

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

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

ORDER

Adopted: January 11, 2024

Released: January 11, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, and consistent with the authority delegated by the Federal Communications Commission (Commission), the Wireline Competition Bureau (Bureau) announces requirements and guidance for the wind-down of the Affordable Connectivity Program (ACP). We currently project that the last month for which the ACP can fully reimburse providers for the ACP benefits provided to enrolled households is April 2024.1 Should Congress not appropriate additional money, the existing funds will be exhausted, the Commission will have to end the ACP, and providers will stop providing discounts to enrolled households. The Commission nonetheless remains dedicated to providing ACP households an orderly transition out of the program and, more importantly, to keeping as many ACP households as possible connected to broadband service after the end of the program. To prepare low-income households and broadband providers, as well as the organizations that help support eligible households' enrollment, and as required by the Commission's delegation to the Bureau in the ACP Order, the Bureau announces ACP wind-down procedures.2 These procedures include the process for notifying enrolled ACP

1 April 2024 is currently projected to be the last data month for which providers will be eligible to receive full reimbursement for discounts passed through to ACP households for service and devices. The May 1, 2024 snapshot will show the households eligible to be claimed for the April 2024 data month.

2 Affordable Connectivity Program, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 485 at 591-92, paras. 231-33 (2022) (ACP Order). We find that notice and comment procedures are not required here under the Administrative Procedure Act, 5 U.S.C. § 551 et seq. We note that section 904(h) of the Consolidated Appropriations Act of 2021, which established the Emergency Broadband Benefit Program, the predecessor to ACP, included an exemption from APA rulemaking requirements. See Consolidated Appropriations Act, div. N, tit. IX, § 904(h)(1), codified at 47 U.S.C. § 1752(h)(1). In addition, certain of the rules being adopted here are procedural rules that are exempt from the notice and comment requirements. See id. at § 553(b)(A). To the extent the rules adopted here are substantive rules not otherwise exempt from the APA rulemaking requirements, we find good cause to forego notice and comment because it would be impracticable and contrary to the public interest. See id. at § 553(b)(B). Given the short period of time between now and the projected depletion of ACP funding, undertaking notice and comment would not permit us to adopt rules with enough time for providers and the Universal Service Administrative Company (USAC) to prepare for wind-down and give adequate notice to ACP households about the end of the program. This could lead to substantial consumer confusion and result in unwanted disruptions to service for ACP households that could deprive households of the broadband

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households about the impact of program termination on their broadband service and bills and the freezing of new enrollments in the program. This Order also offers guidance to providers regarding advertising, awareness, and outreach requirements; the timing of claims submissions; and participation during a possible partially funded month of ACP. We also encourage providers to help ACP households transition to providers' own low-income internet offerings.

2. Congress provided \$14.2 billion in funding for the ACP³ and that funding has been drawn down each month as providers have claimed reimbursement for benefits passed through to households.⁴ The ACP, which was launched two years ago, currently delivers discounted internet service to more than 22 million low-income households, benefiting both rural and urban households alike.⁵ Despite news of the program's projected end, the ACP remains as popular as ever as more households continue to enroll in the program each month.⁶ Moreover, the ACP is embraced by subscribers of all ages, with nearly half of subscribers over the age of 50.⁷

3. The ACP provides eligible households with a monthly discount on broadband service of up to \$30 per month and up to \$75 per month for households on qualifying Tribal lands.⁸ Eligible households can also receive a one-time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers, if the household contributes more than \$10 and less than \$50 toward the purchase price.⁹ Should the ACP not receive additional funding, the Commission will have to end the program and enrolled households will no longer receive the ACP discount after the end of the program.¹⁰

II. BACKGROUND

4. At the end of 2020 and during the COVID-19 pandemic, Congress established the Emergency Broadband Benefit Program (EBB Program), charging the Commission with building a new program to provide discounted internet service and connected devices to low-income households.¹¹

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connections they need for work, school, healthcare, and more and potentially resulting in significant adverse impacts on employment, education, and access to healthcare for millions of low-income consumers. We also note that we are making this Order effective upon release, pursuant to the exemption in 47 U.S.C. § 1752(h)(1), and we also find that we have good cause for doing so for all the reasons stated above.

³ *ACP Order* at 37 FCC Rcd at 485, para. 1. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021). The \$14.2 billion appropriation is contained in Division J, Appropriations, Title IV — Financial Services and General Government, of the Infrastructure Act. The statutory changes to the EBB Program are contained in Division F, Broadband, Title V, Broadband Affordability, Section 60502, Broadband Affordability, of the Infrastructure Act. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752.

⁴ See Universal Service Administrative Co. (USAC), ACP Enrollment and Claims Tracker, <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Jan. 8, 2024).

⁵ See *More Than 20 Million Households Enroll in Nation's Largest Broadband Affordability Program*, Fact Sheet (Aug. 14, 2023), <https://docs.fcc.gov/public/attachments/DOC-396000A1.pdf>.

⁶ See USAC, ACP Enrollment & Claims Tracker, <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Jan. 8, 2024).

⁷ USAC, Additional ACP Data, <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/additional-acp-data/> (last visited Jan. 8, 2024).

⁸ 47 CFR § 54.1803(a).

⁹ 47 CFR § 54.1803(b).

¹⁰ 47 U.S.C. § 1752(b)(15) (providing that, at the end of the ACP, a household will be subject to the provider's generally applicable terms and conditions).

¹¹ 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).

Congress provided the Commission with \$3.2 billion to be used until expended to provide a monthly discount for broadband service of up to \$50 per eligible household, or up to \$75 for households on qualifying Tribal lands, for broadband service plans that were offered as of December 1, 2020.¹² Providers were permitted to offer connected devices and receive a reimbursement of up to \$100 with an accompanying co-payment from the consumer of more than \$10 and less than \$50.¹³ As directed by Congress, the Commission conducted an expedited 60-day rulemaking and adopted rules for the EBB Program on February 25, 2021.¹⁴ The EBB Program was launched on May 12, 2021 and grew to more than 9 million households by the end of that year.¹⁵

5. Just six months after the launch of the EBB Program, the Infrastructure Investment and Jobs Act (Infrastructure Act) became law. As part of the investment in broadband affordability, deployment, and access in the Infrastructure Act, Congress made several changes to the EBB Program to transform it from an emergency COVID-19 program to a longer-term broadband affordability program.¹⁶ The Infrastructure Act provided \$14.2 billion for the ACP. Pursuant to the Infrastructure Act, modifications to the EBB Program took effect on December 31, 2021, and the ACP immediately began accepting new enrollments.¹⁷ As also required by statute, the Commission adopted the final rules for the ACP on January 14, 2022, after another 60-day rulemaking.¹⁸ Those rules reflected new statutory requirements that modified the benefit amount, established new ways to qualify for the affordability program, strengthened controls to safeguard the integrity of the program, and established consumer protection provisions.¹⁹ The Infrastructure Act also authorized the Commission to conduct outreach activities, including providing grants to outreach partners, to promote the ACP and increase enrollment in the program.²⁰ The Commission subsequently established an outreach grant program and ACP outreach

¹² See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612, 4646, para. 71 (2021) (*EBB Program Order*).

¹³ *EBB Program Order*, 36 FCC Rcd at 4651-53, paras. 79-81.

¹⁴ See generally *EBB Program Order*.

¹⁵ See *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

¹⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60502(a)(3), 135 Stat. 429, 1240 (2021) (codified at 47 U.S.C. § 1752).

¹⁷ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(1), (4); *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450; Public Notice, 36 FCC Rcd 16290, 16291, para. 3 (WCB Nov. 18, 2021) (*ACP Public Notice*). The EBB Program transitioned to the ACP before the original funding of \$3.2 billion was fully expended. Congress renamed the Emergency Broadband Benefit Fund as the Affordable Connectivity Fund and appropriated additional funds to the renamed program. Section 60502(a)(2) *Change to Program Name*. As such, the remaining funds from the original appropriation were used to support the ACP, bringing the total funding appropriated for the FCC's broadband affordability program to \$17.4 billion. Information on the claims made under the EBB Program and per month for the ACP are available at <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/>.

¹⁸ See *ACP Order*, 37 FCC Rcd at 486-87, para. 4.

¹⁹ 47 CFR § 54.1803(a) (establishing ACP benefit amount); *id.* § 54.1800(j) (establishing eligibility criteria for ACP); *id.* § 54.1801(e) (establishing removal and withdrawal procedures); *id.* § 54.1806 (establishing an annual recertification requirement); *id.* § 54.1807 (establishing enrollment representatives registration and compensation requirements); *id.* § 54.1809 (establishing requirements for non-usage de-enrollment); *id.* § 54.1810 (implementing ACP consumer protection measures).

²⁰ See 47 U.S.C. § 1752(b)(10)(C)(ii)(IV).

pilot programs to help deliver the message about the ACP and provide application assistance to eligible households across the country.²¹

6. Because the amount appropriated by Congress for the ACP was finite, the Commission recognized the need to prepare for the wind-down of the ACP should Congress not appropriate additional funding. When adopting the rules for the ACP, the Commission delegated authority to the Bureau to establish and implement requirements and procedures to wind down the ACP.²² The *ACP Order* specifies that the Bureau, when developing wind-down procedures, should identify a process for notifying the public of the ACP's projected end as funds are nearing depletion.²³ The *ACP Order* gives the Bureau the authority to establish specific timeframes for consumer opt-ins before they can be charged a higher amount for broadband service than when the ACP benefit was being applied and the appropriate consumer notice and also provides the Bureau with flexibility in implementing a flexible approach to affirmative opt-in.²⁴ The *ACP Order* also provides that the wind-down procedures set by the Bureau must consider how the remaining funds will be distributed in the final month of the ACP, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind down the program.²⁵

7. To project the depletion of funding of the ACP, the Commission directed the Bureau, in coordination with the Office of the Managing Director (OMD), the Office of Economics and Analytics (OEA), and the Universal Service Administrative Company (USAC), to develop a forecast of the depletion of funding appropriated by Congress to the Commission to fund the ACP.²⁶ In addition to developing the forecast, the Commission and USAC have posted information showing weekly enrollment figures, monthly claims, and funding remaining to allow public stakeholders to track claims and enrollment trends in the program.²⁷ The current USAC forecast projects that there are sufficient funds to pay all provider claims in full through the April 2024 service month. The timeline for the wind-down procedures set forth in this Order are based on this forecast; however, the projected last fully funded month may shift based on changes in ACP enrollment trends or any additional funding if provided by Congress after release of this Order.

III. DISCUSSION

A. Preparing Consumers for the End of the ACP

8. *Timing of Bureau Announcement of Last Fully Funded Month of Program.* The Bureau will announce the upcoming end of the ACP approximately 60 days prior to the end of the last fully funded month of the program. Thus, based on current projections that the last fully funded month of the ACP is April 2024, we anticipate that this announcement will occur in late February 2024, but this timing may adjust based on activity in the program, particularly as a result of the freeze in enrollments discussed below. The Bureau's 60-day notice of the end of the last fully funded month of the program will, as set forth below, trigger certain required communication to households receiving ACP-supported service clearly explaining the impact of the end of the benefit on their broadband bills so that households can

²¹ See *ACP Order*, 37 FCC Rcd at 519-20, para. 70; see generally *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order, 37 FCC Rcd 9928 (2022) (*Second ACP Order*); *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order, 37 FCC Rcd 9989 (2022) (*Third ACP Order*).

²² *ACP Order* at 591-92, paras. 231-33; *ACP Public Notice*, 36 FCC Rcd at 16338, para. 128.

²³ *Id.* at 591-92, para. 232.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *id.*; USAC, *ACP Enrollment and Claims Tracker*; <https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Jan. 8, 2024).

make an informed choice about the broadband service they receive to stay connected. However, as set forth below we require providers to begin informing households about the upcoming end of the ACP benefit prior to this 60-day notice.

9. *Provider Notices to ACP Households Regarding End of Program and Continuation of Service.* In the *ACP Order*, the Commission found that, as with the EBB Program, “requiring providers to obtain an affirmative opt-in from households before they [could] be charged an amount higher than they would pay under the full reimbursement amount was necessary to ‘guard against unexpected charges’”²⁸ if the ACP were to end. The Commission also found that “an affirmative opt-in following appropriate consumer notice is generally a good measure for avoiding consumer bill shock and ensuring the household is informed.”²⁹

10. Currently, Commission rules protect ACP households from bill shock in two ways. First, prior to enrolling a consumer in the ACP, participating providers are required to obtain affirmative consumer consent, either orally or in writing, that acknowledges that, after having reviewed the required disclosures about the ACP, the household consents to enroll with the provider.³⁰ One of these required disclosures is that the household will be subject to the provider’s undiscounted rates and general terms and conditions if the ACP ends.³¹ Second, the Commission requires providers to obtain a household’s opt-in, either orally or in writing, to continue providing the broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules.³²

11. Consistent with the direction from the Commission to the Bureau to establish specific timeframes for consumer opt-ins and the appropriate consumer notice,³³ the notice requirements we set out below are intended to ensure that enrolled households learn from their provider about the impact that the end of the ACP will have on the household’s broadband bill. We do not prescribe a specific format or wording for these consumer notices but, to ensure that the notices meaningfully inform consumers about the impact of the end of the ACP on their broadband bills, certain key pieces of information must be included in the notices, as explained below.

12. *Timing and Content of Provider Notices.* To ensure that ACP households have multiple opportunities to receive information regarding the end of the ACP and alternative broadband service plans, including providers’ low-income internet programs, and consistent with the goal of ensuring ACP households remain connected, providers shall send at least three notices related to the end of the ACP to their ACP households. The first required notice shall be sent as soon as practicable, but no later than 14 days after the release of this Order, and shall generally advise ACP households about the possibility of program termination and the potential impact on their broadband service and bills. After the Bureau issues its 60-day notice announcing the end of the last fully funded month of the ACP, providers shall send the second and third required notices to their ACP households notifying those households about the end of the program. The second required notice shall be sent as soon as practicable, but no later than 15 days after the last fully funded month of the ACP is announced by the Bureau in the 60-day notice. The third required notice shall coincide with the last bill or billing cycle in which the full ACP benefit is applied. The second and third required notices shall indicate that the ACP is ending and shall include (1) the date of the last bill on which the full ACP benefit will be applied and (2) the amount that the

²⁸ *ACP Order*, 37 FCC Rcd at 592, para. 232.

²⁹ *Id.*

³⁰ *Id.* at 566, para. 176; 47 CFR § 54.1810.

³¹ *ACP Order*, 37 FCC Rcd at 566, para. 176; 47 CFR § 54.1810(a)(1)(v).

³² *ACP Order*, 37 FCC Rcd at 592, para. 232.

³³ *Id.* at 592, para. 232.

household will be billed for the service once the full ACP benefit is no longer available and/or that the household will be subject to the provider's undiscounted rates and general terms and conditions after the end of the ACP. The second and third notices shall also remind ACP households of their ability to change their service and/or to opt out of continuing their service at the end of the ACP. Providers are strongly encouraged to include in these notices information on their lower cost offerings and low-income programs or a phone number or link to a website where ACP households may obtain such information. Providers are not limited to sending only three notices to their ACP households and are encouraged to correspond more frequently with their ACP households should the provider believe that such additional outreach is necessary or beneficial.

13. *Delivery of Provider Notices.* The required provider notices shall be sent to ACP households in writing, in a manner that is accessible to persons with disabilities. As noted above, we do not prescribe a specific format or wording for these consumer notices. However, we encourage providers to send these notices in a format (e.g., email, text message, or paper mail) that is consistent with any consumer expressed preferences for receiving notices and other communications and using the same email, phone number, or mailing address to which bills or other monthly communications are sent. Providers are also encouraged to offer these notices in households' preferred language.

14. *Announcements and Notices from the Commission and USAC.* Like providers, the Commission and USAC have a responsibility to help enrolled households become aware of the impact of the end of the ACP. To that end, the Bureau has been coordinating with the Consumer and Governmental Affairs Bureau (CGB) to identify necessary changes to consumer-facing Commission websites and materials to effectively communicate end-of-program information upon announcement of wind-down procedures and the end of the ACP. USAC, at the Bureau's direction, has also been preparing updates to USAC websites and materials, including GetInternet.gov, as needed. USAC also played a critical role in communicating program information directly to enrolled households in the past, such as during the transition from the EBB Program to ACP in early 2022.³⁴ Accordingly, the Bureau and USAC have prepared and are ready to implement a communications plan for notifying enrolled households directly of the end of ACP, including multiple notices from USAC to ACP households.

15. *Subscriber Opt-In.* As with the transition from the EBB Program to the ACP, the Commission's approach to subscriber opt-in balances the goals of ensuring households can continue accessing the broadband service they need for work, school, healthcare, and more and of minimizing potential bill shock.³⁵ Consistent with the requirement of affirmative opt-in in the *ACP Order*,³⁶ we set forth below the elements for establishing a household's affirmative opt-in to continuing to receive broadband service after the end of the ACP.

16. For purposes of the unique circumstances of the wind-down of the ACP and pursuant to the *ACP Order*, we find that there are two elements to establishing that a household has affirmatively opted-in to continue receiving broadband service after the end of the ACP. The first element is established by the household's acknowledgment of having reviewed the required disclosures, which include a statement that the household will be subject to the provider's undiscounted rates and general terms and conditions if the program ends, when enrolling in the EBB Program or the ACP.³⁷ The second element is establishing the household's willingness and ability to pay for broadband service. Households

³⁴ *FCC Issues Further Guidance for Affordable Connectivity Program*, Order, WC Docket Nos. 20-445 and 21-450, 36 FCC Rcd 16786, 16792, para. 20 (WCB 2021) (*Dec. 8, 2021 Order*) (directing USAC to notify enrolled households of changes to the EBB Program).

³⁵ See *ACP Order*, 37 FCC Rcd at 583, para. 218.

³⁶ See *id.* at 592, para. 232; see *supra* paras. 9-10.

³⁷ See *ACP Order*, 37 FCC Rcd at 566, para. 176; 47 CFR § 54.1810; *Emergency Broadband Benefit Program*, WC Docket No. 2-445, Order, 36 FCC Rcd 4612, 4629, para. 38 (2021) (*EBB Program Order*).

are considered to have demonstrated a willingness and ability to pay for broadband after the end of the ACP if they (1) have informed their provider, either orally or in writing, that the provider may continue providing broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules;³⁸ (2) were existing paying internet service customers with their current broadband provider at the time the household enrolled in the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported broadband service.

17. This approach for households that have demonstrated a willingness and ability to pay (*i.e.*, that (1) already informed the provider they would continue at a higher rate; (2) were existing paying customers with the current provider before the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported service) is consistent with the approach to affirmative opt-in that the Commission took in the *ACP Order* when transitioning households from the EBB Program's \$50 non-Tribal monthly benefit to the ACP's smaller \$30 non-Tribal monthly benefit.³⁹ The *EBB Program Order* had required providers to "obtain an affirmative opt-in from households ... before they can be charged an amount higher than they would pay under the full EBB Program reimbursement amount."⁴⁰ However, the *ACP Order* deemed affirmative opt-in to include "EBB households that (1) were existing paying internet service customers with the broadband provider when the household enrolled in the EBB with that provider; (2) previously consented to the provider's general terms and conditions if they continued to receive service at the end of the EBB Program; or (3) currently pay a fee for their supported internet service."⁴¹ As the *ACP Order* explained, "[t]his category of households has demonstrated to their current provider a willingness and ability to pay for internet service; therefore, we find that there is little risk of unexpected financial harm even if their bill may potentially increase up to \$20."⁴² Interpreting the entirety of the *ACP Order*, the Commission's statements express a preference for a flexible approach to affirmative opt-in and provides the Bureau with flexibility in implementing it.

18. In addition, this approach reduces the risk of subjecting a large percentage of ACP households to service disruption and avoids increasing administrative burdens on service providers and households.⁴³ We believe this approach will help guard against unintended disconnections from broadband service for households that have demonstrated a willingness to pay for broadband without the ACP benefit, reduce consumer confusion and frustration, and mitigate bill shock.⁴⁴ In light of their demonstrated willingness and ability to pay for broadband service and the required provider notifications to ACP households regarding the end of the program—which must inform households of their ability to change their service and/or to opt out of continuing service at the end of the ACP, the risk of unexpected financial harm for these households is low as compared to the risk of harm to these households due to disconnection for failure to opt-in to receive undiscounted service. For example, requiring a household that was paying for non-discounted broadband service prior to enrollment in the ACP to submit additional consent to retain that broadband service with the provider after the end of the ACP could result in a disconnection of broadband service should the household fail to timely consent. The unwanted loss of broadband service could not only lead to consumer confusion for such households, but could deprive those households of the broadband connections they were relying on for needs related to work, school,

³⁸ See *ACP Order*, 37 FCC Rcd at 582, para. 215.

³⁹ See *id.* at 584-85, para. 220.

⁴⁰ *EBB Program Order*, 36 FCC Rcd at 4673, para. 132.

⁴¹ *ACP Order*, 37 FCC Rcd at 584, para. 220.

⁴² *Id.*

⁴³ See *id.* at 582, paras. 216, 218.

⁴⁴ See *id.* at 582, para. 215.

healthcare, and connections with governmental services. Losing such access could, in turn, result in loss of access to those services and employment, as the household spends the time to restore service.

19. Consistent with the *ACP Order*'s requirement of affirmative opt-in,⁴⁵ providers must collect an opt-in from households that have not established affirmative opt-in as described above prior to charging them a higher rate for that broadband service than the household was paying when the ACP benefit was applied. For these households, there may be a stronger risk of potential bill shock were they to receive a bill for undiscounted broadband service. This opt-in for this category of ACP households is warranted to ensure ACP households are adequately informed about their options and to protect households from bill shock. The opt-in must be collected either orally or in writing and providers may seek such opt-in from households at any time before increasing the household's bill due to the end of the ACP, including before the Bureau issues the 60-day notice of the end of the last fully funded month of the program.

20. *Ensuring ACP Households Remain Connected.* The ACP has made tremendous progress in bridging the digital divide by helping millions of low-income households for whom the cost of internet service has been a barrier to get or stay online. That progress would not be possible without the many participating providers serving ACP households. Unfortunately, losing the ACP benefit puts these ACP households at risk of losing their internet service altogether. Nevertheless, we are confident that participating providers will also play a crucial role in fulfilling an important goal of the wind-down procedures laid out in this Order: ensuring that ACP households remain connected at the end of the program. Some participating providers currently make low-income internet programs available to their households that can play a critical role in keeping ACP households connected. Consistent with this goal of ensuring that ACP households remain connected even after the end of the ACP, providers who already offer low-income internet programs are encouraged to help interested ACP households not already participating in these programs to transition to these programs, and providers that do not currently offer low-income internet programs are encouraged to develop such programs.

B. Enrollment Freeze and Its Impact on ACP Outreach

21. *Enrollment Freeze.* The Bureau will freeze new enrollments into the ACP beginning on February 8, 2024. Accordingly, enrollments into the ACP will be permitted until February 7, 2024 at 11:59 p.m. EST. The Bureau finds that this freeze will help to more accurately project funding exhaustion by increasing certainty in program commitments. For example, an enrollment freeze mitigates the risk that a spike in enrollments or device claims could hasten depletion of remaining ACP funds, preventing the Commission from fully funding benefits through April 2024 as currently projected. If funding were to run out earlier than projected, then low-income households enrolled in the ACP might lose their benefits earlier than anticipated, and before being given adequate time to learn of the program's end and make alternative arrangements for broadband service without the ACP discount. The Bureau finds that freezing enrollments will help reduce the risk of the last fully funded month shifting earlier, thus permitting providers and USAC adequate time to notify consumers about the impact on their broadband bills and services should the ACP not receive more funding. Moreover, to more smoothly administer the end of the program, providers and households must have confidence that the ACP can support ACP benefits through the forecasted end date.

22. At the Bureau's direction, USAC has developed and is ready to implement procedures for this freeze on new enrollments, including changes necessary to the National Lifeline Accountability Database (NLAD) and provider processes, and to publish information on its websites announcing the upcoming freeze in new enrollments. Any existing ACP eligibility determinations and enrollments must be completed by the time enrollments are to be frozen, and no future eligibility determinations or enrollments will be made by USAC or providers unless directed by the Bureau. We further direct USAC to remove paper applications and links to the National Verifier ACP application on its websites at the

⁴⁵ See *id.* at 592, para. 232.

time of the enrollment freeze.⁴⁶ We recognize that the freeze in enrollments will require service providers to adjust their own processes, including those relating to customer support and onboarding new ACP households. To ease provider administration of the wind-down of ACP, we do not require providers to perform transfer-in transactions for enrolled ACP households seeking to transfer their benefit, and instead we allow providers to choose whether to accept transfers after the ACP enrollment freeze. For those that wish to continue to accept new ACP households via benefit transfers when enrollments into the program are frozen, we remind those providers that they must continue to comply with the transfer notice and consent requirements in the Commission rules, as well as any transfer processes implemented by USAC.⁴⁷

23. With the anticipated freeze in enrollments, we also plan to pause certain activities related to advertising, awareness, and outreach. These activities were included when the ACP was first established because the Commission recognized that, for the program to achieve its full potential and reach as many eligible households as possible, households likely to be eligible must be clearly informed of the program's existence and key program information and that the Commission, USAC, participating providers, and other stakeholders and partners play an important role in disseminating information about the ACP to enrolled households and households likely to be eligible.⁴⁸ Accordingly, the Commission adopted certain advertising and awareness requirements consistent with the Infrastructure Act and implemented certain statutorily authorized outreach tools.⁴⁹ As explained below, these activities that promote awareness of and facilitate enrollment in the ACP must also stop concurrently with the anticipated enrollment freeze, so as to avoid consumer confusion.

24. *Advertising, Notification Upon Subscription or Renewal, and Public Awareness Requirements.* The ACP rules include several requirements to ensure that consumers receive meaningful notice of the existence of the ACP. Commission rules require providers to publicize the availability of the ACP in a manner reasonably designed to reach those consumers likely to qualify for the program and in a manner that is accessible to individuals with disabilities.⁵⁰ In addition, consistent with the statutory requirements laid out in the Infrastructure Act,⁵¹ the ACP rules include a requirement that participating providers must notify in writing or orally, in a manner that is accessible to individuals with disabilities, all consumers who either subscribe to or renew a subscription to an internet service offering about the ACP and how to enroll, along with requirements governing the timing and frequency of the required notices.⁵² Also consistent with the statutory requirements laid out in the Infrastructure Act,⁵³ the ACP rules include a requirement that participating service providers carry out public awareness campaigns in their ACP areas of service that highlight the value and benefits of broadband internet access service and the existence of the ACP in collaboration with state agencies, public interest groups, and non-profit organizations.⁵⁴

⁴⁶ 47 CFR § 54.1810(b). The Commission's rules provide that households may transfer their ACP service benefit once per calendar month, with limited exceptions. *See ACP Order*, 37 FCC Rcd at 570-71, paras. 187-89.

⁴⁷ 47 CFR § 54.1810(b)(1) (setting out requirements for providing notice to households and collecting consent prior to conducting a transfer); *id.* § 54.1810(b)(2) (establishing that providers must provide a notice to the subscriber that the transfer has occurred); and *id.* § 54.1810(b)(3) (limiting subscriber transfers to once per calendar month, with limited exceptions).

⁴⁸ *See ACP Order*, 37 FCC Rcd at 578-79, paras. 206-207.

⁴⁹ *See id.* at 571-575, paras. 190-97.

⁵⁰ 47 CFR § 54.1804(b); *ACP Order*, 37 FCC Rcd at 577-78, paras. 204-205.

⁵¹ 47 U.S.C. § 1752(b)(10)(A); *ACP Order*, 37 FCC Rcd at 575, para. 200.

⁵² 47 CFR § 54.1804(c); *ACP Order*, 37 FCC Rcd at 576, para. 202.

⁵³ 47 U.S.C. § 1752(b)(8).

⁵⁴ 47 CFR § 54.1804(d); *ACP Order*, 37 FCC Rcd at 578-79, paras. 206-207.

25. As a general matter, “an agency must adhere to its own rules and regulations.”⁵⁵ 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,”⁵⁶ the Commission’s rules may be waived for “good cause shown.”⁵⁷ 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.⁵⁸ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵⁹ The Bureau, under delegated authority, may act on requests for waiver of rules.⁶⁰

26. While the advertising and promotion requirements detailed above have played a valuable part in educating the public about the ACP, continuing to require providers to disseminate information about the ACP after the program ceases to accept new enrollments in excess of statutory requirements would cause consumer confusion and thus be contrary to the public interest. Accordingly, the Bureau waives the requirements of section 54.1804(b) of the Commission’s rules effective February 8, 2024, concurrent with the start of the enrollment freeze, and this waiver will remain in effect for the duration of the enrollment freeze. While the Bureau is unable to waive the underlying statutory requirements set forth in sections 54.1804(c) and (d) of the Commission’s rules because they are contained in the statute⁶¹ the Bureau advises that conducting campaigns informing consumers about the end of the ACP will be considered to be in compliance with those statutory requirements during the enrollment freeze.

27. *ACP Outreach Grant and Pilot Programs.* The Commission established the Affordable Connectivity Outreach Grant and ACP Pilot Programs to increase the awareness of and encourage participation in the ACP among eligible households.⁶² Under the Affordable Connectivity Outreach Grant Program, over 200 governmental and non-governmental entities are receiving grant funding to promote awareness of the ACP.⁶³ The 23 participants in the Your Home, Your Internet Pilot Program, and the 11 participants in the ACP Navigator Pilot Program are connecting with eligible households in their communities to promote the ACP and help provide application assistance.⁶⁴ Congress authorized the Commission to “conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program” including providing grants to outreach partners in order to carry this out.⁶⁵ The Commission, in adopting rules for the Affordable Connectivity Outreach Grant Program, stated “[e]ntities

⁵⁵ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁵⁶ *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

⁵⁷ 47 CFR § 1.3.

⁵⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵⁹ *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶⁰ 47 CFR § 0.291(b).

⁶¹ See 47 U.S.C. § 1752(b)(8), (10)(A).

⁶² See generally, FCC, Affordable Connectivity Outreach Grant Programs, <https://www.fcc.gov/acp-grants> (last visited Jan. 8, 2024) (providing information on the various FCC grants to fund ACP outreach activities performed by eligible governmental and non-governmental entities; FCC, Affordable Connectivity Pilot Program, <https://www.fcc.gov/affordable-connectivity-pilot-programs> (last visited Jan. 8, 2024) (describing the ACP Your Home, Your Internet and the ACP Navigator Pilot Programs).

⁶³ See *Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, WC Docket No. 21-450, Public Notice, DA-23-194 (CGB Mar. 10, 2023).

⁶⁴ See *Wireline Competition Bureau Announces Final List of Entities Selected for the Affordable Connectivity Pilot Programs*, WC Docket No. 21-440, Public Notice, DA 23-288 (WCB Apr. 6, 2023).

⁶⁵ See 47 U.S.C. § 1752(b)(10)(C)(ii)(IV).

that receive grant awards may continue to use their grant funds for outreach until enrollments cease.”⁶⁶ The Commission recognized that, should enrollments stop during the wind-down of the ACP, continuing outreach efforts could undermine the objectives of the grant programs and create consumer confusion. Additionally, it would not be fiscally responsible to continue grant-funded enrollment efforts after an enrollment freeze. Therefore, consistent with the direction in the Commission’s order establishing the Affordable Connectivity Outreach Grant Program, which includes grant funding for the ACP Pilots Programs, the Bureau and CGB will coordinate on communications and instructions to grant recipients and pilot participants on the need to cease grant-funded outreach work and other pilot-related activities that focus on enrollment activities as a result of the enrollment freeze.

C. Claims Process

28. *Expedited Claims Submission Timeline.* In the *ACP Order*, the Commission delegated to the Bureau the authority to develop procedures regarding how the remaining funds will be distributed in the final month of the ACP, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind down the program.⁶⁷ Pursuant to this authority, we adopt the following modifications to the existing reimbursement process to require providers to submit new claims by the 1st of the second month after the snapshot date. We find these modifications are necessary to help ensure that USAC has a timely accounting of finalized provider claims to inform the forecast of remaining program funds and for the smooth administration of end-of-program procedures. Moreover, requiring providers to submit their claims on a shorter timeline will help track limited funding as it gives the Commission and USAC certainty of the amount the providers seek to claim for each service month.

29. Beginning with the February 1, 2024 snapshot, we require participating providers to submit to USAC their reimbursement claims for service for households captured on the snapshot report by no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. For example, all claims and upward revisions for the February 1 uniform snapshot date and for claims and upward revisions for preceding months must be submitted no later than April 1, 2024. Thereafter, all claims must be submitted no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. Reimbursement claims submitted after the deadline will not be processed. While downward revisions will continue to be accepted, providers should make every effort to ensure that their reimbursement claims are complete and accurate, particularly as the ACP enters the wind-down phase. To facilitate the efficient wind-down of the ACP, we strongly encourage providers to submit any remaining outstanding claims for reimbursement or revisions prior to February 1, 2024. Should the ACP receive additional funding, the Bureau will re-evaluate the need to continue to require providers to submit claims on this new timeline.

30. *Partial Reimbursement.* In the event that reimbursement claims in the final month of the ACP exceed the amount of remaining funds, reimbursements for benefits passed through to households will be paid out to providers on a reduced, pro-rata basis.⁶⁸ For example, if based on the forecast of the

⁶⁶ See *Second ACP Order*, 37 FCC Rcd at 9956, para. 50. See also Affordable Connectivity Outreach Grant Program, Notice of Funding Opportunity, FCC-ACOGP-23-001 (Nov. 10, 2022) and Affordable Connectivity Outreach Grant Program – Pilot Program Grants, Notice of Funding Opportunity, FCC-ACOGP-23-002 (Nov. 21, 2022). The Notices of Funding Opportunity, or NOFOs, provide detailed information about specific grant opportunities, including information about the amount of funding available, eligible entities, fundable expenses and activities, application and evaluation process, reporting requirements, and other rules and requirements for the grant opportunity.

⁶⁷ *ACP Order*, 37 FCC Rcd at 543, para. 123 (delegating to the Bureau to establish a different timeline to submit certified reimbursement claims when the ACP is winding down). See also *ACP Order*, 37 FCC Rcd at 591-92, para. 232.

⁶⁸ *Id.* at 592, para. 233.

depletion of funding established above, the remaining balance in the Affordable Connectivity Fund (Fund) is sufficient to pay out 80% of each reimbursement claim submitted in the final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund.⁶⁹ Similarly, if the Fund is only sufficient to pay 40% of each reimbursement claim in the final month, the Fund will pay out 40% of each claim on a pro-rata basis. We recognize that the *ACP Order* contained language that suggested that providers would “in no circumstances” receive less than 50%” of the providers’ claim for the final month.⁷⁰ However, the *ACP Order* also recognizes that the Fund might not support a 50% pro-rata payout in the final month on claims submitted and directs staff in this event to determine how best to use the remaining funds consistent with the law.⁷¹ Interpreting the entirety of the relevant paragraph, along with the fact that the Fund is limited,⁷² the Commission’s statement *expresses* a preference for a pro-rata reimbursement scheme and also provides the Bureau with flexibility in implementing it if the Fund will not support a 50% pro-rata reimbursement rate in the final month. The Bureau intends, absent unforeseen circumstances, to direct USAC to provide notice to participating providers of whether providers will receive partial payment and the projected pro-rata share of such partial payments for that month as soon as practicable.

31. We understand that providers desire certainty as to whether there will be funding to allow for a partial month payment for benefits passed through to ACP households and as to the amount that the fund can reimburse providers for that benefit applied to ACP households’ bills. Without this certainty, providers may end up passing through a benefit to households for which they may not receive full reimbursement if the ACP cannot fund that reimbursement at the very end of the program. We also recognize the financial hardship that receiving a partial reimbursement may place not only on providers, but also on existing households, who may receive an unanticipated bill to cover the difference between the full ACP discount the household was expecting and the partial benefit that was applied. Therefore, to assist providers in winding down their own participation in the program, we will allow ACP participating providers to choose whether to forego providing ACP service and receiving partial payment for discounts passed through to ACP households after the last fully funded month. At the time of the 60-day notice of the end of the last fully funded month of the ACP, the Bureau will provide guidance to providers that wish to receive reimbursement for discounts provided to ACP households beyond that last fully funded month concerning how to notify USAC of their intention to do so. Providers that choose to forego receiving partial reimbursement for the final month will not be required to pass through any benefits to ACP households after the announced last fully funded month. Providers that forego reimbursement after the last announced fully funded month will not be expected to comply with voluntary withdrawal requirements set forth in section 54.1801(e) of the Commission’s rules.

⁶⁹ *Id.* at 592, para. 233. Similarly, if the remaining fund is only sufficient to pay 40% of each reimbursement claim in the final month, the Fund will pay out 40% of each claim on a pro-rata basis.

⁷⁰ *Id.* (“Therefore, we direct the Bureau to implement similar procedures adopted in the EBB Program Order for reimbursement in the final month of the Affordable Connectivity Program in the event reimbursement claims exceed the amount of remaining funds, but in no circumstances will reimbursements be less than 50% of the provider’s claim for that final month.”).

⁷¹ *Id.* (“If, however, projections from USAC indicate that less than 50% of claims can be paid out on a pro-rata basis for the expected final month of the Affordable Connectivity Program, then USAC shall immediately notify the Bureau, OEA, and OMD. If staff agree with USAC’s projections, then USAC will pause the reimbursement process for the final month, and instead staff will determine how best to use the remaining funds consistent with the Infrastructure Act.”).

⁷² The Antideficiency Act (ADA) precludes an agency from “making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation.” 31 U.S.C. § 1341(a)(1)(A). Thus, we believe it appropriate to interpret the *ACP Order* in a manner that does not suggest the agency can make payments in excess of the available funds.

D. Provider Applications and ACP High-Cost Area Benefit Eligibility

32. *Provider Application and Approval.* The Bureau finds that it would be administratively inefficient and confusing to consumers to approve new provider applications for the ACP when enrollments have been frozen. Processing new provider applications, approvals, and election notices risks confusing ACP households by creating a false expectation that, by subscribing with a newly approved provider, the household would be able to enroll or transfer to that provider to receive the ACP benefit during the enrollment freeze. Accordingly, the Bureau and USAC will stop reviewing new provider applications and election notices, as well as new applications for alternative verification processes, on February 7, 2024 at 6:00 PM EST, concurrent with the final day that enrollments will be permitted in the program. While application and election notice reviews are frozen, providers, however, must continue to update contact, device, or other participation information to USAC in accordance with the Commission's rules.⁷³

33. *High-Cost Area Benefit Provider Applications.* As required by the Infrastructure Act, the Bureau established a mechanism for providers to offer a benefit to eligible households in certain areas designated as "high-cost" by the National Telecommunications and Information Administration (NTIA). In keeping with those requirements, around the same time NTIA designated such high-cost areas, on November 1, 2023, the Bureau announced that USAC will begin accepting applications from providers seeking to qualify to offer the high-cost area ACP benefit on January 17, 2024.⁷⁴ Due to the depletion of funding and upcoming enrollment freeze, USAC will not accept provider applications to offer the high-cost area benefit. We find that processing high-cost area benefit applications and releasing educational and training materials related to the high-cost area benefit during the enrollment freeze would cause confusion among current and potential ACP households. Approving ACP high-cost area benefit applications, publishing information, and moving ahead with implementing the enhanced benefit while new households and providers cannot enter the program could cause confusion among subscribers about the future status of the program and the availability of the enhanced benefit for new subscribers or providers. Furthermore, changing the amount of the discount received by ACP households enrolled with a provider approved to offer the ACP high-cost area benefit, from \$30 to \$75, may cause increased consumer confusion with regard to the availability of program funding. The Bureau will re-evaluate the status of the ACP high-cost area benefit provider applications if the ACP receives additional funding.

34. *Ongoing Program Integrity Obligations.* The Commission is committed to ensuring the integrity of the ACP and addressing potential non-compliance using the full range of the Commission's authority and available tools, including audit and investigatory procedures and in cooperation with the FCC Office of Inspector General and law enforcement agencies. This commitment will continue during the ACP wind-down phase. We remind participating service providers of their obligation to use robust policies and procedures for ensuring compliance with the Commission's rules – including the requirements set forth in this Order concerning consumer notices, opt-ins, and other aspects of wind-down – and de-enrolling households as appropriate. Even during a wind-down period, the Commission will use the full range of its authority and available tools to address non-compliance with the ACP rules, and providers are reminded of their obligation to comply with USAC and Commission requests. Providers are also reminded of their document retention requirements under the ACP programmatic rules, which will extend after the end of the ACP.⁷⁵ Similarly, the Commission and USAC will retain records from the

⁷³ See 47 CFR § 54.1801(c) (providing that "[a]ll participating providers shall maintain up-to-date contact and other administrative information contained in the election notice as designated by the [Bureau] and [USAC]. These updates shall be made within 10 business days of the change in designated information contained in the election notice.").

⁷⁴ See *Wireline Competition Bureau Announces Affordable Connectivity Program High-Cost Area Benefit Application Submission Timing and Processes*, WC Docket No. 21-450, Public Notice, DA 23-1034 (Nov. 1, 2023).

⁷⁵ See 47 CFR § 54.1811; see also *ACP Report and Order*, 37 FCC Rcd at 593, para. 234 (adopting Emergency Broadband Benefit document retention requirements without modification); *EBB Program Order*, 36 FCC Rcd

ACP under applicable National Archives and Records Administration schedules and directives⁷⁶—after which, the Commission will appropriately dispose of such records and rescind the applicable System of Records Notice under the Privacy Act of 1974.⁷⁷

35. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, that 47 CFR § 54.1804(b) of the Commission’s rules is WAIVED effective February 8, 2024, to the extent described herein.

36. Accordingly, IT IS ORDERED, pursuant to pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182 as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), 5 U.S.C. § 551 *et seq.*, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, section 303(r) of the Communications Act, as amended, 47 U.S.C. § 303(r), and sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91 and 0.291, that this Order is ADOPTED.

37. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau

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4612, 4644, para. 67 (“We require that providers keep all documentation provided to them from the applicant used to make eligibility determinations, for as long as the applicant receives the Emergency Broadband Benefit, and also for no less than the six full calendar years following the termination of the EBB Program.”).

⁷⁶ See National Archives and Records Administration (NARA) Records Schedule DAA-0173-2021-0022, Emergency Broadband Benefit Program (EBB Program)/Affordable Connectivity Program (ACP).

⁷⁷ See Federal Communications Commission, *Privacy Act of 1974; System of Records*, 86 F.R. 71,494 (2021).

APPENDIX

Anticipated ACP Wind-Down Timeline

Date	Activity
January 25, 2024	Deadline for first of three required provider notices to ACP households, which must be provided no later than 14 days after release of the Order.
February 7, 2024	Final day for households to enroll in the program. The Bureau and USAC will stop reviewing new provider application and election notices, as well as applications for alternate verification processes at 6:00 p.m. EST. USAC systems will become unavailable for consumer application and enrollment processing, effective 11:59 p.m. EST.
February 8, 2024	ACP enrollment freeze begins and no new providers will be approved to participate in the program.
Late February 2024*	Anticipated timing of Bureau announcement of last fully funded month of ACP and projected amount available for reimbursement after the last fully funded month, if applicable. Second of three required provider notices to ACP households must be provided no later than 15 days after the Bureau announcement.
April 1, 2024	Participating providers must submit to USAC their reimbursement claims for discounted service provided to households for the February 1 uniform snapshot date and all claims and upward revisions for preceding months.
April 2024*	Projected final service month for which ACP can fully reimburse providers for ACP discounts.
May 2024*	Partial provider claims for discounted service provided during this month may be available if funding remains.

* Assuming a last fully funded month of April 2024