

The expanding coronavirus disease 2019 (COVID-19) pandemic has highlighted the importance of ensuring Americans can connect to the internet, especially as they turn to telemedicine, telecommuting and distance learning in response to the social distancing policies that federal, state and local governments have implemented across the US. In light of this surge in demand for broadband connectivity, Congress and the Federal Communications Commission (FCC) have been active in adopting measures to help Americans stay connected. Our Communications Practice has been keeping track of this activity, along with proposals from industry stakeholders and government officials.

This alert synthesizes current events and emerging discussions regarding federal efforts to support communications and connectivity amid the COVID-19 pandemic as to four critical aspects: (1) consumer access to telecommunications and broadband services; (2) healthcare and telemedicine; (3) education; and (4) telecommunications and broadband infrastructure. We will update this document based on further developments.

Consumer Access to Telecommunications and Broadband Services

Keep Americans Connected Pledge

On March 13, 2020, the FCC [announced](#) that numerous telecommunications and broadband providers in the US had accepted the “Keep Americans Connected Pledge.” These providers committed themselves to (1) not terminating service to any residential or small business customers for 60 days if they are unable to pay their bills due to the disruptions caused by the COVID-19 pandemic; (2) waiving any late fees that residential or small business customers may incur if they are unable to pay their bills on time due to the disruptions caused by the COVID-19 pandemic; and (3) opening their Wi-Fi hotspots to any user who needs them.

- **UPDATE:** On April 30, 2020, FCC Chairman Ajit Pai [announced](#) the extension of the Keep Americans Connected Pledge until June 30, 2020. Although the decision to extend the Pledge continues to be voluntary, the chairman indicated that providers that may not be able to extend the Pledge, particularly those “in small markets and rural areas,” should notify the FCC by May 12 “if they wish to opt out of the extension.”
- On April 22, 2020, attorneys general from several states and territories sent a [letter](#) to FCC Chairman Pai asking the FCC to “partner” with them to urge broadband providers to: (1) expand the Keep Americans Connected Pledge for an additional ninety days, i.e., until August 11, 2020; (2) provide customers who experience economic hardship as a result of the COVID-19 pandemic “a fair and reasonable time to pay any bills in arrears that were accumulated during this crisis”; (3) reconnect customers who previously may have been disconnected for a minimum of 90 days from May 13, 2020; (4) expand data caps and waive overage charges for a minimum of 90 days from May 13, 2020; and (5) “inform and educate their customers about the COVID-19-related services they are providing,” including informing them about COVID-19 scams.
- The FCC [announced](#) that, as of March 25, 2020, more than 500 providers had taken the Keep Americans Connected Pledge. The FCC’s chairman also commended providers that “have gone even further, offering things like free service for low-income Americans and students, the easing of data caps, and increasing broadband speeds at no cost.”
- On March 13, 2020, Commissioner Jessica Rosenworcel issued a [statement](#) urging the FCC to expand the “Keep Americans Connected Pledge” to eliminating data caps and overage fees.

Lifeline

Lifeline is a federal program that provides discounts to qualifying low-income consumers on voice and broadband services. The program is part of the Universal Service Fund and is administered by the Universal Service Administrative Company (USAC). Consumers interested in participating in the Lifeline program must prove their eligibility when enrolling by either submitting proof of income or demonstrating that they participate in qualifying programs. Only one discount is allowed per household for either fixed service or mobile service, and voice and broadband bundled plans are eligible for the discount. Providers verify the eligibility of enrolled consumers annually.

- **UPDATE:** The FCC issued an [order](#) on April 29, 2020, waiving the requirement the provisions of the FCC's rules that require consumers seeking to demonstrate income-based qualification for the Lifeline program to provide at least three consecutive months of documentation to confirm their income. In waiving this requirement, the FCC noted, "[m]illions of newly unemployed individual may not be able to verify their income-based eligibility for Lifeline with three consecutive months of income documentation because their unemployment and related decrease in income began so recently." The order directs USAC "to develop guidance for documentation that would allow a consumer to confirm their income-based eligibility." After the waiver, consumers wishing to qualify for the Lifeline program "must still meet the 135% of federal poverty guidelines per household threshold." The order also extends "the waivers of the Lifeline program's recertification, reverification, general de-enrollment, and usage requirements until June 30, 2020."
- On March 30, 2020, the FCC's Wireline Competition Bureau released an [order](#) waiving for 60 days the requirement to de-enroll subscribers who providers have a reasonable basis to believe are no longer eligible for the program and the requirement to de-enroll subscribers who do not pay a fee for their service and do not use the service every 45 days. The FCC also extended the waiver of the Lifeline recertification and reverification rules, which it had issued on March 17, 2020.
- On March 27, 2020, USTelecom – The Broadband Association (USTelecom) [asked](#) the FCC to adopt temporary changes to the Lifeline program, including relaxing the one discount per household rule to allow support for at least one fixed and one mobile broadband per household, establishing an "emergency" lifeline program that could support a discount of up to US\$25 per connection per month and expanding eligibility of this emergency program to consumers who are unemployed as a result of the COVID-19 pandemic.
- On March 17, 2020, the FCC's Wireline Competition Bureau issued an [order](#) waiving for 60 days the requirement to recertify and reverify subscribers and the requirement that all eligible telecommunications carriers (ETCs) register with USAC.

Healthcare and Telemedicine

FCC's COVID-19 Telehealth Program

- **UPDATE:** The FCC [announced](#) that as of April 29, 2020, it had approved an additional 13 applications for the COVID-19 Telehealth Program. The FCC has disbursed US\$13.7 million in funding under the COVID-19 Telehealth Program.
- On April 21, 2020, the FCC [announced](#) that it had approved six additional applications for the COVID-19 Telehealth Program. This followed announcements on [April 16](#) and [April 21](#) that 11 applications had been approved. As of April 23, 2020, the FCC has disbursed US\$9.5 million in funding under the COVID-19 Telehealth Program.
- On April 21, 2020, the FCC [waived](#) the application of its "red light" rule for applicants to the program.

- The FCC's Wireline Competition Bureau published a [Public Notice](#) announcing that it would begin accepting applications for the COVID-19 Telehealth Program on April 13, 2020. The FCC plans to evaluate applications on a rolling basis.
- On April 8, 2020, the FCC's Wireline Competition Bureau issued a [Public Notice](#) providing guidance on the application process for the COVID-19 Telehealth Program. The Bureau also stated that it would be issuing a subsequent Public Notice announcing the application acceptance date. Additional information on the guidance can be found [here](#).
- On April 2, 2020, the FCC released an order [adopting](#) the COVID-19 Telehealth Program, a US\$200 million program that makes funding available to healthcare providers to purchase telecommunications, broadband connectivity and devices necessary for providing telehealth service. A summary of the program can be found [here](#).

FCC's Rural Health Care Program

The Rural Health Care Program (RHCP) provides funding to qualifying healthcare providers to access critical telecommunications and broadband services. Eligible healthcare providers include public and nonprofit healthcare entities, such as teaching hospitals and medical schools, local health agencies, community mental health centers, hospitals and rural health clinics. RHCP has two components: the Healthcare Connect Fund Program, which provides discounts on telecommunications and broadband services, and the Telecommunications Program, which offers subsidies for rural healthcare providers.

- House Health Subcommittee Chairwoman Anna G. Eshoo (D-CA) and Representative Don Young (R-AK) introduced a [bill](#) to provide US\$2 billion in funding to RHCP to expand telehealth in response to the COVID-19 pandemic.
- On April 2, 2020, the FCC released an order [adopting](#) final rules for the Connected Care Pilot Program, which it had proposed in 2019. This three-year pilot program will offer up to US\$100 million of Universal Service Fund to defray healthcare providers' costs of providing connected care service to patients. A summary of the program is available [here](#).
- On March 27, 2020, USTelecom [asked](#) the FCC to open a new application filing window and waive competitive bidding requirements for rural healthcare support under RHCP.
- On March 26, 2020, the FCC's Wireline Competition Bureau issued an [order](#) that (1) extended the application filing window for RHCP until June 30, 2020; (2) eased competitive bidding requirements for healthcare providers with expiring evergreen contracts; and (3) extended various deadlines, including deadlines to respond to inquiries from USAC.
- On March 20, 2020, the FCC's Consumer and Governmental Affairs Bureau issued a [Declaratory Ruling](#) confirming that the COVID-19 pandemic was an "emergency" under the Telephone Consumer Protection Act (TCPA) and that, as a result, "hospitals, health care providers, state and local health officials, and other government officials may lawfully communicate information about the novel coronavirus as well as mitigation measures without violating federal law." Additional analysis on the implications of the Declaratory Ruling can be found [here](#).

- On March 18, 2020, the FCC's Wireline Competition Bureau issued an [order](#) exempting participants in RHCP from rules prohibiting qualifying entities from accepting any gifts or other things of value from a telecommunications or broadband service provider. The FCC took this action to allow service providers to offer qualifying entities, and to allow these entities to accept "improved capacity, Wi-Fi hotspots, networking gear, or other things of value" that assist qualifying entities during the COVID-19 pandemic.
- On March 13, 2020, the FCC issued an [order](#) that made available an additional US\$42.19 million in funding to RHCP.

Other Initiatives

- On April 3, 2020, Rural Utilities Service (RUS) [announced](#) that it was opening a second window (from April 14 through June 13) for applications for funding under its Distance Learning, Telemedicine, and Broadband Program. The original application was set to close on April 10, 2020.
- The CARES Act, which was [enacted](#) on March 27, 2020, gives an additional US\$25 million to the RUS of the Department of Agriculture for its Distance Learning, Telemedicine, and Broadband Program, which offers funding to entities in rural areas that use telecommunications and broadband services to provide healthcare services.
- The CARES Act also gives US\$200 million to the FCC to "support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services." The FCC's chairman explained that this appropriation would fund the telehealth connectivity pilot program that the FCC had [proposed](#) in July 2019.

Education

E-Rate

E-Rate is a federal program that provides funding to help eligible schools and libraries obtain affordable access to broadband. The program has two basic components offering discounts on (1) broadband access services and (2) equipment for connecting schools and libraries to broadband.

- On April 8, 2020, New America's Open Technology Institute sent a [letter](#) to the FCC requesting that it "designate a substantial portion of the \$2.2 billion in currently available E-Rate funding" to support distance learning at schools and libraries for this purpose and "waive restrictions on the use of E-Rate funded facilities to extend school or library connectivity to students off campus for educational purposes." Among other things, the letter proposed allowing funding for Wi-Fi hotspots for distribution to schools and libraries already receiving support through the program. It also asked the FCC "to authorize emergency funding under the general Universal Service Fund to extend broadband internet access to low-income homes with students that lack adequate broadband connectivity."

- On April 1, 2020, the FCC's Wireline Competition Bureau released an [order](#) waiving "(1) the service implementation deadline for non-recurring services for funding year 2019; (2) the deadline for the installation of special construction equipment for all funding year 2019 applicants, as well as funding year 2018 applicants that already received a one-year extension; (3) deadlines for requests for review or waiver of decisions by USAC, whether directed to USAC or the Commission; (4) the invoice filing deadline; and (5) the deadline for filing the FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form)."

- On March 27, 2020, USTelecom [asked](#) the FCC, among other things, to (1) open an emergency funding request window to provide additional E-Rate support; (2) waive certain competitive bidding requirements to allow schools and libraries faster access to emergency funds; (3) allow schools to apply for funding to purchase wired or wireless broadband connectivity on behalf of students and/or teachers that do not have access to broadband; and (4) consider whether it has the authority to support the purchase of devices for teachers and students.
- Although the CARES Act did not provide additional funds for E-Rate, House Commerce Committee Chairman Frank Pallone (D-NJ) has [indicated](#) that he intends to push for US\$2 billion in funding for E-Rate in future legislation.
- On March 23, 2020, the FCC's Wireline Competition Bureau [reminded](#) schools and libraries that are closed due to the COVID-19 pandemic that they are permitted to allow the general public to use Wi-Fi networks supported by the E-Rate program while on the school's campus or library property.
- On March 18, 2020, the FCC's Wireline Competition Bureau issued an [order](#) exempting participants in the E-Rate program from rules prohibiting participants from accepting any gifts or other things of value from a telecommunications or broadband service provider. The FCC took this action to allow service providers to offer schools and libraries, and to allow schools and libraries to accept, "improved capacity, Wi-Fi hotspots, networking gear, or other things of value" that assist qualifying entities during the COVID-19 pandemic.
- On March 17, 2020, FCC Commissioner Rosenworcel [proposed](#) that the FCC use the E-Rate program to allow schools with Wi-Fi hotspots to loan them to students who lack reliable internet access at home.

Other Initiatives

- **UPDATE:** The FCC [announced](#) on April 27, 2020, that it had agreed to collaborate with the Department of Education in the promotion of the use of US\$16 billion in funding that the CARES Act had directed for remote learning under its Education Stabilization Fund. Specifically, the FCC "will publicize CARES Act resources available to governors, states, local school districts, and schools, including identifying service providers in their areas that may be able to quickly provide broadband connectivity and devices to support remote learning."

- On April 21, 2020, Congresswoman Grace Meng (D-NY) [introduced](#) the Emergency Educational Connections Act of 2020, which would create a special US\$2 billion fund for the FCC to disburse for schools and libraries to buy Wi-Fi hotspots, routers and internet connected devices.
- As mentioned above, the CARES Act gives an additional US\$25 million to the RUS of the Department of Agriculture for the Distance Learning, Telemedicine, and Broadband Program, which offers funding to entities in rural areas that use telecommunications and broadband services to provide, among other things, education services.
- On March 12, 2020, FCC Commissioner Rosenworcel issued a [statement](#) urging the FCC to “identify how it can use its authority to provide Wi-Fi hotspots temporarily to students whose schools have closed their doors.”

Telecommunications and Broadband Infrastructure

Connect America Fund

The Connect America Fund (CAF) is a program under the Universal Service Fund designed to expand access to voice and broadband services in areas where these services are not available or that are underserved. Under the current phase of the program, providers of voice and broadband service receive funding to subsidize the building of new telecommunications infrastructure and/or upgrade existing facilities.

- On March 27, 2020, USTelecom [asked](#) the FCC, among other things, to (1) authorize a one-time infusion of funds to support efforts by providers to augment existing infrastructure to support the surge in demand; (2) allow providers to receive an advance payment of future high-cost support that they are eligible to receive; and (3) waive certain performance and deployment requirements under the Connect America Fund.

Other Programs and Initiatives

- President Trump [tweeted](#) on April 22, 2020, his support for the inclusion of funds for broadband in the next COVID-19 relief bill, but it is unclear how quickly or to what extent Republicans in Congress will support another legislative relief package.
- On April 3, 2020, CTIA [asked](#) the FCC to (1) “simplify the review process for temporary license swaps between licenses to facilitate wireless provider offerings of additional service during the state of national emergency,” (2) “accelerate approval of all applications for license assignments and transfers of control,” (3) allow for the filing in PDF of documents that otherwise are required to be filed in paper form under the rules, and (4) expedite access to spectrum in the upper 37 GHz, 39 GHz and 47 GHz bands that was recently auctioned.
- The CARES Act gives the RUS of the Department of Agriculture an additional US\$100 million for the ReConnect program, which offers loans and grants to cover the costs of construction, improvement or acquisition of facilities and equipment needed to provide broadband service in eligible rural areas.

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