

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

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

ORDER

Adopted: November 26, 2021

Released: November 26, 2021

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) sua sponte waives sections 54.1610(b), (c) and (d) of the Commission’s rules governing the enrollment freeze and notice requirements for the end of the Emergency Broadband Benefit Program (EBB Program), which will cease no later than December 31, 2021 as a result of the text in the Infrastructure Investment and Jobs Act (Infrastructure Act).1 At that time, households enrolled in the EBB Program will have an automatic 60-day transition period during which time they will continue to receive their current EBB-benefit amount.2 In addition to waiving the enrollment freeze and consumer notice rules for the EBB Program, we also provide preliminary guidance to help consumers, service providers, outreach partners and other stakeholders prepare for the transition from the EBB Program to the Affordable Connectivity Program.

I. BACKGROUND

2. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law3 and established an Emergency Broadband Connectivity Fund of \$3.2 billion in the United States Treasury to help Americans afford internet service during the COVID-19 pandemic.4 The Act directed the Federal Communications Commission (Commission) to use that fund to establish the EBB Program, under which eligible households may receive a discount off the cost of broadband service and certain connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers can receive a reimbursement for providing such discounts.5 The EBB Program was designed to be a temporary, emergency program that would conclude when the fund is expended or six months after the end of the public health emergency.6

1 Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), available at https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf (Infrastructure Act).

2 Infrastructure Act, div. F, tit. V, § 60502(b)(2) (2021).

3 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), available at https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

4 Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135.

5 Id. § 904(b)(1), (4) & (5).

6 Id.

3. On February 25, 2021, the Commission adopted rules and policies creating and governing the EBB Program pursuant to the Consolidated Appropriations Act.⁷ In light of the emergency, temporary nature of the EBB Program, the Commission adopted rules to help manage the end of the EBB Program, including an enrollment freeze and a requirement that providers send notices to consumers concerning the end of the EBB Program. Under these rules, the Universal Service Administrative Company (USAC) is required to provide participating service providers 60-days' notice of the end of the EBB Program, and enrollments in the EBB Program would freeze concurrent with that notice.⁸ In addition, participating service providers are required to issue notices to their EBB Program households no later than 15 days after the announcement of the end of the EBB Program, and issue a customer notice at least 30 days before the end of the EBB Program.⁹ These requirements were intended to limit volatility in EBB Program reimbursement claims after the announcement of the end date of the EBB Program, and to ensure that consumers are appropriately informed about the end of the EBB Program and any resulting changes to their broadband service rate.¹⁰

4. On November 15, 2021, the Infrastructure Act was enacted, providing \$14.2 billion for the longer-term Affordable Connectivity Program. The Affordable Connectivity Program will extend and supplant the EBB Program, and will continue to provide eligible households with a discount on broadband service and connected devices.¹¹ On November 18, 2021, the Bureau issued a Public Notice seeking comment on the rules and administration of the Affordable Connectivity Program, and providing 20 days for initial comments, and 20 days for reply comments.¹² The Infrastructure Act makes several changes to the eligibility criteria for the new program, and reduces the monthly benefit amount from up to \$50 to up to \$30 (with the exception of eligible households residing on qualifying Tribal lands or high-cost areas, which will receive up to \$75 monthly).¹³ The Infrastructure Act also directs the Commission to effectuate for the Affordable Connectivity Program specified changes, such as to EBB Program eligibility and the program benefit amount, by the effective date, which the statute defines as the date the Commission notifies Congress that all EBB Program funds have been fully expended or December 31, 2021, whichever is earlier.¹⁴ As explained in the *Affordable Connectivity Program Public Notice*, based on current projections, EBB Program funds will not be fully expended on December 31, 2021, and we therefore consider December 31, 2021 to be the effective start date of the Affordable Connectivity Program.

⁷ See generally *Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

⁸ 47 CFR § 54.1610(a) and (b). The Commission required USAC, in coordination with Commission staff, to monitor activity in the Program to forecast the final month in which the Emergency Broadband Connectivity Fund (Fund) could pay out at least 50% of the claims on a pro-rata basis. *EBB Program Order*, 36 FCC Rcd at 4667, para. 116. According to the process established in the *EBB Program Order*, once USAC has identified the final month of the EBB Program using the criteria established by the Commission, USAC would endeavor to provide at least 60 days' notice of the final month of the EBB Program. *Id.*

⁹ 47 CFR § 54.1610(c), (d).

¹⁰ *EBB Program Order*, 36 FCC Rcd at 4669, 4671-73, paras. 122, 128-29, 132.

¹¹ Infrastructure Act, Pub. L. No. 117-58 (2021).

¹² *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453, (WCB Nov.18, 2021) (*Affordable Connectivity Program Public Notice*).

¹³ Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(I), 60502(a)(2)(A), (b)(1)(A)(ii), §§ 904(a)(6)(A), (a)(6)(E), (a)(7)(A), (B) (2021); Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C) and (D), *struck by* Infrastructure Act, div. F, tit. V, § 60502(b)(1)(A)(i)(II) and 60502(b)(1)(A)(i)(III), (V).

¹⁴ Infrastructure Act, div. F, tit. V, § 60502(b)(1).

II. DISCUSSION

5. *Waivers of End of EBB Program Enrollment Freeze and Consumer Notice Requirements.* On our own motion, the Bureau finds good cause exists to waive the rule requiring USAC to freeze enrollments in the EBB Program upon issuance of the notice announcing the end of the EBB Program, as required under section 54.1610(b), and the customer notice requirements under sections 54.1610(c) and (d) of the EBB Program rules. As a general matter, “an agency must adhere to its own rules and regulations.”¹⁵ Although strict application of a rule may be justified “to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,”¹⁶ the Commission’s rules may be waived for “good cause shown.”¹⁷ The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁸ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.¹⁹

6. First, we find that it is in the public interest to waive section 54.1610(b) requiring a freeze in EBB Program enrollments concurrent with the announcement of the end of the EBB Program. This requirement was originally adopted to avoid claims volatility and to allow for more certain financial projections in the final months of the EBB Program when program funds were running low.²⁰ However, the Infrastructure Act mitigates that harm by extending and modifying the EBB Program and replacing it with the Affordable Connectivity Program, and by appropriating an additional \$14.2 billion. Moreover, based on current budget projections, EBB Program funds will not be fully expended before December 31, 2021, so there is no longer any concern that the EBB Program will run out of funding before the effective date of the Affordable Connectivity Program. Further, waiving the initially scheduled enrollment freeze requirement maximizes the time period during which eligible households can continue to enroll in the EBB Program, and avoids unnecessarily limiting participation in the EBB Program in its remaining weeks. Accordingly, it is no longer necessary to freeze EBB Program enrollments concurrent with the announcement of the end of the EBB Program.²¹

7. Next, we find that it is in the public interest to waive the 15-day and 30-day end of EBB Program consumer notice requirements in sections 54.1610(c) and (d) of the Commission’s rules.²² Requiring providers to issue notices to households about the end of the EBB Program in the manner prescribed by the rules could cause alarm about a perceived loss of service, and confusion, given that EBB households will continue to receive a benefit at the EBB-level support amount for a limited 60-day period beyond the end of EBB Program.²³ These notice requirements were intended to ensure that consumers were appropriately informed about the end of the temporary, emergency EBB Program, and

¹⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

¹⁶ *Mary v. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ *Id.*; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁰ *EBB Program Order*, 36 FCC Rcd at 4669, para. 122.

²¹ 47 CFR § 54.1610(a); *EBB Program Order*, 36 FCC Rcd at 4667-69, paras. 116-122.

²² *See* 47 CFR § 54.1610(c), (d).

²³ The Commission’s rules require providers to include in their notices to their EBB Program subscribers information about the last month that the full benefit will be applied to the subscriber’s bill and the last date where a partial benefit will be applied to the bill. 47 CFR § 54.1610(c). The rules also require providers to advise subscribers that they will be subject to the provider’s generally applicable terms and conditions at the conclusion of the EBB Program if the household opted-in to continue to receive service at the conclusion of the EBB Program. 47 CFR § 54.1610(d).

any resulting change in their broadband service rate.²⁴ However, the EBB Program is being replaced by the longer-term Affordable Connectivity Program, and the Infrastructure Act provides for a 60-day transition period, during which time EBB Program enrolled households will continue to receive the same benefit amount that they received under the EBB Program. Therefore, households enrolled in the EBB Program will not see a change in their benefit amount for the duration of the 60-day transition period, and we anticipate that the vast majority of households enrolled in the EBB Program will remain eligible to receive a broadband benefit through the Affordable Connectivity Program, even beyond the 60-day transition period. In light of this transition period and the continued benefit that will be provided under the Affordable Connectivity Program, requiring providers to issue notices to their EBB subscribers about the end of the EBB Program as prescribed in the Commission's rules could result in consumer confusion, which would frustrate the orderly transition from the EBB Program to the Affordable Connectivity Program. We, therefore, find that it is in the public interest to waive these notice requirements. Notwithstanding the waiver of these notice requirements, service providers will continue to play an important role in disseminating information to their EBB Program subscribers about the changes stemming from the Infrastructure Act including, but not limited to, the transition period, and the discount levels.

8. *Preliminary Guidance Concerning the End of Enrollments for the EBB Program, the 60-Day Transition Period, and Start of the Affordable Connectivity Program.* To promote the orderly transition from the EBB Program to the Affordable Connectivity Program, we provide preliminary guidance to help consumers, service providers, outreach partners and other stakeholders begin to plan and prepare for the transition period and the start of the Affordable Connectivity Program in advance of the issuance of the Commission's final rules.²⁵

9. As explained in the *Affordable Connectivity Program Public Notice*, the Infrastructure Act makes certain modifications to the eligibility criteria used for the EBB Program, and changes the monthly benefit amount from \$50 to \$30 (with the exception of consumers residing on qualified Tribal lands and qualifying high-cost areas).²⁶ As explained above and in the *Affordable Connectivity Program Public Notice*, we expect these "delayed amendments" to take effect on December 31, 2021.²⁷ However, the Infrastructure Act provides for a 60-day transition period for households that "qualified for the EBB Program" before December 31, 2021, and would otherwise see a reduction in their benefits as a result of the delayed amendments.²⁸

10. While we have waived section 54.1610(b) of the EBB Program rules, it will still be necessary to stop enrollments in the EBB Program prior to the December 31, 2021 effective date for administrative purposes and to ensure compliance with the requirements of the Infrastructure Act.²⁹ Ending the EBB Program and starting the Affordable Connectivity Program will require administrative and system changes. Accordingly, there may be a *de minimis* gap between the date that EBB Program

²⁴ *EBB Program Order*, 36 FCC Rcd at 4671-73, paras. 128-29, 132.

²⁵ The Commission must promulgate rules for the implementation of the Affordable Connectivity Program within 60 days of enactment of the Infrastructure Act. Accordingly, we anticipate the Commission's rules will be adopted in January, after the wind-down of the EBB Program and the start of the 60-day transition window for households enrolled in the EBB Program before the December 31, 2021 effective date of the delayed amendments. *Affordable Connectivity Program Public Notice* at 2, paras. 2-3; Consolidated Appropriations Act, div. N, tit. IX, § 904(c). Notwithstanding any guidance we provide in this Order, participating service providers are ultimately responsible for reviewing and complying with the requirements of the Consolidated Appropriations Act and Infrastructure Act.

²⁶ *Affordable Connectivity Program Public Notice* at 3, para. 6.

²⁷ Infrastructure Act, div. F, tit. V, § 60502(b)(1).

²⁸ Infrastructure Act, div. F, tit. V, § 60502(b)(2).

²⁹ See Infrastructure Act, div. F, tit. V, § 60502(b)(2) (limiting the transition period to households that "qualified for" the EBB Program before December 31, 2021).

enrollments cease and the date that applications are accepted in the Affordable Connectivity Program. USAC and the Bureau will endeavor to implement the freeze on EBB Program enrollments as close in time to the start of the new program as is technically and administratively feasible.³⁰ We are also mindful that a gap between programs will be necessary to allow households that submit EBB Program applications in December to have sufficient time to provide additional documentation, if necessary, and have their applications reviewed prior to the end of enrollments in the EBB Program. We therefore direct USAC to implement the system changes necessary to administer the end of the EBB Program consistent with this Order and to provide further guidance to service providers as necessary.

11. USAC may also need to remove access to the online and paper applications for the EBB Program before the close of the Program. We therefore direct USAC to identify a date(s) by which applications will be removed in order to prevent consumer confusion and to support the administration of the end of the EBB Program. To retain the benefit at the EBB-support level during the 60-day transition window, households must be enrolled in the EBB Program before the Affordable Connectivity Program begins.³¹ A qualified EBB Program application alone does not constitute enrollment in the EBB Program.³² We will provide subsequent guidance on the specific timing when EBB Program applications will no longer be accepted by USAC. Those households enrolled in the EBB Program as of December 31, 2021 will enter a 60-day transition window during which these households will continue to receive a broadband benefit at the same support level they qualified for under the EBB Program. In other words, these households will continue to receive a benefit of up to \$50 a month during the 60-day transition period rather than an immediate reduction to the \$30 a month benefit set for the Affordable Connectivity Program. EBB Program households that qualified for the monthly benefit of up to \$75 a month will continue to receive that benefit amount during the 60-day transition period. New subscriber enrollments in the Affordable Connectivity Program that occur on or after December 31, 2021 will not be eligible for the limited continuation of the EBB Program benefit levels during the 60-day transition period but will be eligible to receive the subsidies established in the Infrastructure Act for the Affordability Connectivity Program. Households that are enrolled in the EBB Program as of December 31, 2021 will automatically participate in the 60-day transition period and are not required to separately opt-in or affirmatively request enrollment solely for purposes of continuing to receive their benefit during the 60-day transition period. The EBB Program rules adopted by the Commission will continue to govern the remainder of the EBB Program. Moreover, providers must continue to comply with the EBB Program rules for service provided to EBB-enrolled households during the 60-day transition window, where consistent with any guidance provided by the Bureau and the Infrastructure Act.

12. We also recognize the importance of ensuring that existing EBB-enrolled households are adequately informed about the end of the EBB Program, the 60-day transition period, the start of the Affordable Connectivity Program, the change in benefit amounts, any steps consumers may need to take in order to continue to receive an Affordable Connectivity Program benefit after the end of the transition

³⁰ Separate from the activities related to the change between the programs, the Commission and USAC will continue to monitor enrollment and disbursement activity in the EBB Program. In the event that the Commission and USAC project that the Emergency Broadband Connectivity Fund cannot support full reimbursement of claims in the final month of the EBB Program, the Bureau may direct USAC to freeze enrollments in the EBB Program.

³¹ Infrastructure Act, div. F., tit. V., § 60502(b)(2).

³² Households qualifying through the National Verifier must complete two steps to enroll in the EBB Program (1) apply and be deemed qualified to participate in the EBB Program, and (2) select an EBB service provider. *See, e.g.*, FCC, Emergency Broadband Benefit, <https://www.fcc.gov/broadbandbenefit> (last visited Nov. 26, 2021); USAC, How to Apply, <https://getemergencybroadband.org/how-to-apply/> (last visited Nov. 26, 2021) (stating that to enroll “[o]nce we approve your application, you can choose a company that offers EBB Program discounts and sign up for service”). Certain consumers, such as consumers already participating in the Lifeline program were not required to complete new applications in order to participate in the EBB Program. *See EBB Program Order*, 36 FCC Rcd at 4637, para. 52.

period, and other related topics. We waived the end of EBB Program notice requirements in sections 54.1610(c) and (d) to avoid the potential for consumer confusion. However, providers will continue to play an important role in disseminating information to their EBB Program subscribers and should still be prepared to answer consumer questions about the changes, including any rate changes, that may occur as a result of the changed benefit amount under the Affordable Connectivity Program at the conclusion of the 60-day transition window.

13. To ensure compliance with the eligibility criteria for the Affordable Connectivity Program, during the 60-day transition period, it will be necessary to reverify the eligibility of EBB Program households that qualified under eligibility criteria that have been removed by the Infrastructure Act for the Affordable Connectivity Program. This reverification will only be necessary for the limited number of households that enrolled in the EBB Program based on a substantial loss of income after February 29, 2020, or participation in a service provider's approved COVID-19 relief program.³³ Absent demonstrating eligibility for the Affordable Connectivity Program, these households must be de-enrolled at the conclusion of the 60-day transition period. In light of the start date and limited duration of the transition period, and USAC's experience with conducting eligibility reverifications in the Lifeline program, we will rely on USAC's resources as much as possible to complete these reverifications. At a later date, the Bureau will provide additional guidance on this reverification process and steps that providers and affected EBB Program households will need to take in order to establish their eligibility for the Affordable Connectivity Program by the conclusion of the 60-day transition window.

III. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR § 54.1610(b), (c) and (d) of the Commission's rules are WAIVED to the extent provided herein.

15. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

³³ The Infrastructure Act eliminates these two eligibility criteria for the Affordable Connectivity Program. *See* Consolidated Appropriations Act, div. B, tit. IX, § 904(a)(6)(c), *struck by* Infrastructure Act, div. F., tit. V, sec 60502(b)(1)(A)(i)(ii); Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(III), (V), § 904(a)(6)(D) (2021); *see also Affordable Connectivity Program Public Notice* at 14, para. 30.