

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

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

FOURTH REPORT AND ORDER AND FURTHER 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. In this Fourth Report and Order (Order), the Federal Communications Commission (Commission) establishes the Affordable Connectivity Program (or ACP) Transparency Data Collection, which will collect information related to the price, subscription rates, and plan¹ characteristics of the internet service offerings of Affordable Connectivity Program participating providers as required by the Infrastructure Investment and Jobs Act (Infrastructure Act).² This Order fulfills the Congressional mandate to issue final ACP Transparency Data Collection rules regarding the annual collection of information related to the price and subscription rates of internet service offerings of ACP providers to which an ACP household subscribes, no later than one year after the enactment of the Infrastructure Act.³ In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we also seek comment on the statutory requirement to revise the ACP Transparency Data Collection rules we adopt to verify the accuracy of the data submitted pursuant to this collection, and on collecting additional information, including subscriber-level data and data on subscriber interactions with provider representatives.⁴

2. The ACP Transparency Data Collection that we establish today will offer the Commission an opportunity to collect detailed data about the services to which households in the Affordable Connectivity Program chose to apply the affordable connectivity benefit. The ACP Transparency Data Collection will further leverage information required for the broadband consumer labels, helping to create efficiencies and minimize burdens on providers. The actions we take today in response to Congress's directive will allow the Commission to determine the value being provided by the affordable connectivity benefit to households, and to evaluate our progress towards the program goal of reducing the digital divide, while also balancing the privacy interests of consumers and minimizing burdens on the ACP participating providers that serve the nearly 15 million households enrolled in the Affordable Connectivity Program.

II. BACKGROUND

3. On November 15, 2021, the President signed the Infrastructure Act, which appropriated \$14.2 billion for the Affordable Connectivity Program, a new longer-term broadband affordability program, expanding and modifying the Emergency Broadband Benefit (EBB) Program.⁵ The Affordable Connectivity Program plays an integral role in making available affordable broadband services by providing qualifying low-income households with a monthly discount of up to \$30 per month (or up to \$75 per month for households on qualifying Tribal lands) for broadband services, and a one-time \$100 discount on a connected device (tablet, laptop, or desktop computer) from the participating provider with a co-pay of more than \$10 but less than \$50.⁶

¹ A "plan" referred to in this Order has the same meaning as an "internet service offering" as defined in 47 CFR § 54.1800(n).

² Infrastructure Investment and Jobs Act, div. F, tit. V, § 60502(c) (Infrastructure Act). The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752, *Benefit for broadband service*.

³ *Id.*

⁴ *Id.* § 60502(c)(2).

⁵ *Id.* § 60502. The EBB Program was a \$3.2 billion program established pursuant to the Consolidated Appropriations Act of 2021 to provide discounted broadband service to low-income households, including those experiencing economic disruption related to the Covid-19 pandemic. *See Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450 and 20-445, FCC 22-2, at 3, para. 3 (Jan. 21, 2022) (*ACP Order* or *ACP Further Notice*). The EBB Program launched on May 12, 2021. *ACP Order* at 3, para. 3. Consistent with the requirements of the Infrastructure Act, the EBB Program ended and the Affordable Connectivity Program started on December 31, 2021. *ACP Order* at 4, para. 6.

⁶ 47 CFR § 54.1803(a)-(b).

4. The Infrastructure Act also directs the Commission to establish an annual mandatory 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.”⁷ Congress further directs the Commission to revise the rules of the collection to verify the accuracy of the data submitted no later than 180 days after the final rules are issued, and to make data from the annual collection publicly available in a commonly used electronic format while also protecting personally identifiable information (PII) and proprietary information.⁸ In furtherance of these requirements, on June 8, 2022, the Commission adopted a Notice of Proposed Rulemaking seeking comment on the ACP Transparency Data Collection.⁹

5. The Infrastructure Act also directs the Commission to undertake a rulemaking to implement additional transparency measures which intersect with the ACP Transparency Data Collection.¹⁰ Specifically, the Infrastructure Act requires 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].”¹¹ On November 14, 2022, we adopted rules for a consumer broadband label that will display clear information about broadband services to enable consumers to comparison-shop for those services.¹²

III. DISCUSSION

6. In the Order, we establish the requirements for the ACP Transparency Data Collection as required by the Infrastructure Act. In this section, we discuss the entities required to submit data, the aggregated data to be collected, the timing of the collection, the publication of data, and other administrative aspects of the ACP Transparency Data Collection.

A. Data Filers

7. We first establish that all providers participating in the Affordable Connectivity Program with enrolled subscribers are required to submit data for the ACP Transparency Data Collection. The City of New York agrees that the Infrastructure Act requires all providers participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection, and we did not receive any other comments regarding this requirement.¹³ The Infrastructure Act is clear that we are mandated to collect data relating to the price and subscription rate of “*each internet service offering of a participating provider*” to which an eligible household subscribes.¹⁴ The statute has no limiting language to permit us to exclude certain providers based on their size, location, subscribers served, or other characteristics, and we see no reason to permit any such exclusions.¹⁵ Moreover, requiring all providers to submit data for all

⁷ Infrastructure Act, div. F, tit. V, § 60502(c).

⁸ *Id.*

⁹ *Affordable Connectivity Program*, WC Docket No. 21-450, Notice of Proposed Rulemaking, FCC-22-44 (June 8, 2022) (*ACP Data Collection Notice*).

¹⁰ *See Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (Jan. 27, 2022) (*Broadband Labels Notice*).

¹¹ *Id.* at 7, para. 25 (citing Infrastructure Act, div. F, tit. V, § 60504(b)(2)).

¹² *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (adopted Nov. 14, 2022) (*Broadband Labels Order*).

¹³ City of New York Comments at 3.

¹⁴ 47 U.S.C. § 1752(a)(11) (defining a participating provider as “a broadband provider that . . . meets requirements established by the Commission for participation in the Affordable Connectivity Program . . . and elects to participate in the Affordable Connectivity Program”).

¹⁵ Infrastructure Act, div. F, tit. V, § 60502(c)(1).

subscribers will help us study and evaluate the ACP-supported services received by all subscribers across a diverse group of providers that offer a variety of services and products across the United States, and give a transparent overview of the broadband plans subscribed to by the households enrolled in the Affordable Connectivity Program.¹⁶ We therefore require every provider participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection.

B. Collection Structure

1. Aggregate Collection

8. We next establish an aggregate collection that is designed to capture information about ACP-supported services consistent with the Infrastructure Act. In the *ACP Data Collection Notice*, the Commission sought comment on whether to collect data at the subscriber level or aggregate level.¹⁷ In a subscriber-level collection, price and plan characteristics for each subscriber in the Affordable Connectivity Program would be submitted by providers, whereas in an aggregate-level collection, providers would submit to the Commission the number of subscribers for each unique plan for a given geographic area (such as by state).¹⁸ Given these options, the Commission proposed using the National Lifeline Accountability Database (NLAD) to collect subscriber-level data at every enrollment, explaining that such a collection may prioritize ease-of-use for service providers and minimize administrative burdens, and the Commission sought comment on that approach.¹⁹

9. In response, many providers argue that an NLAD-based subscriber-level collection would be more burdensome than an aggregate collection.²⁰ Specifically, providers comment that an NLAD-based subscriber-level collection would require all providers to “pull and report each subscriber’s personal information,”²¹ retrain staff,²² and seek consent from existing subscribers,²³ in addition to making substantial system updates.²⁴ Commenters contend that potential subscribers that are already hesitant to enroll in government programs may have that hesitancy exacerbated by a request to share information

¹⁶ See FCC, *Affordable Connectivity Program Providers*, <https://www.fcc.gov/affordable-connectivity-program-providers> (last visited Oct. 25, 2022).

¹⁷ *ACP Data Collection Notice* at 6-9, paras. 13-14, 17-21. The Commission also sought comment on whether to conduct a hybrid collection that would include both subscriber-level and aggregate-level data. *Id.* at 9-10, para. 22.

¹⁸ *Id.* at 9, para. 20.

¹⁹ *Id.* at 6, 8, 17, paras. 13, 18, 41. NLAD is a centralized database administered by the Universal Service Administrative Company (USAC) into which all ACP providers must enter information about households to enroll them in the Affordable Connectivity Program.

²⁰ John Staurulakis, LLC Comments at 3-4 (JSI) (noting that administrative burdens of increased costs to collect information may cause small providers to exit the program); NaLA Comments at 10 (requiring fields other than price and plan name could delay enrollment and create an undue burden); NTCA Reply at 9-10 (subscriber-level collection is burdensome because providers would need to amend APIs with NLAD); T-Mobile Comments at 7 (any benefits of a subscriber-level collection will be outweighed by the costs); USTelecom Reply at 2 (arguing that an aggregate collection is the simplest, most streamlined approach and a subscriber-level collection places a prohibitive burden on providers); CCA Reply at 6 (arguing that a collection of subscriber-level information is beyond Congress’s direction, more burdensome for providers, and raises privacy concerns).

²¹ Altice Comments at 7.

²² ACA Connects Comments at 16.

²³ *Id.*; USTelecom Comments at 5.

²⁴ USTelecom Comments at 5 (modifying systems to reflect new requirements would be a time consuming and expensive task for providers); NCTA Reply at 6 (subscriber-level collection presents operational challenges); *see also* ACA Comments at 9 (an aggregate collection would not require providers to update systems and processes).

with a government entity.²⁵ Commenters also point out that NLAD would require modifications to accept the additional information.²⁶ CTIA claims that the Infrastructure Act “specifically directs the FCC to conduct the data collection in a manner that minimizes burdens on providers” and that the record demonstrates that the NLAD-based subscriber-level approach would impose significant burdens.²⁷ In addition, some commenters feel that a “continuous” NLAD-based subscriber-level collection is not consistent²⁸ with the “annual collection by the Commission relating to the price and subscription rates of each internet service offering” as required by the Infrastructure Act.²⁹ Conversely, several commenters suggest that an NLAD-based subscriber-level collection would be more beneficial than an aggregate collection when it comes to analyzing data,³⁰ and would also ease administrative burdens.³¹ In sum, the record shows that most providers view an aggregate data collection as the least burdensome option.³²

10. Based upon the record before us, we decline to adopt a subscriber-level approach for the ACP Transparency Data Collection at this time, finding that the subscriber-level approach as proposed by the Commission may conflict with the statutory requirement to stand up an annual collection and may be too administratively burdensome for subscribers and providers, particularly with respect to obtaining subscriber consent to the collection of additional subscriber-specific data and in light of privacy concerns.

11. First, the Infrastructure Act requires the Commission to establish “an annual collection,”³³ and we find support in the record for concluding that an aggregate collection would satisfy that requirement.³⁴ As described further below, the collection we establish in this Order requires providers to submit information as of a particular date and by a deadline. There is little doubt that a collection with a single submission date in a year would be an annual collection. It is less clear whether a subscriber-level collection would comply with the statutory requirement. A subscriber-level approach, as

²⁵ Letter from Brian Ford, Vice President – Federal Regulatory, NTCA-The Rural Broadband Association to Marlene H. Dortch, Secretary, FCC. WC Docket No. 21-450, at 2 (filed Oct. 19, 2022) (NTCA *Ex Parte*).

²⁶ CTIA Comments at 7; JSI Comments at 3 (new NLAD fields would be highly burdensome for small providers); NCTA Comments at 15.

²⁷ CTIA Reply at 9.

²⁸ ACA Connects Comments at 10-11; CCA Reply at 4; CTIA Comments at 4; NCTA Comments at 7; NTCA Comments at 7; USTelecom Comments at 2-3.

²⁹ *See* Infrastructure Act, div. F, tit. V, § 60502(c)(1).

³⁰ City of New York Comments at 3 (suggesting that a subscriber-level collection may allow the Commission to “understand the equity outcome of the intervention and to better assess current impacts as well as design for broadband affordability and adoption initiatives to increase quality access to, and choice of, internet service); Common Sense and Public Knowledge Comments at 8 (Common Sense) (a subscriber-level collection would allow the Commission to “track changes over time” and also “provide the Commission with the most complete data set and leave flexibility for the Commission to later aggregate data as necessary”); City of Seattle Comments at 4 (a subscriber-level collection would enable the publication of data for smaller geographic areas and “will facilitate analysis and use for focused enrollment assistance by subset neighborhoods or service districts”).

³¹ Common Sense Comments at 8; New York State Public Service Comm’n Comments at 2 (NYPSC).

³² ACA Connects Comments at 4-5; Altice Comments at 5; CTIA Comments at 4; INCOMPAS Reply at 3; Lumen Reply at 2; NaLA Comments at 5, 9; NCTA Comments at 25; NCTA Reply at 7-8; Starry Reply at 3; CCA Reply at 6; USTelecom Comments at 2-3. *But see* NaLA Comments at 10 (noting that if the Commission were to adopt an NLAD-based subscriber-level collection, adding fields to NLAD for the “price and name of a plan for which a subscriber enrolls would not be unnecessarily burdensome,” but that “including several more fields could have the effect of delaying the enrollment process”).

³³ Infrastructure Act, div. F., tit. V, § 60502(c)(1).

³⁴ ACA Connects Comments at 10-11; CCA Reply at 4; CTIA Comments at 4; NCTA Comments at 7; NTCA Comments at 7; USTelecom Comments at 2-3; NTCA *Ex Parte* at 1.

we proposed, would require providers to submit price and plan information each time a consenting subscriber enrolls in the program, which as NTCA argues, could happen so frequently that it would be difficult to describe as an annual collection.³⁵ Additionally, a subscriber-level collection would possibly also require providers to separately collect data from subscribers who were already enrolled in the Affordable Connectivity Program prior to the data collection rules becoming effective. We find that the statutory language requiring an annual collection weighs heavily in favor of an aggregated approach.

12. Second, we are mindful of the burdens associated with collecting subscriber consent to the collection of subscriber-specific data. The *ACP Data Collection Notice* pointed out that collecting subscriber-level data implicates statutory privacy regimes such as the Electronic Communications Privacy Act (ECPA),³⁶ section 222 of the Communications Act of 1934, as amended,³⁷ and section 631 of the Cable Communications Policy Act of 1984 (Cable Act),³⁸ which limit the extent to which providers may disclose information about subscribers, including to the government.³⁹ Each of these statutes allows providers to disclose subscriber-level information, however, if the subscriber consents,⁴⁰ and every commenter in the record to address subscriber consent maintains that obtaining it is necessary to collect subscriber data not already collected under ACP rules.⁴¹

³⁵ NTCA Comments at 7.

³⁶ 18 U.S.C. ch. 121. Sections 2701 through 2712 of the ECPA are sometimes referred to as the Stored Communications Act. Dep't of Justice, Bureau of Justice Assistance, *Electronic Communications Privacy Act of 1986 (ECPA)*, <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1285#vf4tzt> (last visited Oct. 25, 2022).

³⁷ 47 U.S.C. § 222(c).

³⁸ 47 U.S.C. § 551.

³⁹ See 18 U.S.C. § 2702(a)(3) (“[A] provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service . . . to any governmental entity.”); 18 U.S.C. § 2703(c)(1) (limiting circumstances under which a governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service); 47 U.S.C. § 222(c)(1) (limiting when a telecommunications carrier may use, disclose, or permit access to individually identifiable customer proprietary network information); 47 U.S.C. § 551(a)(1) (requiring cable operators to provide notice to subscribers of the collection, use, and disclosure of personally identifiable information); 47 U.S.C. § 551(b)(1) (restricting a cable operator’s collection of personally identifiable information concerning any subscriber); 47 U.S.C. § 551(c) (limiting circumstances under which a cable operator may disclose personally identifiable information concerning any subscriber).

⁴⁰ *ACP Data Collection Notice* at 11 n.46; see also 18 U.S.C. § 2702(c)(2) (allowing provider to disclose subscriber information “with the lawful consent of the customer or subscriber”); 18 U.S.C. § 2703(c)(1)(C) (governmental entity may require provider to disclose subscriber information if the governmental entity “has the consent of the subscriber or customer to such disclosure”); 47 U.S.C. § 222(c)(1) (limiting circumstances under which telecommunications carrier may disclose “individually identifiable customer proprietary network information” except “as required by law or *with the approval of the customer*”) (emphasis added); 47 U.S.C. § 551(c)(1) (providing that a cable operator must not disclose personally identifiable information concerning a subscriber “without the prior written or electronic consent of the subscriber”).

⁴¹ Altice Comments at 6 (“If providers were required to report plan and subscription rate data at the individual subscriber level, providers would need to obtain specific, additional consent from the subscriber in order to provide such data to the Commission. The current consents required for ACP subscribers are insufficient for such purposes”); City of New York Comments at 4 n.15 (providers must obtain subscriber consent to meet “oversight and transparency obligations”); NaLA Comments at 10-11 (ACP application consent language does not identify plan name or price and states that information is collected and shared solely for purposes of applying for and receiving the ACP benefit); NCTA Comments at 8-9 (noting subscribers received notice and consented to providing name and address information to Commission); *id.* at 15 (asserting it is “unlikely that current ACP consents would cover all of the new information required by the proposed data collection”); *id.* at 8-10 (citing 47 U.S.C. § 551); NCTA Reply at

(continued....)

13. Providers argue collecting consent from new and existing subscribers would be administratively burdensome,⁴² particularly for smaller providers.⁴³ There is also a concern, particularly where mistrust of government programs is high, that seeking consent to disclose additional information from subscribers could have a chilling effect on subscriber participation in the Affordable Connectivity Program.⁴⁴ We recognize that in order to require the collection of subscriber-level information, we would not only need to develop a process for the collection of consent from any new subscriber, but we would also possibly need to develop consent processes for subscribers that have already enrolled in the program. With nearly 15 million subscribers already enrolled, it could be an immense undertaking to collect consents from those subscribers, and there is no guarantee that subscribers would respond to a request to provide consent so that the provider could submit price and plan information at the subscriber-level.⁴⁵ We thus find that the burdens associated with subscriber consent also weigh against adopting a subscriber-level collection at this time.

14. The Infrastructure Act does not address at what level of granularity the data should be collected, leaving it to the Commission's reasonable discretion to determine the most appropriate way of collecting the data required. We recognize the perception among many providers conveyed in the record that an aggregate-level collection is preferred and that an NLAD-based subscriber-level collection would be more burdensome as compared to an aggregate collection. We find that we must balance the need to meet our statutory obligations to collect information about the internet services ACP households receive with the need to stand up an annual collection that minimizes burdens for providers and consumers. We find that the aggregate collection we adopt herein strikes that balance by circumventing the need for an enrollment-based collection requiring subscriber consent.

15. The aggregate collection, however, is not without administrative burdens. We disagree with providers that argue that an aggregate collection would minimize the need for system development,⁴⁶ as the Commission or USAC will still need to develop a system through which to collect data, even if it is not done through NLAD.⁴⁷ Moreover, we acknowledge that there are some providers who argue that using NLAD for the ACP Transparency Data Collection would not be burdensome. As explained by

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4-5 (arguing that collecting subscriber-level data would likely trigger the Cable Act's notice and consent requirements); NTCA Reply at 5; USTelecom Comments at 5. *Cf.* ACA Connects Comments at 16, 16 n.34 (asserting that ACP rules at 47 CFR § 54.1806(d)(6) create an expectation that customers will have an understanding of the scope of information provided to NLAD before giving consent).

⁴² ACA Connects Comments at 16; Altice Comments at 6-7 (providers will need to devote hundreds of hours to successfully contact and obtain additional consents from millions of current ACP subscribers if required to report data at the subscriber level); CCA Reply at 3; NCTA Comments at 16 (arguing that it would be very challenging to obtain new consents from existing customers, as consumers often do not respond to such requests); NTCA *Ex Parte* at 2.

⁴³ ACA Connects Comments at 16.

⁴⁴ USTelecom Comments at 5; NTCA *Ex Parte* at 2. *Cf.* NCTA Comment at 3 ("More generally, the collection of subscriber-level data poses an unnecessary threat to the privacy of ACP customers and creates additional barriers to enrollment for vulnerable, historically marginalized populations who may already distrust government programs."); NTCA *Ex Parte* at 2.

⁴⁵ See *ACP Order* at 99, para. 215 (a hybrid approach was necessary for managing participation of EBB households during the transition to the Affordable Connectivity Program, finding that a uniform opt-in approach "would likely result in significant de-enrollments due to consumer failure to opt in timely rather than a desire not to participate in the Affordable Connectivity Program, and would also frustrate the transition process, create consumer confusion, and increase administrative burdens on service providers and consumers"); NTCA *Ex Parte* at 2.

⁴⁶ See ACA Connects Comments at 9 (an aggregate collection relieves USAC of making updates to NLAD); NCTA Comments at 15.

⁴⁷ See *infra* para. 32.

NaLA, adding only the limited fields of price and unique plan identifier to NLAD for a subscriber-level collection “would not be unnecessarily burdensome.”⁴⁸ In light of these comments, and consistent with the *ACP Data Collection Notice* and the record,⁴⁹ we seek additional comment in the Further Notice on the value of a subscriber-level collection through the ACP Transparency Data Collection and the processes for obtaining subscriber consent.⁵⁰

16. As discussed in more detail below, for the annual aggregate data collection, providers will need to provide: (1) a unique identifier from the broadband label (or another unique identifier generated by the provider in the case that the provider is not required to file a broadband label for a plan, such as a bundled, grandfathered, or legacy plan) for each plan with an enrolled ACP subscriber; (2) total ACP households subscribed to each such plan; and (3) specified plan characteristics associated with each service plan—all aggregated by ZIP code. We believe at this time that this approach best balances the burdens to collect and report this information with the need for a useful data collection.

17. *Unique Identifier and Broadband Labels.* The Infrastructure Act requires the Commission to “rely on the price information displayed on the broadband consumer label . . . for any collection of data . . . under section 60502(c).”⁵¹ In the *ACP Data Collection Notice*, we sought comment on the interplay between the broadband labels and the ACP Transparency Data Collection, including how to interpret the Infrastructure Act’s requirement that we rely on the price information contained in the labels.⁵² The broadband labels include a service plan’s name, speed, and a unique identifier associated with that plan, along with information relating to monthly price, additional fees (one-time and monthly), and plan characteristics (upload and download speeds, latency, and data caps).⁵³ Commenters overwhelmingly agree that we should rely on the upcoming broadband labels to collect plan price and characteristic information in order to reduce the burden that this collection places on providers.⁵⁴ We find here that leveraging broadband labels for purposes of the ACP Transparency Data Collection not only fulfills the statutory requirement, but also makes the ACP data collection more efficient and minimizes the burden on providers by allowing them to cross-reference the information displayed on a broadband label.

18. To allow us to best utilize the information contained in the broadband labels and to collect the data associated with each ACP-supported plan, we require providers to submit a unique identifier for each service plan to which an ACP household applies the affordable connectivity benefit. As we recognize in the *Broadband Labels Order*, the use of a unique identifier is a means of collecting plan data while minimizing the burden on providers.⁵⁵ Providers must submit as part of the annual

⁴⁸ NaLA Comments at 10; *see also* WISPA Comments at 5 (“Utilizing the NLAD or other USAC systems will ensure that the Commission relies on existing, verifiable data and provide providers and subscribers with use of an already familiar platform for submission of information, reducing the burdens on both.”).

⁴⁹ *See, e.g.*, City of New York Comments at 3; Common Sense Comments at 8; City of Seattle Comments at 4.

⁵⁰ *See infra* Section IV.

⁵¹ Infrastructure Act, div. F. tit. V, § 60504(b)(2).

⁵² *ACP Data Collection Notice* at 5, para. 10.

⁵³ *Broadband Labels Order* at 6 (sample broadband label).

⁵⁴ CCA Reply at 6 (suggesting that the Commission “leverage price information from the broadband labels” (quoting NCTA Comments at 20)); JSI Comments at 5-6 (suggesting that the Commission can use the label information to collect statutory required information while “minimizing the burden on small providers”); Starry Reply at 5 (encouraging the Commission to “utilize the price and subscription information that will be provided on the forthcoming broadband labels where possible”); WISPA Reply at 3 (“agree[ing] with commenters that encourage pricing information to rely on information provided on the Broadband Label”).

⁵⁵ *Broadband Labels Order* at 28, paras. 79-80 (recognizing the utility of unique plan identifiers, and lack of evidence suggesting a high burden on providers).

collection of plan information a unique identifier that matches the plan's corresponding broadband label,⁵⁶ where a broadband label exists. Where a broadband label does not exist (*e.g.*, grandfathered or legacy plans) or where a broadband label does not uniquely identify the plan to which an ACP household applies the benefit (*e.g.*, bundled service plans), providers are also required to create and submit a unique identifier for any plan to which an ACP household subscribes. In such a case, the provider should use the same format as for plans that are covered by a broadband label. Consistent with the *Broadband Labels Order*, providers will not be permitted to reuse unique identifiers.⁵⁷ We direct the Wireline Competition Bureau (Bureau or WCB) with support from the Office of Economics and Analytics (OEA) to develop guidance concerning when a provider is required to formulate a new unique identifier.

19. *Price Information.* We will require providers to submit the same price information as required on the broadband labels. Providers will also, optionally, be able to submit the all-in price with and without the affordable connectivity benefit applied.⁵⁸ In the *ACP Data Collection Notice*, we sought comment on the language in the Infrastructure Act that the Commission “shall rely on the price information displayed on the broadband consumer label required 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).”⁵⁹ We also proposed that price information collected would “include the monthly charge for the internet service offering that a household would be charged absent the application of the affordable connectivity benefit,” and sought comment on that approach, as well as whether promotion pricing, introductory rates, pre-paid or post-paid, taxes and fees, associated equipment, or other discounts should be included as part of price, and whether such information should be separately itemized and collected.⁶⁰

20. The *Broadband Labels Order* requires providers to display⁶¹ the “base monthly price for the stand-alone broadband service offering,”⁶² whether the monthly price is an introductory rate,⁶³ itemized provider-imposed recurring monthly fees (including fees for the rental or leasing of modem and other network connection equipment),⁶⁴ and itemized one-time fees (such as a charge for purchasing a modem, gateway, or router, activation fees, deposits, and installation fees).⁶⁵ Commenters agree that the price to be reported should reflect the amount that a household would pay absent the ACP discount,⁶⁶ and we find that this price is reflected in the pricing requirements of the *Broadband Labels Order*. We therefore find that the price required to be submitted for this collection will reflect the same pricing elements as set forth in the *Broadband Labels Order*. Providers should use the same format for providing

⁵⁶ See *id.* at 27-28, para. 78 (describing unique plan identifier requirement).

⁵⁷ See *id.* at 27-28, para. 78.

⁵⁸ See *infra* paras. 25-27.

⁵⁹ Infrastructure Act, div. F, tit. V, § 60502(b)(2).

⁶⁰ *ACP Data Collection Notice* at 3, para. 5.

⁶¹ *Broadband Labels Order* at 6, Section III.B.1.a.

⁶² *Id.* at 9, para. 23.

⁶³ *Id.* at 10, para. 25.

⁶⁴ *Id.* at 12, para. 33.

⁶⁵ *Id.* at 12, para. 34.

⁶⁶ ACA Connects Comments at 7 (agreeing that price should refer to “the amount that a household would pay absent the ACP subsidy”); City of Seattle Comments at 4 (agreeing that the Commission should “collect pricing information that includes the actual cost paid by broadband subscribers, with and without the benefit”); NaLA Comments at 3 (agreeing that price should be the “monthly charge for the internet service offering that a household would be charged if it did not receive the ACP benefit”); WISPA Comments at 3 (agreeing that price should be the “‘monthly charge for internet’ exclusive of the ACP benefit”).

price information as they will for the broadband labels, and include: (1) the base monthly price for the broadband offering (in the case of bundled offerings, can be the total bundled price or separated out bundled price); (2) whether the monthly price is an introductory rate; (3) itemized provider-imposed recurring monthly fees (excluding government taxes or fees); and (4) itemized one-time fees.

21. Commenters were split as to whether the individual components within the price should be itemized, with some supporting the itemized reporting,⁶⁷ while others opposed their inclusion,⁶⁸ including because discounts or promotional rates may skew the analysis of average rates,⁶⁹ and taxes and fees vary widely, making reporting difficult.⁷⁰ To provide more transparency into the prices that households pay, as well as to be consistent with the *Broadband Labels Order*, we will require itemized reporting of provider-imposed monthly recurring fees and one-time fees. The *Broadband Labels Order* requires that providers display whether “the offered price is an introductory rate, and if so, the price the consumer will be required to pay following the introductory period.”⁷¹ We find that requiring providers to submit the same pricing information about introductory rates and post-introductory rates for the ACP Transparency Data Collection will help minimize any confusion about comparing rates, allowing for a more detailed and accurate analysis of rates. The *Broadband Labels Order* also does not require providers to display the amount of any offered discounts (such as those for paperless billing, automatic payment (autopay), or any other discounts),⁷² or the amount of government taxes,⁷³ and we similarly do not require providers to submit such information as part of this data collection. While we will not require providers to display discounts, we will instead have optional fields for providers to voluntarily identify discounts.

22. *Broadband Equipment Fees.* We will require providers to submit information about recurring or one-time modem or router rental fees as part of this collection. We conclude that it is appropriate to collect information about recurring or one-time modem or router rental fees, not only because of support in the record,⁷⁴ but also because aligning the collection with the requirements of the *Broadband Labels Order* is likely to minimize the burdens on providers. Many commenters suggest that we collect the prices of associated equipment, which may increase transparency about pricing and what households are getting as part of their monthly fee.⁷⁵ NTCA, on the other hand, argues that including

⁶⁷ Commons Sense Comments at 5 (Commission should collect promotional offerings, taxes, fees, overage costs, associated devices); City of New York Comments at 3; NDIA Comments at 3 (line items should be separately collected); NDIA Comments at 2 (taxes and fees should be separate line items); NYPSC Comments at 2 (all pricing information should be collected); City of Seattle Comments at 4.

⁶⁸ NaLA Comments at 3-4 (taxes and fees should not be included unless subscribers are separately billed for such fees); NCTA Comments at 5, 22 (granular price information is inconsistent with the statute); NTCA Comments at 4-5; USTelecom Comments at 1-2, 6; WISPA Comments at 3; ACA Connects Reply at 4 (inclusion of promotional rates that are variable from customer to customer may be confusing, and therefore should not be included); CCA Reply at 6; Lumen Reply at 2-3; NCTA Reply at 7-8 (supporting the collection of a standard non-promotion price from the broadband label).

⁶⁹ NTCA Reply at 3.

⁷⁰ USTelecom Comments at 6.

⁷¹ *Broadband Labels Order* at 10, para. 25.

⁷² *Id.* at 11, para. 27.

⁷³ *Id.* at 9, 12, paras. 24, 33 (only requiring provider-imposed fees).

⁷⁴ Altice Comments at 5 (noting the Commission could require providers to give a description of monthly equipment rentals); Common Sense Comments at 7, 12 (supporting the collection of whether plans include the option to receive, purchase, or rent associated equipment); City of New York Comments at 2-3 (supporting collection of information about associated equipment).

⁷⁵ NDIA Comments at 1 (associated equipment price should be collected); *see also* NaLA Comments at 4 (arguing that price information about associated equipment should only be collected if it is supported by the ACP benefit).

information such as the price of associated equipment is not necessary as part of this collection because the fact that associated equipment costs are assessed on top of the monthly cost for service “is not something with which policymakers are unfamiliar.”⁷⁶ We agree with commenters that pricing information about associated equipment is useful in determining the value provided by the Affordable Connectivity Program.⁷⁷ Moreover, because the affordable connectivity benefit can be applied to “associated equipment” including modems, routers, hotspots, and antennas,⁷⁸ information about the recurring costs for such equipment would help us understand the true price of ACP-supported services. To address NTCA’s arguments, we find that to understand and assess the price of the ACP-supported service, we need to not only know the presence of charges for associated equipment, but the amounts charged. Furthermore, the *Broadband Labels Order* also requires providers to list monthly charges for the “rental or leasing of modem and other network connection equipment” as well as any one-time fees for the purchase of such associated equipment.⁷⁹ We find that adhering to the itemized pricing requirements of specific recurring and one-time fees in the *Broadband Labels Order* is consistent with the Infrastructure Act, makes for an efficient collection, and will not be burdensome to providers. To fully understand the effect associated equipment may have on price, providers must also submit information on whether a plan requires associated equipment and whether any required associated equipment is included in the base monthly price.

23. *Bundled services pricing.* We also conclude that providers must submit information about the prices of bundled service offerings as part of this collection. We find that collecting price information for bundled plans supported by the ACP benefit is necessary to fulfill the statutory mandate to collect price information about ACP-supported plans, which includes bundled services.⁸⁰ We recognize that the *Broadband Labels Order* gives providers the option to display pricing information for bundled plans,⁸¹ but as further discussed below, the approach we adopt for collecting bundle price information minimizes burdens by not requiring bundle component pricing to be reported separately while ensuring that we collect the price information required. We require the base monthly price for a bundle to reflect the price for all services in the bundle and find that the prices for different services within the bundle do not need to be separated out. Some commenters urge the Commission to not “require providers to identify separately the specific prices of discrete services within ‘bundled’ service packages,”⁸² while other commenters preferred breaking down the costs within bundles.⁸³ We agree with those commenters asserting that providers should not be required to separately apportion out the price for broadband and non-broadband components for purposes of the ACP Transparency Data Collection.⁸⁴ We find that the base monthly price for a bundle should reflect the price for all services in the bundle, and we define bundle as the combination of broadband internet access service with any non-broadband internet

⁷⁶ NTCA Comments at 5.

⁷⁷ Common Sense Comments at 5, 7 (agreeing that the Commission should collect data on whether plans include the option to receive, purchase, or rent associated equipment); *see also* Common Sense Comments at 7 (Commission should collect the price options for associated equipment); City of Seattle Comments at 4 (supporting collection of price data about associated equipment).

⁷⁸ *ACP Order* at 54-55, para. 109 (defining associated equipment).

⁷⁹ *Broadband Labels Order* at 12, paras. 32-33.

⁸⁰ *ACP Order* at 54, paras. 106-07.

⁸¹ *Broadband Labels Order* at 12, para. 31.

⁸² NDIA Comments at 3; NTCA Comments at 4-5; WISPA Reply at 2-3.

⁸³ City of Seattle Comments at 4.

⁸⁴ Any requirements or decisions from this Order with respect to bundled plans (such as creating a unique identifier for bundled plans) are only intended to apply for purposes of the ACP Transparency Data Collection, and do not change or alter the requirements of other orders, such as the *Broadband Labels Order*.

access service offerings, including but not limited to video, voice, and text.⁸⁵ Given the complexity of apportioning out the price associated with the bundles that can be supported by the affordable connectivity benefit, we find that asking providers to report a single base monthly price for bundled plans minimizes the burden on providers and outweighs any benefit of requiring the provider to separately itemize different bundle pieces. While understanding pricing associated with the broadband portion of the bundle may help us understand the value as it relates to the data and speed also reported for that broadband service, we recognize that apportioning out the price of a broadband service and the voice component for this data collection may be unduly burdensome for providers. When reporting price information for a bundle, for example, if a bundle contains video, broadband, and telephone, and the base monthly price for that bundle is \$70, then providers will need to report only \$70 and not apportion out the broadband and non-broadband pieces. Providers must also adhere to the requirements for itemization of specific one-time and recurring fees above, but providers will not be required to itemize prices for components that are not related to broadband service (*e.g.*, monthly rental for DVR, set-top box, phone charges).

24. We decline to adopt Altice’s proposal to permit providers to report pricing plan information as a series of ranges rather than providing precise information.⁸⁶ Altice contends that allowing the submission of data in a range format rather than a more precise format will permit more transparency by allowing for an “apples-to apples” comparison of plans, as there may be more comparison points if plans are grouped by range rather than specific characteristics.⁸⁷ We do not find that reporting of prices and speeds in this manner would provide useful and accurate data for purposes of determining the prices of ACP-supported services. For example, Altice suggests a provider could put their plan in the \$70-89.99 price range and further select a 50-100 Mbps speed range and 250-350 GB data cap.⁸⁸ However, under this approach, one subscriber could be paying \$89.99 for 50 Mbps speed and a 250 GB data cap, and another subscriber could be paying \$70 for a 100 Mbps speed and 350 GB data cap, and those two plans would be deemed similar for comparison purposes, despite one plan offering significantly better service for a significantly lower price. The use of ranges could thus mask important distinctions between service offerings, making it difficult for the Commission to analyze trends in the program with precision.

25. *Optional reporting of all-in price information.* Considering the record, we also find that it would be effective to collect the all-in price—that is, the actual price that would be paid by the ACP household, absent the application of the affordable connectivity benefit.⁸⁹ This price would include the price of any associated equipment, taxes, and fees as well as any non-ACP discounts or promotions

⁸⁵ See *ACP Order* at 54, para. 106 (describing bundled service offerings as those including “voice, data, and texting”); *ACA Connects Comments* at 8 (discussing “broadband-video bundles”); *NCTA Comments* at 7 (characterizing bundles as including “voice or video components”); see also *NDIA Comments* at 3 (characterizing “unbundled” service as including only broadband internet access service).

⁸⁶ For example, under Altice’s proposal, price would be submitted as a range, such as under \$30 or \$30-49.99. Providers would also select secondary and tertiary ranges for download speeds and data caps. *Altice Comments* at 4-5.

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 5.

⁸⁹ *ACA Connects Comments* at 7 (supporting collection of “the amount that a household would pay absent the ACP subsidy”); *Common Sense Comments* at 5 (arguing that the price data collected “should reflect the actual cost” of a service plan); *NaLA Comments* at 3 (supporting collecting “the monthly charge for the internet service offering that a household would be charged if it did not receive the ACP benefit”); *City of New York Comments* at 2 (“The City recommends that price and subscription rate information includes . . . the actual price paid by the enrollee.”); *City of Seattle Comments* at 4 (“The Commission should collect pricing information that includes the actual cost paid by broadband subscribers, with and without the benefit.”).

offered to the customer.⁹⁰ With respect to bundled service offerings, the all-in price should be the entire price of the bundled service, as this will allow us to get a view of the actual expenses paid by ACP households. We find that collecting the all-in price will help the Commission determine a household's actual broadband expenses, absent the ACP benefit. We agree with the City of Seattle that collecting all-in price will help the Commission determine our progress towards reducing the digital divide as cost is "one of the primary barriers to broadband adoption" and collecting all-in price will better inform the Commission and local stakeholders about the pricing of ACP plans.⁹¹

26. Additionally, collecting the all-in price with the affordable connectivity benefit applied (net-rate charged) will help the Commission determine the efficacy of the Affordable Connectivity Program. In the *ACP Data Collection Notice*, we sought comment on whether there were "any other indicators of price that should be collected."⁹² The Competitive Carriers Association (CCA), CTIA, NCTA--The Internet & Television Association (NCTA), and USTelecom (collectively, the Associations) suggest that we optionally permit providers to submit the "net-rate charged" as part of this collection, which they define as the "recurring monthly price charged to ACP households . . . for ACP-supported services after application of any state or federal low-income benefits or any applicable promotions or discounts."⁹³ They argue that collecting the net-rate charged would allow the Commission to determine the average out-of-pocket costs for ACP households. We find that information concerning ACP subscribers' out-of-pocket expenses is valuable to the Commission and will assist us in determining the efficacy of the ACP benefit in reducing the digital divide, and adopt the Associations' proposal in part.⁹⁴ Additionally, providers can optionally submit as part of this collection, the total number of subscribers paying \$0 and the average "all-in" price for subscribers whose monthly bill is greater than \$0, after all discounts and benefits, including the ACP benefit and Lifeline (where applicable), have been applied. By limiting the collection of net-rate charged to subscribers with out-of-pocket expenses after the application of the affordable connectivity benefit, we will ensure that the Commission collects data that most accurately reflects the average out-of-pocket expenses paid by ACP subscribers.⁹⁵

⁹⁰ The actual price of the plan absent the affordable connectivity benefit includes rate of the plan and the application of all provider-offered discounts and promotions, and the Lifeline discount, if applicable.

⁹¹ City of Seattle Comments at 3-4; *see also* Common Sense Comments at 5 (arguing that collecting the actual cost of service plans is important to understanding the "real prices" paid by households, and the impact of introductory and promotional rates).

⁹² *ACP Transparency Data Collection Notice* at 3, para. 5.

⁹³ *See* Letter from Angela Simpson, Competitive Carriers Ass'n, Amy Bender, CTIA, Steve Morris, NCTA-The Internet & Television Ass'n, & Diana Eisner, USTelecom-The Broadband Ass'n to Marlene H. Dortch, Secretary, FCC; WC Docket No. 21-450, at 2 (filed Nov. 8, 2022) (Associations Nov. 8 *Ex Parte*) (supporting collection of the net-rate charged: the "recurring monthly price charged to ACP households after application of any state or federal low income benefits or any applicable promotions or discounts").

⁹⁴ The Associations proposed that we collect the average net-rate charged for all ACP households. *See* Associations Nov. 8 *Ex Parte* at 1-2. We are limiting our optional collection of average net-rate charged to ACP households whose net-rate charged would be greater than \$0 a month, because we find that limiting the collection to subscribers with out-of-pocket expenses will result in a more accurate data set detailing such expenses and would not be skewed by subscribers with fully subsidized plans. *See infra* note 95 (describing data set skew involving subscribers with \$0 a month net-rate charged). We are separately collecting information on the number of subscribers who are paying \$0 a month after the application of all discounts and benefits and the ACP benefit. *See infra* para. 36.

⁹⁵ For example, under the Associations' proposal if there were 10 subscribers in a given ZIP code, paying \$0 per month, and 5 paying \$25, the net-rate charged would be \$1.67 across 15 subscribers. Under our adopted methodology, the average net-rate charged would be \$25 and providers who chose to would submit a total of 10 subscribers paying \$0.

27. We acknowledge comments suggesting that collecting “granular price information” including all-in price would be burdensome and would present administrative or technical challenges.⁹⁶ Given the mixed support for reporting such information, for purposes of this collection, providers will not be required to submit all-in price or the net-rate charged, and all-in price and net-rate charged will instead be optional fields that providers can choose to submit.

28. *Subscription Rate.* In the *ACP Data Collection Notice*, the Commission sought comment on the meaning of “subscription rate” in the statute, and proposed collecting the number of ACP households that subscribe to each unique internet service offering.⁹⁷ The Commission further sought comment on what period of time and geographic regions should be covered for the collection.⁹⁸ Commenters propose that in an annual aggregate collection, the Commission would collect data from providers once per year on a chosen data submission date on the prices of broadband plans, and the number of ACP subscribers for each plan (indicating the subscription rates of each plan), grouped by state, with the data current as of a reference or “snapshot” date.⁹⁹ Commenters support aggregating data at a state level as of a specific snapshot date, arguing that it would be less burdensome as providers already track enrollment by state.¹⁰⁰ Some commenters note that under this approach, it would not be necessary to disaggregate the data by month or quarter.¹⁰¹ Some commenters suggest that data should be organized at the ZIP code and county level, as that may help identify areas in need of broadband assistance.¹⁰² USTelecom, NTCA, and the National Rural Electric Cooperative Association support aggregating data at the ZIP code level as an alternative to aggregating at the state level, as ZIP codes are generally in providers’ systems, which would reduce the burdens of data gathering.¹⁰³ WISPA recommends that data be collected “on a census block level, which would be consistent with collection efforts for Form 477 and would avoid imposing new burdens on providers familiar with collecting such information on a census block level.”¹⁰⁴ Conversely, INCOMPAS argues that an aggregate collection should not be done at the census tract or census block, as it may “unnecessarily burden competitive providers who do not have the size and resources that incumbents typically enjoy.”¹⁰⁵

⁹⁶ NaLA Comments at 3-4 (arguing against collection of taxes and fees); NCTA Comments at 22 (arguing that collecting tax and fees would impose a burden on providers); USTelecom Comments at 2 (arguing that collecting information on promotional rates or discounts would be burdensome and would distort the data set); Associations Nov. 8 *Ex Parte* at 2 (arguing that collection of net-rate charged should be optional).

⁹⁷ *ACP Data Collection Notice* at 3, para. 6.

⁹⁸ *Id.* at 3-4, paras. 6-7.

⁹⁹ ACA Connects Comments at 4-5; Altice Comments at 5; CTIA Comments at 4; NaLA Comments at 4; NCTA Comments at 23; USTelecom Comments at 2; WISPA Comments at 3-4; CTIA Reply at 1-2; Lumen Reply at 2; Starry Reply at 2, 4; USTelecom Reply at 3; WISPA Reply at 3; Letter from Morgan E. Reeds, Director, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Sept. 26, 2022).

¹⁰⁰ ACA Connects Comments at 7, 9; CTIA Comments at 4 (state level collection aligns with Form 477); NaLA Comments at 4-5 (not opposing a requirement for data to be done at the state level or Study Area Code “given that ACP providers report information to the Commission and [USAC], and seek reimbursement, on that basis”).

¹⁰¹ ACA Connects Comments at 5; NaLA Comments at 4 (arguing that requiring disaggregated data on a monthly or quarterly basis would place unnecessary burdens on providers).

¹⁰² Connecticut State Broadband Office Comments at 2-3 (CT OSB); *see also* WISPA Reply at 3 (collection should be no more granular than the ZIP code).

¹⁰³ Letter from Morgan E. Reeds, Director, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Oct. 24, 2022) (USTelecom Oct. 24 *Ex Parte*).

¹⁰⁴ WISPA Comments at 7.

¹⁰⁵ INCOMPAS Reply at 4.

29. We find that the record supports aggregating the data at the ZIP code level where the subscriber resides as of a single snapshot date, and we require providers to submit subscription rate information consisting of the total number of ACP households that are subscribed to each service plan with an enrolled ACP subscriber.¹⁰⁶ We find that aggregating at the ZIP code will minimize burdens on providers given that ZIP code information is typically in providers' billing systems,¹⁰⁷ and will provide more informative data for the Commission than aggregating solely at the state level. We will not require providers to submit aggregate data below the ZIP code level at this time. We remind providers that plans that do not require a unique identifier under the *Broadband Labels Order*, such as bundled or legacy plans, will still require a unique identifier for the purposes of this collection.¹⁰⁸

30. *Subscription Rate Subcategories for Lifeline, Tribal, and High-Cost.* In addition to collecting the total number of ACP households subscribed to each service plan with an enrolled ACP subscriber by ZIP code, we require providers to subdivide this data by submitting similar subscribership information for: (1) ACP households also enrolled in the Commission's Lifeline program;¹⁰⁹ (2) ACP households that receive the ACP Tribal enhanced benefit;¹¹⁰ and (3) ACP households that receive the enhanced benefit for high-cost areas.¹¹¹ The *ACP Data Collection Notice* not only proposed to collect total program subscribership data,¹¹² but it also sought comment on collecting other subscription rate data,¹¹³ including data related to subscription trends.¹¹⁴ The *ACP Data Collection Notice* suggested using collected data to improve ACP outreach and analyze the connection between the Affordable Connectivity Program and the Lifeline program,¹¹⁵ and asked about collecting information relating to ACP performance¹¹⁶ and digital equity.¹¹⁷

¹⁰⁶ Although we are collecting subscribership information, we decline to require providers to submit "take rates" or "churn rates," as these rates may be competitively sensitive and burdensome to produce. See *ACP Data Collection Notice* at 3-4, para. 6 (defining "take rate" as "the fraction of subscribers selecting the plan from those who could select the plan" and describing "churn rate" as demonstrating "net additions or drop-offs from plans over time"); NaLA Comments at 5, 12; WISPA Comments at 3.

¹⁰⁷ See USTelecom Oct. 24 *Ex Parte* at 1.

¹⁰⁸ See *Broadband Labels Order* at 19, para. 54 (noting that the requirements in the *Broadband Labels Order* do not impact an ACP provider's obligations to comply with ACP rules).

¹⁰⁹ See generally 47 CFR §§ 54.400-54.423.

¹¹⁰ See 47 CFR § 54.1800(b) ("The term 'affordable connectivity benefit' means a monthly discount for an eligible household, applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than \$30, or, if an internet service offering is provided to an eligible household on Tribal land, not more than \$75.") (emphasis added).

¹¹¹ The Infrastructure Act provides for a separate enhanced benefit for households that are served by providers in high-cost areas. *ACP Further Notice* at 129, para. 287; Infrastructure Act, div. F, tit. V, § 60502(a)(3)(A) (adding High-Cost Areas). The Commission is in the process of implementing that provision of the Infrastructure Act. Providers will thus have no data to report on high-cost area enhanced benefit until adoption of the final rules related to the enhanced benefit for High-Cost Areas and implementation has been completed.

¹¹² *ACP Data Collection Notice* at 3-4, para. 6.

¹¹³ *Id.* at 4, para. 7.

¹¹⁴ *Id.* at 4, para. 6 ("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?").

¹¹⁵ See *id.* at 8-9, para. 19 & n.35. Although we discussed these topics in the context of a subscriber-level collection, the *ACP Data Collection Notice* makes clear that we were interested in collecting data related how the two programs are used by subscribers.

¹¹⁶ *Id.* at 6, para. 12.

¹¹⁷ *Id.* at 19, para. 48.

31. The record on collecting data relating to Lifeline does not oppose collection of aggregate subscribership information relating to ACP subscribers also enrolled in Lifeline for a particular plan. ACA Connects opposes collecting subscriber-level data to analyze the Lifeline-ACP connection, but it suggests that the Commission could facilitate analyzing the connection between Lifeline and the Affordable Connectivity Program by requiring providers to submit data on the number of ACP subscribers that are also enrolled in Lifeline.¹¹⁸ NCTA asserts that USAC “presumably already has” data to analyze the connection between Lifeline and the Affordable Connectivity Program and contends that “data gathered from providers would be redundant.”¹¹⁹ But it makes this argument in the context of opposing a subscriber-level collection and acknowledges that the Commission can conduct a variety of analyses relating to ACP efficacy, consumer outreach, and the digital divide with “aggregated data for each Internet service offering at the state-level.”¹²⁰ We believe that collecting aggregated data on the number of ACP subscribers to a plan that are also enrolled in Lifeline for that plan would allow the Commission to understand the plans and prices that the combined Lifeline and ACP benefits are applied to and help the Commission to assess whether the combined Lifeline and ACP benefits contributes to any significant difference in plan choices compared to the ACP benefit alone. We thus require providers to submit subscription rate information consisting of the number of ACP households that are subscribed to each service plan with an enrolled ACP subscriber who are also enrolled in Lifeline for that plan. As with total subscribership data, this data is to be aggregated by ZIP code.¹²¹

32. We further require providers to submit the number of ACP households receiving the Tribal enhanced benefit that are subscribed to each service plan with an enrolled ACP subscriber and the number of ACP households receiving the high-cost enhanced benefit that are subscribed to each service plan with an enrolled ACP subscriber, by ZIP code. Although the record does not discuss collecting these subcategories of subscribership data, several commenters support collecting data that would allow the Commission to understand the equity outcome and impacts of the Affordable Connectivity Program.¹²² Other commenters note that Tribal and rural areas often “critically lack Internet access comparable to our urban counterparts.”¹²³ And NCTA states that aggregate data “can help the Commission understand how ACP ‘affects overall broadband adoption and how the program furthers the Commission’s efforts to close the digital divide’ just as much as individual data would.”¹²⁴ Collecting data on the number of ACP subscribers enrolled in each plan who receive the ACP Tribal or high-cost enhanced benefits, by ZIP

¹¹⁸ ACA Connects Comments at 12 (“Also, contrary to the NPRM’s suggestion, it is unnecessary to collect subscriber-level data to ‘facilitate analysis of the connection between Lifeline and [ACP]. Instead the Commission could direct providers to report numbers of ACP subscribers at each service tier that are stacking benefits’, i.e., applying both Lifeline and ACP benefits to the same service.”) (internal citations omitted).

¹¹⁹ NCTA Comments at 11 n.34.

¹²⁰ *Id.* at 11.

¹²¹ *See supra* para. 29.

¹²² *E.g.*, City of New York Comments at 3 (discussing how subscriber-level data could allow the Commission to assess the “equity outcome” of the Affordable Connectivity Program) and how assessing the value of the ACP benefit is “essential to addressing the digital divide”); City of Seattle Comments at 2, 6 (urging Commission to “promote digital equity” by collecting and releasing data on who is being served); Common Sense Comments at 6 (arguing Commission should collect demographic data to help the Commission understand the “ACP’s impact on digital equity and support efforts to address digital discrimination”); INCOMPAS Reply at 2 (recognizing the importance of the Commission’s proposal to use data “to evaluate the performance of the ACP and its impact on reducing the digital divide for low-income consumers”).

¹²³ Small Company Coalition Comments at 1; *see also* Starry. Reply at 1 (“The digital divide continues to plague many low-income consumers seeking access to robust services in urban and rural areas alike, and the ACP serves as a valuable means of advancing the Commission’s and the Administration’s goals of addressing this problem.”).

¹²⁴ NCTA Comments at 25-26 (quoting *ACP Data Collection Notice* at 8-9, para. 19); *id.* at 11.

code, would help the Commission understand which plans and prices these enhanced benefits are applied to. This in turn would help the Commission assess whether the enhanced benefit contributes to plans that are of higher, equal, or lower quality compared to the average ACP plan. We direct the Bureau, in consultation with OEA, the Office of Managing Director, and USAC, as appropriate, to establish the electronic format for the submission of aggregated data related to price, subscription rate, and plan characteristics, as well as the process by which providers can submit this aggregated data within the filing window and deadlines established herein. In developing the format, the Bureau should consider allowing providers to rely on the information prepared for broadband labels to the greatest extent possible.

33. *Optional Pricing-related Subscription Rates.* Furthermore, in addition to collecting the subscription rates of plans on which ACP subscribers are receiving Lifeline, ACP Tribal enhanced benefits, or ACP high-cost enhanced benefits, we give providers the option to submit by plan identifier and ZIP code the total number of subscribers that are on introductory pricing plans; the total number of subscribers that paid a set-up or activation fee; and the total number of subscribers that are paying \$0 after all discounts and the ACP benefit are applied. In the *ACP Data Collection Notice* we sought comment on whether to collect other subscription rate data,¹²⁵ whether there was information about subscribers that would be helpful to evaluate the performance of the Affordable Connectivity Program,¹²⁶ and asked whether it would be valuable to collect information related to the growth rate.¹²⁷

34. There is support in the record for the collection of information relating to introductory prices.¹²⁸ As several provider associations point out, there is value in understanding the extent to which ACP households rely on promotions and discounts, which include introductory rates.¹²⁹ While some commenters oppose collecting the introductory rates paid by subscribers, they do not raise any objections to the optional collection of the number of subscribers who are paying introductory rates.¹³⁰ We find that collecting the number of subscribers by plan identifier and ZIP code that are paying introductory rates will assist us in determining the growth rate of the program and in evaluating the performance of the program.¹³¹ Knowing the number of ACP subscribers who are currently paying introductory rates will assist us in determining the growth rate of the program, as it will help us understand the number of subscribers who may be subject to upcoming price increases, and may be at risk of dropping out of the program. Additionally, understanding the number of subscribers who are paying introductory rates will give us greater insight into the number of new subscribers that each provider has under the Affordable Connectivity Program. This information will assist us in evaluating our progress towards the ACP program goal of reducing the digital divide and understanding whether ACP subscribers are predominantly new subscribers to broadband internet or are using the ACP benefit to subsidize service

¹²⁵ *ACP Data Collection Notice* at 4, para. 7 (“What other information should the Commission collect about the subscription rate?”).

¹²⁶ *See id.* at 8, para. 19.

¹²⁷ *See id.* at 4, para. 6.

¹²⁸ *See* Common Sense Comments at 5 (suggesting that the Commission should “collect data on any promotional price offering”); NTCA Comments at 2 (supporting collection of information on the number of new subscribers); NYPSC at 2 (supporting collection of promotional pricing information).

¹²⁹ The provider associations state that “[s]ubmission of data regarding the average net rate charged would enable the Commission to determine, at a geographically granular level, the portion of ACP households that are receiving broadband service with no out-of-pocket expense.” Associations Nov. 8 *Ex Parte* at 1. This “net rate” is the rate after application of, among other things, promotional pricing. *Id.*

¹³⁰ *See* ACA Connects Comments at 7 (arguing against collection of promotional rates); NTCA Comments at 4-5 (“The Commission should decline to include ‘introductory’ or ‘promotional rates’ . . . within the ACP data collection.”).

¹³¹ *ACP Data Collection Notice* at 4, 6, paras. 6, 12.

they previously paid for.¹³² Consistent with the comments of the provider associations,¹³³ and to avoid burden associated with this more granular subscribership data, at this time we make the submission of the number of subscribers who are paying introductory rates or who are on time-limited promotional pricing plans optional for ACP participating providers.

35. Likewise, there is general support for the collection of information concerning set-up fees,¹³⁴ and no objection to the collection of the number of subscribers who pay set-up fees.¹³⁵ We find that collecting the total number of subscribers who paid a set-up fee by plan identifier and ZIP code will help us understand the costs borne by subscribers to set up or activate service. Set-up fees, particularly in the context of fixed broadband service, can be a barrier to the adoption of broadband service.¹³⁶ This information about the number of subscribers who are encountering set-up fees will help us evaluate the efficacy of the Affordable Connectivity Program, and our progress toward the program goal of reducing the digital divide.¹³⁷ We acknowledge comments that the mandatory collection of granular pricing and subscription rate data may impose a burden on providers, and therefore at this time will make the submission of the total number of subscribers who are paying set-up fees optional for ACP participating providers.¹³⁸

36. Furthermore, we will be collecting the total number of subscribers who are paying \$0 after the application of the ACP benefit, and any non-ACP discounts or promotions, by plan identifier and by ZIP code. There was general support in the record for collecting the actual price of ACP service plans, and for collecting the subscription rate for various service plans.¹³⁹ We find that collecting the total numbers of subscribers in a given ZIP code, and on a given plan, that are paying \$0 will help us evaluate the performance of the Affordable Connectivity Program.¹⁴⁰ Knowing the number of subscribers in a given ZIP code and on a given plan that are fully covered by the ACP benefit will help us understand the value that ACP households are obtaining from the federal subsidy and the progress the Commission is making toward reducing the digital divide. To minimize the burden on providers, we will make the collection of this information optional at this time. Therefore, at this time, submission of the number of subscribers for whom the net-rate charged is \$0 aggregated by ZIP code and plan identifier will be optional for ACP participating providers.

¹³² *Id.* at 8, para. 19.

¹³³ Associations Nov. 8 *Ex Parte* at 1.

¹³⁴ Common Sense Comments at 5 (supporting collection of information about fees); City of New York Comments at 3 (supporting collection of taxes and fees); City of Seattle Comments at 4 (suggesting that the Commission’s price collection “include any taxes and fees”).

¹³⁵ See NCTA Comments at 5 (arguing against collection of “granular” pricing information).

¹³⁶ See John Horrigan and Maeva Duggan, Pew Research, *Barriers to broadband adoption* (Dec. 21, 2015), <https://www.pewresearch.org/internet/2015/12/21/3-barriers-to-broadband-adoption-cost-is-now-a-substantial-challenge-for-many-non-users/> (arguing that cost is a primary barrier to adoption of broadband service for non-users); see also Federal Communications Commission, *Broadband Adoption and Use in America*, 5 (2010), available at <https://transition.fcc.gov/national-broadband-plan/broadband-adoption-in-america-paper.pdf> (describing installation fees as a barrier to broadband adoption by non-users).

¹³⁷ See *ACP Order* at 98, paras. 210-212 (describing ACP performance goals).

¹³⁸ See NCTA Comments at 5 (arguing against collection of granular price information).

¹³⁹ See ACA Connects at Comments 7 (supporting collection of actual price, without benefit applied); Common Sense Comments at 5 (supporting collection of actual price, including fees and promotional prices); NaLA Comments at 6-7 (supporting collection of subscription rate information at the aggregate level); NTCA Comments at 2 (supporting collection of rates available to ACP subscribers); City of New York Comments 2-3 (supporting collection of subscription rate information).

¹⁴⁰ *ACP Data Collection Notice* at 8, para. 19.

37. *Plan Characteristics.* In addition to collecting subscription rates for each plan by provider aggregated at the ZIP code level, we also direct providers to submit service plan characteristics to fulfill our requirements under the Infrastructure Act to collect “data relating to price and subscription rate information.”¹⁴¹ In the *ACP Order*, we recognized that collecting service plan characteristics could help us determine the value of the Affordable Connectivity Program to households and directed the staff to determine the appropriate plan characteristics for the collection.¹⁴² In the *ACP Data Collection Notice*, we proposed using the ACP Transparency Data Collection to collect certain characteristics of ACP service plans.¹⁴³ Collecting these data will help us to understand the preferences of the ACP households, and to determine the value of the Affordable Connectivity Program, consistent with our direction in the *ACP Order*.¹⁴⁴ This part of the collection is also consistent with the requirement in the Infrastructure Act to collect “data relating to price and subscription rate information.”¹⁴⁵ Specifically, in addition to the pricing information on the broadband label we also require providers to submit the additional plan information found on a broadband label.¹⁴⁶ We will also collect information not included on the broadband label; specifically, maximum advertised speeds, bundle characteristics, and associated equipment requirements for each plan with an enrolled ACP subscriber. Providers will be required to submit this information for all plans with ACP subscribers; however, some of the fields on a broadband label may not be applicable to legacy plans and will be optional.¹⁴⁷

38. We disagree with the commenters who suggest that the Commission is not authorized to collect service plan characteristic information as part of this collection because plan characteristics are “outside the scope” of the Infrastructure Act.¹⁴⁸ We find that plan characteristics are contemplated by the provision of the Infrastructure Act compelling us to collect “data relating to price and subscription rate information.”¹⁴⁹ The price of broadband service is determined in part by plan characteristics, including

¹⁴¹ Infrastructure Act, div. F, tit. V, § 60502(c)(1); *infra* para. 38.

¹⁴² *ACP Order* at 50-51, para. 100.

¹⁴³ *ACP Data Collection Notice* at 4, para. 8. We also stated that the redundancy avoidance provision of the Infrastructure Act contemplates that the Commission might engage in other data collection activities and asked how this provision would affect the collection of plan characteristic data and on the use of the ACP Transparency Data Collection to collect such information. *Id.* The redundancy avoidance provision provides 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 ACP Transparency Data Collection, and if “the Commission discloses the collection activity to the public.” Infrastructure Act, div. F, tit. V, § 60502(c)(3).

¹⁴⁴ See *ACP Order* at 50-51, para. 100 (directing WCB to collect plan characteristic information).

¹⁴⁵ Infrastructure Act, div. F, tit. V, § 60502(c)(1) (emphasis added); *infra* para. 38.

¹⁴⁶ The broadband labels will include the name and speed tier of a plan, a unique plan identifier, the monthly base price of a plan, any discounts associated with annual contracts, or promotional rates, itemized recurring and one-time fees, the data cap, and the associated charge, the typical upload and download speed, the typical latency information, whether the provider participates in the Affordable Connectivity Program, and a link to the provider’s network management and privacy policies. See *Broadband Labels Order* at 6.

¹⁴⁷ See, e.g., *infra* para. 44 (discussing latency).

¹⁴⁸ NCTA Comments at 7 (arguing that the Commission cannot collect bundle characteristics because the collection is “limited to broadband transparency, and should not be extended to voice or video service components”); CTIA Reply at 9 (arguing that the Commission is not permitted to collect plan characteristics because “Congress has specified the scope of this data collection”); NTCA Reply at 5 (arguing that text of the Infrastructure Act indicates that “Congress specifically sought a very limited collection . . . that restricted the burden on providers to the furthest extent possible”).

¹⁴⁹ Infrastructure Act, div. F, tit. V, § 60502(c)(1).

but not limited to upload and download speeds and data caps.¹⁵⁰ In fact, the Commission has found a positive relationship between download speeds and price in the fixed broadband market, and between data caps and price in the pre-paid wireless market.¹⁵¹ Moreover, the collection of plan characteristic information, including associated equipment requirements, plan latency, and bundle characteristics, is necessary because such information will allow us to contextualize service plan price information and determine the value being provided to eligible households by the Affordable Connectivity Program.¹⁵²

39. T-Mobile and Altice contend that the Infrastructure Act's direction to rely on the information contained in the broadband labels prevents us from collecting any price or plan characteristic information not contained in the labels, including data cap and bundle characteristic information.¹⁵³ We decline to adopt this interpretation. The relevant provision of 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) [the ACP Transparency Data Collection]."¹⁵⁴ The language of the statute notes that the Commission shall rely on the pricing information on the broadband label but does not state that the Commission is limited to the information displayed on the label. We view this provision of the Infrastructure Act as working alongside the redundancy avoidance provision under section 60502(c)(3)¹⁵⁵ to avoid imposing duplicative collection requirements on providers, and as an instruction to utilize the price information in the labels where feasible.

40. *Speed.* In the *ACP Data Collection Notice*, we proposed collecting speed information as one metric of plan characteristics covered by the ACP Transparency Data Collection.¹⁵⁶ As speed is one of the information fields contained on the upcoming broadband labels, we require providers to submit data related to the speed of the services to which ACP households subscribe, in line with the Infrastructure Act's direction to "rely" on the broadband labels.¹⁵⁷ Such speed data will include the actual (*i.e.*, typical) download and upload speed and typical latency data that providers will be required to include on the broadband labels, in addition to advertised speed.¹⁵⁸

41. Commenters generally support the collection of service plan speed.¹⁵⁹ Commenters recognize the importance of broadband speed, describing it as among the "key characteristics" utilized by

¹⁵⁰ Competition Marketplace Report 2020, 76, paras. 109-11 ("pricing for fixed services depends on several factors, including speed tier, technology, region of service, contract length, and an array of bundling options"), available at <https://docs.fcc.gov/public/attachments/FCC-20-188A1.pdf>; see Wireless Competition Report 2017, 75-76 (displaying positive relationship between price and data-caps in prepaid wireless plans).

¹⁵¹ *Id.*

¹⁵² *ACP Order* at 50-51, para. 100.

¹⁵³ Altice Comments at 2-3 (arguing that the FCC should only collect price information contained in the broadband labels); T-Mobile Comments at 3-4 (arguing that "Congress left the Commission no discretion to collect additional price information from providers").

¹⁵⁴ Infrastructure Act, div. F, tit. V, § 60504(b)(2).

¹⁵⁵ The redundancy avoidance provision of the ACP Transparency Data Collection section of the Infrastructure Act provides that "[n]othing in this subsection shall be construed to require the Commission, in order to meet a requirement of this subsection, to duplicate an activity that the Commission is undertaking as of the date of the enactment of this Act [Nov. 15, 2021]." *Id.* § 60502(c)(3).

¹⁵⁶ *ACP Data Collection Notice* at 5, para. 9.

¹⁵⁷ *Broadband Labels Order* at 6; Infrastructure Act, div. F, tit. V § 60504(b)(2).

¹⁵⁸ *Broadband Labels Order* at 13-15, paras. 37-40.

¹⁵⁹ ACA Connects Comments at 6 (supporting collection of upload and download speed); City of New York Comments at 2-3 (supporting collection of "actual not-marketed" upload and download speeds); Lumen Reply at 2 (supporting "reporting the advertised broadband speeds associated with its current service offerings"); City of

(continued....)

consumers in distinguishing between plans, and suggesting that the collection of speed information could allow the Commission to get a “more accurate depiction of the service experience” of ACP subscribers.¹⁶⁰ Moreover, collecting speed information is crucial for the Commission to understand the value being provided by the affordable connectivity benefit, because the speed of a broadband service plan influences what internet applications a household can use.¹⁶¹

42. Some commenters suggest that collecting both the advertised and actual speed of ACP service plans will allow the Commission to compare the speeds and get an accurate view of the “service experience” of ACP subscribers.¹⁶² Joint commenters Public Knowledge and Common Sense and the City of Seattle argue that by collecting both advertised and actual speed, the Commission will be able to ensure that subscribers are obtaining value from their benefit and are able to use the federal subsidy to receive their intended service.¹⁶³ We acknowledge that some commenters argue that collecting speed information or requiring both advertised and actual speeds would be burdensome to providers, but we find that the benefits of collecting such information outweigh any burdens.¹⁶⁴ We find that the requirement to submit the actual speed of a service plan is not overly burdensome, as providers will be required to produce this information as part of their broadband labels.¹⁶⁵ Furthermore, providers should be accustomed to producing advertised speed information because providers are already required to submit advertised speed as part of the Form 477 collection and provide such information to potential subscribers

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Seattle Comments at 4 (supporting collection of “upload and download speeds”); Starry Reply at 3 (supporting collection of advertised speed information); USTelecom Comments at 3 (supporting collection of upload and download speeds); WISPA Comments at 4 (suggesting that the Commission limit collection of plan characteristics to “advertised upload and download speed”).

¹⁶⁰ ACA Connects Comments at 8; City of Seattle Comments at 5.

¹⁶¹ For instance, the Commission has found that a household needs a service plan with a minimum of 5-25 Mbps to be able to telework, and a minimum speed of 6 Mbps to use video conferencing services. FCC, *Broadband Speed Guide*, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Oct. 25, 2022) (describing minimum broadband speeds for various internet applications and uses).

¹⁶² Common Sense Comments at 7 (suggesting that the Commission collect and compare advertised and actual speed); City of Seattle Comments at 5 (suggesting that the Commission collect and compare advertised and actual speed to get a better view of the user experience, including requiring providers to engage in “technical checks”). A number of commenters also supported the collection of actual or advertised speed. See Lumen Reply at 2 (supporting collection of “advertised speeds associated with its current service offerings”); Starry Comments Reply at 3 (supporting collecting of advertised speeds); WISPA Comments at 4 (supporting collection of advertised upload and download speeds); City of New York Comments at 2-3 (supporting collection of “actual, not marketed” upload and download speeds).

¹⁶³ Common Sense Comments at 7 (arguing that collecting advertised and actual speed will allow the Commission to compare speed and “ensure that public money obtains the intended services”); City of Seattle Comments at 5 (noting subscriber experience with having “unexpectedly low speeds”).

¹⁶⁴ Starry Reply at 3 (arguing that advertised speed collection will “help to ease administrative burdens” on participating providers); T-Mobile Comments at 2 (suggesting that collection of speed data would “create additional burdens” on providers); WISPA Comments at 2, 8 (arguing for collection of advertised speed information to avoid “placing overly burdensome collection requirements on providers”).

¹⁶⁵ *Broadband Labels Order* at 13-16, paras. 37-42 (describing actual speed submission requirement). Providers also often provide typical speed information to prospective customers on public-facing websites. See, e.g., Verizon, *Fios & DSL Network Performance*, <https://www.verizon.com/about/our-company/network-performance> (last visited Oct. 21, 2022) (describing December 2021 speed testing for various speed tiers). We understand providers’ concern with being required to engage in subscriber-level technical checks and, given the administrative and technical burdens associated, we do not adopt any requirement that providers test the actual network performance. CTIA Reply at 12 (arguing that testing actual network performance at the subscriber level “would impose considerable burdens on participating providers”).

on their public facing websites in the ordinary course of business.¹⁶⁶ As noted above, the collection of advertised speed is also consistent with the requirement in the Infrastructure Act to collect “data relating to price and subscription rate information.”¹⁶⁷ Therefore, providers will be required to submit the actual and advertised speeds of ACP service plans as part of this collection.¹⁶⁸

43. Consistent with the Broadband Data Collection definition of advertised speed, we use the maximum advertised upload and download speed for fixed providers, and the minimum advertised upload and download speeds for mobile providers.¹⁶⁹ For actual speed, we use the definition adopted in the *Broadband Labels Order*: the typical upload and download speeds for a particular speed tier.¹⁷⁰ For fixed broadband plans, we direct providers to utilize the Measuring Broadband America (MBA) methodology or other relevant testing data.¹⁷¹ For mobile broadband plans, we require providers to submit the applicable technology type (e.g., 4G, 5G), and direct providers to use the methodology adopted in the *Broadband Labels Order*: reliable information on network performance that is the result of their own third-party testing.¹⁷²

44. To ensure comprehensive data with respect to ACP-supported plans, we require providers to submit latency data consistent with the requirements in the *Broadband Labels Order*.¹⁷³ Commenters argue that collecting latency data is overly burdensome and suggest that latency is not one of the “key characteristics” utilized by consumers in distinguishing between plans.¹⁷⁴ We find that while there is merit to this argument with respect to grandfathered or legacy plans, which are neither marketed nor available to new consumers, the inclusion of latency on broadband labels warrants the inclusion of these data in the ACP Transparency Data Collection for currently marketed plans. We clarify that such information will not be required for legacy or grandfathered plans, although such information may be voluntarily submitted by providers.

45. *Data Caps and Connection Reliability.* In the *ACP Data Collection Notice*, we sought comment on whether to collect information on data caps for ACP-supported services, including the

¹⁶⁶ FCC, *Explanation of Broadband Deployment Data*, <https://www.fcc.gov/general/explanation-broadband-deploiment-data> (last visited Oct. 21, 2022) (describing Form 477 data fields); see, e.g., Optimum, *Optimum Fiber Network with up to 1 Gig Internet and Smart Wifi*, <https://Optimum.com/internet/fiber> (last visited Oct. 25, 2022) (describing fiber internet with speeds “up to” 940 Mbps); T-Mobile, *What is 5G? 4G LTE vs 5G, Speed & More*, <https://www.t-mobile.com/5g> (last visited Oct. 25, 2022) (describing 5G network having “superior speeds up to 20 Gbps”).

¹⁶⁷ Infrastructure Act, div. F, tit. V, § 60502(c)(1) (emphasis added); *supra* para. 38.

¹⁶⁸ Actual speed will be an optional data field for legacy and grandfathered plans.

¹⁶⁹ FCC, *Broadband Data Collection: Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data*, <https://us-fcc.app.box.com/v/bdc-availability-spec>, 24-25, 49-50 (last visited Oct. 25, 2022) (describing BDC data fields).

¹⁷⁰ *Broadband Labels Order* at 13-15, paras. 37-38.

¹⁷¹ Providers can also submit actual speed information based on internal testing, consumer speed test data, or other data regarding network performance, including reliable, relevant data from third party sources. *Id.* at 15, paras. 39-40; see also *2017 Restoring Internet Freedom Order*, 33 FCC Rcd at 441 n.818 (citing *2011 Advisory Guidance*, 26 FCC Rcd at 9414-15).

¹⁷² Providers that don’t have reasonable access to network performance data are also permitted to disclose a Typical Speed range (TSR). *Broadband Labels Order* at 13-16, paras. 37, 40-42.

¹⁷³ *Id.* at 15, paras. 39-40.

¹⁷⁴ ACA Connects Comments at 9 (arguing that latency and packet loss are not relevant to consumers, and are not part of provider advertising efforts); NTCA Comments at 6 (arguing that packet-loss is a “feature and not a bug” and should not be collected); USTelecom Reply at 3 (arguing that the Commission should not collect plan latency because it would require the collection of additional information from subscribers).

amount of the data cap and the number of ACP households that reached the cap.¹⁷⁵ We agree with commenters that information concerning data caps is critical to allowing consumers and the Commission to determine the value provided by a service plan.¹⁷⁶ For example, ACA Connects, in supporting the collection of data cap information, characterizes data caps as among the “key characteristics” that subscribers rely upon when choosing between service plans.¹⁷⁷ The City of Seattle also characterized data caps as among “the most important data to collect on service plan characteristics.”¹⁷⁸ WISPA argued that the Commission should not collect data cap information, given the burden such a collection would impose on small providers.¹⁷⁹ Like service plan speed, data caps inherently limit the use of a subscriber’s broadband connection. A low monthly data cap can prevent subscribers from using applications requiring high bandwidth, including, for example, video streaming and remote education applications.¹⁸⁰ We disagree with WISPA that the collection of data cap information will be overly burdensome to small providers. Providers will already be required to display data cap information under the *Broadband Labels Order* and frequently provide prospective customers with such information at the point of sale and on their public facing websites.¹⁸¹ Accordingly, we adopt the proposal to collect information on service plan data caps.

46. There were no objections in the record to our proposals to collect information on the number of subscribers who have reached their monthly data cap and the average amounts by which subscribers have exceeded their cap, and we adopt those proposals herein. These are necessary pieces of information that will allow the Commission to contextualize the price information obtained through this collection and are also consistent with the requirement in the Infrastructure Act to collect “data relating to price and subscription rate information.”¹⁸²

47. In addition, we find that collecting information on the charges to subscribers to obtain additional data once the cap has been exceeded is necessary to obtain an accurate view of the month-to-month cost ACP subscribers are paying. Accordingly, this additional information about the average overage amount for subscribers on an annual basis will allow the Commission to determine value that subscribers are obtaining from the affordable connectivity benefit, and whether the federal subsidy is covering data cap overage fees or is otherwise helping reduce the digital divide. We therefore require

¹⁷⁵ *ACP Data Collection Notice* at 5, para. 9. In the *ACP Data Collection Notice*, we defined data caps to mean data usage restrictions on both pre-paid and post-paid plans. *Id.* at n.23.

¹⁷⁶ ACA Connects Comments at 6; City of Seattle Comments at 2. *See also* Altice Comments at 3 (supporting collection of data caps at aggregate level); City of New York Comments at 2-3 (supporting collection of data caps); Common Sense Comments at 5 (suggesting that the Commission collect information on data caps, including the cost of additional data); USTelecom Comments at 3 (supporting submission of “existence of data cap” as a field in an aggregate collection).

¹⁷⁷ ACA Connects Comments at 6.

¹⁷⁸ City of Seattle Comments at 2.

¹⁷⁹ WISPA Comments at 4 (“The Commission should not require participating providers to assemble and submit data cap . . . information for ACP purposes as such burdens would discourage small providers from continuing to participate in the program.”)

¹⁸⁰ For example, video conferencing applications use between 500mb and 3.2Gb an hour of broadband data. *See* Cable Labs, *Hourly Data Consumption of Popular Video Conferencing Applications*, <https://www.cablelabs.com/blog/hourly-data-consumption-of-popular-video-conferencing-applications> (last visited Oct. 21, 2022).

¹⁸¹ *See Broadband Labels Order* at 12-13, para. 35; *see, e.g.*, GCI, *Unlimited prepaid plans*, <https://www.gci.com/mobile/plans/fastphone-prepaid-mobile-plans#unlimitedplans> (last visited Oct. 25, 2022); Cox, *Learn about Internet Data Usage*, <https://www.cox.com/residential/internet/learn/data-usage.html> (last visited Oct. 25, 2022).

¹⁸² Infrastructure Act, div. F, tit. V, § 60502(c)(1) (emphasis added); *supra* para. 38.

providers to submit for each plan with at least one subscriber, aggregated at the ZIP code level: the data cap (including de-prioritization and throttling), the number of subscribers who have exceeded the data cap in the previous month, the average amount by which subscribers have exceeded their cap in the previous month as part of the annual aggregate collection of plan characteristic information, and any charges for additional data usages along with the relevant increment (e.g., 1 GB, 500 MB). Providers will be required to report the number of subscribers exceeding the data cap, the average amount by which subscribers exceeded the cap, and the average overage amount paid for the month prior to the snapshot date.

48. In the *ACP Data Collection Notice*, we proposed to define data cap to include data usage restrictions on both pre-paid and post-paid plans, and we adopt this proposal.¹⁸³ In so doing, we reject NaLA’s argument that we instead should define a data cap as the “ultimate level of data usage above which the subscriber has no data service.”¹⁸⁴ Both throttling (soft caps) and the termination of service if a household exceeds the data allowance impact the ability of consumers to use the service as intended.¹⁸⁵ Furthermore, providers in their advertising materials characterize throttling-based data caps as “data allowances” or “data usage plans.”¹⁸⁶ To evaluate the value of the affordable connectivity benefit for households, it is important to consider the view of subscribers, and there is support for our finding that consumers view data termination, and throttling and de-prioritization, effectively as a cap on their usage, which impacts their use and enjoyment of the service.¹⁸⁷ Accordingly, as part of the ACP Transparency Data Collection we will collect from providers information on both data caps and data usage restrictions, such as de-prioritization and throttling, consistent with the definition provided in the *ACP Data Collection Notice*.

49. At the same time, we decline to require providers to submit connection reliability data. In the *ACP Data Collection Notice*, we asked whether we should collect additional plan characteristics beyond those related to speed, bundles, and data caps.¹⁸⁸ Some commenters propose that we require providers to submit information on connection reliability to “help ensure that public money obtains the intended services.”¹⁸⁹ We recognize that determining and reporting these data for purposes of the ACP Transparency Data Collection could be unduly burdensome and could require providers to undergo a highly technical determination to be able to produce these data.¹⁹⁰ Although we find that the reliability of a broadband service is a key characteristic in determining the value of the ACP-supported service and this metric would help us evaluate whether low-income consumers are receiving the reliable service they

¹⁸³ *ACP Data Collection Notice* at 5, para. 9, n.23.

¹⁸⁴ NaLA Comments at 8.

¹⁸⁵ See Century Link, *What are Data Caps?*, (Oct. 22, 2021), <https://discover.centurylink.com/what-are-data-caps.html>; Nafeesah Allen, Samantha Allen, *Which Internet Services Have Data Caps?*, <https://www.forbes.com/home-improvement/internet/internet-providers-with-data-caps/> (last visited Oct. 25, 2022).

¹⁸⁶ See, e.g., Verizon, *Prepaid Plans*, <https://www.verizon.com/plans/prepaid/> (last visited Oct. 25, 2022) (“[O]nce high-speed data is used . . . you will have 2G speeds the remainder of the month.”); Comcast, *Questions & Answers About Our Data Usage Plan*, <https://www.xfinity.com/support/articles/data-usage-plan> (last visited Oct. 25, 2022) (describing de-prioritization based cap).

¹⁸⁷ See GAO, *Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*, at 17-19 (2014), <https://www.gao.gov/assets/gao-15-108.pdf> (noting that focus group participants have “learned to adjust to mobile data allowances and throttling”).

¹⁸⁸ *ACP Data Collection Notice* at 5, para. 9.

¹⁸⁹ Common Sense Comments at 7 (the Commission should collect “performance data on the actual quality of internet service including the service’s average speed and reliability”).

¹⁹⁰ See ACA Connects Reply at 8; USTelecom Reply at 3 (arguing against the collection of connection reliability information on the grounds that it would be burdensome and would “exceed the scope” of the Infrastructure Act). *But see* City of New York Comments at 3 (reliability should be included in a data collection).

deserve through the Affordable Connectivity Program, requiring providers to collect and report reliability data through this collection would be an overly burdensome undertaking, particularly for small providers, and would be difficult to implement at the aggregate level.¹⁹¹

50. *Bundle Characteristics.* In the *ACP Data Collection Notice*, we sought comment on whether to collect information on the characteristics of bundled service offerings (e.g., “triple-play” bundles, unlimited voice/text/data plans), including information about the channels offered on bundled video services.¹⁹² A number of commenters supported the collection of bundle characteristics.¹⁹³ Others opposed the collection of bundle characteristics, arguing that we lacked the authority to collect bundle characteristics or that such a collection would be burdensome and without value to the Commission.¹⁹⁴ As mentioned above, we interpret the Infrastructure Act to permit us to collect plan characteristic information, including bundle characteristics.¹⁹⁵ The fact that the Infrastructure Act refers to a “broadband transparency” collection is not determinative in our view, as the Infrastructure Act also directs us to collect “data relating to price and subscription rate information.”¹⁹⁶ We acknowledge comments describing the burdens on providers, but we find that identifying whether a service is bundled, and the type of services that are bundled together, is essential for providing context for the service plan information we receive through the ACP Transparency Data Collection. Understanding that households are applying their affordable connectivity benefit to a plan that includes bundled voice and/or video service tells us about the services offered by a provider and how ACP households are taking advantage of the benefit. The affordable connectivity benefit can be applied to the voice and text portions of a bundled service plan, and such information is therefore essential to determining the value the affordable connectivity benefit provides enrolled households.¹⁹⁷ Therefore, we require providers to identify whether a service is bundled and the type of the bundle (e.g., voice, video), and to submit voice or text characteristic information for bundled service offerings, including those services included with mobile broadband.¹⁹⁸ Specifically, we require providers to submit as part of the annual collection of plan characteristic information the total number of voice minutes and the total number of text messages allotted on a monthly basis, or whether a voice or text offering includes unlimited minutes or text messages.¹⁹⁹

¹⁹¹ See JSI Comments at 3-4 (describing difficulty of small providers of collecting new information fields).

¹⁹² *ACP Data Collection Notice* at 5, para. 9.

¹⁹³ NCTA Comments at 8 (“[T]he Commission should require ACP participating providers to file on an annual basis the details of each internet service offering including . . . an indication of whether the offering is a bundle or standalone broadband offering.”); City of Seattle Comments at 4 (supporting collection of bundle characteristics).

¹⁹⁴ NCTA Comments at 7 (arguing that the IIJA does not authorize the Commission to collect bundle characteristics, and that alternatively as the ACP doesn’t apply to video, there is no reason for the Commission to collect information on the video component of a broadband bundle); WISPA Comments at 4 (arguing that the Commission should not collect information on bundles because of the burden that it would impose on small providers).

¹⁹⁵ See *supra* para. 38.

¹⁹⁶ See *supra* para. 38; Infrastructure Act, div. F, tit. V, § 60502(c) (emphasis added).

¹⁹⁷ *ACP Order* at 54, paras. 106-07 (describing application of ACP benefit to non-video bundle components).

¹⁹⁸ For the purposes of this collection, we define “bundle” to include non-broadband internet access service offerings, including video, voice, and text. We clarify that apart from voice and text, we are only requiring the submission of whether a service is included as part of a bundle with broadband internet access service.

¹⁹⁹ We acknowledge NCTA’s comment about requiring the collection of video characteristics, and do not require providers to submit information regarding the specific characteristics of video bundles (e.g., channels offered) as those services cannot be directly supported by the affordable connectivity benefit. See *ACP Order* at 54, para. 107 (clarifying that while the ACP benefit “cannot go toward the whole value of a bundle that includes video, the data, voice, and/or text messaging portions of the bundle are reimbursable, but the video portion of any bundle must be apportioned out before determining the amount that is reimbursable for broadband purposes by the Affordable

(continued....)

51. *Legacy Service Plans.* In the *ACP Data Collection Notice* we proposed collecting information, including price and plan characteristic information, from all ACP participating providers, which would include legacy service plans.²⁰⁰ Altice argues that “grandfathered plans and other plans that are no longer offered, should not be considered ‘internet service offerings’ for purposes of this data collection because they are not offered to ‘prospective ACP subscribers.’”²⁰¹ We disagree with this argument, as the Infrastructure Act is clear that we must collect information related to the price and subscription rates of “each internet service offering of a participating provider . . . to which an eligible household subscribes,” and this language clearly does not exclude grandfathered or legacy plans.²⁰² We acknowledge however, that there are special circumstances surrounding legacy offerings that merit differential treatment, including lower numbers of subscribers, the fact that they are no longer currently marketed, and the burdens associated with collecting certain information. Therefore, we will not require providers to submit information concerning typical speed or latency.²⁰³ We will also not require providers to submit information on the introductory monthly charge, the length of the introductory period, if the monthly charge requires a contract, the number of months of a contract (if applicable), and the one-time fees required at purchase.

52. We will, however, require providers to create and submit unique plan identifiers for legacy service plans in a same or similar format as those used in the broadband labels. Lumen and USTelecom argue that we should not use the ACP Transparency Data collection to impose a requirement to produce broadband labels on grandfathered or legacy plans.²⁰⁴ We clarify that while providers will need to submit many of the plan and pricing characteristics contained in the labels, they will not be required to create or display a broadband label that the *Broadband Labels Order* would not otherwise require.

2. Affordable Connectivity Program Performance Metrics

53. In the *ACP Data Collection Notice* we proposed 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* and sought comment on the performance metrics we should collect to measure the performance of the Affordable Connectivity Program.²⁰⁵ The goals we established for the Affordable Connectivity Program 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.²⁰⁶ For each of these goals, we established performance metrics and methods to measure progress.²⁰⁷

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Connectivity Program”); *see also* NCTA Comments at 7 (arguing that the Commission cannot collect bundle characteristics because the collection is “limited to broadband transparency, and should not be extended to voice or video service components”).

²⁰⁰ *ACP Data Collection Notice* at 4, 7, paras. 8, 18.

²⁰¹ Altice Comments at 7.

²⁰² Infrastructure Act, div. F, tit. V, § 60502(c).

²⁰³ *See supra* para. 42-44, note 174 (describing optional speed and latency fields for legacy plans).

²⁰⁴ Lumen Reply at 4-5 (requesting that legacy plan data reporting be “done without reference to a broadband label”); USTelecom Comments at 7-8 (arguing that labels for legacy plans are “not only unnecessary but would likely create confusion for customers”).

²⁰⁵ *ACP Data Collection Notice* at 6, para. 12 (citing *ACP Order* at 97, para. 211).

²⁰⁶ *ACP Order* at 97, paras. 210-13.

²⁰⁷ *See id.*

54. The information collected through the ACP Transparency Data Collection will help us to evaluate the efficacy of the Affordable Connectivity Program, and to determine the value that ACP enrolled households are obtaining from their benefit. Data on the price and characteristics of plans with ACP enrolled households will help the Commission understand the value that ACP enrolled households are obtaining from the federal subsidy, including which plan characteristics are covered by the benefit, and whether the plans being subsidized are of adequate quality to engage in telework, telehealth, or remote education.²⁰⁸

55. *Digital Divide Metrics.* In the *ACP Data Collection Notice*, we asked whether we should, through the ACP Transparency Data Collection, collect information about whether a subscriber is a first-time subscriber to the provider or a first-time subscriber for fixed or mobile broadband, or whether a household was subscribing to multiple broadband services.²⁰⁹ In the *ACP Order*, we found that understanding broadband adoption by first-time subscribers would help us measure our progress toward our first goal of narrowing the digital divide for low-income consumers.²¹⁰ Commenters opposed the collection of these metrics as part of the ACP Transparency Data Collection, arguing that providers do not collect this information as a matter of course, and that it would be a substantial burden to submit this information.²¹¹ We still recognize the utility of such information in permitting non-profit organizations, local and state governments, and the Commission to more effectively target ACP outreach efforts to underserved households and to fulfill the requirements to collect data necessary for determining the program's progress toward the goal of narrowing the digital divide. But we also find that the ACP Transparency Data Collection might not be the best vehicle for collecting information about first-time users as it could require providers to survey or otherwise assess and report on broadband services the household is receiving beyond those supported by the affordable connectivity benefit. Therefore, although we decline to require the production of such information as part of the ACP Transparency Data Collection at this time, we seek further comment on how we could collect digital divide data in the Further Notice. We also, as discussed above, require providers to submit performance- and equity-related data on the number of ACP subscribers enrolled in Lifeline and ACP subscribers who receive the ACP Tribal or high-cost enhanced benefits. We also reiterate our direction to Commission staff to consider other ways to collect information to determine progress toward the goal of narrowing the digital divide, such as broadband adoption rates for first-time subscribers, and increases in enrollments in areas with low broadband penetration rates.²¹² More specifically, we direct the Bureau, with support from OEA, the Consumer and Governmental Affairs Bureau (CGB), and USAC, to explore possible approaches proposed by commenters, such as statistical sampling, or industry or consumer surveys, to collect information about the extent to which ACP subscribers are first-time broadband subscribers, first-time fixed broadband subscribers or are subscribing to multiple broadband services.²¹³

56. *Additional Performance Metrics.* In the *ACP Data Collection Notice*, we asked what other data we should collect to measure effectiveness in increasing awareness and participation or the

²⁰⁸ See *id.* at 51, paras. 101-02 (describing quality requirements for ACP service plans); see also NTCA *Ex Parte* at 2 (arguing that ACP Transparency Data Collection will allow the Commission to determine whether \$30 subsidy is effective at increasing broadband affordability, and provide insight into “enrollment preferences” of subscribers).

²⁰⁹ *ACP Data Collection Notice* at 6, para. 12.

²¹⁰ *ACP Order* at 98, para. 211.

²¹¹ NaLA Comments at 8 (suggesting that collecting digital divide metrics would be either “impossible or extremely burdensome for ACP providers to collect”); NCTA Comments at 14 (arguing that the Commission should not collect digital divide metrics in this collection).

²¹² *ACP Order* at 98, para. 211.

²¹³ See JSI Comments at 6 (suggesting that the Commission use an urban survey to collect additional data beyond price of subscription rates and use “statistical analysis to extrapolate the data.”); NaLA Comments at 12 (suggesting that the Commission “work with industry stakeholders to conduct surveys of ACP subscribers.”).

administrative efficacy of the Affordable Connectivity Program.²¹⁴ Public Knowledge and Common Sense jointly suggest that we collect information on the ACP enrollment process, connected device offerings, and availability of low-income plans.²¹⁵ The City of New York and the Connecticut State Broadband Office propose that the Commission collect information on the availability and performance of service plans.²¹⁶ Providers object to proposals to collect information on providers' enrollment processes, connected device offerings, or plan availability and performance.²¹⁷ With consideration of the weight of the record, and the administrative and technical difficulties associated with the collection of information related to awareness of and participation in the Affordable Connectivity Program and the efficient and effective administration of the program, we decline at this time to require providers to submit information on the enrollment process, connected device offerings, plan availability or performance. However, we recognize the value of information concerning the ACP enrollment process, and seek further comment on collecting data on the enrollment process, connected device offerings, and the availability of low-income plans, and any burdens on providers or subscribers associated with collecting such information.²¹⁸ We also direct the Bureau, with support from OEA and USAC, to explore collecting information regarding ACP enrollment through surveys of ACP participating providers, subscribers, and other stakeholders. Additionally, USAC has recently addressed some of these requests through updates to the Companies Near Me tool.²¹⁹ The updated tool now shows which providers offer devices and which providers have indicated to USAC they offer plans fully covered by the standard affordable connectivity benefit.²²⁰ Moreover, as described above, we are collecting information on the number of ACP subscribers who pay \$0 after application of the discounts and the ACP benefit.

C. Subscriber Privacy

57. In the *ACP Data Collection Notice*, we requested that commenters identify any privacy concerns associated with subscriber- and aggregate-level collections of price, subscription rate, and plan characteristic information.²²¹ Commenters focus on the privacy implications of a subscriber-level

²¹⁴ *ACP Data Collection Notice* at 6, para. 12.

²¹⁵ Common Sense Comments at 11-13 (arguing that the Commission collect information on providers' device offering, the ACP enrollment process, and subscriptions to restricted low-income plans).

²¹⁶ CT OSB Comments at 3 (suggesting that the Commission collect information on plan "performance"); City of New York Comments at 3 (suggesting that the Commission collect information including the "reliability, coverage, network capacity, and latency" of service plans).

²¹⁷ See, e.g., NCTA Comments at 5 (arguing against collection of plan coverage); CTIA Reply at 2 (opposing collection of plan performance information). NCTA Reply at 2 (arguing that collection of enrollment process and plan performance information is contrary to the statute and highly burdensome).

²¹⁸ See *infra* Section IV.

²¹⁹ USAC, *ACP Companies Near Me Tool*, <https://www.affordableconnectivity.gov/companies-near-me/> (last visited Oct. 25, 2022); see also USAC, *ACP – September 2022 Newsletter*, <https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-September-Newsletter.pdf> (last visited Oct. 25, 2022) (describing updates to companies near me tool).

²²⁰ Public Knowledge and Common Sense suggest that as part of the ACP Transparency Data Collection providers disclose whether a subscriber was enrolled in a restricted low-income plan along with the Affordable Connectivity Program. Common Sense Comments at 13. We find that the data collection requirements we adopt today will collect sufficient information on plan characteristics and pricing of ACP-supported plans, including those that may be offered only to ACP-eligible households and other low-income households, to allow the Commission to determine the value the affordable connectivity benefit provides low-income households. Therefore, we decline the request.

²²¹ *ACP Data Collection Notice* at 10-12, paras. 25, 29.

collection,²²² with several commenters arguing that collecting aggregated data avoids privacy concerns that arise from collecting and processing information about individual subscribers.²²³ We find that the collection structure we adopt in this Order, under which providers will submit aggregated data,²²⁴ reduces subscriber privacy concerns as compared to other collection options.²²⁵ Similarly, because we are not collecting as part of the ACP Transparency Data Collection subscriber personally identifiable information (PII) or records or other information pertaining to a subscriber, this collection does not implicate privacy statutes such as the Privacy Act of 1974,²²⁶ ECPA, section 222 of the Communications Act of 1934, as amended, or the Cable Act.²²⁷

58. Additionally, privacy concerns associated with a subscriber-level collection could potentially be mitigated by adhering to existing safeguards or crafting new ones. For instance, the Commission and USAC currently protect IT systems and resources, including databases containing PII, with robust technical and physical measures, following the standards and guidelines of the National Institute of Standards and Technology (NIST) framework.²²⁸ We also protect PII disclosed to third parties through our use of Memorandums of Understanding and Information Sharing Agreements.²²⁹ Additionally, privacy concerns related to a subscriber-level data collection could be addressed by limiting the amount of subscriber-level data collected to a few relevant variables; modifying the applicable Systems of Records Notice (SORN),²³⁰ Privacy Act Statement,²³¹ and NLAD Access Agreement;²³² and

²²² For example, NCTA and WISPA contend that a subscriber-level collection runs contrary to data-minimization principles expressed in the Privacy Act of 1974, 5 U.S.C. § 552a. NCTA Comments at 10-11; WISPA Reply at 4. Public Knowledge and Common Sense and the Connecticut State Office of Broadband suggest that we develop privacy notices and PII safeguards. Common Sense Comments at 9-10; CT OSB Comments at 7-8. NCTA asserts that collecting subscriber information implicates cybersecurity concerns. NCTA Comments at 12; *see also* CT OSB at 8. And many commenters argue that subscriber consent is necessary to collect subscriber data not already collected under ACP rules. *See, e.g.*, Altice Comments at 6; NaLA Comments at 10-11; NCTA Comments at 8-10; City of New York Comments at 4 n.15; NCTA Reply at 5; USTelecom Comments at 5; CCA Reply at 3; INCOMPAS Reply at 4; Lumen Reply at 3.

²²³ ACA Connects Comments at 9 (recommending an aggregate collection of state-level data because, among other things, “the data submitted to the Commission would be aggregated and not linkable to any individual subscriber” and would “eliminate[] any concerns regarding customer privacy”); *id.* at 12, 13, 15; CTIA Comments at 6 (most effective way to protect against disclosing personally identifiable information is to avoid collecting subscriber-level data); NCTA Comments at 7-8, 10; USTelecom Comments at 2; ACA Connects Reply at 4; CTIA Reply at 13; INCOMPAS Reply at 2; NCTA Reply at 8; Starry Reply at 4; WISPA Reply at 4; *see also* Altice Comments at 7 (“Of course, obtaining additional subscriber consents would not be necessary if the Commission collects the data on an aggregate basis.”); NaLA Comments at 11 (urging that Commission rely on an “aggregate report” for initial collection because ACP subscribers have not consented to providers sharing their price and plan data).

²²⁴ *See supra* Section III.B.1

²²⁵ The rules governing data publication in this Order also protect subscriber privacy. *See infra* Section III.E.

²²⁶ 5 U.S.C. § 552a (restricting disclosure of personally identifiable records maintained by agencies).

²²⁷ *See supra* paras. 12-13, notes 36-41.

²²⁸ *See generally* NIST, *NIST Risk Management Framework*, <https://csrc.nist.gov/projects/risk-management/fisma-background> (last visited Oct. 25, 2022).

²²⁹ We frequently use Memorandums of Understanding and Information Sharing Agreements with third parties to ensure that recipients of PII do not further disclose such information. *See, e.g.*, FCC, *Form 477 State Regulatory Commission Sample Information Sharing Agreement*, <https://www.fcc.gov/file/18176/download>; FCC, *FCC-HHS Rural Healthcare Memorandum of Understanding*, <https://www.hhs.gov/sites/default/files/rural-telehealth-mou-hhs-usda-fcc.pdf>.

²³⁰ *See* Federal Communications Commission, Privacy Act of 1974; System of Records, 86 FR 11523 (2021) (FCC, WCB-3), available at <https://www.fcc.gov/sites/default/files/sor-fcc-wcb-3.pdf> (last visited Oct. 25, 2022). We have also developed privacy notices in other circumstances that disclose data-sharing practices. For example, the

(continued....)

requiring subscribers' consent to the collection of additional subscriber-level data as part of the ACP Transparency Data Collection.²³³ We seek additional comment on subscriber consent in the Further Notice below.²³⁴

D. Timing of Collection

1. Inaugural Collection

59. Although the Infrastructure Act requires us to issue final data collection rules by November 15, 2022, it does not specify when the inaugural or subsequent data collections should occur, leaving the matter largely one of agency discretion.²³⁵ For the inaugural collection, there must be adequate time for the agency to receive appropriate administrative review and build the collection system and for providers to review the collection requirements and rules, adapt their processes and systems to compile accurate data, and then to submit the data. We therefore delegate to staff responsibility to set an annual date by which all ACP providers must submit required data as well as establish a reference or “snapshot” date for the data submitted by the providers.

60. *Data Submission Date.* The record regarding the inaugural collection reflects a concern that providers, especially smaller providers, have adequate time to comply.²³⁶ ACA Connects suggests that an aggregate, annual collection could commence soon after the Commission receives OMB approval but also argues that collecting the data could “easily consume” six months and that OMB approval could take six months or longer.²³⁷ It further asserts that the Commission should take “special care to ensure

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Commission discloses its data-sharing policy in the FCC Speed Test App terms of service. See FCC, FCC Speed Test App Privacy Notice and Terms of Use, <https://www.fcc.gov/general/mobile-broadband-performance-application-privacy-notice-and-terms-use> (last visited Oct. 25, 2022).

²³¹ For the Affordable Connectivity Program, a Privacy Act Statement is available at the point of online application through the National Verifier and is included on the paper application (FCC Form 5645). Federal Communications Commission, *National Verifier, Your Information, Privacy Act Statement*, OMB Control No. 3060-0819, https://nv.fcc.gov/lifeline/?id=nv_flow&ebbp=true (last visited Oct. 25, 2022); FCC, USAC, *Affordable Connectivity Program Application Form*, FCC Form 5645, at 8, <https://www.affordableconnectivity.gov/wp-content/uploads/ACP-Application-Form-English.pdf> (last visited Oct. 25, 2022).

²³² The NLAD Access Agreement requires each carrier to agree that, by submitting customer data into NLAD, it has “all necessary, rights, permissions, licenses, and/or consents to do so.” USAC, *NLAD Access Agreement* § 1.3, <https://www.usac.org/wp-content/uploads/lifeline/documents/nlad/NLAD-Access-Agreement.pdf> (last modified Jan. 11, 2018).

²³³ The ECPA, section 222 of the Communications Act of 1934, as amended, and the Cable Act allow providers to disclose subscriber-level information if the subscriber consents. *Supra* para. 12, note 40.

²³⁴ See *infra* Section IV.

²³⁵ See ACA Connects Comments at 19-20 (noting that the Infrastructure Act “is silent on the timeframe in which ACP providers must begin submitting data to the Commission” and asserting that “[t]he fact that Congress specified timeframes for certain phases of activity required under the rules but not others would suggest that the latter timeframes are left to the Commission’s discretion as the expert agency charged with carrying out the statute”); see also NCTA Reply at 8-9 (“Indeed, the statute is silent on the timing of the first data collection altogether.”).

²³⁶ ACA Connects Comments at 4, 19, 21-22; NaLA Comments at 9 (stating that the Commission should allow providers adequate time to prepare report after end of reporting period); NCTA Comments at 19 (asserting that Commission should “provide a sufficient amount of time after the final rules have been adopted and approved for providers to implement any necessary changes to their systems needed to collect and prepare the data for the first submission”); NCTA Reply at 8 (urging that first data collection “take place a reasonable amount of time after the Commission finalizes its rules, similar to what the FCC proposed in the Broadband Labels NPRM, for the broadband labels and the ACP data collection so that providers have sufficient time to comply with these new requirements and compile all the necessary data”).

²³⁷ ACA Connects Comments at 21-22.

that smaller providers with more limited resources have ample time to implement the collection.²³⁸ We share the view that providers need adequate time to implement the collection, both to prevent undue provider burden and to ensure that the Commission receives quality data. We therefore delegate to the Bureau the authority to establish a reasonable data submission date for the inaugural collection, which will be no earlier than ninety (90) days after the Commission announces that OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act.²³⁹ We direct the Bureau to take into account other ACP deadlines or significant dates when setting the data submission date so as to minimize burdens on providers.²⁴⁰

61. The inaugural data submission date will likely occur before providers will be required to display broadband labels,²⁴¹ and providers will be required to submit ACP Transparency Data Collection data to the Commission separately from the labels, despite the overlap between the information to be collected under this Order and that to be displayed on the labels.²⁴² We find that it is appropriate to collect data before the initial publication of, and separately from the broadband labels because the Infrastructure Act includes language suggesting that Congress intended a rapid collection of data.²⁴³ Further, given the potential value of ACP Transparency Data Collection data to evaluating the utility of the Affordable Connectivity Program and progress toward reducing the digital divide, this data should be collected as soon as is feasible. Initiating the collection before the initial implementation of the broadband labels requirement may also allow us to publish information that could be useful for participants in newly established ACP outreach efforts such as the Outreach Grant Program²⁴⁴ or Your Home, Your Internet pilot program.²⁴⁵

62. *Rule Revisions.* A relatively rapid data collection is suggested by section 60502(c)(2) of the Infrastructure Act, which states that “[n]ot later than 180 days after the date on which rules are issued . . . the Commission shall revise the rules to verify the accuracy of the data submitted pursuant to the rules.”²⁴⁶ The *ACP Data Collection Notice* sought comment on how to interpret this provision,²⁴⁷ and the only commenters to address the issue contend that section 60502(c)(2) does not require the Commission

²³⁸ *Id.* at 19.

²³⁹ See ACA Connects Comments at 22 (“Should the Commission adopt an aggregate, annual collection that is limited in scope as proposed in these comments, the data collection could commence relatively soon, perhaps three months, after the Commission receives OMB approval for the rules.”). *But see* Associations Nov. 8 *Ex Parte* (asserting that inaugural collection should occur no sooner than 180 days after OMB approval). We believe that giving providers a minimum of ninety days to submit information after OMB approval is sufficient given the aggregate nature of the collection.

²⁴⁰ See NaLA Comments at 9 (“In addition, the annual report should not be due on first or last day of a month to avoid placing additional burdens on ACP providers as they prepare their ACP reimbursement claims.”).

²⁴¹ The *Broadband Labels Order* gives most providers six months following the announcement in Federal Register that OMB has completed its review of the broadband label rules to comply with those rules. *Broadband Labels Order* at 40-41, para. 117. But the Order gives small providers one year to comply, and the machine readability requirement will not go into effect for one year. *Id.* at 27, 41, paras. 77, 118.

²⁴² See *supra* Section III.B (explaining that we will collect, among other things, pricing and plan information to be included on broadband labels).

²⁴³ Infrastructure Act, div. F., tit. V, § 60502(c)(2).

²⁴⁴ *Affordable Connectivity Program*, Second Report and Order, FCC 22-64, 2022 WL 3339459 (Aug. 8, 2022).

²⁴⁵ *Affordable Connectivity Program*, Third Report and Order, FCC 22-65, 2022 WL 3339462 (Aug. 8, 2022).

²⁴⁶ Infrastructure Act, div. F., tit. V, § 60502(c)(2). The latest day we could issue final rules consistent with the statute is November 15, 2022, and May 15, 2023 is 180 days later.

²⁴⁷ *ACP Data Collection Notice* at 18, 19, paras. 45-46.

to begin the data collection within 180 days of the issuance of final data collection rules.²⁴⁸ ACA Connects maintains that the Infrastructure Act does not indirectly specify a timeframe for the commencement of the inaugural collection by requiring the Commission to revise its rules within 180 days.²⁴⁹ According to ACA Connects, the requirement that the Commission “revise its rules to verify the accuracy of the data submitted pursuant to the rules” does not mean that the Commission must collect data prior to revising the rules: “[i]nstead, the Commission can adopt measures that will improve its ability to ‘verify’ the accuracy of data that is submitted in the future.”²⁵⁰ ACA Connects also asserts that to read the Infrastructure Act otherwise would result in a futile exercise because it is “simply unrealistic to believe the Commission could not only complete a data collection, but also complete a rulemaking to ‘verify the accuracy’ of the data collected” in 180 days.²⁵¹

63. We believe there may be merit in ACA Connects’ interpretation of section 60502(c)(2), under which the statute would not require us to collect data through the ACP Transparency Data Collection before revising our rules within the 180-day timeframe. We thus seek comment in the Further Notice below on how the Commission can improve the rules set forth in this Order, including how to verify the accuracy of provider data.²⁵² We also delegate authority to the Bureau to issue a supplemental notice, if necessary, to enhance the record and to propose revised data collection rules in accordance with the 180-day timeframe.

64. *Data Reported as of Snapshot Date.* In addition to directing the Bureau to establish an annual data submission date, we delegate to the Bureau the authority to establish a reasonable annual snapshot date or reference date for the submission of certain data. The *ACP Data Collection Notice* sought comment on the “filing window” for the collection and asked whether we should “require providers to submit data for subscribers enrolled as of a particular date.”²⁵³ Commenters generally

²⁴⁸ ACA Connects Comments at 19-21; NCTA Reply at 8-9 (citing ACA Connects comments); NTCA *Ex Parte* at 3 (urging Commission to “reject a reading of that provision that would require an initial data collection followed by the completion of a rulemaking in response to that data collection within 180 days”).

²⁴⁹ ACA Connects Comments at 20.

²⁵⁰ *Id.*; *id.* at 20-21 (“There is no reason such rule revisions could not precede the collection of any data; indeed, it is entirely reasonable to establish mechanisms for verifying data accuracy before a data collection is initiated.”). As an example, ACA Connects notes that we proposed “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.” *Id.* at 20, 20 n.44 (citing *ACP Data Collection Notice* at 18, para. 44). ACA Connects suggests that rather than adopting that requirement in the final rules due in November 2022, the Commission could adopt the certification requirement in subsequent revisions to the rules, thereby satisfying the statutory requirement to revise the rules within 180 days for data accuracy verification purposes. *Id.* (“The Commission could defer adoption of the certification requirement until after it adopts the initial rules, in which case the certification requirement would be a ‘revi[sion]’ of the initial rules.”); *see also* NCTA Reply at 9 (“As ACA has proposed, the Commission can satisfy the requirement in Section 60502(c)(2) by adopting new certification requirements to verify the accuracy of the data.”). ACA Connects argues that this approach is similar to one we took with the Digital Opportunity Data Collection. ACA Connects Comments at 20 n.44. There, the Commission adopted a data collection in August 2019, and, prior to implementing the collection, revised the rules in January 2021 to require providers to provide certifications of the accuracy of submissions from qualified engineers. *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, Third Report and Order, 36 FCC Rcd. 1126, 1127-30, 1144-45, paras. 1-7, 43 (2021). There is no indication, however, that the Commission adopted the engineer certification requirement of the Digital Opportunity Data Collection to satisfy a statutory provision.

²⁵¹ ACA Connects Comments at 21; *id.* at 19.

²⁵² *See infra* Section IV.

²⁵³ *ACP Data Collection Notice* at 19, para. 45.

support submitting data based on, or current as of, a snapshot date.²⁵⁴ We agree that submitting data as of a snapshot date is appropriate, and we require providers to do so. We direct the Bureau to establish a snapshot date that is no less than sixty (60) days prior to the data submission date. In other words, there must be at least sixty days between the snapshot date and the data submission date.²⁵⁵

2. Subsequent Collections

65. As for collections subsequent to the inaugural collection, there was little comment other than support for an annual collection based on a snapshot date. We direct the Bureau to issue a Public Notice each year reminding providers of the snapshot date and data submission date. The snapshot date and data submission date should account for other ACP deadlines or significant dates to minimize burdens on the Commission, USAC, and providers.²⁵⁶

3. ACP Wind-Down Considerations

66. In the *ACP Order*, we delegated authority to the staff to establish procedures for the wind-down of the Affordable Connectivity Program.²⁵⁷ In addition to the delegations and directions in the *ACP Order*, we direct Commission staff to account for the ACP Transparency Data Collection in the wind-down procedures. Staff may, if appropriate, revise collection procedures or waive rules to avoid collection activities that may be unnecessary or lack utility due to the forecasted end of the Affordable Connectivity Program.

E. Publication of Data

67. The Infrastructure Act not only requires the Commission to collect data relating to price and subscription rates but also directs us to “make data relating to broadband internet access service collected . . . available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information or proprietary information.”²⁵⁸ The *ACP Data Collection Notice* sought comment on what data should be made public, how privacy and provider interests can be protected, and the format, method, and timing of publication.²⁵⁹ Based on the record, at a minimum, we will make publicly available, aggregated at the state level, non-provider-specific data on the average or median prices of plans in which ACP subscribers are enrolled within designated download speed tiers and data on the number of subscribers of plans within those tiers. We direct OEA and USAC to make these

²⁵⁴ ACA Connects Comments at 5; Altice Comments at 6; CTIA Comments at 4; NaLA Comments at 4; NCTA Comments at 19; WISPA Comments at 3, 6-7; CCA Reply at 4; CTIA Reply at 1-2, 4; WISPA Reply at 3; Letter from Morgan E. Reeds, Director, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, FCC, WC Docket No. 21-450, at 2 (filed Sept. 26, 2022); Associations Nov. 8 *Ex Parte* at 2.

²⁵⁵ ACA Connects Comments at 5 (defining “reference date” as “the date that is sixty days prior to the data submission due date”). Several provider associations argue that providers must have at least ninety days between the annual snapshot date and the annual filing date to prepare data for filing. Associations Nov. 8 *Ex Parte* at 2. ACA Connects points out, however, that a sixty-day window is consistent with the Commission’s Form 477 data collection, whereby providers report broadband and voice data on March 1 that is current as of December 31 the previous year. ACA Connects Comments at 5 n.7; e.g., *Form 477 Filings for June 30, 2022 Data Are Due September 1, 2022*, WC Docket No. 11-10, Public Notice, DA 22-704 (OEA July 1, 2022).

²⁵⁶ See NCTA Comments at 19 (“For the recurring data collections, the Commission should establish a filing window that would occur at the same time each year. A predictable annual filing schedule will help providers prepare and provide timely and accurate submissions.”); USTelecom Comments at 1 (asserting that data should be reported annually during a set filing window); see also NaLA Comments at 9 (“In addition, the annual report should not be due on first or last day of a month to avoid placing additional burdens on ACP providers as they prepare their ACP reimbursement claims.”).

²⁵⁷ *ACP Order* at 108-09, paras. 231-33.

²⁵⁸ Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A).

²⁵⁹ *ACP Data Collection Notice* at 13, para. 32.

data available in a downloadable format (e.g., Comma Separated Values file) not more than six months after the submission date set forth by the Bureau in a Public Notice. Making data available in this fashion will provide greater transparency into broadband services provided by ACP participating providers while protecting personally identifiable information and proprietary information. As further discussed below, we also find that it would be valuable to publish data at the ZIP code level after the initial publication of state-level information, provided that it is done in a manner that protects subscriber information and does not result in the publication, directly or indirectly, of provider-specific information.²⁶⁰

1. Publishing Data While Protecting Against the Disclosure of Personally Identifiable Information or Proprietary Information

68. *Defining Personally Identifiable Information (PII)*. The Infrastructure Act requires the Commission to make data available to the public “without risking the disclosure of personally identifiable information or proprietary information”²⁶¹ and further directs us to define “personally identifiable information” (PII) via notice and comment rulemaking.²⁶² Accordingly, we sought comment on how we should define the term,²⁶³ and adopt here the definition of PII used by OMB in, among other authorities, OMB Circular A-130 and OMB M-17-12: “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.”²⁶⁴ We find that this definition is consistent with the approaches suggested in the record. Further, although the ACP Transparency Data Collection does not currently contemplate the collection of subscriber-level data, we find that this definition is flexible enough to ensure the protection of subscriber privacy if a subscriber-level component is made part of the collection in the future.

69. Three commenters propose definitions of “personally identifiable information” for purposes of the ACP Transparency Data Collection. The Connecticut State Broadband Office recommends we use the definition of “personally identifiable information” that the Commission adopted in 2016, supplemented by U.S. Department of Labor restrictions on the publication of a consumer’s telephone number, race, and birth date.²⁶⁵ In 2016, the Commission defined “personally identifiable information” as “any information that is linked or reasonably linkable to an individual or device” and further stated that “[i]nformation is linked or reasonably linkable to an individual or device if it can reasonably be used on its own, in context, or in combination to identify an individual or device, or to logically associate with other information about a specific individual or device.”²⁶⁶ The Department of Labor guidance further specifies that gender, race, birth date, and geographic indicator are data elements that could be used to indirectly identify a person.²⁶⁷ The Connecticut State Broadband Office asserts that

²⁶⁰ *Infra* para. 81.

²⁶¹ Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A).

²⁶² *Id.* § 60502(c)(4)(B)(i).

²⁶³ *ACP Data Collection Notice* at 13-14, paras. 32-33.

²⁶⁴ Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-130, Managing Information as a Strategic Resource at 33 (2016); 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, 47 (2017).

²⁶⁵ CT OSB Comments at 3-4 (citing Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, 81 Fed. Reg. 87274, 87285 (2016), nullified by Pub. L. 115-22, 131 Stat 88 (2017), and U.S. Dep’t of Labor, *Guidance on the Protection of Personal Identifiable Information*, <https://www.dol.gov/general/ppii#:~:text=DOL%20contractors%20having%20access%20to,negligent%20attitude%20toward%20such%20information> (last visited Oct. 25, 2022).

²⁶⁶ 81 Fed. Reg. at 87285.

²⁶⁷ U.S. Dep’t of Labor, *Guidance on the Protection of Personal Identifiable Information*, <https://www.dol.gov/general/ppii#:~:text=DOL%20contractors%20having%20access%20to,negligent%20attitude%20toward%20such%20information> (last visited Oct. 25, 2022).

this definition allows us to refine or include additional data elements as technology advances and more personal information is available online.²⁶⁸

70. The City of New York suggests considering the definition of “identifying information” in the New York City Administrative Code: “any information obtained by or on behalf of the city that may be used on its own or with other information to identify or locate an individual.”²⁶⁹ Similarly, Common Sense advocates adopting a definition of “personally identifiable information” that is consistent with the definition of “personal information” used in the California Consumer Privacy Act.²⁷⁰ The Act defines “personal information” as “information that identifies, relates to, or describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.”²⁷¹

71. These definitions are all consistent with OMB’s definition of “personally identifiable information,” which we cited in the *ACP Data Collection Notice*²⁷² and which we adopt here to comply with the Infrastructure Act. Moreover, this definition is broad enough to promote subscriber trust that we will not publish information that could identify a specific subscriber.

72. *Protecting PII in Published Reports.* The Infrastructure Act not only requires us to define PII but also directs us to publish data collected without risking the disclosure of PII. The *ACP Data Collection Notice* sought comment on “how we should minimize the risk that such information would be disclosed when making data available to the public” and proposed protecting PII by publishing only aggregate-level data.²⁷³ The record strongly supports this proposal,²⁷⁴ and we adopt it.²⁷⁵ Moreover, publishing aggregate-level data—regardless of whether we collect aggregate-level data, subscriber-level data, or a hybrid of the two—aligns with other methods of protecting PII suggested in the record. The Connecticut State Broadband Office, for instance, recommends not disclosing sensitive subscriber information such as a subscriber’s social security number, household income, and participation in a

²⁶⁸ CT OSB Comments at 4.

²⁶⁹ City of New York Comments at 4 (citing NYC Admin. Code § 23-1201). The Code further specifies numerous data elements. NYC Admin. Code § 23-1201 (listing over twenty data elements). The City of New York asserts that this broad definition promotes accountability and public trust. City of New York Comments at 4.

²⁷⁰ Common Sense Comments at 9 (citing Cal. Civ. Code § 1798.140(v)).

²⁷¹ Cal. Civ. Code § 1798.140(o). The Code gives additional examples of data elements that fall within the definition of “personal information.” *Id.*

²⁷² *ACP Data Collection Notice* at 14, para. 33 (quoting Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-130, Managing Information as a Strategic Resource at 33 (2016)).

²⁷³ *Id.* at 15, para. 36; *id.* at 13, para. 31 (“We propose that, at a minimum, only aggregated or masked data be made publicly available, even if subscriber-level data is collected.”).

²⁷⁴ See Common Sense Comments at 8; CT OSB Comments at 2-3; NaLA Comments at 12; City of New York Comments at 2; City of Seattle Comments at 4; USTelecom Comments at 4; WISPA Comments at 7; ACA Connects Reply at 9; Starry Reply at 4. Cf. NCTA at 24 (supporting making aggregated data publicly available to protect proprietary information); NCTA Reply at 7 (same). The only commenter opposing this proposal is the NYPSC, which asserts that we should make all collected data public, including any subscriber-level data, while ensuring that all personally identifiable information is removed prior to publication. The NYPSC does not, however, argue that aggregation is insufficient to protect PII. Further, it does not explain what safeguards could allow us to publish data about each ACP household without risking the disclosure of PII.

²⁷⁵ We are not persuaded, however, by commenters who argue that the best way to protect PII is to collect only aggregate-level data rather than subscriber level data. See CTIA Comments at 6; Starry Reply at 4; WISPA Reply at 4. Although we find an aggregate-level collection appropriate at this time, we nonetheless believe subscriber-level data may have value and could be collected without risking the disclosure of PII. See *supra* Section III.C; *infra* Section IV.

government income subsidy program.²⁷⁶ Publishing only aggregated data is consistent with that recommendation.

73. *Interpreting Proprietary Information.* In addition to directing the Commission to protect PII when publishing data, Congress directed the Commission not to risk the disclosure of proprietary information when making data available to the public.²⁷⁷ Because the Infrastructure Act does not define “proprietary information,” we sought comment on how to interpret the term.²⁷⁸ Consistent with Commission practice and as further stated below, we direct Commission staff, when making information available to the public, to make sure to guard potentially proprietary and competitive information by not disclosing information that could directly or indirectly identify a specific provider.

74. As an initial matter, the record supports interpreting “proprietary information” in the section 60502(c)(4) context to mean the proprietary information of providers, rather than the broad universe of information protected by section 222(a) of the Act or customer proprietary network information protected by section 222(c).²⁷⁹ As for what “proprietary information” means in the context of the ACP Transparency Data Collection, providers and those affiliated with them tend to take a broad view. ACA Connects asserts that because the Commission must avoid even “risking” the disclosure of proprietary information, we must err on the side of non-disclosure of any information that might be deemed proprietary.²⁸⁰ According to ACA Connects, the Commission should thus refrain from disclosing “any provider-specific data, including any data that can be linked to an individual provider.”²⁸¹ More specifically, several commenters assert that proprietary information covers competitively sensitive provider information,²⁸² which includes pricing data,²⁸³ subscription rates for broadband service offerings,²⁸⁴ and “the churn rate for the provider or for a particular internet service plan offered by an

²⁷⁶ CT OSB Comments at 4. CT OSB also urges the Commission not to share collected data with third party websites like Facebook, Twitter, and Instagram. *Id.* at 8. We will not share data collected under the ACP Transparency Data Collection with third parties, but third parties, including the companies listed, will have access to published data. We decline the City of New York’s suggestion to adopt its open data standards and practices. *See* City of New York Comments at 5. We find that publishing aggregate data is sufficient in this context to protect PII.

²⁷⁷ Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A); *ACP Data Collection Notice* at 14, para. 34.

²⁷⁸ *ACP Data Collection Notice* at 14, para. 34.

²⁷⁹ No commenter suggests that “proprietary information” in § 60502(c)(4)(A) of the Infrastructure Act means “customer proprietary network information” or implicates 47 U.S.C. § 222(a). Rather, CT OSB argues that the Commission should limit “proprietary information” and procedures related to that information to providers. CT OSB Comments at 5. *Cf.* ACA Connects Comments at 17 n.36 (noting that the term “proprietary information” is routinely applied to provider data).

²⁸⁰ ACA Connects Comments at 17.

²⁸¹ *Id.* at 18; *see also* NCTA Comments at 1-2 (urging Commission to protect proprietary information by “only disclos[ing] the data collected on a non-provider-specific-basis”); *id.* at 4, 24 (arguing that data made public should not be provider-specific and should be sufficiently aggregated so as not enable public data to be associated with individual providers); USTelecom Comments at 4 (arguing that data on subscription rates and pricing should not be published at provider level because it is proprietary); ACA Connects Reply at 1, 9-10; NCTA Reply at 7 (contending Commission should not publicly disclose any provider-specific data and should aggregate data such that it cannot be associated with individual providers); WISPA Reply at 5; Associations Nov. 8 *Ex Parte* at 2 (arguing that data should not be disclosed on a company-specific basis).

²⁸² ACA Connects Comments at 18; USTelecom Comments at 4 n.10.

²⁸³ USTelecom Comments at 4 (asserting that data on pricing is proprietary and should not be published at the provider level).

²⁸⁴ ACA Connects Comments at 18; NCTA Comments at 24 (stating that “providers generally do not make public the subscription rates of each of their individual Internet service offerings”); USTelecom Comments at 4; ACA

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ACP provider.”²⁸⁵ If, as ACA Connects contends, the Commission were to disclose publicly this competitively sensitive data—e.g., each provider’s total number of ACP subscribers in each area or each provider’s number of ACP subscribers enrolled at different speed tiers—it could chill providers from participating in the Affordable Connectivity Program.²⁸⁶ ACA Connects also asserts that publishing provider-specific information is not necessary to deliver the transparency the Infrastructure Act requires.²⁸⁷

75. Other commenters recommend a narrower interpretation of proprietary information, albeit advocating a relatively broad general definition. As for the latter, the Connecticut State Broadband Office asserts that the Commission should look to the U.S. National Institute of Standards and Technology’s (NIST) definition of proprietary information as well as section 0.457 of the Commission’s rules.²⁸⁸ NIST defines “proprietary information” as

Material and information relating to or associated with a company’s products, business, or activities, including but not limited to financial information; data or statements; trade secrets; product research and development; existing and future product designs and performance specifications; marketing plans or techniques; schematics; client lists; computer programs; processes; and know-how that has been clearly identified and properly marked by the company as proprietary information, trade secrets, or company confidential information. The information must have been developed by the company and not be available to the Government or to the public without restriction from another source.²⁸⁹

As for section 0.457 of the Commission’s rules, it makes certain materials presumptively nonpublic and provides that a person may request non-disclosure of “materials contain[ing] trade secrets or privileged or confidential commercial, financial or technical data” under section 0.459 of the Commission’s rules if the materials are not presumptively nonpublic.²⁹⁰ Although citing those general definitions, the Connecticut State Broadband office asserts that we should only withhold confidential information from public view if disclosing the information would impair our ability to obtain necessary information in the future or if disclosing it would cause substantial harm to the competitive position of the submitter of the information.²⁹¹

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Connects Reply at 10 (asserting that “‘provider data’ relating to ACP subscription rates . . . is competitively sensitive and jealously guarded from disclosure – especially to competitors – in the normal course of business”).

²⁸⁵ NaLA Comments at 12; WISPA Comments at 3 (“WISPA does not believe that the Commission should collect information on a provider’s churn rate because it is closely guarded, competitively sensitive information and should not be publicly disclosed.”).

²⁸⁶ ACA Connects Comments at 18 (“[I]f the Commission were to disclose each provider’s total number of ACP subscribers in each area, or the number of such subscribers enrolled at different speed tiers, that could chill participating in the program from providers – especially smaller providers – that are highly protective of such information out of fear that competitors would use it to engage in predatory pricing practices.”).

²⁸⁷ ACA Connects Comments at 18-19.

²⁸⁸ CT OSB Comments at 5 (citing Celia Paulsen and Robert Byers, Glossary of Key Information Security Terms, NISTIR 7298 Rev. 3 (July 2019), available at <https://csrc.nist.gov/publications/detail/nistir/7298/rev-3/final> (select Online Glossary)).

²⁸⁹ See NIST, *NIST Computer Security Resource Center – proprietary information - Glossary*, https://csrc.nist.gov/glossary/term/proprietary_information (last visited Oct. 25, 2022).

²⁹⁰ 47 CFR § 0.457(d)(2).

²⁹¹ CT OSB Comments at 6 (citing *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974), abrogated by *Food Mkt. Inst. v. Argus Leader Media*, 139 S.Ct. 2356 (2019)). In *Argus Leader*, the Supreme

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76. The Connecticut State Broadband Office further generally advocates that the Commission make “provider data publicly available”²⁹² and asserts that “ACP elements such as price of plans, plan descriptions, and device offers would not substantially harm the government’s ability to obtain future information or cause substantial harm to a provider’s competitive position.”²⁹³ According to the commenter, “it is only right that the enormous subsidies provided to ISPs through the affordable connectivity program be published and analyzed.”²⁹⁴ Similarly, the City of Seattle argues that all pricing data, subscription rates, and service plan data should be publicly released on a provider-specific basis.²⁹⁵

77. Unlike in the case of PII, the Infrastructure Act does not require us to define “proprietary information” for purposes of the ACP Transparency Data Collection, and we decline to do so because it is not necessary to issue a general definition to ensure that provider interests are protected. We are also disinclined to find that *all* provider-specific data about broadband prices and plan characteristics are necessarily proprietary. For example, USTelecom in its comments has not established that the price of a plan is proprietary,²⁹⁶ and the broadband labels will include data on plan characteristics, including price.²⁹⁷

78. *Protecting Proprietary Information in Published Reports.* Consistent with Congress’s directive to avoid risking the disclosure of provider information, and consistent with past Commission practice, we will protect provider proprietary and competitively sensitive information by ensuring that any data published cannot be associated directly or indirectly with a specific provider. To effectuate this principle, we direct Commission staff to: (a) publish data aggregated at the state level and only publish data at lower levels of geographic aggregation if doing so sufficiently protects provider identity; (b) publish average or median prices; and (c) publish such data by speed tiers. We are persuaded, however, that the Infrastructure Act militates against the publication of plan-related subscribership data that could be linked to a particular provider, and we clarify that we do not intend to release as part of the ACP Transparency Data Collection provider-specific data, consistent with our practice not to publish broadband-related data specific to providers in the Internet Access Services Reports.²⁹⁸ ACA Connects, NCTA, and USTelecom state without rebuttal that the number of ACP subscribers that subscribe to a

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Court rejected the *National Parks* “substantial competitive harm” framework referred to by the Connecticut State Broadband Office. 139 S.Ct. at 2362-66.

²⁹² CT OSB Comments at 2 (heading).

²⁹³ *Id.* at 6.

²⁹⁴ *Id.* at 5. CT OSB nonetheless states that specific data on cost per mbps could be produced via an API without directly revealing providers. *Id.*

²⁹⁵ City of Seattle Comments at 5 (“Data, including subscription rates and pricing data, should be available by geography (zip code or smaller areas) and by provider.”).

²⁹⁶ USTelecom cites *Freedom of Information Act Request for Cable Television Price Survey Data*, DA 21-932, Public Notice, 36 FCC Rcd 11783 (2021), for the proposition that the Commission has allowed providers to request confidential treatment of price, subscriber, and locality information in the past. USTelecom Comments at 4. That we have allowed providers to request such treatment, however, does not alone justify blanket non-disclosure of all broadband price information.

²⁹⁷ *Broadband Labels Order* at 5-6, 9, paras. 15, 23.

²⁹⁸ NCTA Comments at 24 (“The Commission’s Internet Access Service reports, which incorporate Form 477 subscription data, also demonstrate that the Commission can perform robust analyses without releasing provider-specific information and while protecting their proprietary information.”); FCC, *Internet Access Services Reports*, <https://www.fcc.gov/internet-access-services-reports> (last visited Oct. 25, 2022). Although USAC’s legacy Funding Disbursement Search Tool makes available provider-specific data on total Lifeline disbursements and total Lifeline subscribers claimed, including by month and by Study Area, that data is not specific to any particular plan, and thus does not disclose subscribership numbers. USAC, Funding Disbursement Search, <https://apps.usac.org/li/tools/disbursements/default.aspx> (last visited Oct. 25, 2022).

particular plan is competitively sensitive.²⁹⁹ Although we decline to find that a provider's subscriber numbers are proprietary information in this context, the Commission has protected similar competitively sensitive provider information in other contexts.³⁰⁰

79. As with protecting PII, one way to protect provider proprietary information is to publish aggregated data, and doing so is supported by the record.³⁰¹ ACA Connects further suggests protecting proprietary provider information by “disclos[ing] averages or median prices for all ACP-subsidized services within various speed ranges, rather than provider-by-provider disclosure” because “[e]ven anonymized provider-level disclosures (e.g., ‘Provider A’ v. ‘Provider B’) may be traceable to a specific provider based on their offering of unique speeds or pricing plans and should thus be avoided.”³⁰² WISPA suggests a similar approach, albeit for the collection of data rather than its publication, and recommends “allow[ing] participating providers to report subscription rates by tier with price ranges for each of the provider's geographic locations.”³⁰³ We find merit in ACA Connects' proposal, under which we would publish average or median prices for all plans based on download speed tiers rather than by provider. This would sufficiently protect provider information while providing meaningful data to the public, and we direct OEA, in coordination with WCB and USAC, to publish non-provider-specific aggregated average or median price data by download speed tier.³⁰⁴

80. *Geographical Aggregation Level.* Although commenters overwhelmingly support publishing aggregated data to protect PII and proprietary information,³⁰⁵ there were marked disagreements about what level of aggregation was appropriate. Several commenters, all provider-affiliated, argue that aggregated data should be published at the state level because publishing more granular data risks

²⁹⁹ See ACA Connects Comments at 18; NCTA Comments at 24; USTelecom Comments at 4; ACA Connects Reply at 10.

³⁰⁰ See *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Second Report and Order, 36 FCC Rcd. 6136, 6156-57 paras. 66-68 (2021) (treating network outage information presumptively confidential due to national security and commercial competitive concerns and prohibiting public disclosure of disaggregated or insufficiently aggregated network outage information that could inadvertently reveal one provider's commercially sensitive information to another); *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd. 7717, ¶¶ 89-91 (2000) (providing streamlined process for providers to request non-disclosure of data and stating “intention not to publish in our publicly-available reports individual provider-filed data for the broadband (Part I) portion of the form, even where providers do not seek non-disclosure of this data”). Commenters also point out that the Commission allows FCC Form 477 filers to request confidential treatment for subscription data. ACA Connects Comments at 18 (citing *Modernizing the Form 477 Data Program*, Report and Order, WC Docket No. 11-10, FCC 13-87 at para. 79 (2013)); NCTA Comments at 24 (citing *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd. 7717, 7758, para. 87 (2000)).

³⁰¹ E.g., NCTA Comments at 24 (supporting making aggregated data publicly available to protect proprietary information); Starry Reply at 4 (asserting that publication of data aggregated at the state level will avoid unauthorized disclosure of proprietary information); NCTA Reply at 7; WISPA Reply at 4. Cf. Lumen Reply at 2 (asserting that submission of aggregated data will ensure that competitively-sensitive provider-specific information remains protected); USTelecom Reply at 3; Associations Nov. 8 *Ex Parte* at 2.

³⁰² ACA Connects Comments at 18; *id.* at 18 n.40 (“The Commission should also avoid disclosure of price and subscription rate information pertaining to specific speed tiers that may be linkable to any one provider.”); Associations *Ex Parte* at 2. In contrast, in the *ACP Data Collection Notice*, we asked whether prices should be grouped into increments or put in cost-range bins to address privacy and proprietary concerns. *ACP Data Collection Notice* at 15, para. 36.

³⁰³ WISPA Comments at 4.

³⁰⁴ E.g., Associations Nov. 8 *Ex Parte* at 2 (“To avoid identifying individual providers, data should be reported within ranges of download speeds for fixed providers (e.g., under 25 Mbps, 25-under 100, 100-300, etc.) and by the monthly data allowance for mobile providers.”).

³⁰⁵ See *supra* paras. 72, 79, notes 275, 302.

disclosing PII or proprietary information “by making it possible to link ‘price’ and ‘subscription rate’ data to a specific provider”³⁰⁶ or because ACP participating providers currently provide data to USAC and the Commission at the State or Study Area Code level.³⁰⁷ Other commenters advocate for publication at the ZIP code or county level because it is more useful to the public and it is how aggregated ACP data are currently made available by USAC.³⁰⁸ As explained by the Connecticut State Broadband Office, providing ZIP code level data to the public “makes it easier for state governments and providers to identify the areas in need of broadband assistance.”³⁰⁹ And some commenters recommend that ACP Transparency Data Collection data be published at a smaller-than-ZIP-code level, such as by Census tract, neighborhood, or individual blocks.³¹⁰

81. We find that publication of aggregated data at the state level is supported by the record and will protect both subscriber and provider information. We thus direct OEA, in coordination with WCB and USAC, to make aggregated data available to the public at the state level. Further, because the public may find more granular data more useful, and because providers will be required to submit data aggregated by ZIP code, we direct OEA, in consultation with WCB, OGC, and USAC to publish data by ZIP code, but only if doing so will not directly or indirectly disclose subscriber PII or result in the publication of provider-specific data.³¹¹ We note that publication of data at more granular levels than ZIP code could be an option were we to collect ACP data at lower levels of aggregation or on a subscriber basis in the future. But regardless of the level at which data is collected, any publication of data must not be specific to any provider even if that requires aggregation of data at levels higher than that at which it is collected.³¹²

82. *47 CFR § 0.459.* The Infrastructure Act states that Commission protection of PII and proprietary information must be consistent with section 0.459 of the Commission’s rules.³¹³ Section 0.459 provides procedures for requesting that information submitted to the Commission be withheld from

³⁰⁶ ACA Connects Comments at 18 n.39; Starry Reply at 4 (asserting that publication of state level data protects proprietary information from unauthorized disclosure); ACA Connects Reply at 9; *see also* NCTA Comments at 24 (asserting that Commission should ensure that data is “sufficiently aggregated so as not to enable any public data to be associated with individual providers”).

³⁰⁷ NaLA Comments at 2; Starry Reply at 4 (recommending state level aggregation because it aligns with format of other Commission data collections such as Form 477 and Broadband Data Collection). *Cf.* NCTA Comments at 23 (recommending collection of aggregate data at the state level because providers already seek ACP reimbursement at that level).

³⁰⁸ City of New York Comments at 2, 5 (“More granular subscriber-level information, limited to price, plan and performance then published in aggregate by zip code, should provide those useful insights without compromising subscriber privacy.”); City of Seattle Comments at 4; CT OSB Comments at 2-3; WISPA Comments at 7 (recommending publication of aggregate data on a no smaller than ZIP code level to avoid “de facto disclosure of personally identifiable and proprietary information”).

³⁰⁹ CT OSB Comments at 3.

³¹⁰ City of Seattle Comments at 4-5 (suggesting smaller geographic areas such as subset neighborhoods or service districts to “better address the impacts of potential causes of disparity in ACP program delivery”); Common Sense Comments at 10 (promoting aggregation by smallest feasible geographic area and noting that adjacent neighborhoods or blocks frequently receive different quality of service).

³¹¹ As pointed out in the *ACP Data Collection Notice*, the Commission redacted certain ZIP code-level data associated with the EBB Program to protect EBB Program subscribers. *ACP Data Collection Notice* at 15, 15 n.64, para. 36. Additionally, several provider associations jointly suggest that for publication purposes, “if there are fewer than 3 providers in a geographic unit, the data should be further aggregated up to a higher geographic level by the Commission before release.” Associations Nov. 8 *Ex Parte* at 2.

³¹² Associations Nov. 8 *Ex Parte* at 2.

³¹³ Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A); *ACP Data Collection Notice* at 15, para. 37.

public inspection. For instance, if a person submits materials to the Commission but wants the materials withheld from public inspection on the grounds that they contain trade secrets or privileged or confidential commercial, financial, or technical data, and the materials do not fall within the list of presumptively nonpublic materials in section 0.457(d)(1) of the Commission's rules, the person must submit a request for non-disclosure under section 0.459.³¹⁴ Unless the Commission provides abbreviated means for requesting confidential treatment,³¹⁵ a request under section 0.459(a) must contain a statement of the reasons for withholding the materials from public inspection, including an "[e]xplanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged" and an "[e]xplanation of how disclosure of the information could result in substantial competitive harm."³¹⁶ We sought comment on how section 0.459 could be incorporated into our processes for publishing information collected through the ACP Transparency Data Collection.³¹⁷

83. The Connecticut State Broadband Office and NaLA assert that the Commission should follow its normal procedures—provider information is either presumptively withheld because it falls within a category of section 0.457 or the provider must request non-disclosure under section 0.459.³¹⁸ In contrast, ACA Connects argues that we should not require providers to submit individual requests under section 0.459 but should instead, in the interest of expediency, add “any proprietary information received via the ACP Transparency Data Collection” to the list of materials presumptively withheld from routine public disclosure in section 0.457.³¹⁹ Additionally, a few commenters propose that if section 0.459 submissions are required, providers should be able to request non-disclosure by checking a box when submitting data.³²⁰

84. We agree with commenters that competitively sensitive information might be proprietary and that providers might want to keep such information confidential. Because we are already refraining from making publicly available any data at the provider level by publishing only aggregated, non-provider-specific data, we do not find it necessary for providers to seek protection of competitively sensitive or proprietary information we have already committed to not make publicly available. We will therefore treat such information as presumptively confidential pursuant to section 0.457(d) of the Commission's rules.³²¹

85. *Scope of Data to be Made Public.* As for what aggregated, non-provider-specific data we should make available to the public, we direct OEA, in coordination with WCB, OGC, and USAC to publish as much data as possible consistent with privacy considerations. At a minimum, OEA and USAC must publish aggregated non-provider-specific data on average or median prices of plans within download speed tiers and data on the total number of ACP subscribers within those tiers,³²² on a state

³¹⁴ 47 CFR § 0.457(d)(1)-(2).

³¹⁵ *Id.* § 0.459(a)(4).

³¹⁶ *Id.* § 0.459(b)(3), (5).

³¹⁷ *ACP Data Collection Notice* at 15, para. 37.

³¹⁸ CT OSB Comments at 6-7; NaLA Comments at 12 (stating that the Commission should allow providers to request confidential treatment under § 0.459).

³¹⁹ ACA Connects Comments at 17 n.38.

³²⁰ NCTA Comments at 25.

³²¹ 47 CFR § 0.457(d). Those seeking to inspect such data may file a request under 47 CFR § 0.461.

³²² We may also make subcategories of subscribership data available to the public, such as number of ACP subscribers who are enrolled in Lifeline or the number of ACP subscribers who receive enhanced benefits, as long as doing so is consistent with privacy considerations.

level basis.³²³ We further direct OEA, in coordination with WCB, OGC, to the extent necessary to protect PII, and USAC, to publish data on legacy plans—plans which have ACP subscribers but are no longer available to the general public—while minimizing the risk of consumer confusion about the availability of those plans.³²⁴ While it is appropriate to publish data on legacy plans because ACP subscribers are enrolled in them, doing so might require a separate dataset or different variables given that legacy plans are not available to new subscribers.

86. We sought comment on whether the Commission should publish only price and subscription rate data, or whether we should also make publicly available other data proposed to be collected, such as plan characteristics or program-performance data, or data obtained outside the ACP Transparency Data Collection, such as data about the availability of plans fully covered by the affordable connectivity benefit.³²⁵ State and local government commenters urge the Commission to publish all data collected, except for PII.³²⁶ The Connecticut State Broadband Office urges us to publish descriptions of all ACP plans, including whether a device is offered, and data on the performance of those plans.³²⁷ It asserts that these “additional variables” help state and local governments understand “affordability issues in their jurisdiction” and “promote transparency in the services ISPs are providing with the benefit of government subsidies and their prices for comparison with unsubsidized services.”³²⁸ Similarly, the City of New York urges us to collect and publish price, plan, and performance features and “anticipates that the publication of ACP transparency data will meaningfully enable the City to further inform emerging broadband maps used for policy, service deployments, and adoption investments.”³²⁹

87. Other commenters agree that all collected data should be published, though they differ somewhat on what should be collected in the first place. Common Sense, for instance, asserts that we should publish all ACP data collected, which would include information on “plan prices, subscription rates, plan characteristics, and performance metrics.”³³⁰ NaLA likewise advocates publishing all collected and analyzed data, but contends that the Commission should limit the data collection to price and subscription rate data.³³¹ Nevertheless, NaLA states that “[i]f the Commission decides to collect data

³²³ Download speed ranges will be created from natural break points in the data. These data may be published at ZIP code level if OEA, in consultation with WCB, OGC, and USAC, determines that doing so will not risk disclosure of subscriber privacy or provider proprietary information.

³²⁴ See Lumen Reply at 5 (asserting that that the Commission should be cautious about publicizing information about legacy plans because doing so could confuse consumers by suggesting that such plans are still being offered and could overwhelm consumers with information about “dozens of unavailable plans”).

³²⁵ *ACP Data Collection Notice* at 13, para. 31.

³²⁶ CT OSB Comments at 3; City of New York Comments at 1-2; City of Seattle Comments at 5-6; NYPSC Comments at 2-3.

³²⁷ CT OSB Comments at 3.

³²⁸ *Id.*

³²⁹ City of New York Comments at 1-2; see also City of Seattle Comments at 5 (asserting we make all pricing, subscription, and service plan data publicly available “for non-profits, local governments, and others to use for assisting them in making budget and household-need-appropriate plan choices and for designing and tailoring digital equity programs”); NYPSC Comments at 2-3 (asserting that Commission should release publicly all collected data including subscriber-level data, with personally identifiable information removed). The City of Seattle also encourages us to develop alternative approaches to collect subscriber demographic data and publish demographic profiles of ACP subscribers by ZIP code. City of Seattle Comments at 6.

³³⁰ Common Sense Comments at 10. Common Sense advocates not sharing subscriber personally identifiable information with third-parties, not sharing demographic data with U.S. Immigrations and Customs Enforcement, and notifying subscribers if data is shared with third-parties. *Id.*

³³¹ NaLA Comments at ii, 3-9, 12.

beyond the price and subscription rate data required by the Infrastructure Act,” it should make such data and related analyses available to the public.³³²

88. As set forth above, we will be collecting data on the prices of plans in which ACP subscribers are enrolled, subscription rates of such plans, and characteristics of those plans.³³³ We recognize that these data not only are valuable for the Commission but could be of significant value to state and local governments, consumer groups, and other stakeholders even when aggregated and disassociated from specific providers to protect PII and competitively sensitive or proprietary information. We will therefore publish as much data as possible, consistent with privacy considerations. Consequently, we direct OEA, in coordination with WCB, OGC, and USAC to publish as much data as possible consistent with privacy considerations.

2. How Data Will Be Made Publicly Available

89. *Format and Method of Publication.* The Infrastructure Act requires the Commission to make data available to the public in a “commonly used electronic format” but does not define the term.³³⁴ In light of the record and current Commission practice, we direct OEA and USAC to make data available to the public in a downloadable format, such as a Comma Separated Values file, on the Commission’s or USAC’s website. As noted in the *ACP Data Collection Notice*, we already make datasets available for viewing in Open Data portals and provide downloadable data in several formats,³³⁵ and commenters generally support “easy to use” and “standardized” formats.³³⁶ As for the method of publication, the only commenter on this topic suggested that the Commission host the public data,³³⁷ and we direct that this information be made available on the Commission’s or USAC’s website.³³⁸

90. *Timing of Publication.* As for when we should make data publicly available, the *ACP Data Collection Notice* noted that the only direction in the Infrastructure Act is that we must define the term “personally identifiable information” through notice and comment rulemaking before making any data available to the public.³³⁹ We proposed making data public at least annually and asked several timing related questions, such as whether data should be published on an annual basis or more frequently and how long after collection should we publish data.³⁴⁰

91. The record is sparse on these issues. WISPA recommends publishing information “on an annual basis during a specified window of time each year to ensure (1) consistency for comparison

³³² *Id.* at 12 (noting that such data and analyses should only be made public insofar as it does not disclose personally identifiable information or company proprietary information).

³³³ See *supra* Section III.B.

³³⁴ Infrastructure Act, div. F, tit. V, § 60502(c)(4)(A); see also *ACP Data Collection Notice* at 16, para. 38.

³³⁵ *ACP Data Collection Notice* at 16, para. 38 (noting that we make datasets available in CSV, Extensible Markup Language (XML), Tab Separated Values (TSV), Resource Description Framework (RDF), and Rich Site Summary (RSS) formats).

³³⁶ Common Sense Comments at 10 (“Published data should be published in a format that is easy to understand and use.”); City of Seattle Comments at 5 (asserting that “[d]ata formats should be standardized”). The Connecticut State Broadband Office supports making aggregated price and plan data publicly available as a CSV “file download” but only as a supplement to an Application Programming Interface (API). CT OSB Comments at 4-5. While we appreciate the value of APIs, we decline to publish ACP Transparency Data Collection data via an API at this time, as developing an API could delay making data available to the public.

³³⁷ CT OSB Comments at 5 (asserting that data “could be hosted alongside the FCC’s existing FCC Content API”).

³³⁸ The OPEN Government Data Act also imposes general requirements on data made publicly available by federal agencies. OPEN Government Data Act, Pub. L. No. 115-435, 132 Stat. 5529, 5534 (2019).

³³⁹ *ACP Data Collection Notice* at 16, para. 40 (citing Infrastructure Act, div. F, tit. V, § 60502(c)(4)(B)(ii)).

³⁴⁰ *Id.* at 17, para. 40.

purposes, (2) sufficiently current information, and (3) a process that is not overly burdensome for providers, the Commission, or USAC.”³⁴¹ In contrast, Common Sense asserts that we “should publish updated ACP data at regular intervals, as frequently as feasibly possible.”³⁴² NaLA does not suggest a particular timeframe in which to make data publicly available but emphasizes the importance of data being disclosed “in a timely manner so that it is useful for determining the effectiveness of the ACP in meeting its goals as well as for enabling low-income consumers to gain insight into the ACP services available to them.”³⁴³

92. We find that making data publicly available on an annual basis aligns with the structure of the data collection, is sufficient to provide greater transparency into broadband services provided by ACP participating providers, and minimizes the burdens of publication on providers and the Commission. Under the collection structure we adopt here, data will be collected annually based on a snapshot date. Making data available publicly annually is consistent with that structure. We further find that data should be published no later than six months after the data submission date to give WCB, OEA, OGC, and USAC sufficient time to prepare the data for publication, including ensuring that no PII or competitively sensitive or proprietary information will be exposed.

F. Guidance

93. The Infrastructure Act 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, projects, or activities are completed in a timely and effective manner,”³⁴⁴ and the *ACP Data Collection Notice* sought comment on this provision.³⁴⁵ Commenters agreed that the Commission should provide support and guidance on data collection through webinars,³⁴⁶ technical instructions,³⁴⁷ form instructions, and frequently asked questions.³⁴⁸ We therefore direct the Bureau, OEA, and USAC to develop provider education and training materials to assist with the ACP Transparency Data Collection rules set forth in this Order and associated processes.

G. Enforcement

94. In the *ACP Data Collection Notice*, we sought comment on issues relating to the enforcement of the annual data collection rules, including the base forfeiture amount for noncompliance, certification requirements, involuntary removal, and submission deadlines.³⁴⁹

95. *Base Forfeiture.* In the *Notice* we proposed to establish a base forfeiture amount proportionate to the level of data ultimately adopted in the proceeding, either on a per-subscriber or on a higher level of aggregation (e.g., ZIP-code, state, SAC).³⁵⁰ For an aggregate collection, we proposed to

³⁴¹ WISPA Comments at 8.

³⁴² Common Sense Comments at 10.

³⁴³ NaLA Comments at 12.

³⁴⁴ Infrastructure Act, div. F, tit. V, § 60502(d).

³⁴⁵ *ACP Data Collection Notice* at 17, para. 42.

³⁴⁶ WISPA Comments at 8-9; Starry Reply at 6; INCOMPAS Reply at 7.

³⁴⁷ WISPA Comments at 8-9; Starry Reply at 6; INCOMPAS Reply at 7.

³⁴⁸ WISPA Comments at 8-9; INCOMPAS Reply at 7.

³⁴⁹ *ACP Data Collection Notice* at 17-18.

³⁵⁰ *Id.* at 18.

establish a base forfeiture amount of \$50,000 per state or study area for which a provider has failed to submit ACP Transparency Data Collection information by the applicable deadline.³⁵¹

96. Commenters generally support establishing forfeiture amounts,³⁵² but some commenters suggest that we adopt a base forfeiture amount proportionate to the number of a providers' ACP subscribers, to avoid chilling small provider participation in the program.³⁵³ Starry argues that "disproportionate penalties" might deter provider participation in the Affordable Connectivity Program.³⁵⁴ Altice suggests that instead of applying additional penalties for missing submissions dated from the submission deadline, that we instead permit a 30-day grace period for providers to come into compliance with the ACP Transparency Data Collection rules.³⁵⁵ Altice further suggests that we adopt as the base forfeiture amount the \$100 per month penalty imposed on providers associated with the failure to file form 499-A, arguing that there is "little justification for adopting a fine or forfeiture amount for ACP transparency data reporting that is higher than the \$100 per month fine for failing to file a Form 499-A."³⁵⁶ Lastly, Altice suggests that instead of instituting a forfeiture amount, the Commission could publish a list of non-compliant providers, and publishing the list would incentive providers to come into compliance to avoid public embarrassment and reputational damages.³⁵⁷

97. With consideration of the record and in light of our decision to utilize an aggregate-level approach in this collection,³⁵⁸ we adopt a base forfeiture amount in line with an aggregate collection.³⁵⁹ We adopt a base forfeiture amount of the lesser of \$22,000³⁶⁰ or the latest monthly claim amount, for each state for which a provider has failed to submit complete information. We agree with WISPA's comment that a base forfeiture amount can be tied to the number of the provider's ACP subscribers to account for differences in provider size, and using the latest monthly claim amount makes that tie to subscribers.³⁶¹ Our adopted approach is consistent with both Commission precedent and our desire to ensure compliance with the ACP Transparency Data Collection rules.³⁶² Moreover, it appears that Altice is confusing late fees that USAC applies to USF accounts for late FCC Form 499 filings (\$100),³⁶³ with forfeitures the

³⁵¹ *Id.*

³⁵² NaLA Comments at 13 (supporting the proposal for violation of data collection rules to result in forfeiture).

³⁵³ Starry Reply at 5-6 (suggesting that the FCC not impose a "disproportionate penalty" in adopting a base forfeiture amount); WISPA Comments at 9-10 (suggesting that the FCC not adopt a "one size fits all" approach to enforcement penalties).

³⁵⁴ Starry Reply at 5-6 (arguing against imposing "disproportionate penalties" on providers for minor violations of the ACP transparency rules).

³⁵⁵ Altice Comments at 8-9 (proposing 30-day grace period for providers that failed to timely submit required information as part of this collection).

³⁵⁶ *Id.* at 8 (proposing \$100 per month base forfeiture amount).

³⁵⁷ *Id.*

³⁵⁸ *Supra* paras. 10-13.

³⁵⁹ *Supra* paras. 10-13.

³⁶⁰ This amount is consistent with the statutory maximum for non-common carriers pursuant to section 503(b)(2), and we adopt this amount for all providers. 47 U.S.C. § 503(b)(2).

³⁶¹ *See* WISPA Comments at 10.

³⁶² *See, e.g., Advanced Tel. Inc.*, Forfeiture Order, 32 FCC Rcd 5151, 5157 (noting \$10,000 base forfeiture amount for violations of TRS collection rules); *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6647, para. 24 (2012), Forfeiture Order, 31 FCC Rcd 1629 (2016); 47 CFR § 1.80(b) (establishing base forfeiture amount of \$3000 for failure to file a required form, for each violation, or each day of a continuing violation).

³⁶³ *See* 47 CFR § 54.713(c).

Commission issues in enforcement proceedings for late, missing, or inaccurate FCC Form 499 filings (\$50,000).³⁶⁴ In this proceeding, the Commission sought comment on forfeitures for rule violations, not late fees assessed by USAC pursuant to Commission rule. We similarly decline to adopt Altice's alternative proposal of a publicized list of non-compliant providers as the means of enforcement, as we find the approach above better balances the incentive to comply with concerns of providers. A "naughty list" would likely not adequately penalize or deter providers from failing to submit the annual plan characteristics information required by this Order and the Infrastructure Act.

98. *Filing Deadlines.* In the *ACP Data Collection Notice*, we proposed that providers be required to submit ACP Transparency Data Collection information by a deadline, and that USAC provide the Enforcement Bureau with a list of providers who have failed to submit the required information by the deadline, identifying the subscribers, state and study area, for which the data has not been properly filed.³⁶⁵ We received no comments concerning the establishment of a deadline and the sharing of information between USAC and the Enforcement Bureau, and we adopt both proposals. We also asked whether we should impose additional fines each day in addition to the base forfeiture amount that a provider is not in compliance with the ACP Transparency Data Collection rules under section 503(b)(2) of the Act. We did not receive any comments concerning additional daily fines, and we decline to adopt any.

99. *Certification.* We received no comments opposing 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.³⁶⁶ Consistent with our rule requiring annual certification for participating providers to be completed by the "officer of the participating provider who oversees Affordable Connectivity Program business activities," we adopt this proposal.³⁶⁷ We direct the Bureau, as part of the electronic process to submit data, to include a process for certifications as to the accuracy of the data and information provided for the data.

100. *Involuntary Removal.* In the *ACP Data Collection Notice* we asked whether a failure to comply with the rules we establish in this data collection could subject a provider to the involuntary removal process the Commission established in the *ACP Order*.³⁶⁸ Starry suggests that providers that utilize the safe-harbor provisions of the Consolidated Appropriations Act or engage in "minor infractions" not be subject to involuntary removal from the Affordable Connectivity Program.³⁶⁹ We decline to carve-out violations of the ACP Transparency Data Collection rules from the ACP's involuntary removal process. In the *ACP Order*, we adopted the application of the safe-harbor provision of the Infrastructure Act, which provides that the Commission could not enforce a violation of the Act using sections 501, 502, or 503 or any rules promulgated under those sections if a participating provider demonstrates that it relied in good faith on information provided to such a provider to make any verifications required by the statute.³⁷⁰ We clarify that the safe harbor provided by the Infrastructure Act is only applicable to

³⁶⁴ See PayG, LLC, FCC 22-69, para. 39 & n.148 (Sept. 14, 2022) (proposed forfeiture paid) (citing ADMA, Forfeiture Order, 26 FCC Rcd at 4155, 4162, paras. 9, 28 (2011); Globcom Forfeiture Order, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45; PTT Phone Cards Inc., Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015)).

³⁶⁵ *ACP Data Collection Notice* at 17-18, para. 43.

³⁶⁶ *Id.* at 18, para. 44.

³⁶⁷ See 47 CFR § 54.1801(f).

³⁶⁸ *ACP Data Collection Notice* at 18, para. 44.

³⁶⁹ Starry Reply at 5-6 (requesting application of the statutory safe harbor to ACP Transparency Data Collection).

³⁷⁰ 47 U.S.C. § 1752(j) (providing that the Commission may not enforce a violation of this section under 47 U.S.C. § 501, 502, and 503, or any rules of the Commission promulgated under such sections if a participating provider demonstrates to the Commission that such provider relied in good faith on information provided to such provider to

(continued....)

eligibility determinations, as the statute plainly provides. We, therefore, decline to adopt Starry's proposed application of the Safe Harbor.

H. Digital Equity and Inclusion

101. In the *ACP Data Collection Notice*, we sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's legal authority. The City of Seattle comments that detailed demographics "are necessary to fully understand the profile of populations served and where gaps may exist" and encourages the Commission "to develop alternative approaches to collect demographic data and publish a demographic profile of ACP subscribers by ZIP code."³⁷¹ The City of Seattle suggests "at minimum collect data on whether companies are running credit checks on ACP applicants, denials of enrollments, and whether the ISP is using a third party for credit checks and if they are prohibited from releasing credit and consumer information."³⁷² Common Sense comments that "relevant demographic data, including the enrollee's race, ethnicity, income, languages spoken, and household size" should be collected to "understand the Affordable Connectivity Program's impact on digital equity and support efforts to address digital discrimination."³⁷³ Common Sense further suggests that the Commission should collect information about the enrollment process and provider customer service practices,³⁷⁴ as well as information about "providers' device offerings, including the types of devices offered and the price options for each type of device," and "how many devices are distributed and at what price to consumers."³⁷⁵ Commenters did not suggest that any of the Commission's proposals inhibited digital equity and inclusion.

102. As discussed above, we adopt an aggregate-level collection. While the additional subscriber-level demographic fields proposed by commenters above may be helpful to analyze populations, we are unable to include them given the nature of our collection approach, which does not accommodate the collection of any subscriber-level data. We further find that the additional data suggested by commenters, such as information on credit checks is not inherently related to information regarding price and subscription rates, and therefore decline at this time to include them for the ACP Transparency Data Collection.

I. Conclusion

103. The ACP Transparency Data Collection we establish today allows the Commission to collect information related to the price and subscription rates of internet service offerings of ACP providers consistent with the requirements of the Infrastructure Act. We establish an aggregate-level collection that will collect price, unique identifier, and plan characteristics from each ACP provider for each plan that has a household enrolled in the Affordable Connectivity Program, as well as the number of households that are subscribed to each plan by ZIP code, and the number of households that have reached a data cap, the average amount by which the household has exceeded its data cap, and average overage amount paid by households exceeding the data cap. The Bureau will further set forth deadlines for inaugural and subsequent collections of this information consistent with this Order.

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make the verification required by 47 U.S.C. § 1752(b)(2)). Section 1752(b)(2) of Title 47 provides the mechanisms through which providers shall verify that a household is eligible for the Affordable Connectivity Program.

³⁷¹ City of Seattle Comments at 6.

³⁷² *Id.*

³⁷³ Common Sense Comments at 6.

³⁷⁴ *Id.* at 11.

³⁷⁵ *Id.* at 12.

104. We further delegate authority to the Bureau to make necessary adjustments to the ACP Transparency Data Collection and to provide additional detail and specificity to the requirements of the ACP Transparency Data Collection to conform with the intent of this Order.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

105. In this Further Notice of Proposed Rulemaking, we seek additional comment on: (1) the statutory requirement to revise ACP Transparency Data Collection rules;³⁷⁶ (2) the value of subscriber-level data and methods of obtaining and encouraging subscriber consent; and (3) whether the Commission should also collect additional data, such as more granular aggregated data, data related to enrollment processes, the digital divide, price, or plan availability or performance.

106. *Data Collection Revisions.* We previously asked about the statutory requirement to revise the ACP Transparency Data Collection rules to verify the accuracy of the data submitted by providers in the *ACP Data Collection Notice*³⁷⁷ and received little comment other than from ACA Connects.³⁷⁸ Although the Infrastructure Act could be interpreted as requiring us to collect and analyze data before revising our rules, as explained above, it could also be interpreted as not making data collection a prerequisite to doing so.³⁷⁹ We believe that Congress's directive to revisit the data collection rules can be accomplished by reviewing and beginning to revise the rules of the collection, including for data accuracy verification, within the six-month statutory timeframe.³⁸⁰ Accordingly, we seek comment on how the rules in this Order could be improved, such as by reducing burdens on smaller providers or, as set forth below, collecting subscriber-level data, more granular aggregated data, or data related to the digital divide or plan availability. In particular, we seek comment on how the rules set forth in this Order could be revised to verify the accuracy of the data to be collected thereunder. How should the Commission track and verify the accuracy of data? How should the Commission protect against inaccuracies in the data? Should rule revisions contemplate adding new collection variables to improve or refine the data collected? How can we structure future rule revisions to minimize the economic impact on small providers? As noted above, we delegate authority to the Bureau to issue a supplemental notice seeking comment on these issues, if necessary to enhance the record. We also seek comment on whether this approach complies with section 60502(c)(2) of the Infrastructure Act.

107. *Subscriber-Level Data.* Additionally, although we are not requiring providers to collect and submit via NLAD subscriber-level data at this time, we seek additional comment on the benefits and costs of collecting subscriber-level data. Does the Commission have authority to collect subscriber-level data under the Infrastructure Act or other sources of authority? Would subscriber-level data on price and a unique plan identifier be more useful relative to the aggregated data to be collected under this Order, and, if so, how, why, and to what extent? Would subscriber-level data allow the Commission to better understand and assess service price and plan characteristics? If so, how could the Commission use this better understanding to further our performance objectives for the Affordable Connectivity Program? For example, as noted in the *ACP Data Collection Notice*, a subscriber-level collection can help to “study how subscriber plan choices and preferences for plan characteristics vary by geographic area”³⁸¹ and could also improve consumer outreach efforts, which could not be targeted based on a high-level aggregate collection. Are there additional benefits of a subscriber-level collection in meeting the

³⁷⁶ See *supra* Section III.D; Infrastructure Act, div. F, tit. V, § 60502(c)(2).

³⁷⁷ *ACP Data Collection Notice* at 18-19, paras. 44, 46.

³⁷⁸ ACA Connects Comments at 20.

³⁷⁹ See *supra* Section III.D.

³⁸⁰ Infrastructure Act, div. F, tit. V, § 60502(c)(2).

³⁸¹ *ACP Data Collection Notice* at 8, para. 18.

performance goals of the program? Would providing additional fields in NLAD, for example, including price and a unique plan identifier, impose significant burdens on providers or subscribers?

108. Collecting subscriber-level data, however, means getting subscriber consent, and we seek additional comment on how consent could be obtained.³⁸² Should providers be required to obtain or seek consent upon enrolling new subscribers? What about when transferring-in subscribers who are moving the ACP benefit to another provider? Additionally, we seek comment on obtaining consent from existing ACP households. Although commenters representing providers asserted this would be burdensome in response to the *ACP Data Collection Notice*, we seek further comment on ways to seek consent by using existing systems or other required or voluntary contacts with enrolled households. For subscribers already enrolled based on a qualified ACP application in the National Verifier, should USAC obtain or seek consent from these subscribers? Or is the broadband provider better positioned to obtain consent?³⁸³ Should USAC seek or obtain consent upon recertification? Are there other touchpoints between USAC and subscribers that would permit consent? If consent is sought or obtained via USAC in the application or through recertification, how should consent be obtained from ACP subscribers who do not have their eligibility determined via the National Verifier because they qualify via participation in a provider's low-income program or are enrolled in Lifeline and do not have to apply again for the Affordable Connectivity Program? Is the enrolling provider in the best position to obtain consent? Similarly, how could consent be obtained from subscribers who are recertified automatically through the National Verifier or through their Lifeline recertification?

109. We seek further comment on whether consent should be mandatory or optional for subscribers. If consent is mandatory, what would be the likely effect on ACP enrollment for new subscribers and existing subscribers? If consent is optional for subscribers, how would this affect the quantity and quality of the resulting data? How could we encourage or incentivize subscribers to consent? Should we make consent mandatory, that is, a condition for ACP participation, for new subscribers or those transferring the affordable connectivity benefit, as is the case for the consent required to transmit data such as name and address under 47 CFR § 54.1806(d), while leaving consent optional for existing subscribers to whom providers must reach out? Would making consent mandatory for new subscribers upon enrollment improve the data collection? Would making consent mandatory for existing subscribers upon transferring the affordable connectivity benefit improve the data collection? If consent were to be made optional for subscribers but requesting consent mandatory for providers, how could we ensure that providers timely seek and obtain consent?

110. *Other Levels of Aggregation.* Although the rules in this Order require providers to submit data at the ZIP code level, we also seek comment on whether aggregated data should be collected or aggregated on a level smaller than ZIP code, such as by county or Census tract, either in addition to or instead of ZIP code. What would be the benefits and costs of collecting data aggregated at these levels? Do providers have the capability to readily aggregate data by county or Census tract? If not, what are the burdens associated with aggregating data at these levels? If data is collected or aggregated on a level other than by ZIP code, should this effect the level at which data is published? How would privacy considerations affect the level at which data gets published?

111. *Enrollment Process Data.* We also seek comment on whether to collect information about the enrollment process and customer interactions with provider representatives. Such information could relate to the administrative efficacy of the Affordable Connectivity Program. In particular, information about interactions between subscribers and provider representatives and the type of interaction, such as enrollment assistance in-person, over the phone, or via email, could help the Commission combat enrollment misconduct. We thus seek further comment on whether we should, in the

³⁸² See *supra* paras. 12-13; Section III.C.

³⁸³ See NaLA Comments at 11 (suggesting that the National Verifier application be used to obtain consent from new subscribers).

ACP Transparency Data Collection, collect information about the extent to which subscribers enroll in the program using the assistance of provider representatives. Should we collect data on the type of enrollment interaction – in person, telephonically, or via email or other method? Should we collect this information at the subscriber-level or aggregate-level? Should we require providers to upload to NLAD the type of enrollment interaction between subscriber and representative or data relating to which representative was involved? Does the Commission have the authority collect such information as part of the ACP Transparency Data Collection? What burdens on providers or subscribers would be associated with collecting enrollment-related interaction data from providers?

112. *Digital Divide Performance Metrics.* Furthermore, we seek comment on whether to collect data related to the digital divide. This information could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to our accomplishment of the performance goal of reducing the digital divide.³⁸⁴ We therefore seek further comment on whether we should collect information through this collection about the extent to which ACP subscribers are new or existing broadband subscribers, or are subscribers to multiple broadband plans (e.g., fixed and mobile). Should we collect this information at the subscriber-level or aggregate-level? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burdens on providers, particularly small providers, would such a collection entail? If this collection is not the proper venue for such a collection, should the Commission collect the information through statistical sampling, industry or consumer surveys? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital equity and inclusion?

113. *Introductory Pricing and Set-up Fees.* We also seek comment on whether to make mandatory the submission of information concerning the number of ACP households paying introductory prices or on introductory or time-limited promotional pricing plans and the total number of subscribers who pay set-up fees. In the Order, we made the submission of the total number of subscribers on introductory rates or who pay set-up fees optional for providers, acknowledging the burden that providers face when submitting such granular information.³⁸⁵ Information on introductory pricing could assist in understanding the growth of the Affordable Connectivity Program, the number of subscribers who may be subject to upcoming price increases, and whether ACP subscribers are predominantly new. Information on set-up fees could assist the Commission in determining the efficacy of the Affordable Connectivity Program, particularly with regard to the accomplishment of the performance goal of reducing the digital divide, given that set-up or installation fees are a barrier to the adoption of broadband internet service. We therefore seek further comment on whether we should make the collection of these two data points mandatory. Should we collect this information at the subscriber level or aggregate level? Are there other data fields or information related to introductory pricing or set-up or activation fees that the Commission should collect? Does the Commission have the authority to collect such information as part of the ACP Transparency Data Collection? What burden on providers, particularly small providers, would such a collection entail? Is this collection the proper venue for the collection of this information, and if not, where and how should the Commission collect this information? Would collection of this information help the Commission assess our progress towards digital equity and inclusion?

114. *Quality of Service Metrics.* In the *Broadband Labels Further Notice of Proposed Rulemaking (Broadband Labels FNPRM)*, we requested comment on whether and how we should collect connection reliability or other quality of service metrics, such as network availability.³⁸⁶ This information, if collected as part of Broadband Labels, could assist the Commission in determining the value that ACP households are obtaining from their benefit. We seek comment on whether, as part of this

³⁸⁴ See *ACP Order* at 98, paras. 210-11 (describing ACP performance goals).

³⁸⁵ See *supra* paras. 33-35, note 136 (describing set-up fees as an adoption barrier); see also *ACP Order* at 98, paras. 210-12 (describing ACP program goals).

³⁸⁶ *Broadband Labels Order* at 48-49, paras. 140-42, 144.

collection, we should collect any reliability or other quality of service information that may be collected as part of Broadband Labels.

115. *Plan Characteristics.* We also seek comment on whether we should make the collection of all plan characteristics included on the broadband labels mandatory for legacy or grandfathered plans.³⁸⁷ In the Order, we make the submission of information included on the broadband labels relating to introductory rates, one-time fees, typical speeds, and typical latency optional for legacy service plans, given their unique features (e.g., lower subscribership rates, not currently offered, no broadband labels etc.).³⁸⁸ Collecting this information would allow the Commission to ensure that our data set is more robust and not skewed or biased as a result of the exclusion of certain data fields relating to legacy plans. What are the benefits of collecting this information for legacy service plans? What are the burdens associated with such a collection and how can burdens on providers be minimized? Should we collect this information at the subscriber or aggregate level? If we were to make the submission of these characteristics mandatory, what should the timeframe for the collection be? Would collecting this information present an opportunity to collect and assess other useful information, related to digital equity and inclusion, or reducing the digital divide?

116. *All-in Price.* We also seek comment on whether we should make mandatory the collection of all-in price, net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than \$0. This information would help the Commission determine our progress toward the goal of reducing the digital divide, the efficacy of the Affordable Connectivity Program, and the value that ACP households are obtaining from the federal subsidy. In the Order we make the submission of the all-in price, the net-rate charged, and the number of subscribers whose monthly net-rate charged is greater than \$0 optional. We seek comment on whether to make the collection of these characteristics mandatory. What are the benefits of collecting such information? How would all-in price, net-rate charged, or the number of subscribers whose net-rate charge is \$0 be helpful for groups engaging in targeted outreach? Should we make mandatory the collection of any other optional fields? What would the burdens of such a collection impose on providers and in particular, small providers? If we were to require the submission of this information, should we collect it at the subscriber or the aggregate levels? What are the benefits and burdens associated with each approach? Would collecting this information present help assess other information, related to digital equity and inclusion, or reducing the digital divide?

117. *Additional Plan Metrics.* We also seek comment on whether we should collect data on additional metrics, including but not limited to low-income plan and connected device offerings. This information could assist the Commission in determining our progress towards the Affordable Connectivity Program goals of reducing the digital divide and ensuring the efficient administration of the program.³⁸⁹ We seek comment on whether, as part of this collection, we should collect information about the availability of restricted or low-income only service plans, or a provider's connected device offerings. Should we collect information about the availability of low-income plans or connected device such offerings at the subscriber or aggregate level? Would the collection of such information impose a burden on providers, including small providers, or on subscribers? Do we have the authority to collect this information? Are there any privacy concerns raised by the collection of this information? Would collection of these data present an opportunity to also collect and assess other useful information, for example, related to digital equity and inclusion?

³⁸⁷ The Broadband Labels include (in addition to other characteristics): introductory rates, one-time fees, typical speed and typical latency. *Broadband Labels Order* at 6.

³⁸⁸ See *supra* paras. 51-52.

³⁸⁹ *Id.* (describing ACP performance goals).

V. SEVERABILITY

118. All of the rules that are adopted in this Order are designed to work in unison to implement the ACP Transparency Data Collection. Each separate ACP Transparency Data Collection rule we adopt here, however, serves a particular function in the implementation of the ACP Transparency Data Collection. Therefore, it is our intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.

VI. PROCEDURAL MATTERS

119. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),³⁹⁰ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Fourth Report and Order and Further Notice of Proposed Rulemaking. The FRFA is set forth in Appendix B.

120. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report & Order, etc. to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

121. *Paperwork Reduction Act.* This Fourth Report and Order may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.³⁹¹ All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,³⁹² the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses in the FRFA in Appendix B. Compliance with the information collection requirements will not be required until OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act.

122. The Further Notice of Proposed Rulemaking may contain 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 any information collection requirements contained in the Further Notice of Proposed Rulemaking, 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.

³⁹⁰ See 5 U.S.C. § 604. The RFA, *see* 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, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

³⁹¹ The Consolidated Appropriations Act, as extended by the Infrastructure Act, exempted certain ACP regulations from the PRA. Because the ACP Transparency Data Collection is otherwise a collection of information, the *ACP Data Collection Notice* sought comment on whether the PRA exemption applies to the rules established herein. Every commenter to address the issue contends that the PRA applies here, and we agree.

³⁹² 44 U.S.C. § 3506(c)(4).

123. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended,³⁹³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Further Notice of Proposed Rulemaking of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. The IRFA is in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.³⁹⁴ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³⁹⁵

124. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁹⁶ 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.

125. *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.³⁹⁷

- 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

³⁹³ See 5 U.S.C. § 603.

³⁹⁴ See *id.* § 603(a).

³⁹⁵ See *id.*

³⁹⁶ 47 CFR § 1.1200 et seq.

³⁹⁷ 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), available at <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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.

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

127. *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.

VII. ORDERING CLAUSES

128. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), this Fourth Report and Order IS ADOPTED.

129. IT IS FURTHER ORDERED that this Fourth Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register. Compliance with section 54.1813(b)-(d) of the Commission's rules, 47 CFR § 54.1813(b)-(d), which may contain new or modified information collection requirements, will not be required until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the compliance date for section 54.1813(b)-(d) by subsequent Public Notice and to cause section 54.1813 to be revised accordingly.

130. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Fourth Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

131. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fourth Report and Order, and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons set forth above, Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

The authority citation for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

1. Add § 54.1813 to subpart R to read as follows:

§ 54.1813 Affordable Connectivity Program Transparency Data Collection

(a) *Definitions.* For purposes of the Affordable Connectivity Program Transparency Data Collection:

- (1) *Actual Speed.* The term “actual speed” means the typical upload and download speeds period for a particular speed tier, either based on Measuring Broadband America (MBA) methodology, or other relevant testing data.
- (2) *Advertised Speed.* The term “advertised speed” means the maximum advertised upload and download speeds for fixed broadband plans, and the minimum advertised upload and download speeds for mobile broadband plans.
- (3) *Base monthly price.* The term “base monthly price” means the monthly price for a broadband internet service offering that would be paid by a household enrolled in the Affordable Connectivity Program, absent the affordable connectivity benefit. The base monthly price does not include the price of any recurring monthly fees (such as fees providers impose at their discretion, or equipment rental fees), government taxes or fees, or one-time charges (such as installation charges, equipment purchase fee, etc.).
- (4) *Bundle.* The term “bundle” means a combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text.
- (5) *Data Cap.* The term “data cap” means data usage restrictions on both pre-paid and post-paid plans, including “soft caps” where a user’s internet traffic is throttled or deprioritized, and “hard caps” where a user’s access to the internet is discontinued.
- (6) *Latency.* The term “latency” means the length of time for a signal to be sent between two defined end points and the time it takes for an acknowledgement of the receipt of the signal to be received.
- (7) *Legacy plan.* The term “legacy plan” means an internet service offering in which an ACP subscriber is enrolled that a participating provider is not accepting new enrollment.
- (8) *Personally identifiable information.* The term “personally identifiable information” means 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.
- (9) *Plan.* The term “plan” means “Internet service offering” as defined in § 54.1800(n).
- (10) *Unique identifier.* The term “unique identifier” means a machine-readable string of characters uniquely identifying a broadband plan, not containing any special characters. Where a broadband plan is associated with a broadband label under 47 CFR 8.1(a), the unique identifier must be the same as that in the broadband label. Unique identifiers cannot be reused or refer to multiple plans. A provider must develop a new plan identifier, when a plan’s components change.

(b) *Information to be collected.*

(1) For each plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers shall submit, in an electronic format as directed by the Commission at the ZIP code level, by the deadline described in paragraph (c),

(i) the unique identifier with the following plan characteristics:

(A) base monthly price,

(B) whether the base monthly price is introductory, and if so, the term of the introductory price and the post-introductory price,

(C) itemized provider-imposed recurring monthly fees,

(D) itemized one-time fees,

(E) speed (actual and advertised speeds),

(F) latency,

(G) data caps (including de-prioritization and throttling), any charges for additional data usages along with the relevant increment (*e.g.*, 1 GB, 500 MB),

(H) whether the service is bundled, the high-level components of the bundle, and voice minutes or number of text messages included as part of the bundle if applicable,

(I) whether any associated equipment is required, whether any required associated equipment is included in the advertised cost, and the one-time fee or rental cost for required associated equipment;

(ii) the number of ACP households subscribed;

(iii) the number of ACP households that have reached a data cap during month prior to the snapshot date;

(iv) the average amount by which ACP households have exceeded the data cap for the month prior to the snapshot date;

(v) the average overage amount paid by ACP households exceeding a data cap for the month prior to the snapshot date;

(vi) the number of ACP households receiving the ACP Tribal enhanced benefit;

(vii) the number of ACP households receiving the ACP high-cost enhanced benefit;

(viii) the number of ACP households who are also enrolled in Lifeline for that plan;

(2) *Legacy plans.* For each legacy plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers are required to submit all of the characteristics identified in paragraph (b)(1) of this section except: speed (actual and advertised), latency, introductory monthly charge, the length of the introductory period, and any one-time fees.

(c) *Timing of collection.* No later than the compliance date to be established by the Wireline Competition Bureau pursuant to paragraph (g) of this section and annually thereafter, participating providers must submit to the Commission the information in paragraph (b) of this section for all plans in which an Affordable Connectivity Program household is subscribed. The information must be current as of an annual snapshot date established and announced by the Bureau.

(d) *Certifications.* As part of the data collection required by paragraph (b) of the section, an officer of the participating provider shall certify, under penalty of perjury, that:

- (1) The officer is authorized to submit the data collection on behalf of the participating provider; and
- (2) The data and information provided in the data collection is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted.

(e) *Publication of data.*

(1) *Obligation to publish data.* The Commission will make aggregated, non-provider-specific data relating to broadband internet access service information collected in paragraph (b) of this section available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information, as defined in paragraph (a)(8) of this section, or proprietary information.

(2) *Requests for withholding from public inspection.* When submitting information to the Commission under paragraph (c) of this section, a participating provider may submit a request that information be withheld from public inspection under § 0.459 of this chapter.

(f) *Enforcement.* A violation of the collection requirement occurs where a provider fails to submit ACP Transparency Data Collection information by the compliance date for a state in which the provider has ACP-enrolled subscribers. A base forfeiture amount for each state is the lesser of \$22,000 or the latest monthly claim amount, for each state for which a provider has failed to submit complete information.

(g) *Compliance.* Paragraphs (b) through (d) of this section may contain information collection and/or recordkeeping requirements. Compliance with paragraphs (b) through (d) will not be required until this paragraph (g) is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraphs (b) through (d) of this section by subsequent Public Notice and to cause this section to be revised accordingly.

APPENDIX B

Final Regulatory Flexibility Analysis

1. Consistent with the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *ACP Data Collection Notice* in WC Docket No. 21-450.² The Commission sought written public comment on the proposals in the *ACP Data Collection Notice*, including comment on the IRFA. The Commission did not receive comments specifically directed as a response to the IRFA, however John Staurulakis, LLC (JSI) filed reply comments raising issues pertaining to small entities and the IRFA.³ This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Report and Order

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.⁵ 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.⁶ The Commission established rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.⁷

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.”⁸

4. This Order adopts 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, we establish the ACP Transparency Data Collection, a mandatory annual data collection of price, subscription rate and plan characteristic information.⁹ We will collect plan pricing, unique identifier and plan characteristic information at the ZIP code level.¹⁰

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Affordable Connectivity Program*, Notice of Proposed Rulemaking, WC Docket No. 21-450, at 23-28 (2022) (*ACP Data Collection Notice*).

³ See JSI Reply at 3 (arguing that a subscriber level collection of information for current or new subscribers would be highly burdensome for small providers).

⁴ See 5 U.S.C. § 604.

⁵ 47 U.S.C. § 1752.

⁶ *Id.* § 1752(a)(7)(A), (b)(1), (b)(4).

⁷ 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*).

⁸ Infrastructure Act, div. F, tit. V, § 60502(c)(1).

⁹ *Supra* Section III.B.1 (describing collection structure).

¹⁰ *Supra* Section III.B.1 (describing collection structure).

5. In executing our obligations under the Infrastructure Act we establish rules and requirements in this Order that implement the relevant portions of the Infrastructure Act efficiently and by balancing privacy interests of subscribers and minimizing burdens on participating providers. This action is consistent with our ongoing effort to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband internet access service.

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

6. JSI filed reply comments asserting that “requiring small providers to complete new NLAD data fields when enrolling new subscribers and updating fields for households already enrolled in the ACP would be highly burdensome.”¹¹ While we note the concerns raised by JSI, we believe that the recordkeeping, reporting, and other compliance requirements adopted in this Order strike a balance between providing small and other affected entities flexibility in reporting data while allowing the Commission to obtain the necessary information to meet its obligations under the Infrastructure Act. In Section E below, we discuss alternatives we considered but decline to adopt, that would have increased the costs and/or burdens on small entities.¹²

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

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.¹³

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

D. Description and Estimate of the Number of Small Entities to Which These Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁶ 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).¹⁷

10. *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.¹⁸ 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

¹¹ JSI Reply at 3.

¹² *Infra* paras. 19-21 (describing steps taken to minimize compliance and reporting burdens on small entities).

¹³ 5 U.S.C. § 604(a)(3).

¹⁴ *Id.* § 603(b)(3).

¹⁵ *Id.* § 601(6).

¹⁶ *See id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632).

¹⁷ *See* 15 U.S.C. § 632.

¹⁸ *See* 5 U.S.C. § 601(3)-(6).

general a small business is an independent business having fewer than 500 employees.¹⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.²⁰

11. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²¹ 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.²² 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.²³

12. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁴ U.S. Census Bureau data from the 2017 Census of Governments²⁵ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁶ Of this number there were 36,931 general purpose governments (county,²⁷ municipal and town or township²⁸) with populations of

¹⁹ See SBA, Office of Advocacy, *Frequently Asked Questions, “What is a small business?”* available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf> (Nov 2021).

²⁰ *Id.*

²¹ See 5 U.S.C. § 601(4).

²² 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 IRS, *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> (last visited Oct. 25, 2022). 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.

²³ See IRS, *Exempt Organizations Business Master File Extract (EO BMF)*, <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf> (last visited Oct. 25, 2022). 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.

²⁴ See 5 U.S.C. § 601(5).

²⁵ 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 U.S. Census Bureau, *About Census of Governments*, <https://www.census.gov/programs-surveys/cog/about.html> (last visited Oct. 25, 2022).

²⁶ 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> (last visited Oct. 25, 2022). 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.

²⁷ 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.

less than 50,000 and 12,040 special purpose governments - independent school districts²⁹ with enrollment populations of less than 50,000.³⁰ 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.”³¹

13. *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.³² Wired broadband internet services fall in the Wired Telecommunications Carriers industry.³³ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.³⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁵ Of this number, 2,964 firms operated with fewer than 250 employees.³⁶

14. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.³⁷ 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

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²⁸ 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.

²⁹ 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.

³⁰ 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.

³¹ 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.

³² See 47 CFR § 1.7001(a)(1).

³³ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁴ See 13 CFR § 121.201, NAICS Code 517311.

³⁵ 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>.

³⁶ *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.

³⁷ 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.

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*,³⁸ we believe that the majority of wireline internet access service providers can be considered small entities.

15. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"³⁹ 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.⁴⁰ 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).⁴¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁴³ Of that number, 2,837 firms employed fewer than 250 employees.⁴⁴

16. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁴⁵ 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,⁴⁶ as well as on terrestrial fixed wireless broadband providers in general,⁴⁷ we believe that the majority of wireless internet access service providers can be considered small entities.

³⁸ 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*).

³⁹ Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 (*IAS Status 2018*), Industry Analysis Division, Office of Economics & Analytics (September 2020), available at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

⁴⁰ See 47 CFR § 1.7001(a)(1).

⁴¹ 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>.

⁴² See 13 CFR § 121.201, NAICS Code 517312.

⁴³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁴⁴ *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.

⁴⁵ See *IAS Status 2018*, Fig. 30.

⁴⁶ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13. (2020) (*2020 Communications Marketplace Report*).

⁴⁷ *Id.* at 59, para. 91.

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

17. We expect the rules adopted in this Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Specifically, we establish new reporting and disclosure requirements for ACP participating providers in order to comply with the Infrastructure Investment and Jobs Act's (Infrastructure Act) broadband transparency requirement, and to determine the value being provided to eligible households by the ACP.⁴⁸ We require providers to submit unique identifiers, plan characteristic and plan pricing information, and subscription rate information annually at the ZIP code level.⁴⁹

18. The requirements we adopt in this Order continue the Commission's actions to comply with the Infrastructure Act and develop better data to advance our statutory obligations and program goals of closing the digital divide.⁵⁰ We conclude that it is necessary to adopt these rules to obtain plan pricing and characteristic information to allow the Commission to target outreach efforts, and ensure that we achieve the goals of the ACP of reducing the digital divide, and increasing participation in and awareness of the program.⁵¹ We are aware of the need to ensure that the benefits resulting from use of the data outweigh the reporting burdens imposed on small entities. The Commission believes that any additional burdens imposed by our reporting approach for providers are outweighed by the significant benefit to be gained from more precise data about ACP participating providers' service offerings. We are likewise cognizant that small entities will incur costs and may have to hire attorneys, consultants, or other professionals to comply with this Order. Although the Commission cannot quantify the cost of compliance with the requirements in this Order, we believe the reporting and other requirements that we have adopted are necessary to comply with the Infrastructure Act, and in our efforts in reducing the digital divide.

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

19. 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."⁵²

20. The Commission has considered the comments in the record and is mindful of the time, money, and resources that some small entities may incur to comply with the requirements of this Order. In reaching the requirements we adopted in this Order, there were various approaches and alternatives that the Commission considered but rejected which prevented small entities from incurring additional burdens and economic impacts. For example, we declined to collect data on connection reliability, or plan coverage, although some comments supported such a collection.⁵³ We also decline to adopt a pure

⁴⁸ See Infrastructure Act, div. F, tit. V, § 60502(c).

⁴⁹ *Supra* Section III.B.1 (describing collection structure).

⁵⁰ Infrastructure Act, div. F, tit. V, § 60502(c) (requiring collection of broadband transparency information); *ACP Order* at 98, paras. 210-211 (describing ACP program goals); see also 47 U.S.C. § 254 (describing FCC universal service obligations).

⁵¹ *ACP Order* at 98, paras. 210-11 (describing ACP program goals).

⁵² 5 U.S.C. § 603(c)(1)-(4).

subscriber level collection, as proposed in the *ACP Data Collection Notice* and supported by a number of commenters, out of a concern for the burdens imposed on small entities.⁵⁴ Instead, we adopted an aggregate level collection.⁵⁵

21. Another step taken by the Commission to minimize the compliance burdens on small entities include guidance and support on data collection through webinars, technical instructions, form instructions, and frequently asked questions.⁵⁶ In this Order we direct USAC to develop provider education and training programs to reduce the compliance burden on providers in complying with the requirements set forth in this Order.⁵⁷

G. Report to Congress

22. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁵⁸ In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

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⁵³ *Supra* para. 49 (declining to require submission of connection reliability information); *supra* para. 56 (declining to require submission of plan coverage information).

⁵⁴ *ACP Data Collection Notice* at 6-7, paras. 13-14 (proposing subscriber level collection); *supra* Section III.B.1 (describing collection structure).

⁵⁵ *Id.*

⁵⁶ *Supra* para. 93 (adopting guidance requirements).

⁵⁷ *Supra* para. 93 (adopting guidance requirements).

⁵⁸ *See* 5 U.S.C. § 801(a)(1)(A).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). 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 Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need For, and Objectives of, the Proposed Rules

2. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (ACP), which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices.⁴ The Affordable Connectivity Program 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.⁵ The Commission established rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.⁶

3. Furthermore, the Infrastructure Act directs the Commission to establish an annual mandatory collection of data relating to the price and subscription rates of each internet service offering of ACP participating providers.⁷ The Act also requires the Commission to “revise the rules to verify the accuracy of data submitted pursuant to the rules” no later than 180 days after the rules are promulgated.⁸

4. By way of background, in the *ACP Data Collection Notice*, the Bureau sought comment on the timing requirement, specifically asking how to interpret section 60502(c)(2)’s revision mandate.⁹ In response, we only received one comment from ACA Connects, suggesting that we are permitted to revise our rules in compliance with 60502(c)(2) before collecting any data.¹⁰ In this Order, we interpreted the Infrastructure Act as not requiring us to collect data prior to revising our rules.¹¹

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 U.S.C. § 1752.

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

⁶ 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*).

⁷ Infrastructure Act, div. F, tit. V, § 60502(c)(1).

⁸ *Id.* § 60502(c)(2).

⁹ *ACP Data Collection Notice* at 18, para. 45.

¹⁰ ACA Connects Comments at 20.

¹¹ See *supra* Section III.D; Infrastructure Act, div. F, tit. V, § 60502(c)(2).

5. The Further Notice seeks comment on the Infrastructure Act's rule revision requirement.¹² Specifically, we seek information on how to improve the data collection rules, including how to track and verify the accuracy of data collected, to protect against inaccuracies, and to reduce burdens.¹³ Moreover, the Further Notice seeks comment on whether the timing of this collection, as proposed, satisfies the requirements of the Infrastructure Act to "revise the accuracy" of our rules no later than 180 days after establishing final rules.¹⁴

6. We are also seeking comment on the value of subscriber-level data and how, if we decide to collect such information, we should obtain consent.¹⁵ Specifically, we are seeking comments on the value and burdens associated with collecting subscriber level information, and the methods and merit of collecting consent from new and existing ACP subscribers, including whether consent should be mandatory or optional.¹⁶

7. Additionally, we are seeking comment on whether we should collect information about the Affordable Connectivity Program enrollment process as part of this collection, specifically whether we are authorized to collect such information, and how we should go about collecting it.¹⁷

8. We are seeking comment on whether we should collect information to help us measure our progress towards accomplishing the Affordable Connectivity Program goals of reducing the digital divide and ensuring effective administration of the program. Specifically, we are asking whether we are authorized to collect such information, whether we should collect the information as part of this collection, and what methods we should use to collect it.¹⁸

9. We are also seeking comment on whether we should make the collection of the total number of subscribers who are paying introductory rates or who pay set-up fees in a data-month mandatory.¹⁹ In the Order we permit, but do not require providers to submit this information.²⁰ We specifically ask whether we should make these optional submissions mandatory, and whether we are authorized to collect such information.²¹

10. Furthermore, we are seeking comment on whether we should make the collection of all-in price, net-rate charged, and the number of subscribers for whom net-rate charged is \$0 mandatory.²² In the order we permit, but do not require providers to submit information on the all-in price, the net-rate charged, and the number of subscribers whose net-rate charges is \$0 by ZIP-code and plan identifier.²³ We specifically ask whether we should make this collection mandatory, and what the benefits and burdens are with such an approach.

¹² See *supra* Section IV.

¹³ See *supra* Section IV.

¹⁴ *Supra* Section IV.

¹⁵ See *supra* Section IV.

¹⁶ *Supra* Section IV.

¹⁷ See *supra* Section IV.

¹⁸ *Supra* Section IV.

¹⁹ See *supra* Section IV.

²⁰ See *supra* paras. 33-35.

²¹ See *supra* Section IV.

²² See *supra* Section IV.

²³ See *supra* paras. 25-27, 36.

11. We also seek comment on whether we should collect additional quality of service metrics as part of this collection, including connection reliability, and outages.²⁴ We specifically seek comment on the benefits and burdens associated with collecting additional quality of service metrics, and ask whether we should collect such information at the subscriber or aggregate level.

12. We finally, seek comment on whether we should make mandatory the collection of latency, one-time fees, introductory rates, typical speed, and typical latency.²⁵ In the Order, providers are not required to submit these fields for legacy service plans.²⁶ We specifically seek comment on what the benefits and burdens of submitting this information for all plans would be, in addition to whether we should collect this information at the subscriber or aggregate level.²⁷

13. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the Affordable Connectivity Program efficiently, with minimal burden on eligible households and 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

14. The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(c).²⁸

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

15. 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.²⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³¹ 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).³²

16. *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.³³ 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

²⁴ See *supra* Section IV.

²⁵ See *supra* Section IV.

²⁶ See *supra* para. 51-52.

²⁷ See *supra* Section IV.

²⁸ Infrastructure Act, div. F, tit. V, § 60502(c)(1).

²⁹ 5 U.S.C. § 603(b)(3).

³⁰ See *id.* § 601(6).

³¹ See *id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632).

³² See 15 U.S.C. § 632.

³³ See 5 U.S.C. § 601(3)-(6).

general a small business is an independent business having fewer than 500 employees.³⁴ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.³⁵

17. 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.”³⁶ 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.³⁷ 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.³⁸

18. 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.”³⁹ U.S. Census Bureau data from the 2017 Census of Governments⁴⁰ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.⁴¹ Of this number there were 36,931 general purpose governments (county,⁴² municipal and town or township⁴³) with populations of

³⁴ 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).

³⁵ *Id.*

³⁶ See 5 U.S.C. § 601(4).

³⁷ 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.

³⁸ 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.

³⁹ See 5 U.S.C. § 601(5).

⁴⁰ 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>.

⁴¹ 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.

⁴² 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.

less than 50,000 and 12,040 special purpose governments - independent school districts⁴⁴ with enrollment populations of less than 50,000.⁴⁵ 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.”⁴⁶

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⁴⁷ See 47 CFR § 1.7001(a)(1).

⁴⁸ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁹ See 13 CFR § 121.201, NAICS Code 517311.

⁵⁰ 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: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁵¹ *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.

⁵² 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.

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*,⁵³ we believe that the majority of wireline internet access service providers can be considered small entities.

21. *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 Internet[.]”⁵⁴ 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.⁵⁵ 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).⁵⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵⁸ Of that number, 2,837 firms employed fewer than 250 employees.⁵⁹

22. 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.⁶⁰ 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,⁶¹ as well as on terrestrial fixed wireless broadband providers in general,⁶² we believe that the majority of wireless internet access service providers can be considered small entities.

⁵³ 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*).

⁵⁴ 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>.

⁵⁵ See 47 CFR § 1.7001(a)(1).

⁵⁶ 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>.

⁵⁷ See 13 CFR § 121.201, NAICS Code 517312.

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁵⁹ *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.

⁶⁰ See *IAS Status 2018*, Fig. 30.

⁶¹ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13 (2020) (*2020 Communications Marketplace Report*).

⁶² *Id.* at 59, para. 91.

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

23. In this Further Notice, the Commission seeks comment on how to structure our revisions to the rules adopted in this Order, as required by the Infrastructure Act, in addition to whether and how we should collect information relating to subscriber-level data, subscriber enrollment, digital divide performance metrics, all-in price, one-time set-up fees, quality of service metrics, plan characteristics or additional performance metrics.⁶³ To the extent the Commission revises the rules promulgated in this Order or decides to collect enrollment information, subscriber level data, digital divide metrics, or other metrics, participating providers of all sizes may 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 chose to participate in the Affordable Connectivity Program.

24. 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 Further Notice 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

25. 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.”⁶⁴

26. The Further Notice seeks comments from all interested parties. The Commission is aware that some of the proposed collections under consideration may impact small entities. The Further Notice 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 Further Notice.⁶⁵

27. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the Further Notice 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

28. None.

⁶³ Infrastructure Act, div. F. tit. V, § 60502(c)(2).

⁶⁴ 5 U.S.C. § 603(c)(1)–(4).

⁶⁵ See *supra* Section IV.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking (November 15, 2022).

Happy Birthday to the Affordable Connectivity Program. It was one year ago—on November 15, 2021—that President Biden signed the Bipartisan Infrastructure Law, the landmark legislation that directed the Federal Communications Commission to establish what has become the largest broadband affordability effort in our nation’s history—the program we now call the ACP.

What a year it has been! In the past 12 months, the Commission stood up the ACP in record time and now has over 15 million households that are enrolled and receiving this essential broadband benefit. But we are not done yet, because we have underway a \$100 million outreach grant program that the Commission adopted earlier this year that is designed to make sure those who are eligible for the ACP hear about it from someone they trust. In fact, just last week we released a Notice of Funding Opportunity for our ACP Outreach Grant Program, which provides up to \$70 million in competitive funding support available to all 50 states and territories, including funds earmarked for Tribal communities. Next week, we will start accepting applications in response to a Notice of Funding Opportunity for our two related one-year outreach grant pilot programs: the Your Home, Your Internet Pilot Program, and the ACP Navigator Pilot Program. On top of that, we are also moving forward with a paid media campaign, which will help get the word out about the ACP to eligible households in conjunction with these other efforts.

But an important part of the success of these outreach initiatives is knowing who is participating in the ACP and how they are using this benefit to get and stay connected. And that takes data. In other words, we need to know where we have been with this program to better understand where we need to go. So we are doing just that. With this order, we are standardizing the way we collect information about the ACP. We are also considering proposals in a further rulemaking to see what other data points may help paint a fuller picture of how eligible households participate in this program.

This is a vital part of our work at the Commission to help thoughtfully grow the ACP. It is also a duty we have under the law. That’s because the Bipartisan Infrastructure Law that established the ACP one year ago directed us to establish rules for the collection of data relating to the price and subscription rates of each internet service provider participating in the program. Thank you to my colleagues and the Commission staff who contributed to this order, the further rulemaking, and all other matters involving the ACP during the past year. Together we have built a history-making program to help close the digital divide and assist households across the country afford broadband service.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking.

The Affordable Connectivity Program (ACP) has made broadband adoption possible for millions of households nationwide. Indeed, nearly 15 million eligible households have signed up to take advantage of free and discounted broadband.¹ This item completes our statutory obligation to adopt rules regarding the annual collection of information related to the price and subscription rates of internet service offerings of ACP providers to which an ACP household subscribes.

The data we collect as a result of this information collection, when coupled with the information included as part of the Commission's broadband labels,² will greatly inform our policymaking going forward. We'll learn what speeds and services that ACP participants prefer. We'll learn the cost of these offerings, as well as the other terms and conditions that ACP participants encounter as they make their broadband selection. And, as we begin to roll out millions of dollars in grants to help increase ACP awareness and enrollment,³ I hope that the grantees look to the data we collect here to help them better serve their communities. I also expect that Internet service providers will use this data to better target their broadband offerings to ACP participants.

I'm thankful to the fantastic FCC staff for their hard work in meeting our statutory deadline. But, I'm also open to revising the collection, if necessary, consistent with our statutory requirement.⁴ There are questions for which we seek comment in the Further Notice that are worthy of further consideration.

While I agree with the decision here to adopt an aggregated collection to satisfy our statutory requirement, I also support seeking further comment on whether there is value in collecting subscriber-level data. While aggregated data is valuable, more granular data could provide additional ACP insights going forward. I'm also glad we will seek to build a record on the enrollment process. In my trips to support ACP in Denver, San Francisco, Chicago, Oakland, and elsewhere, one constant refrain is how challenging many eligible households find the enrollment process. While we are testing out solutions in the ACP pilot programs,⁵ collecting additional data could help clearly identify issues. We can then consider targeted solutions to improve enrollment to ensure that ACP fully benefits all eligible Americans.

Thank you to the FCC staff who worked on this item. It has my support.

¹ As for 11/20/22, 14,948,398 households are enrolled. See "Total Households Enrolled—Weekly", ACP Enrollment and Claims Tracker, USAC.org (last visited Nov. 20, 2022), available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/>.

² *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (Nov. 14, 2022).

³ See *Affordable Connectivity Program*, WC Docket No. 21-450, Third Report and Order, FCC 22-65 (Aug. 5, 2022) (*Your Home, Your Internet Order*); *Affordable Connectivity Program*, WC Docket No. 21-450, Second Report and Order, FCC 22-64 (Aug. 5, 2022).

⁴ Infrastructure Act, div. F., tit. V, § 60502(c)(2).

⁵ See, e.g., *Your Home, Your Internet Order*, para. 16.