

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

In the Matter of)
)
Emergency Broadband Benefit Program) WC Docket No. 20-445

ORDER

Adopted: May 28, 2021

Released: May 28, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the petitions of Cox Communications, Inc. (Cox)¹ and the National Lifeline Association (NaLA)² (collectively, the Petitioners) seeking an expedited grant of a limited waiver of the Emergency Broadband Benefit Program (EBB Program) reimbursement rules (Petitions) as they apply to the connected device discount. The Petitioners request a waiver of the rule that prohibits a provider from seeking a connected device reimbursement for households that are not receiving EBB Program supported service by the same provider.³ NaLA also requests that the Commission direct the Universal Service Administrative Company (USAC) to update the National Lifeline Accountability Database (NLAD) to allow providers to view whether another provider has enrolled the household with a connected device or if there is a reimbursement claim for a connected device associated with that household.⁴

2. Based on the Commission’s established waiver standard, we grant the Petitions and extend this waiver to the entire EBB Program. This waiver permits all participating providers offering a connected device to submit a reimbursement claim for a connected device discount provided to a household that had been receiving an EBB-supported service from that provider at the time the device was supplied to the household, even if the household subsequently transferred its benefit to another provider prior to the snapshot date. We grant this waiver to remove a disincentive that could discourage

¹ Petition of Cox for a Limited Waiver of the Emergency Broadband Benefit Program Reimbursement Rules, WC Docket No. 20-445 (filed May 10, 2021), <https://ecfsapi.fcc.gov/file/1051008647471/EBB%20Waiver%20Connected%20Device%20Final.docx> (Cox EBB Waiver Petition).

² Petition of NaLA for a Limited Waiver, WC Docket No. 20-445 (filed May 24, 2021), <https://ecfsapi.fcc.gov/file/10524218911157/NaLA%20Petition%20for%20Limited%20Waiver%20of%20EBB%20Connected%20Device%20Rule.5.24.21.pdf> (NaLA EBB Waiver Petition). NaLA seeks a waiver of the connected device reimbursement rules for all providers participating in the EBB Program. NaLA EBB Waiver Petition at 1.

³ Cox EBB Waiver Petition at 1 (*citing* 47 CFR § 54.1606(e)(3) (providing that participating providers “shall not seek a connected device reimbursement for a subscriber that is not receiving the Emergency Broadband Benefit for service provided by the same participating provider.”)); NaLA EBB Waiver Petition at 2 (seeking a waiver of 47 CFR §§ 54.1606(e)(3) and 54.1608(d). Section 54.1608(d) provides that a “[a] participating provider that, in addition to providing the Emergency Broadband Benefit to an eligible household, provides such household with a connected device may be reimbursed up to \$100.00 for such connected device, if the charge to such eligible household is more than \$10.00 but less than \$50.00 for such connected device, except that a participating provider may receive reimbursement for no more than one (1) connected device per eligible household.”

⁴ NaLA EBB Waiver Petition at 4-5.

participating providers from offering connected devices to eligible households by providing certainty as to whether they will be able to claim reimbursement for providing a subscriber with a discounted connected device. We conclude that the Petitioners' requested limited waiver and its application to all EBB Program providers is consistent with the Program's statutory requirements and will serve the public interest.

II. BACKGROUND

3. On December 27, 2020, the Consolidated Appropriations Act of 2021 (Consolidated Appropriations Act) became law⁵ 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.⁶ 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.⁷ The EBB Program will conclude when the fund is expended or six months after the end of the public health emergency.⁸ On January 4, 2021, the Bureau sought comment on how the Commission should implement the EBB Program.⁹

4. On February 25, 2021, the Commission adopted rules and policies creating and governing the EBB Program pursuant to the Consolidated Appropriations Act in the *EBB Program Order*.¹⁰ The EBB Program uses available funding from the Emergency Broadband Connectivity Fund to provide funding for broadband service and connected devices for low-income households during the COVID-19 pandemic.¹¹ To participate in the Program, a broadband provider must elect to do so and either be designated as an eligible telecommunications carrier (ETC) or be approved by the Commission.¹² Participating providers will make available to eligible households a monthly discount off the standard rate for an Internet service offering and associated equipment, up to \$50.00 per month.¹³ On Tribal lands, the monthly discount may be up to \$75.00 per month.¹⁴ Participating providers will receive reimbursement from the EBB Program for the discounts passed through to eligible households.¹⁵ Participating providers that also supply an eligible household with a connected device, defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet, for use during the emergency period may receive a single reimbursement of up to \$100.00 for the connected device, if the charge to the eligible

⁵ 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).

⁶ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(i), 134 Stat. 2130, 2135.

⁷ *Id.* § 904(b)(1), (4)&(5).

⁸ *Id.* Under Section 904, the emergency period “ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates.” *Id.* § 904(a)(8).

⁹ See *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6, at 2 (WCB 2021).

¹⁰ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21- 29, 50, para. 98 (2021) (*EBB Program Order*).

¹¹ 47 CFR § 54.1602.

¹² *Id.* § 54.1601.

¹³ *Id.* § 54.1603(a).

¹⁴ *Id.*

¹⁵ *Id.* §§ 54.1603, 54.1608.

household for that device is more than \$10.00 but less than \$50.00.¹⁶ A participating provider may receive reimbursement for only one supported device per eligible household¹⁷ and must submit certain certifications to the Commission to receive reimbursement.¹⁸

5. Reimbursement claims for the EBB Program will be based on the number of Program subscribers enrolled with each provider in the NLAD as of the first day of each month.¹⁹ In order to receive reimbursement, providers must then submit certified reimbursement claims through the Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend.²⁰ Claims for reimbursement of the connected device discount are limited to those providers that are providing EBB service to the household.²¹ The *EBB Program Order* specifies that providers submitting claims for connected devices must do so concurrent with or after the provider's first reimbursement claim for service support passed through to that household.²² Before submitting a reimbursement claim, providers are required to confirm in the NLAD that no reimbursement claim has been made for a connected device for the household,²³ and to certify to the accuracy of their claim and compliance with EBB Program rules.²⁴ With respect to connected device claims, a provider must certify that each eligible household for which the provider is seeking reimbursement for supplying a connected device was charged by the provider a co-pay of more than \$10.00 but less than \$50.00 for the device.²⁵ The provider must further certify that: no such household had already received a reimbursable connected device from the participating provider or any other participating provider when the connected device was distributed to the household;²⁶ the device meets the Commission's requirements; the amount claimed reflects the market value of the device; and, the device has been delivered to the household.²⁷ Additionally, the provider must certify that it has retained the relevant supporting documents that demonstrate the connected devices for which it seeks reimbursement are eligible for reimbursement.²⁸ Households completing the EBB Program Application also must certify that they know their household may receive only one Emergency Broadband Benefit and that they understand that they can receive only one connected device through the EBB Program, even if they switch EBB providers.²⁹

¹⁶ *Id.* §§ 54.1603(b), 54.1608(d).

¹⁷ *Id.* §§ 54.1608(a), 54.1605(b).

¹⁸ *Id.* § 54.1608(e).

¹⁹ *Id.* § 54.1608(a).

²⁰ *Id.* § 54.1608(g).

²¹ Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(5); 47 CFR § 54.1606(e)(3); *EBB Program Order* at 49, para. 96.

²² *EBB Program Order* at 49, para. 96.

²³ *Id.*; 47 CFR § 54.1606(e).

²⁴ 47 CFR § 54.1608(e).

²⁵ *Id.* § 54.1608(e)(7).

²⁶ USAC has provided a list of the certifications a provider is required to make when submitting EBB Program claims in the Lifeline Claims System. Emergency Broadband Benefit Program Reimbursement Claims, USAC Webinar at 33-34 (Apr. 2021), <https://www.usac.org/wp-content/uploads/about/documents/ebb-program/EBB-LCS-training.pdf>.

²⁷ 47 CFR § 54.1608(e)(8).

²⁸ *Id.* § 54.1608(e)(10).

²⁹ USAC, Emergency Broadband Benefit Program Application, https://getemergencybroadband.org/res/documents/EBB_Application_Form_FINAL.pdf (last visited May 25, 2021).

6. Pursuant to EBB Program rules, providers seeking to receive the connected device benefit must also query the NLAD to determine whether a household has received a connected device benefit, and if the NLAD indicates that the subscriber has received a connected device benefit, the provider cannot seek a connected device reimbursement for that household.³⁰ Program rules further provide that where two or more providers submit a reimbursement claim for a connected device discount for the same household, the provider whose information was first received and processed by the NLAD or the Lifeline Claims System, as determined by USAC, will be entitled to receive the connected device reimbursement for that household.³¹ Moreover, providers must obtain the subscriber's consent before querying a subscriber's information in the NLAD.³²

III. DISCUSSION

7. We grant the limited waiver requests and allow Cox and all participating providers to submit claims for connected devices for households that received a device from the first provider but subsequently transferred their monthly service benefit to a different provider before the first of the month, thus preventing the first provider from claiming for reimbursement any service support provided to the household during that service month. In response to NaLA's petition, we extend this waiver to all EBB Program providers offering a connected device through the EBB Program.

8. As a general matter, "an agency must adhere to its own rules and regulations."³³ 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,"³⁴ the Commission's rules may be waived for "good cause shown."³⁵ 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.³⁶ The Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.³⁷ The Bureau, under delegated authority, may act on requests for waiver of rules.³⁸

9. In their Petitions, Cox and NaLA request a waiver of the requirement that a provider cannot claim a reimbursement of the connected device discount for subscribers that are not receiving the Emergency Broadband Benefit for the EBB-supported service provided by the provider at the time of the snapshot.³⁹ Cox contends that without this waiver it will be unable to claim reimbursement for a device delivered to a household if, as a result of the household transferring its benefit to another provider, the household no longer receives the supported service from Cox and does not appear on Cox's snapshot report of enrolled subscribers in the service month.⁴⁰ As Cox argues, because a household in the EBB Program may transfer their benefit to another participating provider at any time, there is a financial risk to Cox that it may offer a discount on a device for which Cox subsequently could not seek reimbursement, if the household is not served by the Cox at the time of the snapshot report on the first day of the following

³⁰ 47 CFR § 54.1606(e).

³¹ *Id.* § 54.1606(e)(4).

³² *Id.* § 54.1606(6)(5).

³³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

³⁴ *Mary v. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

³⁵ 47 CFR § 1.3.

³⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁷ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³⁸ 47 CFR § 0.291(b).

³⁹ Cox EBB Waiver Petition at 4-5; NaLA EBB Waiver Petition at 2.

⁴⁰ Cox EBB Waiver Petition at 2-3.

month.⁴¹ Cox adds that where it is unable to seek reimbursement for the connected device due to the household's transfer to another provider, Cox would be forced to attempt to collect the connected device discount from the former subscriber.⁴² NaLA adds that the reimbursement rules for connected devices "unfairly penalize providers that sell a discounted connected device to a subscriber who decides to de-enroll from the EBB program or change to a different EBB service provider at any time prior to the next snapshot date."⁴³

10. Because the household would not appear on the snapshot report if the household transfers its benefit prior to the first day of the following month, Cox is requesting the ability to submit reimbursement claims for connected devices supplied to their former customers if it certifies that the "subscribers were enrolled with Cox and the NLAD did not indicate that the eligible subscribers already received discounted connected devices when the connected devices were sold and certifies that it submitted modifications to NLAD to reflect the sales of the connected devices."⁴⁴ Cox argues that if its waiver request is not granted, it, as one of the largest fixed providers offering a connected device through the EBB Program, would need to reconsider its decision to offer a connected device, but also adds that it is not known how many subscribers, if any, will potentially switch to another EBB provider after purchasing a discounted connected device from Cox.⁴⁵ NaLA argues that Cox's description of the issue is applicable to all participating providers offering a connected device through the EBB Program and requests that the waiver apply to all providers.⁴⁶

11. Based on the record before us, the Bureau finds that good cause exists to waive the requirement of section 54.1606(e)(3) of our rules,⁴⁷ which prohibits a provider from seeking reimbursement for a connected device if the provider is not providing EBB-supported service to that household, in instances where the household, at the time the connected device was supplied, was receiving EBB-supported service from the provider but later transfers their benefit to another provider before the snapshot date for that service month. Similarly, the Bureau waives the requirement of section 54.1608(d)⁴⁸ to the extent it requires a provider to claim a connected device for a household if the household is receiving monthly support from the provider at the time of the snapshot date. The Consolidated Appropriations Act provides that a participating provider that, "in addition to providing the emergency broadband benefit to an eligible household, supplies such household with a connected device may be reimbursed up to \$100 from the Emergency Broadband Connectivity Fund . . ."⁴⁹ We find that this waiver does not disturb the statutory requirement that the connected device discount only be provided to households that were receiving the EBB service from the provider at the time the connected device was supplied.

12. We are also convinced that preventing providers from seeking reimbursement for connected devices provided to households that subsequently transfer their benefit before the provider can claim reimbursement poses a substantial hardship for Cox and all other EBB Program participating providers that have elected to offer a connected device. We find this waiver is in the public interest because it will allow a household's first provider to seek reimbursement for the connected device that

⁴¹ Cox EBB Waiver Petition at 2-3.

⁴² Cox EBB Waiver Petition at 3.

⁴³ NaLA EBB Waiver at 2-3.

⁴⁴ Cox EBB Waiver Petition at 3.

⁴⁵ Cox EBB Waiver Petition at 3; *see also* NaLA EBB Waiver Petition at n.10 (noting that it appears that only one out of 10 EBB participating providers have chosen to provide connected devices in the EBB Program).

⁴⁶ NaLA EBB Waiver Petition at 1, 3.

⁴⁷ 47 CFR § 54.1606(e)(3).

⁴⁸ 47 CFR § 54.1608(d).

⁴⁹ Consolidated Appropriations Act, div. N. tit. IX, § 904 (b)(5).

initially helped the household obtain the supported connectivity. The waiver also removes a financial disincentive that could discourage providers from offering the connected device. In particular, without this waiver, providers would be unable to seek reimbursement for a connected device through the Program if the household transferred its benefit to another provider.⁵⁰ By removing uncertainty regarding a provider's ability to seek reimbursement for a device where the household subsequently transfers its benefit, the Bureau expects this waiver will encourage providers to offer a connected device through the EBB Program. Providers are not required to offer a connected device through the EBB Program, but those that do are giving households the opportunity to maximize their monthly broadband service benefit by obtaining a device that allows them to contact employers, participate in school, check in with medical providers, and connect with family.⁵¹ We hope that this waiver not only encourages providers to continue offering connected devices but motivates other participating providers to elect to offer connected devices as well.

13. We also find that granting this waiver to Cox and extending it to all participating providers should not undermine any program integrity controls and invite waste, fraud, and abuse. First, providers submitting a reimbursement claim for connected devices supplied to households that have since transferred their benefit must still make the certifications required in section 54.1608 of the Commission's rules.⁵² Second, USAC will be able to confirm that the household for which the connected device reimbursement is claimed was enrolled with the provider during the service month. Third, this waiver does not alter the requirement that the first provider to transmit information about a connected device for the household pursuant to section 54.1606(e)(4) will be entitled to claim the connected device reimbursement for that household.⁵³ To support this waiver, the NLAD will begin to issue a warning to providers that attempt to enroll a household if that household has already been enrolled for a connected device in the NLAD.⁵⁴ The NLAD will also block connected device enrollments for a household if USAC has already processed a reimbursement claim for the connected device benefit for that household. These safeguards will help to ensure that reimbursement claims for connected devices comply with EBB Program rules and to guard against waste, fraud, and abuse in the Program.⁵⁵ The Bureau directs USAC to conduct outreach to participating providers with additional details on the process for submitting claims for any subscribers that do not appear in the monthly snapshot but for which they are entitled to claim the device benefit pursuant to the relief granted by this Order.

IV. ORDERING CLAUSE

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

⁵⁰ *EBB Program Order* at 49, para. 95.

⁵¹ For a list of EBB Program providers offering a connected device, visit <https://www.fcc.gov/emergency-broadband-benefit-providers>.

⁵² 47 CFR § 54.1608.

⁵³ 47 CFR § 54.1606(e)(4).

⁵⁴ If it is determined that a provider has falsely enrolled an EBB subscriber with a connected device in the NLAD without actually distributing a connected device to the subscriber, USAC may accept a subsequent device enrollment and reimbursement claim for that subscriber. We direct USAC to refer any such instances of transmission of false connected device enrollment information to the Commission for enforcement purposes.

⁵⁵ NaLA requests that the Commission direct USAC to deploy functionality in NLAD to allow providers to confirm whether a household has received a connected device or if another provider has received a reimbursement claim for a connected device delivered to that household. NaLA EBB Waiver Petition at 4-5. The Bureau believes that the NLAD functionality described above provides the functionality requested in NaLA's petition and we therefore find that this request is moot.

sections 47 CFR § 54.1606(e)(3) and 47 CFR § 54.1608(d) of the Commission's rules is WAIVED to the limited extent provided herein and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau