled households. We seek comment on that view and the benefits of that approach. We do not read the Infrastructure Act as permitting us to limit the number of providers that must participate in this data collection. We seek comment on this interpretation and encourage commenters suggesting otherwise to explain how to limit participation without jeopardizing the integrity of the collection and ensuring that sufficient information is collected to provide the price and subscription rate information required by Congress.

## 3. Data Updates

16. Using the existing NLAD system will allow us to collect data at enrollment for all new participants but may not easily allow for the collection of newly required information about existing ACP households. We therefore seek comment on how providers should be required to backfill data for the millions of existing households that have already enrolled in the Affordable Connectivity Program. When the rules for the ACP transparency data collection go into effect, what should providers be required to do for these existing households? We seek comment on the best ways to obtain data from providers about the price and subscription rate of existing ACP households and on an appropriate amount of time to submit information into the NLAD system. Are there other alternative methods for collecting newly required information? For all households, should we require providers to submit and/or update plan

<sup>30</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

information continuously throughout the Affordable Connectivity Program? What are the benefits of requiring providers to continuously update this information throughout the year rather than collecting it during a filing window? Should providers be required to update plan information when that plan information changes? If so, how soon after the plan change should providers submit that new information? We also seek comment on whether to require providers to continue to maintain, update, or correct relevant information for the ACP transparency data collection after a provider exits the Affordable Connectivity Program.

### C. Collection Approaches

17. We propose that information about the price and subscription rate of internet service offerings to which enrolled ACP households subscribe be collected at the subscriber level. In a subscriber-level approach, data would be provided for each household enrolled in the Affordable Connectivity Program for that provider. The Infrastructure Act does not specify the level at which data should be collected.<sup>31</sup> Further, by prohibiting the Commission from “risking the disclosure of personally identifiable information” when making data public, Congress necessarily contemplated that the Commission might collect subscriber-specific information.<sup>32</sup> Recognizing the paramount importance of consumer privacy, we seek comment on any statutory or regulatory restrictions on the collection of subscriber-level data beyond what participating providers already provide, including privacy statutes.

18. In a subscriber-level collection, the provider would submit plan information to NLAD for each subscriber enrolled in the Affordable Connectivity Program. Having plan information for each subscriber would allow Commission staff to track the subscriber take-up rate of different plans over time and study how subscriber plan choices and preferences for plan characteristics vary by geographic area and household demographics. Subscriber-level information would provide insight into whether the Affordable Connectivity Program is meeting the broadband needs of eligible households and how those needs change over time, and would assist our understanding of whether plan choice is influenced by available technologies and speeds in a geographic area. For example, subscriber-level data would allow us to examine the preference for fixed versus mobile plans across geography and demography.

19. In addition to helping the Commission understand what choices subscribers have available to them and their preferences, subscriber-level data would also help us understand how the Affordable Connectivity Program affects overall broadband adoption and how the program furthers the Commission’s efforts to close the digital divide. Subscriber-level plan information would more easily be combined with subscription data already collected by the Commission,<sup>33</sup> which could improve estimates of ACP subscribers that are first time broadband adopters. Subscriber-level data may also improve consumer outreach efforts, including the outreach efforts the Infrastructure Act permits the Commission to pursue, as described in the *ACP Order* by targeting geographic areas and particular demographics that lag behind in ACP adoption.<sup>34</sup> Finally, subscriber-level data may facilitate analysis of the connection

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<sup>31</sup> The Infrastructure Act requires the Commission to issue final rules “regarding the annual collection . . . of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program . . . to which an eligible household subscribes.” Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>32</sup> *Id.* § 60502(c)(4)(A).

<sup>33</sup> See *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887, 9914-18 (2013) (describing collection of speed and plan location subscription data); FCC, *Form 477 Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources> (Nov. 23, 2021). For example, when only using Form 477, observed increases in broadband connections in a census tract can be due to any number of factors not related to the Affordable Connectivity Program (e.g., population growth). But matching subscriber-level ACP enrollment trends to changes in Form 477 broadband connections of a given speed is more indicative of households with new broadband connections that previously did not have any.

<sup>34</sup> See *ACP Order* at 89-92, paras. 190-99.



between Lifeline and the Affordable Connectivity Program. By matching subscriber-level plan information across the two programs, we could study how subscribers are using both subsidies to meet their broadband needs and whether their plan choices take full advantage of the ACP subsidy.<sup>35</sup>

20. We also seek comment on benefits and drawbacks of collecting more aggregated data. If we did not collect subscriber-level data from providers, we would need to collect the data at some level of aggregation. For an aggregated data approach, we seek comment on the level of data aggregation and what, if any, other information should be collected from providers. Should aggregated data be the number of individuals in a geographic area subscribed to a unique plan? And if so, what is the appropriate geographic level (e.g., census block, census tract, city (census place), county) for aggregated data? Is there some way other than geographic area that data should be aggregated? Should the plan characteristics still be collected at the subscriber level if collected through the ACP transparency data collection? Under the aggregated-level approach, how should subscribers that are on the same plan with respect to service characteristics, but who pay different amounts, be treated? Under an aggregated approach, each field could be submitted as an average or by category (e.g., speed tier). Are there specific fields that would be best suited for categorization? Should providers aggregate at the price-geographic level, the speed-geographic level, or the price-speed-geographic level? Or some other combination of variables? For example, should aggregate-level data be categorized by census tract, download speed, and upload speed, with other fields submitted as averages? We seek comment on the key fields for aggregation. We also seek comment on how collecting aggregated-level data as compared to subscriber-level data would impact our ability to use this data collection to fulfill the requirements in the *ACP Order* to collect service plan characteristics and to evaluate the performance of the Affordable Connectivity Program.<sup>36</sup>

21. We further seek comment on how useful aggregated data of providers' ACP offerings would be in evaluating the performance and administration of the Affordable Connectivity Program as compared to subscriber-level data. For example, at a high level of aggregation, such as the provider-state level, how could one analyze differences between rural and urban plan choices or subscription rates within a state? Even if aggregation were at the census tract level, we may not be able to match subscribers between Lifeline and the Affordable Connectivity Program, and would be unable to determine if Lifeline subscribers are gaining additional value for their ACP subsidy. Would aggregated data make it easier for the Commission to analyze or publish the data? We also seek comment on the relative burdens to providers in submitting aggregated data of their ACP service offerings as compared with subscriber-level data. As discussed above, for subscriber-level data, providers would be required to input additional data in NLAD at enrollment in addition to the information already required to enroll a household. For aggregated data, providers may not need to enter additional data into NLAD, but they would be required to submit such aggregated data to the Commission. We seek comment on the burdens raised by these data collection approaches. Are there specific steps the Commission could take to reduce such burdens (e.g., offering tools to facilitate the collection)? Are there data that USAC already has access to from participating providers which could be used for aggregation without requiring additional data from providers? Are there circumstances or reasons where aggregated data would be preferred to subscriber-level data in evaluating the effectiveness of the Affordable Connectivity Program?

22. We also seek comment on other data collection alternatives. What about a collection that requires the production of a combination of both subscriber-level data and more aggregated data? What would be the benefits and challenges of a hybrid approach that collects aggregated data and subscriber-

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<sup>35</sup> For example, are subscribers to both the Affordable Connectivity Program and Lifeline stacking benefits to increase the quality of their mobile plans? Is the increase in quality in line with a subsidy that is four times more than the Lifeline subsidy, or are certain subscribers using Lifeline for mobile broadband and Affordable Connectivity Program for fixed broadband?

<sup>36</sup> *ACP Order* at 50-51, 98, paras. 100, 210.

level information from all ACP subscribers? We seek comment on whether and in what circumstances a hybrid approach assists in evaluating the Affordable Connectivity Program.

23. *Collection Impact on Stakeholders.* We seek comment on what the impacts and costs would be to stakeholders (households, providers, the Commission, USAC) for the collection of subscriber-level data and how they compare to the benefits of the data and the statutory directive to collect and publish data to offer transparency about the service offerings ACP households receive. What are the benefits and burdens associated with requiring subscriber-level information from providers, and how can we reduce burdens associated with providing subscriber-level plan information in addition to the subscriber-level information already collected? Are there differences in the benefits and burdens associated with requiring subscriber-level information from small providers? If so, how can we structure this collection to minimize the economic impact on small providers? How should the Commission structure a subscriber-level collection to minimize the challenges associated with making subscriber-level information publicly available for analysis? To what extent can providers use an API or other tool to seamlessly submit and update plan information?

24. We also seek comment on what the impacts and costs would be to stakeholders for the collection of aggregated data. For aggregated data, providers would be responsible for collecting all the information of their ACP subscribers and compiling that information in the manner required by the Commission. We seek comment on our view that collecting aggregated data, especially depending on the level of aggregation, may be burdensome for providers. Are there any tools or steps USAC or the Commission can take to reduce burdens? We seek comment on the burdens of this data collection on providers. Does the burden vary depending on the level of data aggregation? Could any other of USAC's systems be modified to allow for aggregated data? Should we require providers to give us information in specific popular machine-readable formats? How could the Commission structure an aggregate-level broadband transparency data collection to minimize the burdens associated with handling the ACP transparency data? For small providers, what are the benefits and burdens associated with an aggregate level data collection? How can the Commission structure the collection to minimize any economic impact on small providers?

25. *Privacy and Proprietary Interests.* Congress indicated that the Commission should undertake the collection of data relating to ACP plan price and subscription rates while still protecting the privacy interests of individual subscribers.<sup>37</sup> We seek comment on any privacy concerns that may arise from the collection of subscriber-level price, subscription rate, and plan characteristic information. As part of the ACP enrollment process, the Commission already collects, with subscriber consent, the subscriber's information.<sup>38</sup> To what extent would a subscriber-level collection of price, subscription rate, and plan characteristics affect privacy interests of subscribers? Are there any unique privacy concerns related to a subscriber-level collection in areas or plans with low ACP enrollments? Can data masking methods be utilized by providers to address any privacy concerns? Are there alternative measures or safeguards that we could adopt for the Commission, USAC, or providers to mitigate any harm to subscriber privacy? To what extent would a subscriber-level collection of price, subscription rate, and plan characteristics impact providers? The Infrastructure Act also seeks to ensure that the ACP data collection and publication do not harm proprietary interests.<sup>39</sup> Would a subscriber-level collection of plan

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<sup>37</sup> Cf. Infrastructure Act, div. F, tit. V, § 60502(c)(4) (directing the Commission to define personally identifiable information and to publish the data collected without risking the disclosure of any such information).

<sup>38</sup> *ACP Order* at 32 n.186, para. 60; 47 CFR § 54.1806(d)(4) (listing subscriber information that participating providers must transmit to NLAD); see also *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453, at 47, para. 120 (WCB Nov. 18, 2021) (*ACP Public Notice*) (“Currently, providers in the EBB Program indicate the type of service a household receives through the EBB Program.”).

<sup>39</sup> Cf. Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A) (directing the Commission to publish data collected without risking the disclosure of proprietary information).

characteristics or other information raise issues related to providers' proprietary information? If so, how can the Commission balance these interests and/or mitigate the potential harm?

26. Additionally, we seek comment on the extent to which collecting additional subscriber-level data through the ACP transparency data collection implicates statutory privacy regimes, including the Electronic Communications Privacy Act (ECPA).<sup>40</sup> The Commission concluded a decade ago that it had sufficient authority under the Communications Act to require eligible telecommunications carriers (ETCs) to provide Lifeline subscriber-specific information to the NLAD notwithstanding ECPA.<sup>41</sup> The Commission explained that the Communications Act clearly demonstrated "Congress's intent that other provisions of law should not be held to override our specific authority to access information needed to perform oversight, including non-content information, which generally is less sensitive than the contents of communications."<sup>42</sup> The Commission also concluded that ETCs could divulge information about Lifeline and Link Up subscribers to the Commission under an exception to ECPA that permits divulgence that is "necessarily incident to the rendition of the service."<sup>43</sup> Similar to our current practice in Lifeline,<sup>44</sup> we require ACP providers to obtain consent from subscribers prior to transmitting certain subscriber-specific information to NLAD.<sup>45</sup> We request comment on whether we can collect additional subscriber-level data regarding ACP households consistent with ECPA without obtaining additional consent. We also seek comment on whether participating providers may divulge ACP household price and plan data to the Commission as necessarily incident to the providers' rendering service under the Affordable Connectivity Program, given Congress's mandate to collect broadband data and the importance that subscriber-level data could have in evaluating the performance and value of the Affordable Connectivity Program.

27. To ameliorate privacy concerns<sup>46</sup> and ensure that subscribers are cognizant of the uses of their personal information, the Commission currently requires subscribers to consent to the transmittal of

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<sup>40</sup> 18 U.S.C. ch. 121 (Stored Communications Act). Other privacy statutes include Section 222 of the Communications Act, of 1934, as amended, 47 U.S.C. § 222(c), and Section 631 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 551. In 2011, the Commission determined that "production by the ETCs [eligible telecommunications carriers] of Lifeline subscriber data necessary to identify duplicative Lifeline claims is consistent with section 222(d) of the Communications Act. . . . , [and] [t]o the extent that information produced by ETCs is customer proprietary network information as defined in section 222(h), this disclosure is permitted by the exceptions in section 222(d)." *Lifeline and Link Up Reform and Modernization*, Report and Order, 26 FCC Rcd 9022, 9029 n.48 (2011) (*2011 Lifeline Order*).

<sup>41</sup> *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6750-51, para. 219 (2012) (*2012 Lifeline Order*).

<sup>42</sup> *Id.* at 6751, para. 219.

<sup>43</sup> *Id.* at 6750, para. 219 (quoting 18 U.S.C. § 2702(c)(3)); *id.* ("In light of the findings we make in this Order about the need to develop a database to detect and prevent duplicative support, we conclude that divulging information about Lifeline and Link Up subscribers as required by this Order is 'necessarily incident to the rendition of the service.'").

<sup>44</sup> See 47 CFR § 54.404(b)(9).

<sup>45</sup> *Id.* § 54.1806(d)(4), (6).

<sup>46</sup> Many privacy statutes permit disclosure of subscriber data if the subscriber consents. See 18 U.S.C. § 2702(c)(1) (permitting disclosure of subscriber information "with the lawful consent of the subscriber"); 18 U.S.C. § 2703(c)(1)(C) (specifying that a governmental entity may require a provider to disclose subscriber information if the governmental entity "has the consent of the subscriber or customer to such disclosure"). Similarly, Section 222 of the Communications Act and Section 631 of the Cable Act both permit disclosure of information with customer or subscriber's consent. 47 U.S.C. § 222(c)(1) (limiting a telecommunications carrier's disclosure of individually identifiable customer proprietary network information "[e]xcept as required by law or with the approval of the customer"); 47 U.S.C. § 551(c)(1) (providing that a cable operator shall not disclose subscriber personally identifiable information "without the prior written or electronic consent of the subscriber"). The Cable Act

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their data to the Commission or USAC.<sup>47</sup> In the Affordable Connectivity Program, prior to obtaining consent, a participating provider must describe to the subscriber the “specific information being transmitted, that the information is being transmitted the Administrator to ensure the proper administration of the Affordable Connectivity Program and that the failure to provide consent will result in subscriber being denied the affordable connectivity benefit.”<sup>48</sup> We seek comment on the need for any additional subscriber consent as well as how that consent should be obtained.

28. We further request comment on how to best balance the burdens for providers and subscribers associated with obtaining consent with the benefits of a subscriber-level collection. How would providers obtain such consent from new ACP applicants and from existing ACP households? Can consent be collected by USAC either when consumers complete an application in the National Verifier or at the time of their recertification? We seek comment on how consent can be collected at the time of recertification, particularly where a subscriber’s eligibility is confirmed by querying the appropriate eligibility database.<sup>49</sup> If consent can be obtained only for a portion of the ACP subscriber base, is it worth collecting partial subscriber-level data? We seek comment on other ways in which providers, the Commission, or USAC can obtain a consumer’s consent to permit their provider to submit ACP service plan information consistent with any requirements we adopt in this proceeding. How can we structure the consent process to minimize the cost or burdens of consent? What burdens would be imposed on participating providers if they are required to provide additional notice to, and obtain additional consent from, existing ACP subscribers?<sup>50</sup> Can we collect opt-out consent, or should consenting to participation in a subscriber-level collection be strictly opt-in? For the millions of households that are already participating in the Affordable Connectivity Program, we seek comment on the process by which providers, USAC, or the Commission would collect consent for the subscriber-level data collection? Would requiring this additional consent from subscribers risk depressing subscriber participation in Affordable Connectivity Program? What role should providers play in obtaining consent from their existing ACP subscribers for a subscriber-level data collection? What is the cost to providers of any requirement that they play a part in obtaining consent? How long would it take for providers to obtain additional consents from existing subscribers? If subscriber-level information is collected outside of NLAD, should we require providers to mask personally identifiable information? Would requesting consent bias the data in a way that would substantially reduce its usability?

29. If the Commission were to engage in an aggregate-level collection, are there any separate privacy concerns that would arise from such a collection? Are there any privacy concerns with the sharing of aggregated information for areas or plans with low ACP enrollments, including areas or plans with only a single subscriber? What is the minimum level of geographic data specificity (e.g., census tract, census block) that can assist the Commission in answering questions of program performance,

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expressly allows the disclosure of personally identifiable information if disclosure is authorized under 18 U.S.C. § 2702 or 2703, except for “records revealing cable subscriber selection of video programming.” 47 U.S.C. § 551(c)(2)(D).

<sup>47</sup> E.g., 47 CFR § 54.404(b)(9) (requiring ETCs to obtain Lifeline subscriber consent to transmitting subscriber information); 47 CFR § 54.1606(d)(6) (requiring EBB Program participating providers to obtain subscriber consent to transmitting subscriber information); 47 CFR § 54.1806(d)(6) (requiring ACP participating providers to obtain subscriber consent to transmitting subscriber information).

<sup>48</sup> 47 CFR § 54.1806(d)(6).

<sup>49</sup> *Id.* § 54.1806(f).

<sup>50</sup> See, e.g., *Misuse of Internet Protocol (IP) Captioned Telephone Service et al*, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd. 691,702, paras. 22-24 (2019) (finding that benefits associated with prevention of fraud, waste, and abuse outweigh cost to providers in obtaining consent from existing subscribers and providing Commission with information already collected).

digital discrimination, digital divide, and other matters of importance in judging ACP efficacy without overly burdening subscriber privacy or provider confidentiality interests?

**D. Publication of Data**

30. *Public Availability of Data.* In addition to requiring the Commission to collect price and subscription rate data, Congress directed the Commission “to make data relating to broadband internet access service collected” in this collection “available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information or proprietary information, consistent with” section 0.459 of the Commission’s rules.<sup>51</sup> We seek comment generally on what data should be made public, how subscriber privacy and provider interests can be protected, and the method and timing of publication. We also seek comment on how to best balance the benefits and burdens associated with the publication of information collected through the ACP transparency data collection. How should the Commission structure the publication of information to minimize the challenges in making subscriber-level information publishable? How should the Commission structure the publication of information from the ACP transparency data collection to minimize the challenges in making aggregate-level information publishable?

31. *Scope of Information Made Public.* Commenters should address what data collected by the Commission should be made public. We do not interpret the Infrastructure Act as requiring the Commission to make publicly available all information collected under section 60502(c)(1). The Act requires the Commission to make “data” available, not necessarily all of the data collected. We propose that, at a minimum, only aggregated or masked data be made publicly available, even if subscriber-level data is collected.<sup>52</sup> We seek comment on what data the Commission should make publicly available on an aggregated basis and at what geographic level (e.g., ZIP code, county, state). Should the Commission only make price and subscription rate data public, because that is the scope of section 60502(c)(1) of the Infrastructure Act? Should the Commission also make public other data proposed to be collected, such as plan characteristics or program-performance-related data? Should the data published pursuant to the Infrastructure Act also include information collected outside of this collection? For example, should the Commission make available as part of this release data about the availability of plans fully covered by the ACP benefit?<sup>53</sup> What public information would be most useful to consumers, providers, outside researchers, advocates, or governmental entities?

32. *Personally Identifiable Information.* The Infrastructure Act provides that in making data available to the public, the Commission must not “risk the disclosure of personally identifiable information.”<sup>54</sup> The Act does not define “personally identifiable information;” rather, it requires the Commission to define the term via notice and comment rulemaking.<sup>55</sup> We therefore seek comment on

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<sup>51</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A).

<sup>52</sup> *Id.* (providing that Commission make data public “without risking the disclosure of personally identifiable information or proprietary information”).

<sup>53</sup> *ACP Order* at 50-52, para. 100 (directing “USAC to make available, where possible, information about the availability of plans fully covered by the household discount”).

<sup>54</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A).

<sup>55</sup> *Id.* § 60502(c)(4)(B)(i). Although the Act refers to “personally identifiable information” in a few other places, it does not define the term. *See id.* section 23017, section 30019. Nor does the Consolidated Appropriations Act, which created the Emergency Broadband Benefit program on which Affordable Connectivity Program is based. Title 47 of the United States Code likewise does not define “personally identifiable information.” The Cable Act and its satellite equivalent refer to “personally identifiable information” but do not define the term, other than to specify that it “does not include any record of aggregate data which does not identify particular persons.” 47 U.S.C. § 551(a)(2)(A); 47 U.S.C. § 338(i)(2)(A).

how we should define personally identifiable information for purposes of making data publicly available under section 60502(c) of the Infrastructure Act.

33. We seek comment on definitions of “personally identifiable information” that might be appropriate in this context. Should the Commission borrow a definition from another statute, regulation, executive order, or government-wide guidance? If so, which authority and why?<sup>56</sup> For instance, OMB Circular A-130 defines “personally identifiable information,” for purposes of agency information resources management activities, as “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.”<sup>57</sup> Similarly, the E-Government Act of 2002, defines “identifiable form” as “any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.”<sup>58</sup>

34. *Proprietary Information.* The Infrastructure Act also requires the Commission to avoid risking the disclosure of “proprietary information” when making data public under section 60502(c)(4). The Act does not define “proprietary information,” nor does it require the Commission to define the term. We request comment on how to interpret “proprietary information” under section 60502(c)(4). Should the Commission define the term at all, given that unlike “personally identifiable information,” a definition is not required? Further, whose “proprietary information” needs to be protected in this context? If it is subscriber proprietary information, how is proprietary information different than personally identifiable information? Or should the term be interpreted as meaning the proprietary information of participating providers, i.e., proprietary business information? Alternatively, should we interpret “proprietary information” to mean information covered by section 222 of the Communications Act?<sup>59</sup> Under that approach, the Commission would need to avoid risking the disclosure of the proprietary information of subscribers, participating providers, and equipment manufacturers.<sup>60</sup>

35. Additionally, regardless of whether proprietary information means that of subscribers, participating providers, or both, commenters should address what constitutes proprietary information. Should the Commission treat “proprietary information” as limited to trade secrets and or privileged or confidential commercial, financial, or technical data?<sup>61</sup> If so, what type of participating provider data collected under section 60502(c) could be considered proprietary? What other statutes or regulations might the Commission look to in interpreting “proprietary information” in this context? Does aggregate data become proprietary, for either a subscriber or a participating provider, at a certain level of

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<sup>56</sup> Several statutes define “personally identifiable information” or related terms, including the Children’s Online Privacy Protection Act, 15 U.S.C. § 6501(8) (defining “personal information”), the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d(6) (defining “individually identifiable health information”), and the Video Privacy Protection Act, 18 U.S.C. § 2710(a)(3) (defining “personally identifiable information”).

<sup>57</sup> Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-130, Managing Information as a Strategic Resource at 33 (2016); *see also* Office of Mgmt. & Budget, Exec. Office of the President, M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information at 8 (2017).

<sup>58</sup> E-Government Act of 2002, Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2923, codified at 44 U.S.C. § 3501 note. *See also* 44 U.S.C. 3561(7) (defining “identifiable form” similarly in Confidential Information Protection and Statistical Efficiency Act of 2002); Nat’l Inst. of Standards & Technology, Computer Security Resource Center, Glossary, [https://csrc.nist.gov/glossary/term/personally\\_identifiable\\_information](https://csrc.nist.gov/glossary/term/personally_identifiable_information) (last visited June 7, 2022) (providing definitions of “personally identifiable information”).

<sup>59</sup> 47 U.S.C. § 222(a).

<sup>60</sup> *Id.* (“Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.”).

<sup>61</sup> *Cf.* 47 CFR § 0.457(d)(2) (providing that the Commission will not make routinely available for public inspection “materials contain[ing] trade secrets or privileged or confidential commercial, financial or technical data”).

granularity? Is it sufficient if subscribers or participating providers have an opportunity to request non-publication of proprietary information under procedures such as section 0.459 of the Commission's rules?

36. *Protecting Personally Identifiable and Proprietary Information.* Because the Commission must not “risk the disclosure of personally identifiable information or proprietary information,” we seek comment on how we should minimize the risk that such information would be disclosed when making data available to the public under section 60502(c)(4) of the Infrastructure Act. One way to protect subscriber personally identifiable information is to publish only aggregate data. Would doing so sufficiently protect personally identifiable or proprietary information? What level of aggregation would be sufficient? For what geographic area should data be published? With the EBB Program, USAC released information first by three-digit ZIP code areas, and then by five-digit ZIP code and county-level areas.<sup>62</sup> For the Affordable Connectivity Program, USAC releases enrollments by five-digit ZIP code and county.<sup>63</sup> What procedures should the Commission have in place to ensure that there is adequate “masking” for data in areas with few subscribers?<sup>64</sup> For data that involves plan characteristics or prices, should the values be aggregated to further address any personally identifiable information or proprietary issues? For example, should prices be grouped into \$10 increments with a plan costing \$55.34 being put in a bin with all plans costing between \$50 and \$60? Are there other privacy concerns the Commission should consider when making data available to the public other than personally identifiable information and proprietary information?

37. *Effect of 47 CFR § 0.459.* The Infrastructure Act states that the Commission's protection of personally identifiable and proprietary information must be consistent with section 0.459 of the Commission's rules. Section 0.459 of Title 47 of the Code of Federal Regulations provides procedures for requesting that information submitted to the Commission be withheld from public inspection. We seek comment on whether and how this rule should be incorporated into the Commission's processes for publishing data under section 60502(c)(4) of the Act. Does the statute's reference to section 0.459 mean that a subscriber or participating provider should have the ability to request non-publication of certain collected information by submitting a request under section 0.459? If so, what provisions of section 0.459 should be applicable for requests of non-publication for purposes of section 60502(c)(4)? How should such a request be submitted, what information would a requester need to submit to justify a request for non-publication of data, and when should a request be submitted vis-à-vis the data publication date? That is, should a request for nonpublication be required to be submitted before a data publication date? In other contexts, the Commission allows filers of certain information to check a box to request nondisclosure of privileged or confidential information in lieu separately requesting confidentiality under 47 CFR § 0.459.<sup>65</sup> Should the Commission consider a similar “check box” approach for this data

<sup>62</sup> *ACP Public Notice* at 45, para. 117.

<sup>63</sup> USAC, ACP Enrollment and Claims Tracker, <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited June 7, 2022).

<sup>64</sup> With the EBB Program and the Affordable Connectivity Program, the Commission redacted ZIP code-level data to protect EBB Program subscribers. ZIP codes were excluded if their estimated population was below 50, if a population estimate for the ZIP code was not available in the American Community Survey, if there were fewer than 1,000 enrolled households in a ZIP code and those households comprise most of a ZIP code's estimated population, or if the number of EBB enrolled households in a ZIP code equals or exceeds the population estimate range for that ZIP code. See *ACP Public Notice* at 45 n.228, para. 117; USAC, EBB Program Enrollment and Claims Data, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited June 7, 2022).

<sup>65</sup> See, e.g., *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, DA 21-1237 (WCB Oct. 1, 2021) (instructing filers of FCC Form 499-A that they may use a check box to request nondisclosure of confidential commercial or financial information the disclosure of which would likely cause substantial harm to the competitive position of filers in lieu of submitting a separate confidentiality request under 47 CFR § 0.459); Filing Manual for Section 43.82 Circuit Capacity Reports, Control. No. 3060-1156 (IB Feb. 2020), <https://docs.fcc.gov/public/attachments/DOC->

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collection? If so, how would a checkbox be incorporated in the collection process? Additionally, should some data be deemed presumptively nonpublic, i.e., “not routinely available” to the public under 47 CFR § 0.457? If the reference in the Infrastructure Act does not mean that the procedures of section 0.459 need to be incorporated in making data available to the public, what meaning should we give “consistent with” section 0.459 of the Commission’s rules?

38. *Format of Publication.* The Commission must make data available to the public in a “commonly used electronic format.”<sup>66</sup> Further, agencies must generally use a machine-readable format when making data publicly available.<sup>67</sup> We therefore seek comment on what format the publisher of the data, whether it be the Commission or USAC, should use when making it available to the public. How should the Commission interpret “commonly used electronic format?” Should we require that the data be made public in a machine-readable format with standard, labeled fields?<sup>68</sup> Is the OPEN Government Data Act of 2018 applicable to our publication responsibilities under the Infrastructure Act?<sup>69</sup> What file formats should the Commission provide the data in? Both the Commission and USAC make datasets available for viewing in Open Data portals and provide downloadable data in Comma Separated Values (CSV), Extensible Markup Language (XML), Tab Separated Values (TSV), Resource Description Framework (RDF), and Rich Site Summary (RSS) formats.<sup>70</sup> Should we use different formats for making publicly available different types of data? For instance, should plan characteristic and provider enrollment data be published separately or together? Should plan and provider enrollment data be published at the same geographic level? We propose, at a minimum, making aggregated data publicly available in CSV format, given that this format is already used by the Commission and USAC. We seek comment on this proposal.

39. *Method of Publication.* We also seek comment on the method of making data available to the public. That is, who should host the data and where? The Infrastructure Act requires only that the Commission make data publicly available; it does not preclude publication via third parties.<sup>71</sup> Should the Commission post the data on its website or Open Data portal?<sup>72</sup> Or should the Commission direct USAC to publish the data on its Open Data portal?<sup>73</sup>

40. *Timing of Publication.* Although the Infrastructure Act requires the Commission to make data available to the public, the Act does not specify when publication should occur, other than prohibiting publication prior to the Commission defining “personally identifiable information.”<sup>74</sup> We thus

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[362660A1.pdf](#) (instructing that a filer of a Circuit Capacity Report may check a box on a registration form to indicate that the filer requests that its circuit capacity data be treated as confidential consistent with 47 CFR § 0.459).

<sup>66</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A). The Infrastructure Act does not define that term.

<sup>67</sup> *Broadband Labels Notice* at 7 n.37, para. 24 (citing 44 U.S.C. § 3506(b)(6)). Machine-readable means “data in a format that can easily be processed by a computer without human intervention while ensuring no semantic meaning is lost.” *Id.* (citing 44 U.S.C. § 3502(18)).

<sup>68</sup> *Cf. id.* at 7, para. 24 (asking whether the Commission should require broadband labels “be provided in a machine-readable format with standard, labeled fields to ensure that third parties and consumers can more readily compare across multiple providers”).

<sup>69</sup> OPEN Government Data Act, of 2018, Pub. L. No. 115-435 (2019).

<sup>70</sup> *See, e.g.*, FCC – Open Data, <https://opendata.fcc.gov/>; USAC Open Data, <https://opendata.usac.org/>.

<sup>71</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A).

<sup>72</sup> FCC - Open Data, <https://opendata.fcc.gov/>.

<sup>73</sup> USAC Open Data, <https://opendata.usac.org/>.

<sup>74</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(4)(B)(ii).



seek comment on the timing of publication. Because Congress instituted an annual data collection, we propose making data publicly available at least annually. If data is collected on a more frequent basis, such as by participating providers providing data to NLAD on a rolling basis, should we or USAC make data public more frequently than annually? If so, how often? Commenters should also address how long after collection data should be published. That is, how long after collection would data become “stale” and lack utility for consumers or others? Should time be built into the publication process to allow participating providers to protect proprietary information from disclosure? The Infrastructure Act is also silent as to how long the Commission must keep data available to the public. For how long should the Commission maintain the public-facing data? For a set amount of time? Until newer data is made public? Further, the Commission must revise its data collection rules no later than 180 days after they are issued.<sup>75</sup> How, and to what extent, should the need for rule revisions affect the timing of making data available to the public?

#### **E. Proposed Collection Approach**

41. After weighing the benefits and burdens of the statutorily required data collection, we propose the most efficient and least burdensome approach is to modify NLAD to incorporate new data fields that would collect price, subscription rate information, and plan characteristics as discussed above.<sup>76</sup> We would collect subscriber-level data by having providers complete the new fields when enrolling households, and updating fields for households already enrolled in the Affordable Connectivity Program on a set time schedule. Under this approach, all data that is required to be collected for the ACP transparency data collection would be contained in NLAD, which would allow the Commission to publish the data in a manner consistent with the statute. Taking advantage of NLAD for this collection allows us to collect the information without requiring providers to produce large volumes of data each year. We view the approach of submitting ACP transparency data collection information to the NLAD at the time of a transaction (e.g., whether at the time of enrollment, as an update for a previously enrolled subscriber, or when necessary to update the fields due to a change in service plan) as being less burdensome to providers than the alternative option of compiling information for a bulk production during a limited filing window. Allowing providers to update the necessary fields at the time of the NLAD transaction also avoids any duplicitous efforts to recreate subscriber-level data for a separate submission. We seek comment on these views.

#### **F. Guidance**

42. The Infrastructure Act further provides that the Commission “may issue such guidance, forms, instructions, publications, or technical assistance as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section, including to ensure that such programs, project, or activities are completed in a timely and effective manner.”<sup>77</sup> We seek comment on the meaning of this provision and what training, support, and guidance should be provided to support the ACP transparency data collection. What resources would be helpful to providers to facilitate this data collection?

#### **G. Enforcement**

43. We seek comment on issues related to enforcement of the annual data collection rules. Should the Commission adopt rules specifically governing the enforcement of the data collection requirement, or should the Commission employ the same enforcement position that it adopted for the Affordable Connectivity Program?<sup>78</sup> Consistent with the approach in that program and its authorizing

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<sup>75</sup> *Id.* § 60502(c)(2).

<sup>76</sup> *See supra* paras. 5-9.

<sup>77</sup> Infrastructure Act, div. F, tit. V, § 60502(d).

<sup>78</sup> *ACP Order* at 111, para. 237.

statute, we propose to treat failure to submit the data necessary for the ACP transparency collection, failure to respond to the Administrator's or the Commission's request for data, and failure to provide complete and accurate data as program rule violations that may result in forfeiture penalties pursuant to Section 503 of the Act.<sup>79</sup> We propose establishing a base forfeiture amount that is proportionate to the level of data ultimately adopted, for example on a per-subscriber basis or higher level of aggregation. We seek comment on whether to assess the forfeiture on a per-subscriber basis to reflect the number of subscribers for which the provider has not submitted data. Alternatively, we seek comment on establishing a forfeiture amount at the state or study area level: that is, for any missing ACP data for subscribers within a state or study area, a base forfeiture penalty amount would be applied. Should we consider establishing a base forfeiture amount of \$50,000 per state or study area for which a provider is missing ACP transparency data collection information by the deadline, which is consistent with precedent for violations of Commission filing rules?<sup>80</sup> We seek comment on other ways to calculate forfeiture amounts for failure to comply with the rules we establish for the ACP transparency data collection. In addition to a base forfeiture for non-filing, should the Commission impose additional fines each day a provider is not in compliance pursuant to Section 503(b)(2) of the Act?<sup>81</sup> Given the importance of this Congressionally mandated data collection, we propose requiring the submission of ACP transparency data collection information by the deadline to be established by the Bureau or the Commission. We tentatively conclude that failure to meet the deadline will constitute a rule violation that may result in a monetary forfeiture penalty. We propose to instruct USAC to provide the Enforcement Bureau a list of providers that have failed to submit ACP transparency data collection information by the deadline that identifies the subscribers, by state and study area, for which the data has not been properly filed.

44. Finally, we seek comment on how to evaluate and enforce the accuracy of the information presented in the ACP transparency data collection. How can the Commission verify the accuracy of the information that a broadband provider provides? How should the Commission protect against inaccuracies in the information provided? We seek comment on our proposal to require an officer of each provider to certify, under penalty of perjury, to the accuracy of the data and information provided prior to the submission of each data collection. We seek comment on further certifications and enforcement tools the Commission can use to ensure full and accurate participation in the data collection. We seek comment on whether a failure to comply with the rules we establish for the ACP data collection could subject a provider to the involuntary removal process the Commission established in the *ACP Order*.<sup>82</sup>

## H. Timing

45. The Infrastructure Act requires an “annual collection” relating to the price and subscription information.<sup>83</sup> The Infrastructure Act further provides that, “not later than 180 days after the date on which rules are issued . . . and when determined to be necessary by the Commission thereafter, the Commission shall revise the rules to verify the accuracy of data submitted pursuant to the rules.”<sup>84</sup> We seek comment on when the collection can begin in relation to the statutory requirement to revise the final rules within six months of adoption of final rules. Does this require the Commission to collect ACP data within a certain period of time? If so, by when should we commence the inaugural data collection?

<sup>79</sup> See Consolidated Appropriations Act, div. N, tit. IX, § 904(g); 47 U.S.C. § 503(b).

<sup>80</sup> See e.g., *Advanced Tel. Inc.*, Forfeiture Order 32 FCC Rcd 5151, 5157, para. 17 (2017); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4162, para. 28 (2011); *Globcom Inc.*, Forfeiture Order, 21 FCC Rcd 4710, 4727, para. 45 (2006).

<sup>81</sup> 47 U.S.C. § 503(b)(2).

<sup>82</sup> 47 CFR § 54.1801(e).

<sup>83</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>84</sup> *Id.* § 60502(c)(2).

For subsequent data collections, should the collection occur during the same window as the collection? We also seek comment on the filing window for collection. Should we require providers to submit data for subscribers enrolled as of a particular date? How long should a filing window remain open?

46. We also seek comment on the statutory requirement to revise the rules to verify the accuracy of the data within six months from when we adopt final rules and its impact on this proceeding. What is intended by the language providing that “the Commission shall revise the rules to verify the accuracy of data submitted pursuant to the rules”? What is the purpose of the language limiting revisions to the final rules to verify accuracy? How should the Commission track and verify the accuracy of data submitted? What are the outer bounds on the period of time when the Commission must update its final rules? What circumstances should warrant revision of the rules? Should the updates to the rules include the possibility of adding new variables to improve or refine the data collected? How should the Commission determine when it is necessary to update the final rules? What other considerations should the Commission take into account when determining the necessity of updating the final rules for this data collection?

47. We also seek comment on the requirements of the Paperwork Reduction Act and the timing of the inaugural collection. In establishing the EBB Program and the Affordable Connectivity Program, the Consolidated Appropriations Act exempted the Commission from certain rulemaking requirements under the Administrative Procedure Act and the Paperwork Reduction Act.<sup>85</sup> We seek comment on whether this exemption applies to rules established in this proceeding. Assuming the Paperwork Reduction Act requirements do apply to this collection, we seek comment on how this impacts the timing of the launch of the collection.

#### **I. Efforts to Promote Digital Equity and Inclusion**

48. The Commission, as part of its continuing effort to advance digital equity for all,<sup>86</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>87</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

#### **IV. PROCEDURAL MATTERS**

49. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible

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<sup>85</sup> See 47 U.S.C. § 1752(h) (establishing that 5 U.S.C. § 553 shall not apply to a regulation promulgated under 47 U.S.C. 1752(c) or a rulemaking proceeding to promulgate such a regulation and that a collection of information conducted or sponsored under the regulations required by section 904(c) shall not constitute a collection of information for the purposes of 44 U.S.C. § 3501-3531).

<sup>86</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>87</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking.<sup>88</sup> The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>89</sup>

50. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

51. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>90</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR § 1.1206(b). In proceedings governed by 47 CFR § 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

52. *Filing of Comments and Reply Comments.* Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings should refer to WC Docket No. 21-450. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.<sup>91</sup>

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<sup>88</sup> 5 U.S.C. § 603.

<sup>89</sup> *See id.* § 603(a).

<sup>90</sup> 47 CFR § 1.1200 et seq.

<sup>91</sup> In response to the COVID-19 pandemic, the Commission has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Paper filings can be sent by first-class or overnight commercial or U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Filings by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings by U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

53. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

54. *Contact Person.* For further information about this proceeding, contact Eric Wu Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1543 or by email at [Eric.Wu@fcc.gov](mailto:Eric.Wu@fcc.gov).

#### V. ORDERING CLAUSES

55. IT IS ORDERED, pursuant to section 60502(c) of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), that this Notice of Proposed Rulemaking is hereby ADOPTED.

56. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

57. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A – PROPOSED RULES

**Subpart R – Affordable Connectivity Program****Sec.**

1. Amend § 54.1801(e)(2)(ii)(A) to read as follows:

**§ 54.1801 Participating Providers**

(e) \*\*\*

(i)\*\*\*

(ii) \*\*\*

- (A) Violations of the rules or requirements of the Affordable Connectivity Program, including rules and requirements related to the Affordable Connectivity Program transparency data collection; the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission’s Universal Service Fund program

2. Add § 54.1813 to subpart R to reads as follows:

**§ 54.1813 Affordable Connectivity Program Transparency Data Collection**

(a) *Information to be collected.* Participating providers shall transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Affordable Connectivity Program subscriber’s full name; contact information; total monthly charge for internet service prior to any discounts (including bundled components, associated equipment, taxes, and fees); itemized breakdown of monthly charge including cost of ACP-supported service, associated equipment, discounts, taxes, and fees; plan characteristics, including upload and download speeds, average latency and packet loss, data caps, associated equipment requirements, for bundles, voice and video characteristics (e.g., number of minutes, number of channels offered); and plan coverage by geographic level as to be determined by the Commission.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided on the first page of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (ACP), which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices.<sup>4</sup> The Affordable Connectivity Program provides funds for an affordable connectivity benefit consisting of a \$30.00 per month discount on the price of broadband internet access services that participating providers supply to eligible households in most parts of the country and a \$75.00 per month discount on such prices in Tribal areas.<sup>5</sup> The Commission established rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.<sup>6</sup>

3. The Infrastructure Act also directs the Commission to issue “final rules regarding the annual collection by the Commission relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program.”<sup>7</sup>

4. This NPRM proposes rules to implement section 60502(c) of the Infrastructure Act, to provide greater transparency into broadband services provided by ACP participating providers, and to allow the Commission to assess its progress towards the ACP program goals. Specifically, the NPRM proposes establishing a mandatory annual data collection, collecting price, subscription rate, and plan characteristic information at the subscriber level through the National Lifeline Accountability Database (NLAD).<sup>8</sup>

5. The NPRM seeks comment on what plan characteristics, data formats, and collection methods and timing should be collected or adopted.<sup>9</sup> For example, the NPRM seeks comment on whether

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<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

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

<sup>4</sup> 47 U.S.C. § 1752.

<sup>5</sup> *Id.* § 1752(a)(7)(A), (b)(1), (b)(4).

<sup>6</sup> See generally *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450 and 20-445, FCC 22-2, at 1, para. 2. (rel. Jan. 21, 2022) (*ACP Order and Further Notice*).

<sup>7</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>8</sup> See *supra* paras. 5-17.

<sup>9</sup> See *supra* paras. 8-9, 38-47.

the Commission should collect information about plan speed or bundle characteristics, and it also seeks comment on what common data formats the Commission should collect and how the Commission should approach scheduling the annual collection of ACP transparency data.<sup>10</sup> The NPRM also seeks comment on the burdens and benefits of requiring providers to submit information at the subscriber level, aggregate level, and alternative approaches.<sup>11</sup>

6. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the Infrastructure Act efficiently, with minimal burden on participating providers. These actions are consistent with our ongoing efforts to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband internet access service.

**B. Legal Basis**

7. The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(c).<sup>12</sup>

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

8. 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.<sup>13</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>14</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>15</sup> 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).<sup>16</sup>

9. *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 here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>17</sup> 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.<sup>18</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.<sup>19</sup>

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<sup>10</sup> See *id.*

<sup>11</sup> See *supra* paras. 17-29.

<sup>12</sup> Infrastructure Act, div. F, tit. V, § 60502(c)(1).

<sup>13</sup> 5 U.S.C. § 603(b)(3).

<sup>14</sup> See *id.* § 601(6).

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

<sup>16</sup> See 15 U.S.C. § 632.

<sup>17</sup> See 5 U.S.C. § 601(3)-(6).

<sup>18</sup> See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf> (Nov 2021).

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



10. 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.”<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

11. 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.”<sup>23</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>24</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>25</sup> Of this number there were 36,931 general purpose governments (county,<sup>26</sup> municipal and town or township<sup>27</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>28</sup> with enrollment

<sup>20</sup> See 5 U.S.C. § 601(4).

<sup>21</sup> 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.

<sup>22</sup> 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) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>23</sup> See 5 U.S.C. § 601(5).

<sup>24</sup> 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>.

<sup>25</sup> 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 *id.* at tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> 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 *id.* at 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.

populations of less than 50,000.<sup>29</sup> 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.”<sup>30</sup>

12. *Wired Broadband Internet Access Service Providers (Wired ISPs)*. 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.<sup>31</sup> Wired broadband internet services fall in the Wired Telecommunications Carriers industry.<sup>32</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>33</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>34</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>35</sup> 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.<sup>36</sup> 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*,<sup>37</sup> we believe that the majority of wireline internet access service providers can be considered small entities.

13. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*. 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

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> See 47 CFR § 1.7001(a)(1).

<sup>32</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>33</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>34</sup> 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: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>35</sup> *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.

<sup>36</sup> 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.

<sup>37</sup> 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*).

Internet[.]”<sup>38</sup> 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.<sup>39</sup> 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).<sup>40</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>41</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>42</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>43</sup> 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.<sup>44</sup> 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,<sup>45</sup> as well as on terrestrial fixed wireless broadband providers in general,<sup>46</sup> we believe that the majority of wireless internet access service providers can be considered small entities.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

14. In this NPRM, the Commission seeks comment on its proposal to require providers to provide subscriber level price, subscription rate, and plan characteristic information to the Commission.<sup>47</sup> To the extent the Commission imposes an annual data collection, participating providers of all sizes would be required to maintain and report information concerning plan prices, subscription rates, and plan characteristics. Any recordkeeping or reporting requirements adopted in this proceeding however will apply only to those providers that choose to participate in the Affordable Connectivity Program.

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<sup>38</sup> 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>.

<sup>39</sup> See 47 CFR § 1.7001(a)(1).

<sup>40</sup> 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>.

<sup>41</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>42</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>43</sup> *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.

<sup>44</sup> See *IAS Status 2018*, Fig. 30.

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

<sup>46</sup> *Id.* at 59, para. 91.

<sup>47</sup> See *supra* paras. 5-9, 41-47.

15. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the potential rule changes that may be adopted and is not in a position to determine whether the proposals in the NPRM will require small entities to hire professionals in order to comply. The Commission seeks comment on its proposals and their likely costs and benefits as well as alternative approaches. We expect the comments we receive will include information on the costs and benefits, service impacts, and other relevant matters that should help us identify and evaluate relevant issues for small entities, including compliance costs and other burdens (as well as countervailing benefits), so that we may develop final rules that minimize such costs.

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

16. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>48</sup>

17. The NPRM seeks comments from all interested parties. The Commission is aware that some of the proposed collections under consideration will impact small entities. The NPRM does seek comment on the impact of its proposed rules on providers, and small entities are encouraged to bring to the Commission’s attention any specific concerns that they may have with the proposals outlined in the NPRM.<sup>49</sup>

18. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking actions in this proceeding.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

19. None.

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<sup>48</sup> 5 U.S.C. § 603(c)(1)–(4).

<sup>49</sup> *Supra* paras. 23-24 (seeking comment from small providers on data collection burden).

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Notice of Proposed Rulemaking (June 8, 2022).

There are now more than 12 million households nationwide that subscribe to the Affordable Connectivity Program. This Commission established the program—and it’s a big deal. It’s the largest-ever broadband affordability program in the United States.

Last week, I visited San Antonio to learn from those with boots on the ground—in this case, cowboy boots—spreading the word about how this program can help families get online and stay online. From Representative Joaquin Castro I learned that before the pandemic one in four households in the city had no internet access at home. It’s a statistic the city is eager to change and there are amazing local efforts to do so through the San Antonio Housing Authority, San Antonio Public Library, and City of San Antonio Office of Innovation. Speaking with these folks was like attending a masterclass in community organizing and digital equity.

One thing I took away from this trip is that data matters. The city has done a lot of work to quantify the state of internet service within its borders. It has made use of the local zip code data we produce about subscribers to the Affordable Connectivity Program. And the people I spoke with impressed upon me that more data would be even better because it will help inform their efforts to reach everyone in the city—block by block, building by building.

The good news is that more data is coming. That’s because this rulemaking is an effort to standardize the way we collect data about the Affordable Connectivity Program. This is a terrific idea. It’s also required under the law. Section 60502(c) of the Infrastructure Investment and Jobs Act specifically directs us to establish rules for the collection of data “relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program.” That is what we kick off here and I look forward to the record that develops. More than that, I look forward to increasing the data we have regarding this program and the creative ways it can support digital equity efforts San Antonio and in communities nationwide.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Notice of Proposed Rulemaking (June 8, 2022).

I am pleased to support the Notice of Proposed Rulemaking, which begins the process for the Commission to fulfill its statutory mandate to collect data regarding internet service offerings subscribed to by households enrolled in the Affordable Connectivity Program.

Ensuring that all Americans have access to affordable broadband remains my top priority. And it's a shared mission. The Commission's action here is part of a whole-of-government push to expand broadband and ensure that the benefits of our modern economy are available to everyone, including low income individuals. Just last month, I attended an event at the White House with President Biden, Vice President Harris, and many other stakeholders committed to this effort. At that event, the President shared his belief that high-speed internet access is no longer a luxury—it's a necessity.<sup>1</sup> I couldn't agree more.

Ultimately, collecting this data will help inform how the Affordability Connectivity Program is operating, the Commission's understanding of what services are offered, and what consumers prioritize when they subscribe. This level of insight will undoubtedly improve the Program.

I am also aware of the potential sensitivity of some of this data, which is why I am pleased to see that the Commission seeks comment on how best to structure the information collection to meet Congress' requirement to collect and publish certain data, while also protecting against the risk of disclosure of personally identifiable or proprietary information. It is critically important that we get this right, even as we work toward meeting the fast-approaching statutory deadline. I thank the Commission staff for their work on this Notice.

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<sup>1</sup> The White House, *Fact Sheet: President Biden and Vice President Harris Reduce High-Speed Internet Costs for Millions of Americans* (May 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans/>.