

VCBB Federal Legislative and Regulatory Update – January 2022

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Federal legislation – Infrastructure Investment and Jobs Act (IIJA) or Bipartisan Infrastructure Law

- IIJA (P.L. 117-58) was enacted November 15, 2021. Sweeping legislation of \$973 billion over five years; contains \$65 billion in new investment for broadband, to be administered by the US Department of Commerce.
- Broadband investments include:
 - over \$42B in fiscal 2022 to the Broadband Equity, Access and Deployment (“BEAD”) program which will make grants to States;
 - \$1B over 5 years for new “middle mile” competitive grants to facilitate broadband deployment;
 - \$14.2B to extend the Emergency Broadband Benefit program, renamed the Affordable Connectivity Program (“ACP”), with the monthly amount reduced from \$50 to \$30; and
 - \$1.25B over 5 years to create a new competitive grant program for broadband.

Affordable Connectivity Program (ACP)

- ACP is the successor to the Emergency Broadband benefit (“EBB”) program. EBB recipients fully enrolled as of 12/31/21 will automatically continue to receive their current monthly benefit until 3/1/22.
- Eligibility is broadened (discussed on next slide).
- Some recipients (e.g. those that qualified substantial loss of income as a result of a job loss or furlough, or by meeting the eligibility criteria for a participating provider's COVID-19 program) will need to requalify for the ACP. These households will receive additional details about the steps they need to take from the program administrator (USAC) or their internet service provider and will be given at least 30 days to respond. (See: fcc.gov/broadbandbenefit).
- The ACP provides up to \$30/month per household for internet service (\$75/month on tribal lands). This is a reduction from the EBB’s \$50/month limit. Eligible households can also receive a one-time discount of up to \$100 for a laptop, desktop or tablet from a “participating provider” if they contribute between \$10-\$50 towards the purchase price.

ACP Participation Requirements

- Household must be at or below 200% of the federal poverty guidelines, or
- Participate in certain assistance programs (SNAP, Medicaid, Public Housing Assistance, SSI, WIC, Lifeline or Tribal Assistance Programs); or
- Be approved to receive benefits under the USDA free and reduced-price school lunch or breakfast programs; or
- Have received a Pell Grant during the current award year; or
- Meet the eligibility criteria for a participating provider's existing low-income program.

ACP continued

- Service providers use the Program Claims Process (accessed through the USAC portal) each month to seek reimbursement for eligible consumers who received program-supported broadband or devices.
- FCC issued draft rules for the ACP on January 7th. FCC-CIRC22-450-010722.
- QUESTION FOR BOARD MEMBERS: Should the VCBB take action to promote the ACP program, and if so, what? For instance, it could:
 - Provide assistance to CUDs to become participating providers
 - Develop surveys of providers regarding their participation, or potential obstacles to participating
 - Encourage households to apply for the ACP.

ACP “Participating Provider” Definition

- Participating Provider was defined in the Consolidated Appropriations Act as either an existing Eligible Telecommunications Carrier (ETC) [a company designated under 47 U.S.C. 214(e) to receive universal service support] or a provider approved by the FCC under an expedited approval process. The ACP did not change this definition, or the framework through which providers may seek to participate in the program. Thus, Participating Providers under the EBB Program can continue to participate in the ACP Program without seeking approval or filing election notices.
- Providers that have not already participated in the EBB Program or been designated as an ETC by a state or the FCC must file for automatic approval or expedited approval from the Commission. The FCC will require all new participating providers to file USAC election notices with the FCC’s Wireline Competition Bureau prior to offering ACP supported services.

ACP Participating Provider (cont.)

- Eligibility Requirements. Both ETCs and non-ETCs must establish they provide broadband services to participate. The broad interpretation allows for traditional ISPs (e.g. cable providers and wireless ISP), but also non-traditional broadband providers like community-owned networks, electric cooperatives, or municipal governments.
- Provider participation in the ACP is voluntary.
- The IJA requires providers to offer the ACP discount on any of its internet service offerings, not only the most basic one.
- Participating providers will only need to establish they offered broadband services to end-users prior to seeking to participate in the ACP. (Under the former EBB Program they had to offer broadband prior to April 2020; this provision has been removed).

NTIA Requests Comment on Broadband Programs in IIJA

- This week the National Telecommunications and Information Association (NTIA) published a Notice seeking comment in its implementation of the broadband provisions of the IIJA (87 FR 1122).
- The NTIA is responsible for distributing over \$46B of broadband funding through several programs
- The Notice contains a list of 36 questions (included in the Board packet). Comments are due February 4, 2022.
- PSD is planning to provide comments, and has asked that, to the extent possible, the VCBB submit comments together with PSD. VCBB Staffs plan to meet with PSD staff to consider the issues with a goal toward submitting joint comments wherever possible, and identifying if there are any issues where our interests diverge.

NTIA Request for Comment (cont.)

- Review and discuss the questions in the Board Packet
- POSSIBLE ACTION ITEM: Request a motion that the Board Delegate to the Executive Director the Ability to File Comments with State and Federal Regulators on its Behalf

IIJA Other Issues

- Staff has identified one potential conflict between a provision of IIJA and Act 71. Under the IIJA, a granting entity may not exclude “cooperatives, nonprofits, public-private partnerships, private companies, public or private utilities, PUDs, or local governments from eligibility for such grant funds ...” Act 71, however (Section 8086(e)) permits grants to non-CUDs ONLY if they do not conflict with CUDs’ plans. We need to analyze whether this provision in Act 71 can be harmonized with the IIJA. We do not want to preclude use of IIJA grant funds.

IIJA Other Issues (cont.)

- IIJA requires a speed of at least 100/20

Treasury Final Rules re: SLFRF

- Two signature programs of the American Rescue Plan Act (ARPA) are the Coronavirus State Fiscal Recovery Fund (“SFRF”) and the Coronavirus Local Fiscal Recovery Fund (“LFRF”), together the SLFRF. Last May, the Department of the Treasury issued Interim Final Rules (“IFRs”) for these programs. Last week, Treasury issued Final Rules, which considered the more than 1,500 comments made to the IFR, which will become effective April 1, 2022.
- A key component of the SLFRFs was broadband infrastructure, and the Final Rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability and reliability.
- Though the Final Rules will become effective April 1, 2022, recipients of Funds may take advantage of the Final Rules earlier – Treasury will not enforce the IFRs to the extent that a use of funds is consistent with the terms of the final rule, regardless of when SLFRF funds were used.

SLFRF - Summary of Broadband Provisions

- Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, including:
 - Lack of access to a reliable high-speed broadband connection
 - Lack of affordable broadband
 - Lack of reliable service
- Prohibited uses: Funds can't be used to offset or reduce taxes based on State law, and can't be used for debt service or to replenish rainy day funds, satisfy settlements or judgments, or other uses that contravene or violate ARPA or state and local laws.

SLFRF – Additional Broadband Requirements

- Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds. (p.39 of Treasury Overview)

SLFRF - Additional Broadband Guidelines

- If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investments that is not met by the existing commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

SLFRF – Additional Broadband Guidelines

- Recipients are encouraged to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.

SLFRF - Participation in Subsidy Program

- Completed projects must participate in a low-income subsidy program. Recipients must require the service provider for a broadband project that provides service to households to either:
 - Participate in the FCC's ACP; or
 - Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP.

SLFRF - Other Guidelines

- SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.
- Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.