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(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3229; email [vladimir.ulyanov@faa.gov](mailto:vladimir.ulyanov@faa.gov).

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Issued on June 16, 2022.

**Christina Underwood,**

*Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 21-450; FCC 22-44; FR ID 92237]

#### Affordable Connectivity Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) seeks comments on the annual collection of data relating to price and subscription rates of internet service offerings received by households enrolled in the Affordable Connectivity Program, mechanism for collecting such data, and format for the data's publication, as required by Section 60502(c) of the Infrastructure Investment and Jobs Act.

**DATES:** Comments are due on or before July 25, 2022 and reply comments are due on or before August 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the listed contact as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 21-450, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the Electronic Comment Filing System (ECFS): <https://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020) (<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>).

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Eric Wu, Wireline Competition Bureau, 202-418-7400 or by email at [Eric.Wu@fcc.gov](mailto:Eric.Wu@fcc.gov). Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 21-450; FCC 22-44, adopted on June 7, 2022, and released on June 8, 2022. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-22-44A1.pdf>.

## I. Introduction

1. On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (Infrastructure Act or Act), which modified and extended the Emergency Broadband Benefit Program (EBB Program) to a longer-term broadband affordability program called the Affordable Connectivity Program (ACP). The Infrastructure Act also mandates that the Commission issue final "broadband transparency rules" regarding the annual collection of information about the price and subscription rates of internet service offerings received by households enrolled in the Affordable Connectivity Program. Consistent with the directive to adopt rules no later than one year after enactment of the Act, the Commission herein seek comment on the data to be collected, mechanism for collecting this data, and format for the data's publication.

## II. Discussion

2. *ACP Transparency Data to be Collect—Price and Subscription Rate Information.* The Act requires an "annual collection by the Commission of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program . . . to which an eligible household subscribes." The Commission first seeks comment on the collection of price information. The Commission proposes that the price information include the monthly charge for the internet service offering that a household would be charged absent the application of the affordable connectivity benefit. How should the Commission collect promotional pricing or introductory rates? Should other price characteristics, such as whether the internet service offering is pre-paid or post-paid, be collected? Should taxes and fees be collected as part of price? If so, what price information should be included, and how can the Commission distinguish between the components of the price? For example, should the values of promotional discounts such as for streaming service (e.g., Disney+, Spotify, Netflix, etc.) or modem rental, military discounts, or paperless billing discounts be collected? Should the collected price information reflect any discounts provided to households receiving a service offering under an extended service contract? Should whether a plan is designated as a plan for a low-income household be collected? Should the prices for associated equipment, such as modems or routers, be collected? How should the

price of service bundles (for example, voice/broadband or voice/broadband/cable) be collected? For those households who exceed their monthly data cap, should the cost of additionally purchased data be considered? Are there any other indicators of price that should be collected?

3. The Commission next seeks comment on the collection of subscription rates. The Commission interprets “subscription rate” as the total program subscribership to a unique internet service offering over time, and seek comment on this approach. In other words, the Commission proposes to collect the number of ACP households that subscribe to each unique internet service offering, where offerings are differentiated by price and service characteristics. Should the Commission collect the number of households of an internet service offering as of a certain moment in time (e.g., as of a particular day), or should the Commission collect data on the number of households receiving the offering over a given period of time (e.g., over a multiple month period)? What is the meaning of the statutory wording “subscription rate”? Should the Commission require providers to submit annually such subscription rate data disaggregated by month or quarter? Will either of these approaches better enable the Commission to calculate the “take rate” (i.e., the fraction of subscribers selecting the plan from those who could select the plan) and identify changes in the rate over time? Should the Commission collect any other data related to the growth or churn rate, which would show the net additions or drop-offs from plans over time? The Commission seeks comment on other interpretations of “subscription rate.”

4. Some providers offer plans nationwide. How should that be taken into account when collecting subscription rate information? Should the subscription rate be for a particular geographic location if plans are offered nationally or across large geographic regions, such as statewide? Are large geographic regions (e.g., state) most appropriate or would it be beneficial to collect this information on a more granular geographic level? If so, what geographic level (e.g., study areas, designated market areas) would be most appropriate? What other information should the Commission collect about the subscription rate? Do providers collect and maintain household demographic information or information on a subscriber’s past internet access, and if so should that information be collected here? The Commission proposes to have providers enrolling

households in the Affordable Connectivity Program through an FCC-approved alternative verification process be required to submit information about how the household qualified for the Affordable Connectivity Program, and the Commission seek comment on this proposal.

5. *Plan Characteristics.* In the *ACP Order*, 87 FR 8346 (Feb. 14, 2022), FCC 22–2 (Jan. 21, 2022), the Commission determined that collecting data on service plan characteristics, including upload and download speeds, data allowances, and co-payments could help determine the value the Affordable Connectivity Program provides to households. Given the utility of such data, the Commission directed the Bureau and the Office of Economics and Analytics (OEA), with assistance from the program administrator, the Universal Service Administrative Company (USAC), to determine the appropriate way to collect service plan characteristics while minimizing the burden to service providers. The Infrastructure Act also anticipates that the Commission may engage in other data collection activities, specifically including a redundancy avoidance provision stating that nothing “shall be construed to require the Commission . . . to duplicate an activity that the Commission is undertaking as of the date of enactment” of the Act if “the Commission refers to the activity in the” final broadband transparency rules issued by the Commission, if “the activity meets the requirements of” the broadband transparency rules, and if “the Commission discloses the activity to the public.” The Commission seeks comment on whether and how this provision affects the collection of service plan characteristic data. Plan characteristics data arguably falls within the scope of “data relating to the price and subscription rates” of internet service offerings to which households subscribe. The Commission thus seeks comment on using this ACP transparency annual data collection to collect information on plan characteristics, as required by the Commission in the *ACP Order*.

6. The Commission seeks comment on what ACP plan characteristics the Commission should collect. The Commission first proposes to collect upload and download speeds. For upload and download speeds, should the Commission collect the advertised or maximum speeds? Are there other speed measurements the Commission should consider collecting instead? Should the Commission collect information about ACP service plan data

caps, including the amount of the data cap and the number of subscribers who have reached their cap? What about information concerning associated equipment, including whether or not a plan includes or requires a modem or router rental? For bundled service plans should the Commission collect information concerning the characteristics of the bundle, including whether voice is included in the bundle, voice characteristics (e.g., total minutes), whether video is included, video characteristics (e.g., total channels, channels included)? Are there other plan characteristics that the Commission should collect as part of the ACP transparency data collection?

7. *Broadband Consumer Labels.* The Commission also seeks comment on the interplay between the ACP transparency data collection and broadband consumer labels. 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).” This language may mean that the Commission must incorporate *price information* from broadband consumer labels in the section 60502(c) ACP transparency data collection but that this category of price information data is not coterminous with the data *related to price* that is referenced in section 60502(c). Are there alternative interpretations? For example, should the Commission interpret the “shall rely” language as meaning that the Commission should only rely on data contained in the broadband labels to meet the statutory requirement that the Commission collect data relating to price? Does the redundancy avoidance provision in section 60502(c) support this interpretation? The Commission seeks comment on this language and request that commenters also suggest ways in which the Commission can use broadband label information as part of the ACP transparency data collection. The Commission also seeks comment on whether the redundancy avoidance language could be interpreted to mean that the Commission could rely on price information contained in consumer broadband labels. Does USAC collect any information about subscription rates to satisfy the ACP’s other statutory requirements, rather than conducting a new data collection?

8. As proposed, the broadband labels may include information concerning plan pricing, performance, and data caps and will be required to be displayed at the point of sale. How

should the Commission structure the ACP transparency data collection to take advantage of information contained in the broadband labels? The *Broadband Labels NPRM* (87 FR 6827 (Feb. 7, 2022)) sought comment about whether the Commission should directly collect the information contained in the broadband labels with each plan having a unique identifier, or whether the Commission should require all participating internet service providers to make plan information publicly available via an Application Programming Interface (API) or other machine-readable format. If the Commission require labels in a machine-readable format, how would the Commission be able to match the labels to ACP subscribers? As a practical matter, is it possible for the information included in the broadband labels to meet the statutory requirement in section 60502(c) to collect price information for “each internet service offering of a participating provider . . . to which an eligible household subscribes?” If a provider is to submit a unique identifier for each plan, what naming convention should be used to identify the plan? Should there be a standardized naming convention used across providers, and if so, what should that format be? Absent a data collection of broadband labels or required availability of plan information via an API, can price information be obtained from the label on the provider’s marketing materials? How could the Commission link the price information from the provider’s marketing materials to the “eligible household”? If available, would this price information accurately reflect the prices applicable to ACP subscribers? The Commission seeks comment on these approaches to leveraging information for the broadband labels and alternative approaches the Commission should consider in this proceeding. Should the Commission consider public sources for plan information? If so, how should the Commission link rate and plan characteristic information on a website label to an ACP subscriber?

9. *Performance Metrics.* The Commission proposes to use information in the ACP transparency data collection for the evaluation of the performance of the Affordable Connectivity Program in achieving the goals set in the *ACP Order*. Those goals are to (1) reduce the digital divide for low-income consumers, (2) promote awareness and participation in the Affordable Connectivity Program, and (3) ensure efficient and effective administration of the Affordable

Connectivity Program. The Commission seeks comment on this proposal. What information should the Commission collect in the ACP transparency data collection to measure the performance of the Affordable Connectivity Program? Should the Commission collect information about whether a subscriber is a first-time subscriber to the provider? A first-time subscriber for fixed or mobile broadband? Whether a household subscribes to another broadband service? Should the Commission collect data on a subscriber’s plan characteristics prior to ACP service to help identify the impact of the ACP benefit or information from providers on how many subscribers changed their data usage or plan once they received their ACP benefit? Is there information about subscribers that is not currently collected that would be helpful to evaluate the performance of the program? Should the Commission collect information concerning how a customer became aware of the Affordable Connectivity Program? What other information should the Commission to measure effectiveness in increasing awareness and participation in the Affordable Connectivity Program? What information should the Commission collect to measure the administrative efficacy of the program or otherwise help measure the performance of the Affordable Connectivity Program?

10. *Collection Structure—Data Collection Systems.* To allow providers to efficiently submit information for the ACP transparency data collection, the Commission proposes using the National Lifeline Accountability Database (NLAD) or other USAC systems to collect subscriber-level data. The NLAD is a centralized database through which all ACP providers must enter information about households to enroll them in the Affordable Connectivity Program. The Commission seeks comment on this approach. For example, providers currently submit to NLAD information regarding a subscriber’s residential address, other contact information, whether the subscriber is receiving an ACP connected device from the provider, service type (cable, DSL, fiber, fixed wireless, mobile broadband, satellite), among other information necessary to administer the program and to prohibit members of the same household from receiving the affordable connectivity benefit at the same time. Both USAC and providers have experience using NLAD to submit and retrieve information about households’ ACP service, and using this system for the

collection would prioritize ease-of-use for service providers and minimize administrative burdens. Given the statutory constraints and need to collect this information quickly and efficiently after the final rules are adopted, using a system that is already familiar and that already contains information about the households enrolled in the Affordable Connectivity Program will benefit providers, the Commission, and USAC. The Commission seeks comment on these views and welcome comment on other data collection mechanisms. The Commission believes it will be less burdensome for providers to update their connections to NLAD and to continue to use a system they are familiar with to submit data collection information rather than requiring them to modify their processes and systems to transfer data to a new and unfamiliar system. The Commission seeks comment on this assumption. Additionally, receiving data from NLAD will allow the Commission to determine the rate of subscriptions of different plans, which otherwise could not be obtained in a static, aggregate collection. Are there alternative USAC-managed data upload systems that could be used for a subscriber-level collection? Would the creation of a new USAC-managed system be most appropriate for this data collection?

11. If the Commission was to collect the data at an aggregated level, and not at the subscriber level, what collection mechanism should the Commission use? It may be difficult to modify NLAD to collect data on an aggregated level within the time necessary to launch the ACP data collection and, thus, USAC or the Commission may have to develop a new system. The Commission seeks comment on this view. The Commission also seeks comment on the ways that USAC could modify NLAD or another existing system to collect aggregate plan data. Are there ways that USAC could collect subscriber level information via NLAD and aggregate that data? Should the Commission collect this aggregated data instead of USAC? Developing a new system and standing up a collection of this magnitude would require significant resources, so the Commission seeks comment on the feasibility of the Commission hosting this collection. Finally, the Commission seeks comment on how the level of aggregation impacts the collection mechanism the Commission should employ. Commenters are encouraged to explain whether their suggested collection mechanism is particular to a specific level of aggregation, or if it can

accommodate a wide swath of possible aggregation levels.

12. *Data Filers.* The Commission next seeks comment on which providers will need to submit data to the ACP transparency data collection. The Infrastructure Act requires collecting data “relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program . . . to which an eligible household subscribes.” The Commission views the Infrastructure Act as requiring every provider participating in the Affordable Connectivity Program to provide such data, regardless of the number of enrolled households. The Commission seeks comment on that view and the benefits of that approach. The Commission did not read the Infrastructure Act as permitting us to limit the number of providers that must participate in this data collection. The Commission seeks comment on this interpretation and encourage commenters suggesting otherwise to explain how to limit participation without jeopardizing the integrity of the collection and ensuring that sufficient information is collected to provide the price and subscription rate information required by Congress.

13. *Data Updates.* Using the existing NLAD system will allow us to collect data at enrollment for all new participants but may not easily allow for the collection of newly required information about existing ACP households. The Commission therefore seeks comment on how providers should be required to backfill data for the millions of existing households that have already enrolled in the Affordable Connectivity Program. When the rules for the ACP transparency data collection go into effect, what should providers be required to do for these existing households? The Commission seeks comment on the best ways to obtain data from providers about the price and subscription rate of existing ACP households and on an appropriate amount of time to submit information into the NLAD system. Are there other alternative methods for collecting newly required information? For all households, should the Commission require providers to submit and/or update plan information continuously throughout the Affordable Connectivity Program? What are the benefits of requiring providers to continuously update this information throughout the year rather than collecting it during a filing window? Should providers be required to update plan information when that plan information changes? If

so, how soon after the plan change should providers submit that new information? The Commission also seeks comment on whether to require providers to continue to maintain, update, or correct relevant information for the ACP transparency data collection after a provider exits the Affordable Connectivity Program.

14. *Collection Approaches.* The Commission proposes that information about the price and subscription rate of internet service offerings to which enrolled ACP households subscribe be collected at the subscriber level. In a subscriber-level approach, data would be provided for each household enrolled in the Affordable Connectivity Program for that provider. The Infrastructure Act does not specify the level at which data should be collected. Further, by prohibiting the Commission from “risking the disclosure of personally identifiable information” when making data public, Congress necessarily contemplated that the Commission might collect subscriber-specific information. Recognizing the paramount importance of consumer privacy, the Commission seeks comment on any statutory or regulatory restrictions on the collection of subscriber-level data beyond what participating providers already provide, including privacy statutes.

15. In a subscriber-level collection, the provider would submit plan information to NLAD for each subscriber enrolled in the Affordable Connectivity Program. Having plan information for each subscriber would allow Commission staff to track the subscriber take-up rate of different plans over time and study how subscriber plan choices and preferences for plan characteristics vary by geographic area and household demographics. Subscriber-level information would provide insight into whether the Affordable Connectivity Program is meeting the broadband needs of eligible households and how those needs change over time, and would assist our understanding of whether plan choice is influenced by available technologies and speeds in a geographic area. For example, subscriber-level data would allow us to examine the preference for fixed versus mobile plans across geography and demography.

16. In addition to helping the Commission understand what choices subscribers have available to them and their preferences, subscriber-level data would also help us understand how the Affordable Connectivity Program affects overall broadband adoption and how the program furthers the Commission’s efforts to close the digital divide.

Subscriber-level plan information would more easily be combined with subscription data already collected by the Commission, which could improve estimates of ACP subscribers that are first time broadband adopters. Subscriber-level data may also improve consumer outreach efforts, including the outreach efforts the Infrastructure Act permits the Commission to pursue, as described in the *ACP Order* by targeting geographic areas and particular demographics that lag behind in ACP adoption. Finally, subscriber-level data may facilitate analysis of the connection between Lifeline and the Affordable Connectivity Program. By matching subscriber-level plan information across the two programs, the Commission could study how subscribers are using both subsidies to meet their broadband needs and whether their plan choices take full advantage of the ACP subsidy.

17. The Commission also seeks comment on benefits and drawbacks of collecting more aggregated data. If the Commission did not collect subscriber-level data from providers, the Commission will need to collect the data at some level of aggregation. For an aggregated data approach, the Commission seeks comment on the level of data aggregation and what, if any, other information should be collected from providers. Should aggregated data be the number of individuals in a geographic area subscribed to a unique plan? And if so, what is the appropriate geographic level (e.g., census block, census tract, city (census place), county) for aggregated data? Is there some way other than geographic area that data should be aggregated? Should the plan characteristics still be collected at the subscriber level if collected through the ACP transparency data collection? Under the aggregated-level approach, how should subscribers that are on the same plan with respect to service characteristics, but who pay different amounts, be treated? Under an aggregated approach, each field could be submitted as an average or by category (e.g., speed tier). Are there specific fields that would be best suited for categorization? Should providers aggregate at the price-geographic level, the speed-geographic level, or the price-speed-geographic level? Or some other combination of variables? For example, should aggregate-level data be categorized by census tract, download speed, and upload speed, with other fields submitted as averages? The Commission seeks comment on the key fields for aggregation. The Commission also seeks comment on how collecting aggregated-level data as compared to

subscriber-level data would impact our ability to use this data collection to fulfill the requirements in the *ACP Order* to collect service plan characteristics and to evaluate the performance of the Affordable Connectivity Program.

18. The Commission further seeks comment on how useful aggregated data of providers' ACP offerings would be in evaluating the performance and administration of the Affordable Connectivity Program as compared to subscriber-level data. For example, at a high level of aggregation, such as the provider-state level, how could one analyze differences between rural and urban plan choices or subscription rates within a state? Even if aggregation were at the census tract level, the Commission may not be able to match subscribers between Lifeline and the Affordable Connectivity Program, and would be unable to determine if Lifeline subscribers are gaining additional value for their ACP subsidy. Would aggregated data make it easier for the Commission to analyze or publish the data? The Commission also seeks comment on the relative burdens to providers in submitting aggregated data of their ACP service offerings as compared with subscriber-level data. As discussed above, for subscriber-level data, providers would be required to input additional data in NLAD at enrollment in addition to the information already required to enroll a household. For aggregated data, providers may not need to enter additional data into NLAD, but they would be required to submit such aggregated data to the Commission. The Commission seeks comment on the burdens raised by these data collection approaches. Are there specific steps the Commission could take to reduce such burdens (e.g., offering tools to facilitate the collection)? Are there data that USAC already has access to from participating providers which could be used for aggregation without requiring additional data from providers? Are there circumstances or reasons where aggregated data would be preferred to subscriber-level data in evaluating the effectiveness of the Affordable Connectivity Program?

19. The Commission also seeks comment on other data collection alternatives. What about a collection that requires the production of a combination of both subscriber-level data and more aggregated data? What would be the benefits and challenges of a hybrid approach that collects aggregated data and subscriber-level information from all ACP subscribers? The Commission seeks comment on whether and in what circumstances a

hybrid approach assists in evaluating the Affordable Connectivity Program.

20. *Collection Impact on Stakeholders.* The Commission seeks comment on what the impacts and costs would be to stakeholders (households, providers, the Commission, USAC) for the collection of subscriber-level data and how they compare to the benefits of the data and the statutory directive to collect and publish data to offer transparency about the service offerings ACP households receive. What are the benefits and burdens associated with requiring subscriber-level information from providers, and how can the Commission reduce burdens associated with providing subscriber-level plan information in addition to the subscriber-level information already collected? Are there differences in the benefits and burdens associated with requiring subscriber-level information from small providers? If so, how can the Commission structure this collection to minimize the economic impact on small providers? How should the Commission structure a subscriber-level collection to minimize the challenges associated with making subscriber-level information publicly available for analysis? To what extent can providers use an API or other tool to seamlessly submit and update plan information?

21. The Commission also seeks comment on what the impacts and costs would be to stakeholders for the collection of aggregated data. For aggregated data, providers would be responsible for collecting all the information of their ACP subscribers and compiling that information in the manner required by the Commission. The Commission seeks comment on our view that collecting aggregated data, especially depending on the level of aggregation, may be burdensome for providers. Are there any tools or steps USAC or the Commission can take to reduce burdens? The Commission seeks comment on the burdens of this data collection on providers. Does the burden vary depending on the level of data aggregation? Could any other of USAC's systems be modified to allow for aggregated data? Should the Commission require providers to give us information in specific popular machine-readable formats? How could the Commission structure an aggregate-level broadband transparency data collection to minimize the burdens associated with handling the ACP transparency data? For small providers, what are the benefits and burdens associated with an aggregate level data collection? How can the Commission structure the collection to minimize any economic impact on small providers?

22. *Privacy and Proprietary Interests.* Congress indicated that the Commission should undertake the collection of data relating to ACP plan price and subscription rates while still protecting the privacy interests of individual subscribers. The Commission seeks comment on any privacy concerns that may arise from the collection of subscriber-level price, subscription rate, and plan characteristic information. As part of the ACP enrollment process, the Commission already collects, with subscriber consent, the subscriber's information. To what extent would a subscriber-level collection of price, subscription rate, and plan characteristics affect privacy interests of subscribers? Are there any unique privacy concerns related to a subscriber-level collection in areas or plans with low ACP enrollments? Can data masking methods be utilized by providers to address any privacy concerns? Are there alternative measures or safeguards that the Commission could adopt for the Commission, USAC, or providers to mitigate any harm to subscriber privacy? To what extent would a subscriber-level collection of price, subscription rate, and plan characteristics impact providers? The Infrastructure Act also seeks to ensure that the ACP data collection and publication do not harm proprietary interests. Would a subscriber-level collection of plan characteristics or other information raise issues related to providers' proprietary information? If so, how can the Commission balance these interests and/or mitigate the potential harm?

23. Additionally, the Commission seeks comment on the extent to which collecting additional subscriber-level data through the ACP transparency data collection implicates statutory privacy regimes, including the Electronic Communications Privacy Act (ECPA). The Commission concluded a decade ago that it had sufficient authority under the Communications Act to require eligible telecommunications carriers (ETCs) to provide Lifeline subscriber-specific information to the NLAD notwithstanding ECPA. The Commission explained that the Communications Act clearly demonstrated "Congress's intent that other provisions of law should not be held to override our specific authority to access information needed to perform oversight, including non-content information, which generally is less sensitive than the contents of communications." The Commission also concluded that ETCs could divulge information about Lifeline and Link Up subscribers to the Commission under an

exception to ECPA that permits divulgence that is “necessarily incident to the rendition of the service.” Similar to our current practice in Lifeline, the Commission requires ACP providers to obtain consent from subscribers prior to transmitting certain subscriber-specific information to NLAD. The Commission request comment on whether the Commission can collect additional subscriber-level data regarding ACP households consistent with ECPA without obtaining additional consent. The Commission also seeks comment on whether participating providers may divulge ACP household price and plan data to the Commission as necessarily incident to the providers’ rendering service under the Affordable Connectivity Program, given Congress’s mandate to collect broadband data and the importance that subscriber-level data could have in evaluating the performance and value of the Affordable Connectivity Program.

24. To ameliorate privacy concerns and ensure that subscribers are cognizant of the uses of their personal information, the Commission currently requires subscribers to consent to the transmittal of their data to the Commission or USAC. In the Affordable Connectivity Program, prior to obtaining consent, a participating provider must describe to the subscriber the “specific information being transmitted, that the information is being transmitted the Administrator to ensure the proper administration of the Affordable Connectivity Program and that the failure to provide consent will result in subscriber being denied the affordable connectivity benefit.” The Commission seeks comment on the need for any additional subscriber consent as well as how that consent should be obtained.

25. The Commission further request comment on how to best balance the burdens for providers and subscribers associated with obtaining consent with the benefits of a subscriber-level collection. How would providers obtain such consent from new ACP applicants and from existing ACP households? Can consent be collected by USAC either when consumers complete an application in the National Verifier or at the time of their recertification? The Commission seeks comment on how consent can be collected at the time of recertification, particularly where a subscriber’s eligibility is confirmed by querying the appropriate eligibility database. If consent can be obtained only for a portion of the ACP subscriber base, is it worth collecting partial subscriber-level data? The Commission seeks comment on other ways in which providers, the Commission, or USAC

can obtain a consumer’s consent to permit their provider to submit ACP service plan information consistent with any requirements the Commission adopt in this proceeding. How can the Commission structure the consent process to minimize the cost or burdens of consent? What burdens would be imposed on participating providers if they are required to provide additional notice to, and obtain additional consent from, existing ACP subscribers? Can the Commission collect opt-out consent, or should consenting to participation in a subscriber-level collection be strictly opt-in? For the millions of households that are already participating in the Affordable Connectivity Program, the Commission seeks comment on the process by which providers, USAC, or the Commission would collect consent for the subscriber-level data collection? Would requiring this additional consent from subscribers risk depressing subscriber participation in Affordable Connectivity Program? What role should providers play in obtaining consent from their existing ACP subscribers for a subscriber-level data collection? What is the cost to providers of any requirement that they play a part in obtaining consent? How long would it take for providers to obtain additional consents from existing subscribers? If subscriber-level information is collected outside of NLAD, should the Commission require providers to mask personally identifiable information? Would requesting consent bias the data in a way that would substantially reduce its usability?

26. If the Commission were to engage in an aggregate-level collection, are there any separate privacy concerns that would arise from such a collection? Are there any privacy concerns with the sharing of aggregated information for areas or plans with low ACP enrollments, including areas or plans with only a single subscriber? What is the minimum level of geographic data specificity (*e.g.*, census tract, census block) that can assist the Commission in answering questions of program performance, digital discrimination, digital divide, and other matters of importance in judging ACP efficacy without overly burdening subscriber privacy or provider confidentiality interests?

27. *Publication of Data—Public Availability of Data.* In addition to requiring the Commission to collect price and subscription rate data, Congress directed the Commission “to make data relating to broadband internet access service collected” in this collection “available to the public in a commonly used electronic format

without risking the disclosure of personally identifiable information or proprietary information, consistent with” § 0.459 of the Commission’s rules. The Commission seeks comment generally on what data should be made public, how subscriber privacy and provider interests can be protected, and the method and timing of publication. The Commission also seeks comment on how to best balance the benefits and burdens associated with the publication of information collected through the ACP transparency data collection. How should the Commission structure the publication of information to minimize the challenges in making subscriber-level information publishable? How should the Commission structure the publication of information from the ACP transparency data collection to minimize the challenges in making aggregate-level information publishable?

28. *Scope of Information Made Public.* Commenters should address what data collected by the Commission should be made public. The Commission did not interpret the Infrastructure Act as requiring the Commission to make publicly available all information collected under section 60502(c)(1). The Act requires the Commission to make “data” available, not necessarily all of the data collected. The Commission proposes that, at a minimum, only aggregated or masked data be made publicly available, even if subscriber-level data is collected. The Commission seeks comment on what data the Commission should make publicly available on an aggregated basis and at what geographic level (*e.g.*, ZIP code, county, state). Should the Commission only make price and subscription rate data public, because that is the scope of section 60502(c)(1) of the Infrastructure Act? Should the Commission also make public other data proposed to be collected, such as plan characteristics or program-performance-related data? Should the data published pursuant to the Infrastructure Act also include information collected outside of this collection? For example, should the Commission make available as part of this release data about the availability of plans fully covered by the ACP benefit? What public information would be most useful to consumers, providers, outside researchers, advocates, or governmental entities?

29. *Personally Identifiable Information.* The Infrastructure Act provides that in making data available to the public, the Commission must not “risk the disclosure of personally identifiable information.” The Act does not define “personally identifiable information;” rather, it requires the

Commission to define the term via notice and comment rulemaking. The Commission therefore seeks comment on how the Commission should define personally identifiable information for purposes of making data publicly available under section 60502(c) of the Infrastructure Act.

30. The Commission seeks comment on definitions of “personally identifiable information” that might be appropriate in this context. Should the Commission borrow a definition from another statute, regulation, Executive order, or Government-wide guidance? If so, which authority and why? For instance, Office of Management and Budget (OMB) Circular A–130 defines “personally identifiable information,” for purposes of agency information resources management activities, as “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.” Similarly, the E-Government Act of 2002, defines “identifiable form” as “any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.”

31. *Proprietary Information.* The Infrastructure Act also requires the Commission to avoid risking the disclosure of “proprietary information” when making data public under section 60502(c)(4). The Act does not define “proprietary information,” nor does it require the Commission to define the term. The Commission requests comment on how to interpret “proprietary information” under section 60502(c)(4). Should the Commission define the term at all, given that unlike “personally identifiable information,” a definition is not required? Further, whose “proprietary information” needs to be protected in this context? If it is subscriber proprietary information, how is proprietary information different than personally identifiable information? Or should the term be interpreted as meaning the proprietary information of participating providers, *i.e.*, proprietary business information? Alternatively, should the Commission interpret “proprietary information” to mean information covered by section 222 of the Communications Act? Under that approach, the Commission would need to avoid risking the disclosure of the proprietary information of subscribers, participating providers, and equipment manufacturers.

32. Additionally, regardless of whether proprietary information means that of subscribers, participating

providers, or both, commenters should address what constitutes proprietary information. Should the Commission treat “proprietary information” as limited to trade secrets and or privileged or confidential commercial, financial, or technical data? If so, what type of participating provider data collected under section 60502(c) could be considered proprietary? What other statutes or regulations might the Commission look to in interpreting “proprietary information” in this context? Does aggregate data become proprietary, for either a subscriber or a participating provider, at a certain level of granularity? Is it sufficient if subscribers or participating providers have an opportunity to request non-publication of proprietary information under procedures such as § 0.459 of the Commission’s rules?

33. *Protecting Personally Identifiable and Proprietary Information.* Because the Commission must not “risk the disclosure of personally identifiable information or proprietary information,” the Commission seeks comment on how the Commission should minimize the risk that such information would be disclosed when making data available to the public under section 60502(c)(4) of the Infrastructure Act. One way to protect subscriber personally identifiable information is to publish only aggregate data. Would doing so sufficiently protect personally identifiable or proprietary information? What level of aggregation would be sufficient? For what geographic area should data be published? With the EBB Program, USAC released information first by three-digit ZIP code areas, and then by five-digit ZIP code and county-level areas. For the Affordable Connectivity Program, USAC releases enrollments by five-digit ZIP code and county. What procedures should the Commission have in place to ensure that there is adequate “masking” for data in areas with few subscribers? For data that involves plan characteristics or prices, should the values be aggregated to further address any personally identifiable information or proprietary issues? For example, should prices be grouped into \$10 increments with a plan costing \$55.34 being put in a bin with all plans costing between \$50 and \$60? Are there other privacy concerns the Commission should consider when making data available to the public other than personally identifiable information and proprietary information?

34. *Effect of 47 CFR 0.459.* The Infrastructure Act states that the Commission’s protection of personally identifiable and proprietary information

must be consistent with § 0.459 of the Commission’s rules. Section 0.459 of title 47 of the Code of Federal Regulations provides procedures for requesting that information submitted to the Commission be withheld from public inspection. The Commission seeks comment on whether and how this rule should be incorporated into the Commission’s processes for publishing data under section 60502(c)(4) of the Act. Does the statute’s reference to § 0.459 mean that a subscriber or participating provider should have the ability to request non-publication of certain collected information by submitting a request under § 0.459? If so, what provisions of section 0.459 should be applicable for requests of non-publication for purposes of section 60502(c)(4)? How should such a request be submitted, what information would a requester need to submit to justify a request for non-publication of data, and when should a request be submitted vis-à-vis the data publication date? That is, should a request for nonpublication be required to be submitted before a data publication date? In other contexts, the Commission allows filers of certain information to check a box to request nondisclosure of privileged or confidential information in lieu separately requesting confidentiality under 47 CFR 0.459. Should the Commission consider a similar “checkbox” approach for this data collection? If so, how would a checkbox be incorporated in the collection process? Additionally, should some data be deemed presumptively nonpublic, *i.e.*, “not routinely available” to the public under 47 CFR 0.457? If the reference in the Infrastructure Act does not mean that the procedures of § 0.459 need to be incorporated in making data available to the public, what meaning should the Commission give “consistent with” § 0.459 of the Commission’s rules?

35. *Format of Publication.* The Commission must make data available to the public in a “commonly used electronic format.” Further, agencies must generally use a machine-readable format when making data publicly available. The Commission therefore seeks comment on what format the publisher of the data, whether it be the Commission or USAC, should use when making it available to the public. How should the Commission interpret “commonly used electronic format?” Should the Commission require that the data be made public in a machine-readable format with standard, labeled fields? Is the OPEN Government Data Act of 2018 applicable to our publication responsibilities under the

Infrastructure Act? What file formats should the Commission provide the data in? Both the Commission and USAC make datasets available for viewing in Open Data portals and provide downloadable data in Comma Separated Values (CSV), Extensible Markup Language (XML), Tab Separated Values (TSV), Resource Description Framework (RDF), and Rich Site Summary (RSS) formats. Should the Commission use different formats for making publicly available different types of data? For instance, should plan characteristic and provider enrollment data be published separately or together? Should plan and provider enrollment data be published at the same geographic level? The Commission proposes, at a minimum, making aggregated data publicly available in CSV format, given that this format is already used by the Commission and USAC. The Commission seeks comment on this proposal.

36. *Method of Publication.* The Commission also seeks comment on the method of making data available to the public. That is, who should host the data and where? The Infrastructure Act requires only that the Commission make data publicly available; it does not preclude publication via third parties. Should the Commission post the data on its website or Open Data portal? Or should the Commission direct USAC to publish the data on its Open Data portal?

37. *Timing of Publication.* Although the Infrastructure Act requires the Commission to make data available to the public, the Act does not specify when publication should occur, other than prohibiting publication prior to the Commission defining “personally identifiable information.” The Commission thus seeks comment on the timing of publication. Because Congress instituted an annual data collection, the Commission proposes making data publicly available at least annually. If data is collected on a more frequent basis, such as by participating providers providing data to NLAD on a rolling basis, should the Commission or USAC make data public more frequently than annually? If so, how often? Commenters should also address how long after collection data should be published. That is, how long after collection would data become “stale” and lack utility for consumers or others? Should time be built into the publication process to allow participating providers to protect proprietary information from disclosure? The Infrastructure Act is also silent as to how long the Commission must keep data available to the public. For how long should the

Commission maintain the public-facing data? For a set amount of time? Until newer data is made public? Further, the Commission must revise its data collection rules no later than 180 days after they are issued. How, and to what extent, should the need for rule revisions affect the timing of making data available to the public?

38. *Proposed Collection Approach.* After weighing the benefits and burdens of the statutorily required data collection, the Commission proposes the most efficient and least burdensome approach is to modify NLAD to incorporate new data fields that would collect price, subscription rate information, and plan characteristics as discussed above. The Commission will collect subscriber-level data by having providers complete the new fields when enrolling households, and updating fields for households already enrolled in the Affordable Connectivity Program on a set time schedule. Under this approach, all data that is required to be collected for the ACP transparency data collection would be contained in NLAD, which would allow the Commission to publish the data in a manner consistent with the statute. Taking advantage of NLAD for this collection allows us to collect the information without requiring providers to produce large volumes of data each year. The Commission views the approach of submitting ACP transparency data collection information to the NLAD at the time of a transaction (*e.g.*, whether at the time of enrollment, as an update for a previously enrolled subscriber, or when necessary to update the fields due to a change in service plan) as being less burdensome to providers than the alternative option of compiling information for a bulk production during a limited filing window. Allowing providers to update the necessary fields at the time of the NLAD transaction also avoids any duplicitous efforts to recreate subscriber-level data for a separate submission. The Commission seeks comment on these views.

39. *Guidance.* The Infrastructure Act further 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, project, or activities are completed in a timely and effective manner.” The Commission seeks comment on the meaning of this provision and what training, support, and guidance should be provided to support the ACP transparency data

collection. What resources would be helpful to providers to facilitate this data collection?

40. *Enforcement.* The Commission seeks comment on issues related to enforcement of the annual data collection rules. Should the Commission adopt rules specifically governing the enforcement of the data collection requirement, or should the Commission employ the same enforcement position that it adopted for the Affordable Connectivity Program? Consistent with the approach in that program and its authorizing statute, the Commission proposes to treat failure to submit the data necessary for the ACP transparency collection, failure to respond to the Administrator’s or the Commission’s request for data, and failure to provide complete and accurate data as program rule violations that may result in forfeiture penalties pursuant to Section 503 of the Act. The Commission proposes establishing a base forfeiture amount that is proportionate to the level of data ultimately adopted, for example on a per-subscriber basis or higher level of aggregation. The Commission seeks comment on whether to assess the forfeiture on a per-subscriber basis to reflect the number of subscribers for which the provider has not submitted data. Alternatively, the Commission seeks comment on establishing a forfeiture amount at the state or study area level: that is, for any missing ACP data for subscribers within a state or study area, a base forfeiture penalty amount would be applied. Should the Commission consider establishing a base forfeiture amount of \$50,000 per state or study area for which a provider is missing ACP transparency data collection information by the deadline, which is consistent with precedent for violations of Commission filing rules? The Commission seeks comment on other ways to calculate forfeiture amounts for failure to comply with the rules the Commission establishes for the ACP transparency data collection. In addition to a base forfeiture for non-filing, should the Commission impose additional fines each day a provider is not in compliance pursuant to Section 503(b)(2) of the Act? Given the importance of this congressionally mandated data collection, the Commission proposes requiring the submission of ACP transparency data collection information by the deadline to be established by the Bureau or the Commission. The Commission tentatively concludes that failure to meet the deadline will constitute a rule violation that may result in a monetary forfeiture penalty. The Commission



proposes to instruct USAC to provide the Enforcement Bureau a list of providers that have failed to submit ACP transparency data collection information by the deadline that identifies the subscribers, by state and study area, for which the data has not been properly filed.

41. Finally, the Commission seeks comment on how to evaluate and enforce the accuracy of the information presented in the ACP transparency data collection. How can the Commission verify the accuracy of the information that a broadband provider provides? How should the Commission protect against inaccuracies in the information provided? The Commission seeks comment on our 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. The Commission seeks comment on further certifications and enforcement tools the Commission can use to ensure full and accurate participation in the data collection. The Commission seeks comment on whether a failure to comply with the rules the Commission establishes for the ACP data collection could subject a provider to the involuntary removal process the Commission established in the *ACP Order*.

42. *Timing*. The Infrastructure Act requires an “annual collection” relating to the price and subscription information. The Infrastructure Act further provides that, “not later than 180 days after the date on which rules are issued . . . and when determined to be necessary by the Commission thereafter, the Commission shall revise the rules to verify the accuracy of data submitted pursuant to the rules.” The Commission seeks comment on when the collection can begin in relation to the statutory requirement to revise the final rules within six months of adoption of final rules. Does this require the Commission to collect ACP data within a certain period of time? If so, by when should the Commission commence the inaugural data collection? For subsequent data collections, should the collection occur during the same window as the collection? The Commission also seeks comment on the filing window for collection. Should the Commission require providers to submit data for subscribers enrolled as of a particular date? How long should a filing window remain open?

43. The Commission also seeks comment on the statutory requirement to revise the rules to verify the accuracy of the data within six months from

when the Commission adopts final rules and its impact on this proceeding. What is intended by the language providing that “the Commission shall revise the rules to verify the accuracy of data submitted pursuant to the rules”? What is the purpose of the language limiting revisions to the final rules to verify accuracy? How should the Commission track and verify the accuracy of data submitted? What are the outer bounds on the period of time when the Commission must update its final rules? What circumstances should warrant revision of the rules? Should the updates to the rules include the possibility of adding new variables to improve or refine the data collected? How should the Commission determine when it is necessary to update the final rules? What other considerations should the Commission take into account when determining the necessity of updating the final rules for this data collection?

44. The Commission also seeks comment on the requirements of the Paperwork Reduction Act and the timing of the inaugural collection. In establishing the EBB Program and the Affordable Connectivity Program, the Consolidated Appropriations Act exempted the Commission from certain rulemaking requirements under the Administrative Procedure Act and the Paperwork Reduction Act. The Commission seeks comment on whether this exemption applies to rules established in this proceeding. Assuming the Paperwork Reduction Act requirements do apply to this collection, the Commission seeks comment on how this impacts the timing of the launch of the collection.

45. *Efforts to Promote Digital Equity and Inclusion*. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

### III. Procedural Matters

#### A. Initial Paperwork Reduction Act Analysis

46. This document contains proposed new or modified information collection

requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### B. Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the notice of proposed rulemaking provided on the first page of the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### a. Ex Parte Rules

48. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such

data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

b. Need for, and Objectives of, the Proposed Rules

49. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (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 established rules governing the affordable connectivity benefit and related matters in the ACP Report and Order, 87 FR 8346 (Feb. 14, 2022).

50. 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."

51. This NPRM proposes 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 NPRM proposes establishing a mandatory annual data collection, collecting price, subscription rate, and plan characteristic information at the subscriber level through the National Lifeline Accountability Database (NLAD).

52. The NPRM seeks comment on what plan characteristics, data formats, and collection methods and timing should be collected or adopted. For example, the NPRM seeks comment on whether the Commission should collect information about plan speed or bundle characteristics, and it also seeks comment on what common data formats the Commission should collect and how the Commission should approach scheduling the annual collection of ACP transparency data. The NPRM also seeks comment on the burdens and benefits of requiring providers to submit information at the subscriber level, aggregate level, and alternative approaches.

53. In executing its obligations under the Infrastructure Act, the Commission intends to establish rules and requirements that implement the relevant provisions of the Infrastructure Act efficiently, with minimal burden on participating providers. These actions are consistent with our ongoing efforts to bridge the digital divide by ensuring that low-income households have access to affordable, high-quality broadband internet access service.

c. Legal Basis

54. The proposed actions are authorized pursuant to the Infrastructure Act, div. F, tit. V, sec. 60502(c).

d. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

55. 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).

56. *Small Businesses, Small Organizations, Small Governmental*

*Jurisdictions.* Our 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.

57. 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.

58. 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 indicates 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."

59. *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 shows 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.

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.

60. *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 shows 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. 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* 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.

#### e. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

61. In this NPRM, the Commission seeks comment on its proposal to require providers to provide subscriber level price, subscription rate, and plan characteristic information to the Commission. To the extent the Commission imposes an annual data collection, participating providers of all sizes would be required to maintain and report information concerning plan prices, subscription rates, and plan characteristics. Any recordkeeping or reporting requirements adopted in this proceeding however will apply only to those providers that choose to participate in the Affordable Connectivity Program.

62. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with the potential rule changes that may be adopted and is not in a position to determine whether the proposals in the NPRM will require small entities to hire professionals in order to comply. The Commission seeks comment on its proposals and their likely costs and benefits as well as alternative approaches. The Commission expects the comments received will include information on the costs and benefits, service impacts, and other relevant matters that should help us identify and evaluate relevant issues for small entities, including compliance costs and other burdens (as well as countervailing benefits), so that the Commission may

develop final rules that minimize such costs.

#### f. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. 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.”

64. The NPRM seeks comments from all interested parties. The Commission is aware that some of the proposed collections under consideration will impact small entities. The NPRM does seek comment on the impact of its proposed rules on providers, and small entities are encouraged to bring to the Commission's attention any specific concerns that they may have with the proposals outlined in the NPRM.

65. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking actions in this proceeding.

#### g. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

66. None.

#### IV. Ordering Clauses

67. *It is ordered*, pursuant to section 60502(c) of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), that this Notice of Proposed Rulemaking is hereby *adopted*.

68. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the notice of proposed rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 45 days after publication in the **Federal Register**.

69. *It is further ordered* that the Commission *shall send* a copy of this notice of proposed rulemaking, including the Initial Regulatory

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Internet telecommunications, Reporting and recordkeeping requirement, Telephone.

Federal Communications Commission.

Marlene Dortch,  
Secretary.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 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. Amend § 54.1801 by revising paragraph (e)(2)(ii)(A) to read as follows:

#### § 54.1801 Participating providers.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) Violations of the rules or requirements of the Affordable Connectivity Program, including rules and requirements related to the Affordable Connectivity Program transparency data collection, the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund program.

\* \* \* \* \*

- 3. Add § 54.1813 to read as follows:

#### § 54.1813 Affordable Connectivity Program transparency data collection.

Participating providers shall transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Affordable Connectivity Program (ACP) subscriber's full name; contact information; total monthly charge for internet service prior to any discounts (including bundled components, associated equipment, taxes, and fees); itemized breakdown of monthly charge including cost of ACP-supported service, associated equipment, discounts, taxes, and fees; plan characteristics, including upload and download speeds, average latency and packet loss, data caps, associated equipment requirements, for bundles, voice and video characteristics (e.g.,

number of minutes, number of channels offered); and plan coverage by geographic level as to be determined by the Commission.

[FR Doc. 2022–13438 Filed 6–22–22; 8:45 am]

BILLING CODE 6712–01–P

#### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Parts 203 and 212

[Docket DARS–2022–0013]

RIN 0750–AL36

#### Defense Federal Acquisition Regulation Supplement: Prohibition on Award to Contractors That Require Certain Nondisclosure Agreements (DFARS Case 2021–D018)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that prohibits the award of any DoD contracts to an entity that requires its employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict its employees from lawfully reporting waste, fraud, or abuse related to the performance of a DoD contract to a designated investigative or law enforcement representative of DoD authorized to receive such information.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2022, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2021–D018, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2021–D018.” Select “Comment” and follow the instructions to submit a comment. Please include your name, company name (if any), and “DFARS Case 2021–D018” on any attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2021–D018 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To

confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, telephone 703–901–3176.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD is proposing to amend DFARS subpart 203.9 to implement section 883 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 883 prohibits the award of a DoD contract to an entity that requires its employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict such employees from lawfully reporting waste, fraud, or abuse related to the performance of a DoD contract to a designated investigative or law enforcement representative within DoD authorized to receive such information. The statute also requires entities to inform their employees of the limitations on confidentiality agreements or other statements. Offerors are required to represent compliance with the statutory restrictions prior to submitting an offer or quote.

The requirements of section 883 closely resemble those provided in section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), which was implemented at Federal Acquisition Regulation (FAR) 3.909, Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements (82 FR 4717, dated January 13, 2017).

Differences between the statutory requirements are negligible; the most notable is that section 743 applies the prohibition to entities who require their employees or contractors to sign the internal confidentiality agreements or statements. Section 883, however, applies the prohibition to entities who require their employees to sign them. Since the prohibition at section 743 applies Governmentwide, DoD is currently complying with section 883 based on the FAR application of section 743 to employees and contractors.

#### II. Discussion and Analysis

The proposed rule implements section 883 of the NDAA for FY 2021 by utilizing the existing Governmentwide prohibition at FAR subpart 3.9 and clarifies the applicability of Governmentwide statutory guidance at DFARS 203.900. Section 883 provides