

October 2022 CPI and making the CPI-based annual adjustment thereafter, after rounding, we are adjusting the maximum penalty amount for this CMP to \$13,000 for each false claim or statement made to the agency.

### III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking, public comment, and effective date procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA, at 5 U.S.C. 559, provides that a subsequent statute may supersede the APA if it does so expressly. This rulemaking effectuates the statutory requirements set forth in section 4(b)(2) of the 2015 Act, which provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. Furthermore, the APA provides an exception to the usual notice of proposed rulemaking, public comment, and effective date procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B) and 553(d)(3), good cause exists for dispensing with these procedures. The 2015 Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties. GSA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, under the clear terms of the APA and the language of the 2015 Act, this rule is not subject to notice, an opportunity for public comment, or a delayed effective date, and will be final and effective on January 15, 2023.

### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of E.O. 12866 and has determined that it does not meet the criteria for a significant regulatory action and thus was not subject to review under Section 6(b) of E.O. 12866.

As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable CMPs. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited conduct, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited conduct in violation of the statute. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or state expenditures.

### V. Congressional Review Act

The agency and the Office of Information and Regulatory Affairs, OMB have determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. GSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). As explained above, GSA is not required to first publish a proposed rule here. Thus, the RFA does not apply to this final rule.

### VII. Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

### List of Subjects in 41 CFR Part 105–70

Administrative hearing, Claims, Program fraud.

**Robin Carnahan,**  
*Administrator.*

Accordingly, 41 CFR part 105–70 is amended as set forth below:

### PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 105–70 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 31 U.S.C. 3809.

#### § 105–70.003 [Amended]

■ 2. Amend § 105–70.003 by—

■ a. Removing from paragraph (a)(1)(iv) the amount “12,100” and adding “13,000” in its place; and

■ b. Removing from paragraph (b)(1)(ii) the amount “12,100” and adding “13,000” in its place.

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 54

[WC Docket Nos. 21–450; FCC 22–87; FRS 120419]

#### Affordable Connectivity Program; Emergency Broadband Benefit Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In the Fourth Report and Order, the Federal Communications Commission (Commission or FCC) establishes the Affordable Connectivity Program (or ACP) Transparency Data Collection, which will collect information related to the price, subscription rates, and plan characteristics of the internet service offerings of Affordable Connectivity Program participating providers as required by the Infrastructure Investment and Jobs Act (Infrastructure Act).

**DATES:** Effective February 13, 2023, except for instruction 3 (§ 54.1813(b) through (d)) which is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after the Office of Management and Budget approval of the information collection requirements as

required by the Paperwork Reduction Act.

**FOR FURTHER INFORMATION CONTACT:** Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–7400 or [eric.wu@fcc.gov](mailto:eric.wu@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Fourth Report and Order (Order) in WC Docket Nos. 21–450, FCC 22–87, adopted on November 15, 2022 and released on November 23, 2022. The full text of this document is available at <https://docs.fcc.gov/public/attachments/FCC-22-87A1.pdf>. The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Fourth Report and Order is to be published elsewhere in the **Federal Register**.

## I. Introduction

1. In the Order, the Commission establishes the ACP Transparency Data Collection, which will collect information related to the price, subscription rates, and plan characteristics of the internet service offerings of ACP participating providers as required by Infrastructure Act.

2. The Order fulfills the Congressional mandate to issue final ACP Transparency Data Collection rules regarding the annual collection of information related to the price and subscription rates of internet service offerings of ACP providers to which an ACP household subscribes, no later than one year after the enactment of the Infrastructure Act.

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

## II. Discussion

4. In the Order, the Commission establishes the requirements for the ACP Transparency Data Collection as required by the Infrastructure Act. The Commission discusses the entities required to submit data, the aggregated data to be collected, the timing of the collection, the publication of data, and other administrative aspects of the ACP Transparency Data Collection.

5. *Data Filers.* The Commission first establishes that all providers participating in the Affordable Connectivity Program with enrolled subscribers are required to submit data for the ACP Transparency Data Collection. The City of New York agrees that the Infrastructure Act requires all providers participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection, and the Commission did not receive any other comments regarding this requirement. The Infrastructure Act is clear that the Commission is mandated to collect data relating to the price and subscription rate of “*each internet service offering of a participating provider*” to which an eligible household subscribes. The statute has no limiting language to permit the Commission to exclude certain providers based on their size, location, subscribers served, or other characteristics, and the Commission sees no reason to permit any such exclusions. Moreover, requiring all providers to submit data for all subscribers will help the Commission study and evaluate the ACP-supported services received by all subscribers across a diverse group of providers that offer a variety of services and products across the United States, and give a transparent overview of the broadband plans subscribed to by the households enrolled in the Affordable Connectivity Program. The Commission therefore requires every provider participating in the Affordable Connectivity Program to submit data for the ACP Transparency Data Collection.

6. *Collection Structure, Aggregate Collection.* The Commission next establishes an aggregate collection that is designed to capture information about ACP-supported services consistent with the Infrastructure Act. In the *ACP Data Collection Notice*, 87 FR 37459, June 23, 2022, the Commission sought comment on whether to collect data at the subscriber level or aggregate level. In a subscriber-level collection, price and plan characteristics for each subscriber in the Affordable Connectivity Program would be submitted by providers, whereas in an aggregate-level collection,

providers would submit to the Commission the number of subscribers for each unique plan for a given geographic area (such as by state). Given these options, the Commission proposed using the National Lifeline Accountability Database (NLAD) to collect subscriber-level data at every enrollment, explaining that such a collection may prioritize ease-of-use for service providers and minimize administrative burdens, and the Commission sought comment on that approach.

7. In response, many providers argue that an NLAD-based subscriber-level collection would be more burdensome than an aggregate collection. Specifically, providers comment that an NLAD-based subscriber-level collection would require all providers to “pull and report each subscriber’s personal information,” retrain staff, and seek consent from existing subscribers, in addition to making substantial system updates. Commenters contend that potential subscribers that are already hesitant to enroll in government programs may have that hesitancy exacerbated by a request to share information with a government entity. Commenters also point out that NLAD would require modifications to accept the additional information. CTIA claims that the Infrastructure Act “specifically directs the FCC to conduct the data collection in a manner that minimizes burdens on providers” and that the record demonstrates that the NLAD-based subscriber-level approach would impose significant burdens. In addition, some commenters feel that a “continuous” NLAD-based subscriber-level collection is not consistent with the “annual collection by the Commission relating to the price and subscription rates of each internet service offering” as required by the Infrastructure Act. Conversely, several commenters suggest that an NLAD-based subscriber-level collection would be more beneficial than an aggregate collection when it comes to analyzing data, and would also ease administrative burdens. In sum, the record shows that most providers view an aggregate data collection as the least burdensome option.

8. Based upon the record, the Commission declines to adopt a subscriber-level approach for the ACP Transparency Data Collection at this time, finding that the subscriber-level approach as proposed by the Commission may conflict with the statutory requirement to stand up an annual collection and may be too administratively burdensome for subscribers and providers, particularly

with respect to obtaining subscriber consent to the collection of additional subscriber-specific data and in light of privacy concerns.

9. First, the Infrastructure Act requires the Commission to establish “an annual collection,” and the Commission finds support in the record for concluding that an aggregate collection would satisfy that requirement. As described further in the following, the collection the Commission establishes in the Order requires providers to submit information as of a particular date and by a deadline. There is little doubt that a collection with a single submission date in a year would be an annual collection. It is less clear whether a subscriber-level collection would comply with the statutory requirement. A subscriber-level approach, as the Commission proposes, would require providers to submit price and plan information each time a consenting subscriber enrolls in the program, which as NTCA argues, could happen so frequently that it would be difficult to describe as an annual collection. Additionally, a subscriber-level collection would possibly also require providers to separately collect data from subscribers who were already enrolled in the Affordable Connectivity Program prior to the data collection rules becoming effective. The Commission finds that the statutory language requiring an annual collection weighs heavily in favor of an aggregated approach.

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

11. Providers argue collecting consent from new and existing subscribers would be administratively burdensome, particularly for smaller providers. There is also a concern, particularly where mistrust of government programs is

high, that seeking consent to disclose additional information from subscribers could have a chilling effect on subscriber participation in the Affordable Connectivity Program. The Commission recognizes that in order to require the collection of subscriber-level information, the Commission will not only need to develop a process for the collection of consent from any new subscriber, but the Commission will also possibly need to develop consent processes for subscribers that have already enrolled in the program. With nearly 15 million subscribers already enrolled, it could be an immense undertaking to collect consents from those subscribers, and there is no guarantee that subscribers would respond to a request to provide consent so that the provider could submit price and plan information at the subscriber-level. The Commission thus finds that the burdens associated with subscriber consent also weigh against adopting a subscriber-level collection at this time.

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

13. The aggregate collection, however, is not without administrative burdens. The Commission disagrees with providers that argue that an aggregate collection would minimize the need for system development, as the Commission or USAC will still need to develop a system through which to collect data, even if it is not done through NLAD. Moreover, the Commission acknowledges that there are some providers who argue that using NLAD for the ACP Transparency Data Collection would not be burdensome. As explained by NaLA, adding only the limited fields of price and unique plan identifier to NLAD for a subscriber-level collection “would not be unnecessarily burdensome.” In light of these

comments, and consistent with the *ACP Data Collection Notice* and the record, the Commission seeks additional comments in the FNPRM published elsewhere in the **Federal Register**, on the value of a subscriber-level collection through the ACP Transparency Data Collection and the processes for obtaining subscriber consent.

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

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

16. To allow the Commission to best utilize the information contained in the broadband labels and to collect the data associated with each ACP-supported

plan, providers are required to submit a unique identifier for each service plan to which an ACP household applies the affordable connectivity benefit. As the Commission recognizes in the *Broadband Labels Order*, FCC 22–86, November 17, 2022, the use of a unique identifier is a means of collecting plan data while minimizing the burden on providers. Providers must submit as part of the annual collection of plan information a unique identifier that matches the plan's corresponding broadband label, where a broadband label exists. Where a broadband label does not exist (e.g., grandfathered or legacy plans) or where a broadband label does not uniquely identify the plan to which an ACP household applies the benefit (e.g., bundled service plans), providers are also required to create and submit a unique identifier for any plan to which an ACP household subscribes. In such a case, the provider should use the same format as for plans that are covered by a broadband label. Consistent with the *Broadband Labels Order*, providers will not be permitted to reuse unique identifiers. The Commission directs the Wireline Competition Bureau (Bureau or WCB) with support from the Office of Economics and Analytics (OEA) to develop guidance concerning when a provider is required to formulate a new unique identifier.

17. *Price Information.* The Commission requires providers to submit the same price information as required on the broadband labels. Providers will also, optionally, be able to submit the all-in price with and without the affordable connectivity benefit applied. In the *ACP Data Collection Notice*, the Commission seeks comments on the language in the Infrastructure Act that the Commission “shall rely on the price information displayed on the broadband consumer label required under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c).” The Commission also proposes that price information collected would “include the monthly charge for the internet service offering that a household would be charged absent the application of the affordable connectivity benefit,” and sought comment on that approach, as well as whether promotion pricing, introductory rates, pre-paid or post-paid, taxes and fees, associated equipment, or other discounts should be included as part of price, and whether such information should be separately itemized and collected.

18. The *Broadband Labels Order* requires providers to display the “base monthly price for the stand-alone broadband service offering,” whether the monthly price is an introductory rate, itemized provider-imposed recurring monthly fees (including fees for the rental or leasing of modem and other network connection equipment), and itemized one-time fees (such as a charge for purchasing a modem, gateway, or router, activation fees, deposits, and installation fees). Commenters agree that the price to be reported should reflect the amount that a household would pay absent the ACP discount, and the Commission finds that this price is reflected in the pricing requirements of the *Broadband Labels Order*. The Commission therefore finds that the price required to be submitted for this collection will reflect the same pricing elements as set forth in the *Broadband Labels Order*. Providers should use the same format for providing price information as they will for the broadband labels, and include: (1) the base monthly price for the broadband offering (in the case of bundled offerings, can be the total bundled price or separated out bundled price); (2) whether the monthly price is an introductory rate; (3) itemized provider-imposed recurring monthly fees (excluding government taxes or fees); and (4) itemized one-time fees.

19. Commenters were split as to whether the individual components within the price should be itemized, with some supporting the itemized reporting, while others opposed their inclusion, including because discounts or promotional rates may skew the analysis of average rates, and taxes and fees vary widely, making reporting difficult. To provide more transparency into the prices that households pay, as well as to be consistent with the *Broadband Labels Order*, the Commission requires itemized reporting of provider-imposed monthly recurring fees and one-time fees. The *Broadband Labels Order* requires that providers display whether “the offered price is an introductory rate, and if so, the price the consumer will be required to pay following the introductory period.” The Commission finds that requiring providers to submit the same pricing information about introductory rates and post-introductory rates for the ACP Transparency Data Collection will help minimize any confusion about comparing rates, allowing for a more detailed and accurate analysis of rates. The *Broadband Labels Order* also does not require providers to display the amount of any offered discounts (such

as those for paperless billing, automatic payment (autopay), or any other discounts), or the amount of government taxes, and the Commission similarly does not require providers to submit such information as part of this data collection. While the Commission will not require providers to display discounts, will instead have optional fields for providers to voluntarily identify discounts.

20. *Broadband Equipment Fees.* The Commission requires providers to submit information about recurring or one-time modem or router rental fees as part of this collection. The Commission concludes that it is appropriate to collect information about recurring or one-time modem or router rental fees, not only because of support in the record, but also because aligning the collection with the requirements of the *Broadband Labels Order* is likely to minimize the burdens on providers. Many commenters suggest that the Commission collects the prices of associated equipment, which may increase transparency about pricing and what households are getting as part of their monthly fee. NTCA, on the other hand, argues that including information such as the price of associated equipment is not necessary as part of this collection because the fact that associated equipment costs are assessed on top of the monthly cost for service “is not something with which policymakers are unfamiliar.” The Commission agrees with commenters that pricing information about associated equipment is useful in determining the value provided by the Affordable Connectivity Program. Moreover, because the affordable connectivity benefit can be applied to “associated equipment” including modems, routers, hotspots, and antennas, information about the recurring costs for such equipment would help us understand the true price of ACP-supported services. To address NTCA's arguments, the Commission finds that to understand and assess the price of the ACP-supported service, the Commission needs to not only know the presence of charges for associated equipment, but the amounts charged. Furthermore, the *Broadband Labels Order* also requires providers to list monthly charges for the “rental or leasing of modem and other network connection equipment” as well as any one-time fees for the purchase of such associated equipment. The Commission finds that adhering to the itemized pricing requirements of specific recurring and one-time fees in the *Broadband Labels Order* is consistent

with the Infrastructure Act, makes for an efficient collection, and will not be burdensome to providers. To fully understand the effect associated equipment may have on price, providers must also submit information on whether a plan requires associated equipment and whether any required associated equipment is included in the base monthly price.

21. *Bundled services pricing.* The Commission also concludes that providers must submit information about the prices of bundled service offerings as part of this collection. The Commission finds that collecting price information for bundled plans supported by the ACP benefit is necessary to fulfill the statutory mandate to collect price information about ACP-supported plans, which includes bundled services. The Commission recognizes that the *Broadband Labels Order* gives providers the option to display pricing information for bundled plans, but as further discussed, the approach the Commission adopts for collecting bundle price information minimizes burdens by not requiring bundle component pricing to be reported separately while ensuring that the Commission collects the price information required. The Commission requires the base monthly price for a bundle to reflect the price for all services in the bundle and find that the prices for different services within the bundle do not need to be separated out. Some commenters urge the Commission to not “require providers to identify separately the specific prices of discrete services within ‘bundled’ service packages,” while other commenters preferred breaking down the costs within bundles. The Commission agrees with those commenters asserting that providers should not be required to separately apportion out the price for broadband and non-broadband components for purposes of the ACP Transparency Data Collection. The Commission finds that the base monthly price for a bundle should reflect the price for all services in the bundle, and the Commission defines bundle as the combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text. Given the complexity of apportioning out the price associated with the bundles that can be supported by the affordable connectivity benefit, the Commission finds that asking providers to report a single base monthly price for bundled plans minimizes the burden on providers and

outweighs any benefit of requiring the provider to separately itemize different bundle pieces. While understanding pricing associated with the broadband portion of the bundle may help to understand the value as it relates to the data and speed also reported for that broadband service, the Commission recognizes that apportioning out the price of a broadband service and the voice component for this data collection may be unduly burdensome for providers. When reporting price information for a bundle, for example, if a bundle contains video, broadband, and telephone, and the base monthly price for that bundle is \$70, then providers will need to report only \$70 and not apportion out the broadband and non-broadband pieces. Providers must also adhere to the requirements for itemization of specific one-time and recurring fees proceeding, but providers will not be required to itemize prices for components that are not related to broadband service (e.g., monthly rental for DVR, set-top box, phone charges).

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

23. *Optional reporting of all-in price information.* Considering the record, the Commission also finds that it would be effective to collect the all-in price—that is, the actual price that would be paid

by the ACP household, absent the application of the affordable connectivity benefit. This price would include the price of any associated equipment, taxes, and fees as well as any non-ACP discounts or promotions offered to the customer. With respect to bundled service offerings, the all-in price should be the entire price of the bundled service, as this will allow us to get a view of the actual expenses paid by ACP households. The Commission finds that collecting the all-in price will help the Commission determine a household’s actual broadband expenses, absent the ACP benefit. The Commission agrees with the City of Seattle that collecting all-in price will help the Commission determine progress towards reducing the digital divide as cost is “one of the primary barriers to broadband adoption” and collecting all-in price will better inform the Commission and local stakeholders about the pricing of ACP plans.

24. Additionally, collecting the all-in price with the affordable connectivity benefit applied (net-rate charged) will help the Commission determine the efficacy of the Affordable Connectivity Program. In the *ACP Data Collection Notice*, the Commission seeks comments on whether there were “any other indicators of price that should be collected.” The Competitive Carriers Association (CCA), CTIA, NCTA—The Internet & Television Association (NCTA), and USTelecom (collectively, the Associations) suggest that the Commission optionally permits providers to submit the “net-rate charged” as part of this collection, which they define as the “recurring monthly price charged to ACP households . . . for ACP-supported services after application of any state or federal low-income benefits or any applicable promotions or discounts.” They argue that collecting the net-rate charged would allow the Commission to determine the average out-of-pocket costs for ACP households. The Commission finds that information concerning ACP subscribers’ out-of-pocket expenses is valuable to the Commission and will assist in determining the efficacy of the ACP benefit in reducing the digital divide, and adopt the Associations’ proposal in part. Additionally, providers can optionally submit as part of this collection, the total number of subscribers paying \$0 and the average “all-in” price for subscribers whose monthly bill is greater than \$0, after all discounts and benefits, including the ACP benefit and Lifeline (where applicable), have been applied. By

limiting the collection of net-rate charged to subscribers with out-of-pocket expenses after the application of the affordable connectivity benefit, the Commission ensures that the Commission collects data that most accurately reflects the average out-of-pocket expenses paid by ACP subscribers.

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

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

argues that an aggregate collection should not be done at the census tract or census block, as it may “unnecessarily burden competitive providers who do not have the size and resources that incumbents typically enjoy.”

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

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

29. The record on collecting data relating to Lifeline does not oppose collection of aggregate subscribership information relating to ACP subscribers also enrolled in Lifeline for a particular plan. ACA Connects opposes collecting subscriber-level data to analyze the Lifeline-ACP connection, but it suggests that the Commission could facilitate analyzing the connection between

Lifeline and the Affordable Connectivity Program by requiring providers to submit data on the number of ACP subscribers that are also enrolled in Lifeline. NCTA asserts that USAC “presumably already has” data to analyze the connection between Lifeline and the Affordable Connectivity Program and contends that “data gathered from providers would be redundant.” But it makes this argument in the context of opposing a subscriber-level collection and acknowledges that the Commission can conduct a variety of analyses relating to ACP efficacy, consumer outreach, and the digital divide with “aggregated data for each internet service offering at the state-level.” The Commission believes that collecting aggregated data on the number of ACP subscribers to a plan that are also enrolled in Lifeline for that plan would allow the Commission to understand the plans and prices that the combined Lifeline and ACP benefits are applied to and help the Commission to assess whether the combined Lifeline and ACP benefits contributes to any significant difference in plan choices compared to the ACP benefit alone. The Commission thus requires providers to submit subscription rate information consisting of the number of ACP households that are subscribed to each service plan with an enrolled ACP subscriber who are also enrolled in Lifeline for that plan. As with total subscribership data, this data is to be aggregated by ZIP code.

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

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

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

32. There is support in the record for the collection of information relating to introductory prices. As several provider associations point out, there is value in understanding the extent to which ACP households rely on promotions and discounts, which include introductory rates. While some commenters oppose collecting the introductory rates paid by subscribers, they do not raise any objections to the optional collection of the number of subscribers who are paying introductory rates. The Commission finds that collecting the number of subscribers by plan identifier and ZIP code that are paying introductory rates will assist in determining the growth rate of the program and in evaluating the

performance of the program. Knowing the number of ACP subscribers who are currently paying introductory rates will assist the Commission in determining the growth rate of the program, as it will help to understand the number of subscribers who may be subject to upcoming price increases, and may be at risk of dropping out of the program. Additionally, understanding the number of subscribers who are paying introductory rates will give the Commission greater insight into the number of new subscribers that each provider has under the ACP. This information will assist the Commission in evaluating progress towards the ACP program goal of reducing the digital divide and understanding whether ACP subscribers are predominantly new subscribers to broadband internet or are using the ACP benefit to subsidize service they previously paid for. Consistent with the comments of the provider associations, and to avoid burden associated with this more granular subscribership data, at this time the Commission makes the submission of the number of subscribers who are paying introductory rates or who are on time-limited promotional pricing plans optional for ACP participating providers.

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

34. Furthermore, the Commission collects the total number of subscribers who are paying \$0 after the application of the ACP benefit, and any non-ACP discounts or promotions, by plan identifier and by ZIP code. There was general support in the record for

collecting the actual price of ACP service plans, and for collecting the subscription rate for various service plans. The Commission finds that collecting the total numbers of subscribers in a given ZIP code, and on a given plan, that are paying \$0 will help the Commission evaluate the performance of the ACP. Knowing the number of subscribers in a given ZIP code and on a given plan that are fully covered by the ACP benefit will help the Commission understand the value that ACP households are obtaining from the federal subsidy and the progress the Commission is making toward reducing the digital divide. To minimize the burden on providers, the Commission makes the collection of this information optional at this time. Therefore, at this time, submission of the number of subscribers for whom the net-rate charged is \$0 aggregated by ZIP code and plan identifier will be optional for ACP participating providers.

35. *Plan Characteristics.* In addition to collecting subscription rates for each plan by provider aggregated at the ZIP code level, the Commission also directs providers to submit service plan characteristics to fulfill requirements under the Infrastructure Act to collect “data relating to price and subscription rate information.” In the *ACP Order*, 87 FR 8346, February 14, 2022, the Commission recognizes that collecting service plan characteristics could help the Commission determine the value of the ACP to households and directed the staff to determine the appropriate plan characteristics for the collection. In the *ACP Data Collection Notice*, the Commission proposes using the ACP Transparency Data Collection to collect certain characteristics of ACP service plans. Collecting these data will help the Commission to understand the preferences of the ACP households, and to determine the value of the Affordable Connectivity Program, consistent with the Commission direction in the *ACP Order*. This part of the collection is also consistent with the requirement in the Infrastructure Act to collect “data relating to price and subscription rate information.” Specifically, in addition to the pricing information on the broadband label the Commission also requires providers to submit the additional plan information found on a broadband label. The Commission will also collect information not included on the broadband label; specifically, maximum advertised speeds, bundle characteristics, and associated equipment requirements for each plan with an enrolled ACP subscriber. Providers will be required to submit this



information for all plans with ACP subscribers; however, some of the fields on a broadband label may not be applicable to legacy plans and will be optional.

36. The Commission disagrees with the commenters who suggest that the Commission is not authorized to collect service plan characteristic information as part of this collection because plan characteristics are “outside the scope” of the Infrastructure Act. The Commission finds that plan characteristics are contemplated by the provision of the Infrastructure Act compelling the Commission to collect “data relating to price and subscription rate information.” The price of broadband service is determined in part by plan characteristics, including but not limited to upload and download speeds and data caps. In fact, the Commission has found a positive relationship between download speeds and price in the fixed broadband market, and between data caps and price in the pre-paid wireless market. Moreover, the collection of plan characteristic information, including associated equipment requirements, plan latency, and bundle characteristics, is necessary because such information will allow the Commission to contextualize service plan price information and determine the value being provided to eligible households by the ACP.

37. T-Mobile and Altice contend that the Infrastructure Act’s direction to rely on the information contained in the broadband labels prevents the Commission from collecting any price or plan characteristic information not contained in the labels, including data cap and bundle characteristic information. The Commission declines to adopt this interpretation. The relevant provision of the Infrastructure Act provides that the Commission “shall rely on the price information displayed on the broadband consumer label under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c) of the ACP Transparency Data Collection.” The language of the statute notes that the Commission shall rely on the pricing information on the broadband label but does not state that the Commission is limited to the information displayed on the label. The Commission views this provision of the Infrastructure Act as working alongside the redundancy avoidance provision under section 60502(c)(3) of the (what rule) to avoid imposing duplicative collection requirements on providers, and as an

instruction to utilize the price information in the labels where feasible.

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

39. Commenters generally support the collection of service plan speed. Commenters recognize the importance of broadband speed, describing it as among the “key characteristics” utilized by consumers in distinguishing between plans, and suggesting that the collection of speed information could allow the Commission to get a “more accurate depiction of the service experience” of ACP subscribers. Moreover, collecting speed information is crucial for the Commission to understand the value being provided by the affordable connectivity benefit, because the speed of a broadband service plan influences what internet applications a household can use.

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

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

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

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

43. *Data Caps and Connection Reliability*. In the *ACP Data Collection Notice*, the Commission seeks comments on whether to collect information on data caps for ACP-supported services, including the amount of the data cap and the number of ACP households that reached the cap. The Commission agrees with



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

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

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

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

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

47. At the same time, the Commission declines to require providers to submit connection reliability data. In the *ACP Data Collection Notice*, the Commission asks whether it should collect additional plan characteristics beyond those related to speed, bundles, and data caps. Some commenters propose that the Commission requires providers to submit information on connection reliability to “help ensure that public money obtains the intended services.” The Commission recognizes that

determining and reporting these data for purposes of the ACP Transparency Data Collection could be unduly burdensome and could require providers to undergo a highly technical determination to be able to produce these data. Although the Commission finds that the reliability of a broadband service is a key characteristic in determining the value of the ACP-supported service and this metric would help to evaluate whether low-income consumers are receiving the reliable service they deserve through the Affordable Connectivity Program, requiring providers to collect and report reliability data through this collection would be an overly burdensome undertaking, particularly for small providers, and would be difficult to implement at the aggregate level.

48. *Bundle Characteristics.* In the *ACP Data Collection Notice*, the Commission seeks comments on whether to collect information on the characteristics of bundled service offerings (e.g., “triple-play” bundles, unlimited voice/text/data plans), including information about the channels offered on bundled video services. A number of commenters supported the collection of bundle characteristics. Others opposed the collection of bundle characteristics, arguing that the Commission lacks the authority to collect bundle characteristics or that such a collection would be burdensome and without value to the Commission. As mentioned, the Commission interprets the Infrastructure Act to permit the Commission to collect plan characteristic information, including bundle characteristics. The fact that the Infrastructure Act refers to a “broadband transparency” collection is not determinative in our view, as the Infrastructure Act also directs the Commission to collect “data relating to price and subscription rate information.” The Commission acknowledges comments describing the burdens on providers, but finds that identifying whether a service is bundled, and the type of services that are bundled together, is essential for providing context for the service plan information the Commission receives through the ACP Transparency Data Collection. Understanding that households are applying their affordable connectivity benefit to a plan that includes bundled voice and/or video service tells the Commission about the services offered by a provider and how ACP households are taking advantage of the benefit. The affordable connectivity benefit can be applied to the voice and text portions of a bundled service plan, and such information is therefore

essential to determining the value the affordable connectivity benefit provides enrolled households. Therefore, the Commission requires providers to identify whether a service is bundled and the type of the bundle (e.g., voice, video), and to submit voice or text characteristic information for bundled service offerings, including those services included with mobile broadband. Specifically, the Commission requires providers to submit as part of the annual collection of plan characteristic information the total number of voice minutes and the total number of text messages allotted on a monthly basis, or whether a voice or text offering includes unlimited minutes or text messages.

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

50. The Commission will, however, require providers to create and submit unique plan identifiers for legacy service plans in a same or similar format as those used in the broadband labels. Lumen and USTelecom argue that the Commission shall not use the ACP Transparency Data collection to impose

a requirement to produce broadband labels on grandfathered or legacy plans. The Commission clarifies that while providers will need to submit many of the plan and pricing characteristics contained in the labels, they will not be required to create or display a broadband label that the *Broadband Labels Order* would not otherwise require.

51. *Affordable Connectivity Program Performance Metrics.* In the *ACP Data Collection Notice* the Commission proposes to use information in the ACP Transparency Data Collection for the evaluation of the performance of the ACP in achieving the goals set in the *ACP Order* and sought comment on the performance metrics the Commission shall collect to measure the performance of the ACP. The goals the Commission establishes for the ACP are to (1) reduce the digital divide for low-income consumers; (2) promote awareness and participation in the ACP; and (3) ensure efficient and effective administration of the ACP. For each of these goals, the Commission establishes performance metrics and methods to measure progress.

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

53. *Digital Divide Metrics.* In the *ACP Data Collection Notice*, the Commission ask whether it shall, through the ACP Transparency Data Collection, collect information about whether a subscriber is a first-time subscriber to the provider or a first-time subscriber for fixed or mobile broadband, or whether a household was subscribing to multiple broadband services. In the *ACP Order*, the Commission finds that understanding broadband adoption by first-time subscribers would help measure the Commission’s progress toward its first goal of narrowing the digital divide for low-income consumers. Commenters opposed the collection of these metrics as part of the ACP Transparency Data Collection, arguing that providers do not collect this information as a matter of course, and that it would be a substantial

burden to submit this information. The Commission still recognizes the utility of such information in permitting non-profit organizations, local and state governments, and the Commission to more effectively target ACP outreach efforts to underserved households and to fulfill the requirements to collect data necessary for determining the program’s progress toward the goal of narrowing the digital divide. But the Commission also finds that the ACP Transparency Data Collection might not be the best vehicle for collecting information about first-time users as it could require providers to survey or otherwise assess and report on broadband services the household is receiving beyond those supported by the affordable connectivity benefit. Therefore, although the Commission declines to require the production of such information as part of the ACP Transparency Data Collection at this time, the Commission seeks further comment on how to collect digital divide data in the FNPRM. The Commission also, as discussed, requires providers to submit performance- and equity-related data on the number of ACP subscribers enrolled in Lifeline and ACP subscribers who receive the ACP Tribal or high-cost enhanced benefits. The Commission also reiterates its direction to Commission staff to consider other ways to collect information to determine progress toward the goal of narrowing the digital divide, such as broadband adoption rates for first-time subscribers, and increases in enrollments in areas with low broadband penetration rates. More specifically, the Commission directs the Bureau, with support from OEA, the Consumer and Governmental Affairs Bureau (CGB), and USAC, to explore possible approaches proposed by commenters, such as statistical sampling, or industry or consumer surveys, to collect information about the extent to which ACP subscribers are first-time broadband subscribers, first-time fixed broadband subscribers or are subscribing to multiple broadband services.

54. *Additional Performance Metrics.* In the *ACP Data Collection Notice*, the Commission asks what other data should collect to measure effectiveness in increasing awareness and participation or the administrative efficacy of the ACP. Public Knowledge and Common Sense jointly suggest that the Commission collects information on the ACP enrollment process, connected device offerings, and availability of low-income plans. The City of New York and the Connecticut State Broadband Office propose that the Commission

collects information on the availability and performance of service plans. Providers object to proposals to collect information on providers' enrollment processes, connected device offerings, or plan availability and performance. With consideration of the weight of the record, and the administrative and technical difficulties associated with the collection of information related to awareness of and participation in the Affordable Connectivity Program and the efficient and effective administration of the program, the Commission declines at this time to require providers to submit information on the enrollment process, connected device offerings, plan availability or performance. However, the Commission recognizes the value of information concerning the ACP enrollment process, and seek further comment on collecting data on the enrollment process, connected device offerings, and the availability of low-income plans, and any burdens on providers or subscribers associated with collecting such information. The Commission also directs the Bureau, with support from OEA and USAC, to explore collecting information regarding ACP enrollment through surveys of ACP participating providers, subscribers, and other stakeholders. Additionally, USAC has recently addressed some of these requests through updates to the Companies Near Me tool. The updated tool now shows which providers offer devices and which providers have indicated to USAC they offer plans fully covered by the standard affordable connectivity benefit. Moreover, as described above, the Commission is collecting information on the number of ACP subscribers who pay \$0 after application of the discounts and the ACP benefit.

55. *Subscriber Privacy.* In the *ACP Data Collection Notice*, the Commission requests that commenters identify any privacy concerns associated with subscriber- and aggregate-level collections of price, subscription rate, and plan characteristic information. Commenters focus on the privacy implications of a subscriber-level collection, with several commenters arguing that collecting aggregated data avoids privacy concerns that arise from collecting and processing information about individual subscribers. The Commission finds that the collection structure the Commission adopts in this Order, under which providers will submit aggregated data, reduces subscriber privacy concerns as compared to other collection options. Similarly, because the Commission is

not collecting as part of the ACP Transparency Data Collection subscriber personally identifiable information (PII) or records or other information pertaining to a subscriber, this collection does not implicate privacy statutes such as the Privacy Act of 1974, ECPA, section 222 of the Communications Act of 1934, as amended, or the Cable Act.

56. Additionally, privacy concerns associated with a subscriber-level collection could potentially be mitigated by adhering to existing safeguards or crafting new ones. For instance, the Commission and USAC currently protect IT systems and resources, including databases containing PII, with robust technical and physical measures, following the standards and guidelines of the National Institute of Standards and Technology (NIST) framework. The Commission also protects PII disclosed to third parties through its use of Memorandums of Understanding and Information Sharing Agreements. Additionally, privacy concerns related to a subscriber-level data collection could be addressed by limiting the amount of subscriber-level data collected to a few relevant variables; modifying the applicable Systems of Records Notice (SORN), Privacy Act Statement, and NLAD Access Agreement; and requiring subscribers' consent to the collection of additional subscriber-level data as part of the ACP Transparency Data Collection. The Commission seeks additional comment on subscriber consent in the FNPRM.

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

58. *Data Submission Date.* The record regarding the inaugural collection reflects a concern that providers, especially smaller providers, have adequate time to comply. ACA Connects suggests that an aggregate, annual collection could commence soon after

the Commission receives OMB approval but also argues that collecting the data could "easily consume" six months and that OMB approval could take six months or longer. It further asserts that the Commission should take "special care to ensure that smaller providers with more limited resources have ample time to implement the collection." The Commission shares the view that providers need adequate time to implement the collection, both to prevent undue provider burden and to ensure that the Commission receives quality data. The Commission therefore delegates to the Bureau the authority to establish a reasonable data submission date for the inaugural collection, which will be no earlier than ninety (90) days after the Commission announces that OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Bureau to take into account other ACP deadlines or significant dates when setting the data submission date so as to minimize burdens on providers.

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

60. *Rule Revisions.* A relatively rapid data collection is suggested by section 60502(c)(2) of the Infrastructure Act, which states that "[n]ot later than 180 days after the date on which rules are issued . . . the Commission shall revise the rules to verify the accuracy of the data submitted pursuant to the rules." The *ACP Data Collection Notice* sought

comment on how to interpret this provision, and the only commenters to address the issue contend that section 60502(c)(2) of the Infrastructure Act does not require the Commission to begin the data collection within 180 days of the issuance of final data collection rules. ACA Connects maintains that the Infrastructure Act does not indirectly specify a timeframe for the commencement of the inaugural collection by requiring the Commission to revise its rules within 180 days. According to ACA Connects, the requirement that the Commission “revise its rules to verify the accuracy of the data submitted pursuant to the rules” does not mean that the Commission must collect data prior to revising the rules: “[i]nstead, the Commission can adopt measures that will improve its ability to ‘verify’ the accuracy of data that is submitted in the future.” ACA Connects also asserts that to read the Infrastructure Act otherwise would result in a futile exercise because it is “simply unrealistic to believe the Commission could not only complete a data collection, but also complete a rulemaking to ‘verify the accuracy’ of the data collected” in 180 days.

61. The Commission believes there may be merit in ACA Connects’ interpretation of section 60502(c)(2) of the (what act), under which the statute would not require the Commission to collect data through the ACP Transparency Data Collection before revising its rules within the 180-day timeframe. The Commission thus seeks comment in the FNPRM on how the Commission can improve the rules set forth in the Order, including how to verify the accuracy of provider data. The Commission also delegates authority to the Bureau to issue a supplemental notice, if necessary, to enhance the record and to propose revised data collection rules in accordance with the 180-day timeframe.

62. *Data Reported as of Snapshot Date.* In addition to directing the Bureau to establish an annual data submission date, the Commission delegates to the Bureau the authority to establish a reasonable annual snapshot date or reference date for the submission of certain data. The *ACP Data Collection Notice* sought comment on the “filing window” for the collection and asked whether the Commission shall “require providers to submit data for subscribers enrolled as of a particular date.” Commenters generally support submitting data based on, or current as of, a snapshot date. The Commission agrees that submitting data as of a snapshot date is appropriate, and requires providers to do so. The

Commission directs the Bureau to establish a snapshot date that is no less than sixty (60) days prior to the data submission date. In other words, there must be at least sixty days between the snapshot date and the data submission date.

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

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

65. *Publication of Data.* The Infrastructure Act not only requires the Commission to collect data relating to price and subscription rates but also directs the Commission to “make data relating to broadband internet access service collected . . . available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information or proprietary information.” The *ACP Data Collection Notice* sought comment on what data should be made public, how privacy and provider interests can be protected, and the format, method, and timing of publication. Based on the record, at a minimum, the Commission makes publicly available, aggregated at the state level, non-provider-specific data on the average or median prices of plans in which ACP subscribers are enrolled within designated download speed tiers and data on the number of subscribers of plans within those tiers. The Commission directs OEA and USAC to make these data available in a downloadable format (e.g., Comma Separated Values file) not more than six months after the submission date set forth by the Bureau in a Public Notice. Making data available in this fashion will provide greater transparency into broadband services provided by ACP

participating providers while protecting personally identifiable information and proprietary information. As further discussed, the Commission also finds that it would be valuable to publish data at the ZIP code level after the initial publication of state-level information, provided that it is done in a manner that protects subscriber information and does not result in the publication, directly or indirectly, of provider-specific information.

66. *Publishing Data While Protecting Against the Disclosure of Personally Identifiable Information or Proprietary Information, Defining Personally Identifiable Information (PII).* The Infrastructure Act requires the Commission to make data available to the public “without risking the disclosure of personally identifiable information or proprietary information” and further directs the Commission to define “personally identifiable information” (PII) via notice and comment rulemaking. Accordingly, the Commission seeks comments on how it shall define the term, and adopt here the definition of PII used by OMB in, among other authorities, OMB Circular A–130 and OMB M–17–12: “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.” The Commission finds that this definition is consistent with the approaches suggested in the record. Further, although the ACP Transparency Data Collection does not currently contemplate the collection of subscriber-level data, the Commission finds that this definition is flexible enough to ensure the protection of subscriber privacy if a subscriber-level component is made part of the collection in the future.

67. Three commenters propose definitions of “personally identifiable information” for purposes of the ACP Transparency Data Collection. The Connecticut State Broadband Office recommends the Commission uses the definition of “personally identifiable information” as “any information that is linked or reasonably linkable to an individual or device” and further stated that “information is linked or reasonably linkable to an individual or device if it can reasonably be used on its own, in context, or in combination to identify an individual or device, or to logically associate with

other information about a specific individual or device.” The Department of Labor guidance further specifies that gender, race, birth date, and geographic indicator are data elements that could be used to indirectly identify a person. The Connecticut State Broadband Office asserts that this definition allows the Commission to refine or include additional data elements as technology advances and more personal information is available online.

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

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

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

Publishing only aggregated data is consistent with that recommendation.

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

72. As an initial matter, the record supports interpreting “proprietary information” in the section 60502(c)(4) context to mean the proprietary information of providers, rather than the broad universe of information protected by section 222(a) of the Act or customer proprietary network information protected by section 222(c). As for what “proprietary information” means in the context of the ACP Transparency Data Collection, providers and those affiliated with them tend to take a broad view. ACA Connects asserts that because the Commission must avoid even “risking” the disclosure of proprietary information, the Commission must err on the side of non-disclosure of any information that might be deemed proprietary. According to ACA Connects, the Commission should thus refrain from disclosing “any provider-specific data, including any data that can be linked to an individual provider.” More specifically, several commenters assert that proprietary information covers competitively sensitive provider information, which includes pricing data, subscription rates for broadband service offerings, and “the churn rate for the provider or for a particular internet service plan offered by an ACP provider.” If, as ACA Connects contends, the Commission discloses publicly this competitively sensitive data—e.g., each provider’s total number of ACP subscribers in each area or each provider’s number of ACP subscribers enrolled at different speed tiers—it could chill providers from participating in the Affordable Connectivity Program. ACA Connects also asserts that publishing provider-specific information is not necessary to deliver the transparency the Infrastructure Act requires.

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

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

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

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

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

76. *Protecting Proprietary Information in Published Reports.* Consistent with Congress’s directive to avoid risking the disclosure of provider information, and consistent with past Commission practice, the Commission protects provider proprietary and competitively sensitive information by ensuring that any data published cannot be associated directly or indirectly with a specific provider. To effectuate this principle, the Commission directs Commission staff to: (a) publish data aggregated at the state level and only publish data at lower levels of geographic aggregation if doing so sufficiently protects provider identity; (b) publish average or median prices; and (c) publish such data by speed tiers. The Commission is persuaded, however, that the Infrastructure Act militates against the publication of plan-related subscribership data that could be linked to a particular provider, and the Commission clarifies that it does not intend to release as part of the ACP Transparency Data Collection provider-specific data, consistent with its practice not to publish broadband-related data specific to providers in the internet Access Services Reports. ACA Connects, NCTA, and USTelecom state without rebuttal that the number of ACP subscribers that subscribe to a particular plan is competitively sensitive. Although the Commission declines to find that a provider’s subscriber numbers are proprietary information in this context, the Commission has protected similar competitively sensitive provider information in other contexts.

77. As with protecting PII, one way to protect provider proprietary information is to publish aggregated data, and doing so is supported by the record. ACA Connects further suggests protecting proprietary provider information by “disclos[ing] averages or median prices for all ACP-subsidized services within various speed ranges, rather than

provider-by-provider disclosure” because “[e]ven anonymized provider-level disclosures (e.g., ‘Provider A’ v. ‘Provider B’) may be traceable to a specific provider based on their offering of unique speeds or pricing plans and should thus be avoided.” WISPA suggests a similar approach, albeit for the collection of data rather than its publication, and recommends “allow[ing] participating providers to report subscription rates by tier with price ranges for each of the provider’s geographic locations.” The Commission finds merit in ACA Connects’ proposal, under which it publishes average or median prices for all plans based on download speed tiers rather than by provider. This would sufficiently protect provider information while providing meaningful data to the public, and the Commission directs OEA, in coordination with WCB and USAC, to publish non-provider-specific aggregated average or median price data by download speed tier.

78. *Geographical Aggregation Level.* Although commenters overwhelmingly support publishing aggregated data to protect PII and proprietary information, there were marked disagreements about what level of aggregation was appropriate. Several commenters, all provider-affiliated, argue that aggregated data should be published at the state level because publishing more granular data risks disclosing PII or proprietary information “by making it possible to link ‘price’ and ‘subscription rate’ data to a specific provider” or because ACP participating providers currently provide data to USAC and the Commission at the State or Study Area Code level. Other commenters advocate for publication at the ZIP code or county level because it is more useful to the public and it is how aggregated ACP data are currently made available by USAC. As explained by the Connecticut State Broadband Office, providing ZIP code level data to the public “makes it easier for state governments and providers to identify the areas in need of broadband assistance.” And some commenters recommend that ACP Transparency Data Collection data be published at a smaller-than-ZIP-code level, such as by Census tract, neighborhood, or individual blocks.

79. The Commission finds that publication of aggregated data at the state level is supported by the record and will protect both subscriber and provider information. The Commission thus directs OEA, in coordination with WCB and USAC, to make aggregated data available to the public at the state level. Further, because the public may find more granular data more useful,

and because providers will be required to submit data aggregated by ZIP code, the Commission directs OEA, in consultation with WCB, OGC, and USAC to publish data by ZIP code, but only if doing so will not directly or indirectly disclose subscriber PII or result in the publication of provider-specific data. The Commission notes that publication of data at more granular levels than ZIP code could be an option were the Commission collects ACP data at lower levels of aggregation or on a subscriber basis in the future. But regardless of the level at which data is collected, any publication of data must not be specific to any provider even if that requires aggregation of data at levels higher than that at which it is collected.

80. *47 CFR 0.459.* The Infrastructure Act states that Commission protection of PII and proprietary information must be consistent with section 0.459 of the Commission’s rules. Section 0.459 provides procedures for requesting that information submitted to the Commission be withheld from public inspection. For instance, if a person submits materials to the Commission but wants the materials withheld from public inspection on the grounds that they contain trade secrets or privileged or confidential commercial, financial, or technical data, and the materials do not fall within the list of presumptively nonpublic materials in section 0.457(d)(1) of the Commission’s rules, the person must submit a request for non-disclosure under section 0.459. Unless the Commission provides abbreviated means for requesting confidential treatment, a request under section 0.459(a) must contain a statement of the reasons for withholding the materials from public inspection, including an “explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged” and an “explanation of how disclosure of the information could result in substantial competitive harm.” The Commission seeks comments on how section 0.459 could be incorporated into its processes for publishing information collected through the ACP Transparency Data Collection.

81. The Connecticut State Broadband Office and NaLA assert that the Commission shall follow its normal procedures—provider information is either presumptively withheld because it falls within a category of section 0.457 or the provider must request non-disclosure under section 0.459. In contrast, ACA Connects argues that the Commission shall not require providers to submit individual requests under

section 0.459 but should instead, in the interest of expediency, add “any proprietary information received via the ACP Transparency Data Collection” to the list of materials presumptively withheld from routine public disclosure in section 0.457. Additionally, a few commenters propose that if section 0.459 submissions are required, providers should be able to request non-disclosure by checking a box when submitting data.

82. The Commission agrees with commenters that competitively sensitive information might be proprietary and that providers might want to keep such information confidential. Because the Commission is already refraining from making publicly available any data at the provider level by publishing only aggregated, non-provider-specific data, the Commission does not find it necessary for providers to seek protection of competitively sensitive or proprietary information the Commission has already committed to not make publicly available. The Commission will therefore treat such information as presumptively confidential pursuant to section 0.457(d) of the Commission’s rules.

83. *Scope of Data to be Made Public.* As for what aggregated, non-provider-specific data the Commission shall make available to the public, its direct OEA, in coordination with WCB, OGC, and USAC to publish as much data as possible consistent with privacy considerations. At a minimum, OEA and USAC must publish aggregated non-provider-specific data on average or median prices of plans within download speed tiers and data on the total number of ACP subscribers within those tiers, on a state level basis. The Commission further direct OEA, in coordination with WCB, OGC, to the extent necessary to protect PII, and USAC, to publish data on legacy plans—plans which have ACP subscribers but are no longer available to the general public—while minimizing the risk of consumer confusion about the availability of those plans. While it is appropriate to publish data on legacy plans because ACP subscribers are enrolled in them, doing so might require a separate dataset or different variables given that legacy plans are not available to new subscribers.

84. The Commission seeks comments on whether the Commission shall publish only price and subscription rate data, or whether the Commission shall also make publicly available other data proposed to be collected, such as plan characteristics or program-performance data, or data obtained outside the ACP Transparency Data Collection, such as data about the availability of plans fully

covered by the affordable connectivity benefit. State and local government commenters urge the Commission to publish all data collected, except for PII. The Connecticut State Broadband Office urges the Commission to publish descriptions of all ACP plans, including whether a device is offered, and data on the performance of those plans. It asserts that these “additional variables” help state and local governments understand “affordability issues in their jurisdiction” and “promote transparency in the services ISPs are providing with the benefit of government subsidies and their prices for comparison with unsubsidized services.” Similarly, the City of New York urges the Commission to collect and publish price, plan, and performance features and “anticipates that the publication of ACP transparency data will meaningfully enable the City to further inform emerging broadband maps used for policy, service deployments, and adoption investments.”

85. Other commenters agree that all collected data should be published, though they differ somewhat on what should be collected in the first place. Common Sense, for instance, asserts that the Commission shall publish all ACP data collected, which would include information on “plan prices, subscription rates, plan characteristics, and performance metrics.” NaLA likewise advocates publishing all collected and analyzed data, but contends that the Commission shall limit the data collection to price and subscription rate data. Nevertheless, NaLA states that “[i]f the Commission decides to collect data beyond the price and subscription rate data required by the Infrastructure Act,” it should make such data and related analyses available to the public.

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

possible consistent with privacy considerations.

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

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

89. The record is sparse on these issues. WISPA recommends publishing information “on an annual basis during a specified window of time each year to ensure (1) consistency for comparison purposes, (2) sufficiently current information, and (3) a process that is not overly burdensome for providers, the Commission, or USAC.” In contrast, Common Sense asserts that the Commission “shall publish updated ACP data at regular intervals, as frequently as feasibly possible.” NaLA does not suggest a particular timeframe in which to make data publicly available but emphasizes the importance of data being disclosed “in a timely manner so that it is useful for determining the effectiveness of the ACP in meeting its goals as well as for enabling low-income consumers to gain insight into the ACP services available to them.”



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

91. *Guidance.* The Infrastructure Act provides that the Commission “may issue such guidance, forms, instructions, publications, or technical assistance as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section, including to ensure that such programs, projects, or activities are completed in a timely and effective manner,” and the *ACP Data Collection Notice* sought comment on this provision. Commenters agreed that the Commission should provide support and guidance on data collection through webinars, technical instructions, form instructions, and frequently asked questions. The Commission therefore directs the Bureau, OEA, and USAC to develop provider education and training materials to assist with the ACP Transparency Data Collection rules set forth in this Order and associated processes.

92. *Enforcement.* In the *ACP Data Collection Notice*, the Commission seeks comments on issues relating to the enforcement of the annual data collection rules, including the base forfeiture amount for noncompliance, certification requirements, involuntary removal, and submission deadlines.

93. *Base Forfeiture.* In the *Notice* the Commission proposes to establish a base forfeiture amount proportionate to the level of data ultimately adopted in the proceeding, either on a per-subscriber or on a higher level of aggregation (e.g., ZIP-code, state, SAC). For an aggregate collection, the Commission proposes to establish a base forfeiture amount of \$50,000 per state or study area for which a provider has failed to submit ACP Transparency Data Collection information by the applicable deadline.

94. Commenters generally support establishing forfeiture amounts, but

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

95. With consideration of the record and in light of the Commission decision to utilize an aggregate-level approach in this collection, the Commission adopts a base forfeiture amount in line with an aggregate collection. The Commission adopts a base forfeiture amount of the lesser of \$22,000 or the latest monthly claim amount, for each state for which a provider has failed to submit complete information. The Commission agrees with WISPA’s comment that a base forfeiture amount can be tied to the number of the provider’s ACP subscribers to account for differences in provider size, and using the latest monthly claim amount makes that tie to subscribers. The Commission adopted approach is consistent with both Commission precedent and its desire to ensure compliance with the ACP Transparency Data Collection rules. Moreover, it appears that Altice is confusing late fees that USAC applies to USF accounts for late FCC Form 499 filings (\$100), with forfeitures the Commission issues in enforcement proceedings for late, missing, or inaccurate FCC Form 499 filings (\$50,000). In this proceeding, the Commission seeks comment on forfeitures for rule violations, not late fees assessed by USAC pursuant to Commission rule. The Commission

similarly declines to adopt Altice’s alternative proposal of a publicized list of non-compliant providers as the means of enforcement, as the Commission finds the preceding approach better balances the incentive to comply with concerns of providers. A “naughty list” would likely not adequately penalize or deter providers from failing to submit the annual plan characteristics information required by this Order and the Infrastructure Act.

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

97. *Certification.* The Commission receives no comments opposing its proposal to require an officer of each provider to certify, under penalty of perjury, to the accuracy of the data and information provided prior to the submission of each data collection. Consistent with the Commission rule requiring annual certification for participating providers to be completed by the “officer of the participating provider who oversees Affordable Connectivity Program business activities,” the Commission adopts this proposal. The Commission directs the Bureau, as part of the electronic process to submit data, to include a process for certifications as to the accuracy of the data and information provided for the data.

98. *Involuntary Removal.* In the *ACP Data Collection Notice* the Commission asks whether a failure to comply with the rules established in this data collection could subject a provider to the involuntary removal process the Commission establishes in the *ACP Order*. Starry suggests that providers that utilize the safe-harbor provisions of the Consolidated Appropriations Act or

engage in “minor infractions” not be subject to involuntary removal from the Affordable Connectivity Program. The Commission declines to carve-out violations of the ACP Transparency Data Collection rules from the ACP’s involuntary removal process. In the *ACP Order*, the Commission adopts the application of the safe-harbor provision of the Infrastructure Act, which provides that the Commission could not enforce a violation of the Act using sections 501, 502, or 503 or any rules promulgated under those sections if a participating provider demonstrates that it relied in good faith on information provided to such a provider to make any verifications required by the statute. The Commission clarifies that the safe harbor provided by the Infrastructure Act is only applicable to eligibility determinations, as the statute plainly provides. The Commission, therefore, declines to adopt Starry’s proposed application of the Safe Harbor.

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

the Commission’s proposals inhibited digital equity and inclusion.

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

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

102. The Commission further delegates authority to the Bureau to make necessary adjustments to the ACP Transparency Data Collection and to provide additional detail and specificity to the requirements of the ACP Transparency Data Collection to conform with the intent of the Order.

### III. Severability

103. All of the rules that are adopted in the Order are designed to work in unison to implement the ACP Transparency Data Collection. Each separate ACP Transparency Data Collection rule the Commission adopts here, however, serves a particular function in the implementation of the ACP Transparency Data Collection. Therefore, it is the Commissions intent that each of the rules adopted herein shall be severable. If any of the rules is declared invalid or unenforceable for

any reason, it is the Commissions intent that the remaining rules shall remain in full force and effect.

### IV. Procedural Matters

104. *Paperwork Reduction Act*. This Fourth Report and Order may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission has described impacts that might affect small businesses in the FRFA. Compliance with the information collection requirements will not be required until OMB has completed any review that the Bureau determines is required under the Paperwork Reduction Act.

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

106. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Fourth Report and Order.

107. *Need for, and Objectives of, the Report and Order*. In Infrastructure Act, Congress established the ACP, which is designed to promote access to broadband internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices. The Affordable Connectivity Program provides funds for an affordable connectivity benefit consisting of a \$30.00 per month discount on the price of broadband

internet access services that participating providers supply to eligible households in most parts of the country and a \$75.00 per month discount on such prices in Tribal areas. The Commission establishes rules governing the affordable connectivity benefit and related matters in the ACP Report and Order.

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

109. The Order adopts rules to implement section 60502(c) of the Infrastructure Act, to provide greater transparency into broadband services provided by ACP participating providers, and to allow the Commission to assess its progress towards the ACP program goals. Specifically, the Commission establishes the ACP Transparency Data Collection, a mandatory annual data collection of price, subscription rate and plan characteristic information. The Commission collects plan pricing, unique identifier and plan characteristic information at the ZIP code level.

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

111. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* JSI filed reply comments asserting that “requiring small providers to complete new NLAD data fields when enrolling new subscribers and updating fields for households already enrolled in the ACP would be highly burdensome.” While the Commission notes the concerns raised by JSI, the Commission believes that the recordkeeping, reporting, and other compliance requirements adopted in the Order strike a balance between providing small and other affected entities flexibility in reporting data while allowing the Commission to obtain the necessary information to meet its obligations under the Infrastructure Act. The Commission discusses alternatives considered but decline to adopt, that

would have increased the costs and/or burdens on small entities.

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

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

114. *Description and Estimate of the Number of Small Entities to Which These Rules Will Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).

115. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

116. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately

447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

117. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

118. *Wired Broadband internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

119. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the

general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report*, the Commission believes that the majority of wireline internet access service providers can be considered small entities.

120. *Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs)*. Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the internet[.]" Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

121. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report*, FCC–20–188, 36 FCC Rcd 2945, December 31, 2020, on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, the Commission believes that the majority of wireless internet access service providers can be considered small entities.

122. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small*. The Commission expects the rules adopted in the Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Specifically, the Commission establishes new reporting and disclosure requirements for ACP participating providers in order to comply with the Infrastructure Investment and Jobs Act's (Infrastructure Act) broadband transparency requirement, and to determine the value being provided to eligible households by the ACP. The Commission requires providers to submit unique identifiers, plan characteristic and plan pricing information, and subscription rate information annually at the ZIP code level.

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

124. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its

proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

125. The Commission has considered the comments in the record and is mindful of the time, money, and resources that some small entities may incur to comply with the requirements of this Order. In reaching the requirements the Commission adopts in the Order, there were various approaches and alternatives that the Commission considers but rejected which prevented small entities from incurring additional burdens and economic impacts. For example, the Commission declines to collect data on connection reliability, or plan coverage, although some comments supported such a collection. The Commission also declines to adopt a pure subscriber level collection, as proposed in the *ACP Data Collection Notice* and supported by a number of commenters, out of a concern for the burdens imposed on small entities. Instead, the Commission adopts an aggregate level collection.

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

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

## V. Ordering Clauses

128. Accordingly, *it is ordered* that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act,

2021, Public Law 116–260, 134 Stat. 1182, as amended by Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), this Fourth Report and Order *is adopted*.

129. *It is further ordered* that the Fourth Report and Order *shall be effective* February 13, 2023, except new 47 CFR 54.1813(b) through (d) shall be effective upon announcement in the **Federal Register** of the Office of Management and Budget approval of the information collection requirements as required by the Paperwork Reduction Act.

#### List of Subjects in 47 CFR Part 54

Internet, Telecommunications, Telephone.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

#### Final Rules

For the reasons set forth, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 54—UNIVERSAL SERVICE

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

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

■ 2. Add § 54.1813 to subpart R to read as follows:

##### § 54.1813 Affordable Connectivity Program Transparency Data Collection.

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

*Actual Speed.* The term “actual speed” means the typical upload and download speeds period for a particular speed tier, either based on Measuring Broadband America (MBA) methodology, or other relevant testing data.

*Advertised Speed.* The term “advertised speed” means the maximum advertised upload and download speeds for fixed broadband plans, and the minimum advertised upload and download speeds for mobile broadband plans.

*Base monthly price.* The term “base monthly price” means the monthly price for a broadband internet service offering that would be paid by a household enrolled in the Affordable Connectivity Program, absent the affordable connectivity benefit. The base monthly price does not include the price of any recurring monthly fees (such as fees providers impose at their discretion, or equipment rental fees),

government taxes or fees, or one-time charges (such as installation charges, equipment purchase fee, etc.).

*Bundle.* The term “bundle” means a combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text.

*Data Cap.* The term “data cap” means data usage restrictions on both pre-paid and post-paid plans, including “soft caps” where a user’s internet traffic is throttled or deprioritized, and “hard caps” where a user’s access to the internet is discontinued.

*Latency.* The term “latency” means the length of time for a signal to be sent between two defined end points and the time it takes for an acknowledgement of the receipt of the signal to be received.

*Legacy plan.* The term “legacy plan” means an internet service offering in which an ACP subscriber is enrolled that a participating provider is not accepting new enrollment.

*Personally identifiable information.* The term “personally identifiable information” means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual.

*Plan.* The term “plan” means “internet service offering” as defined in § 54.1800(n).

*Unique identifier.* The term “unique identifier” means a machine-readable string of characters uniquely identifying a broadband plan, not containing any special characters. Where a broadband plan is associated with a broadband label under 47 CFR 8.1(a), the unique identifier must be the same as that in the broadband label. Unique identifiers cannot be reused or refer to multiple plans. A provider must develop a new plan identifier, when a plan’s components change.

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

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

(2) *Requests for withholding from public inspection.* When submitting information to the Commission under paragraph (c) of this section, a

participating provider may submit a request that information be withheld from public inspection under § 0.459 of this chapter.

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

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

■ 3. Delayed indefinitely., amend § 54.1813 by adding paragraphs (b) through (d) to read as follows:

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

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

(A) Base monthly price,

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

(C) Itemized provider-imposed recurring monthly fees,

(D) Itemized one-time fees,

(E) Speed (actual and advertised speeds),

(F) Latency,

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

(H) Whether the service is bundled, the high-level components of the

bundle, and voice minutes or number of text messages included as part of the bundle if applicable,

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

(ii) The number of ACP households subscribed;

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

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

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

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

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

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

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

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

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

(1) The officer is authorized to submit the data collection on behalf of the participating provider; and

(2) The data and information provided in the data collection is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by

employees responsible for the information being submitted.

[FR Doc. 2022–28435 Filed 1–12–23; 8:45 am]

#### BILLING CODE P

## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 8)]

#### Civil Monetary Penalties—2023 Adjustment

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This final rule is effective January 13, 2023.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, sec. 701, 129 Stat. 584, 599–601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for October of the previous year and the October CPI-U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

##### II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. 11901–11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The

Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.<sup>1</sup> The Board has regulations at 49 CFR part 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 CFR part 1022 to make an annual inflation adjustment to the civil monetary penalties in conformance with the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations that occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.07745, which reflects the percentage change between the October 2022 CPI-U (298.012) and the October 2021 CPI-U (276.589). The table at the end of this decision shows the statutory citation for each civil penalty, a description of the provision, the adjusted statutory civil penalty level for 2022, and the adjusted statutory civil penalty level for 2023.

##### III. Final Rule

The final rule set forth at the end of this decision is being issued without notice and comment pursuant to the rulemaking provision of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), which does not require that process “when the agency for good cause finds” that public notice and comment are “unnecessary.” Here, Congress has mandated that the agency make an annual inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Given the absence of discretion, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

##### IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a

<sup>1</sup> The Board also has various criminal penalty authority, enforceable in a Federal criminal court. Congress has not, however, authorized Federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.