

# COVID-19 Telecommunications Update

**Akin Gump**  
STRAUSS HAUER & FELD LLP

## Supporting the Telecommunications Industry Through the COVID-19 Crisis – What You Need To Know

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### Key Points

- Congress and federal agencies are taking action to ensure that Americans stay connected during the COVID-19 crisis, including the CARES Act. The CARES Act provides \$200 million to the FCC for telehealth services and additional funding for other federal initiatives aimed at closing the digital divide and supporting distance learning.
- In addition to the \$200 million COVID-19 Telehealth Program (implementing the CARES Act), the FCC has proposed other new initiatives to make funding available for telehealth providers, including a \$100 million Connected Care Program. The Commission has also made an additional \$42 million immediately available through its RHC Program, and has taken other measures to support telecommunications providers and telecommunications services by temporarily extending certain deadlines, issuing waivers of some existing rules and granting some wireless providers temporary access to additional spectrum.
- DHS has issued guidance classifying certain telecommunications workers as “essential critical infrastructure workers” during this crisis.

This update attempts to compile in one place all the major actions that have been taken by our government related to supporting the telecommunications industry during the COVID-19 crisis.

Do not hesitate to contact us if you have questions or need further information.

### Congress

#### The CARES Act Includes Funding for Telecommunications

On March 27, the President signed into law [H.R. 748, the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) to provide funding to support Coronavirus-related efforts by a number of federal agencies, including the following to support telecommunications services and devices:

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- \$200 million to the Federal Communications Commission (FCC) to support telehealth services, including devices
- \$25 million for the USDA’s Distance Learning, Telemedicine (DLT), and Broadband Program;
- \$100 million in funding for the USDA’s ReConnect Program
- \$13.2 billion to the Education Department for an “Elementary and Secondary School Emergency Relief Fund,” which defines eligible uses as including the “[p]urchase of educational technology (including hardware, software, and connectivity) for students”
- \$75 million for the Corporation for Public Broadcasting (CPB)
- \$50 million in funding to the Institute of Museum and Library sciences to help public libraries expand digital network access, purchase internet accessible devices, and provide technical support to communities
- Authorizes the Department of Veterans Affairs (VA) to enter into short-term agreements with fixed and mobile broadband providers to expand telehealth mental services for veterans.

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In a **written statement** released on March 26, FCC Chairman Ajit Pai praised the CARES Act, noting that the “FCC has already begun preparing for this bill to become law,” and has “already acted to promote telehealth solutions for the patients of rural hospitals and clinics by making an additional \$42 million immediately available” through the Rural Health Care (RHC) Program, and by waiving its “gift rules” so that RHC Program participants “can solicit and accept improved connections or additional equipment for telemedicine.”

Notably, the legislation did not address Democrats’ calls for additional funding to support broadband connectivity for low-income students and help close the homework gap (including a proposal to provide \$2 billion for the FCC’s E-Rate subsidy program, and \$1 billion to help low-income households struggling with connectivity) or to protect spectrum for emergency first responders. Democrats have indicated that we should expect to see a push for more telecom provisions in the next phase of emergency funding relief related to COVID-19.

## **The Federal Communications Commission**

### **Keep Americans Connected initiative**

In an effort to ensure Americans maintain access to broadband and phone service during the coronavirus outbreak, the FCC recently asked service providers to take the Keep Americans Connected pledge. The pledge includes a sixty (60) day commitment not to terminate service for customers who are unable to pay their bills, to waive late fees, and to provide more Wi-Fi hotspots to those who need them. In conjunction with this effort, the FCC has taken a number of steps, including:

- Asking broadband providers to improve their low-income broadband programs, relax data caps where appropriate, and enhance remote learning and telehealth opportunities.
- Providing \$42.19 million in funding to the RHC Program to help promote telehealth services in rural areas

- Waiving gift rules for the Rural Health Care and E-Rate programs until September 30, 2020.
- Waiving the Lifeline program's recertification and reverification requirements for participating low-income consumers for sixty (60) days, and waiving the requirement that participating carriers' enrollment representatives register with USAC, the administrator for the Universal Service Fund, for 60 days.
- Granting Special Temporary Authorities (STAs) to T-Mobile, U.S. Cellular, Verizon and the [A:shiwí College & Career Readiness Center](#) to use additional spectrum for 60 days to meet increased consumer demand for mobile broadband.
- In a recent letter to Commerce Ranking Member Maria Cantwell, Chairman Pai stated that the FCC is working with Congress to ensure the Commission has the legal authority and funding available to do more to provide connectivity during the pandemic.

### **Auction Dates Postponed**

The FCC [moved its 3.5 GHz auction](#) from June 25 to July 23 due to the pandemic, and has also indefinitely [postponed an auction of FM construction permits](#) that was originally scheduled for April 28.

### **Draft Telehealth Order Circulated**

On March 30, FCC Chairman Ajit Pai circulated a [draft order](#) announcing his plan for a COVID-19 Telehealth Program to support health care providers responding to the ongoing coronavirus pandemic. If adopted, the Program would use \$200 million appropriated to the FCC through the CARES Act to help eligible health care providers purchase telecommunications, broadband connectivity and devices necessary for providing telehealth services. The draft order also contains proposed final rules to stand up a broader, longer-term Connected Care Pilot Program that was first introduced last summer. It would study how connected care could be a permanent part of the Universal Service Fund by making available up to \$100 million of universal service support over three years to help defray eligible health care providers' costs of providing telehealth services to patients at their homes or mobile locations, with an emphasis on providing those services to low-income Americans and veterans. At today's FCC Open Meeting, all Commissioners pledged to vote on this proposal quickly, although Commissioner O'Rielly asked that it be bifurcated into two items: the CARES Act order and the Connected Care Pilot Program order.

### **Temporary Waiver of Administrative Restrictions Related to the Telecommunications Relay Service (TRS) to Ensure Availability of Services to the Deaf**

On March 16, the FCC's Consumer and Governmental Affairs Bureau released an [order](#) temporarily waiving certain of its rules to ensure the continued availability of TRS for deaf and hard-of-hearing consumers during the COVID-19 pandemic, enabling more interpreters to provide remote interpreting from home, rather than in call centers.

Specifically, the FCC waived, retroactive to March 13, 2020 and until May 15, 2020, the following rules for providers of video relay service (VRS):

- The cap on the percentage of a VRS provider's conversation minutes that may be handled by interpreters working from home

- The requirement that at-home VRS interpreters have at least three years of experience in call centers or as an interpreter generally
- The requirement that “virtual teaming” be available to at-home VRS interpreters
- The requirement that the location of an at-home VRS interpreter’s workstation be restricted solely to the interpreter, provided that access be restricted to the interpreter during working hours
- The requirement that VRS providers inspect and approve each at-home workstation before activating it and conduct random, unannounced inspections of at least 5 percent of such workstations
- The requirement to equip at-home VRS workstations with monitoring technology
- The requirement that, if a VRS interpreter’s home is simultaneously used by more than one interpreter, it must be identified and reported as a call center
- The prohibition on international VRS calls placed by VRS users who pre-registered to make such calls while on international travel but whose travel has exceeded the time limit for such pre-registration
- The requirement that VRS providers notify the FCC and the TRS Fund Administrator of the opening, closing, or relocation of any call center at least 30 days in advance.

For non-VRS providers of TRS, the FCC also waived, from March 1, 2020, through May 15, 2020, the requirement that such providers answer 85 percent of daily calls within 10 seconds -- the provider must ensure that 85 percent of monthly calls are answered within 120 seconds.

### **Major Wireless Carriers Granted Access to Additional Spectrum**

The FCC has granted several major wireless carriers access to additional spectrum in order to help expand the capacity of wireless networks, as more Americans turn to telework, remote learning, and telehealth, including:

- Granting Verizon and U.S. Cellular temporary access to AWS-3 band spectrum licensed to other companies
- Granting Verizon and AT&T temporary access to AWS-4 spectrum licensed to DISH
- Granting **T-Mobile** temporary access to additional spectrum in the 600 MHz band that was held in FCC inventory and by other licensees.
- Granting an emergency request by the **A:shiwi College & Career Readiness Center** for special temporary authority to operate on unassigned 2.5 GHz spectrum over rural tribal land on the Zuni Reservation.

T-Mobile also asked the FCC for special temporary authority to augment its wireless services with spectrum in the 2.5 GHz band. The FCC is still considering T-Mobile’s request.

### **Temporary Access to Spectrum in the 5.9 GHz band Granted to Fixed Wireless ISPs to Meet Increased Demand for Rural Broadband**

The FCC’s Wireless Telecommunications Bureau **granted temporary spectrum access** to 33 wireless ISPs serving 330 counties in 29 states to help them serve rural communities facing an increase in broadband needs during the COVID-19 pandemic.

The Special Temporary Authority (STA) granted to these providers will allow them to use the lower 45 MHz of spectrum in the 5.9 GHz band for fifty (50) days.

### **Access Arbitrage Rules Waived to Ensure that Consumers Can Continue Accessing Conference Calling Services from Zoom and Webex During the COVID-19 Crisis**

The **FCC granted a petition** filed by Inteliquent, the company that manages traffic for conference calling services, and waived the Commission's access arbitrage rules to keep up with a "massive surge in demand" for conference calling services. Without a waiver, additional financial obligations would have been triggered due to the high traffic ratios Inteliquent is experiencing.

### **Waiving Lifeline Program De-Enrollment Requirements Until May 29**

The FCC's Wireline Competition Bureau **issued an order** on March 30 waiving several rules that could otherwise result in de-enrollment of subscribers from the Lifeline program, which provides monthly discounts on broadband and voice services to qualified low-income consumers. Specifically, the order waives the Lifeline program's usage requirements and general de-enrollment procedures until May 29, 2020, and extends a recent waiver of the program's recertification and reverification requirements to May 29, 2020 to ensure that all of the waiver periods for the Lifeline de-enrollment rules will have the same duration. The order also directs the Lifeline program administrator to pause any involuntary de-enrollment of existing subscribers until that date.

### **Order Easing Near-Term Administrative Requirements for Rural Health Care Program Participants**

The FCC **released an order on March 26** granting additional relief to assist RHC Program participants during the ongoing COVID-19 emergency. Specifically, the order is intended to "allow health care providers to focus their attention on their immediate task at hand... without the diversion of near-term RHC Program administrative requirements" by taking the following specific actions:

- Issuing an extension of the RHC Program application filing window until June 30, 2020.
- Easing competitive bidding requirements for health care providers with expiring evergreen contracts.
- Providing an extension of several procedural deadlines.

### **Temporary Waivers of the Television Duopoly Rule for Increased Local News Coverage During COVID-19**

In light of the need for additional news coverage during the COVID-19 outbreak, the FCC's Media Bureau **announced on March 26** that it will provide waivers of its local television ownership rule to certain broadcast licensees on an expedited basis to enable receipt of additional news coverage from another in-market station. Ordinarily, the provision of programming from one local television station to another in-market television station cannot exceed 15 percent of the weekly programming without violating the local television ownership rules.

Individual licensees may request a waiver by sending an emailed request to the Media Bureau explaining how additional coverage would assist in providing community-specific information regarding COVID-19, and how such needs would be better met by allowing for the production of additional news and/or informational programming by the brokering station. The Media Bureau will assess such requests on a case-by-case basis, and any waivers granted will be limited to the time period that the COVID-19 outbreak remains a national emergency.

### **Guidance Regarding Political Advertising Lowest Unit Charge During the COVID-19 Crisis**

On March 25, the FCC's Media Bureau **issued new guidance** clarifying that during the COVID-19 pandemic, broadcasters who provide excess advertising inventory to commercial advertisers at no charge may exclude this free time when calculating their lowest unit charges, provided that the free time is not associated with an existing commercial contract for paid time or otherwise considered bonus spots. This guidance was requested by the National Association of Broadcasters (NAB) in light of many television stations desiring to offer excess inventory created by the COVID-19 pandemic to merchants free of charge.

### **Time Extended For Broadcasters to File Children's Programming Reports and Quarterly Issues/Programs Lists**

On March 27, the FCC's Media Bureau released a **public notice** announcing that it is extending: (1) the filing deadline for the first annual Children's Television Programming Report (FCC Form 2100, Schedule H) from March 30, 2020 to July 10, 2020; and (2) the deadline by which radio and television broadcasters must place their first quarter issues/programs lists into their Online Public Inspection File from April 10, 2020, to July 10, 2020. The extensions do not modify any requirements or filing deadlines related to broadcasters' political files, nor does it modify any other filing obligations or deadlines related to those public files.

## **Department of Homeland Security (DHS)**

### **CISA issued an advisory memorandum classifying telecommunications workers as "essential critical infrastructure workers"**

Pursuant to President Trump's **Coronavirus Guidance for America**, DHS's Cybersecurity and Infrastructure Security Agency (CISA) published an advisory memorandum to assist state and local officials when making decisions regarding essential critical infrastructure workers in their jurisdictions. The **advisory memorandum** lists telecommunications workers among these essential functions, including the following:

- Maintenance technicians, operators, call-centers, and data centers
- Transmission, network operations, central office engineers or technicians to manage or operate facilities
- Installations, maintenance, and repair, as needed
- Customer support service and support staff that interface with customers, including retail facilities for emergency support to wireless customers
- Dispatchers for repair and restoration.

CISA advises state and local officials and critical infrastructure industry partners to “use their own judgment,” to “appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.”

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