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The Universal Service Fund and COVID-19: The FCC and Industry Response

The need for social distancing, due to the Coronavirus Disease 2019 (COVID-19) pandemic, has led to an increase in remote working, distance learning, and telemedicine—activities that depend on connectivity to the telecommunications and broadband network. The Federal Communications Commission (FCC) and its Universal Service Fund (USF) programs are viewed by some as avenues to address this growing need. The FCC has taken steps to expand and modify three of the USF programs: the Lifeline Program; the Schools and Libraries (E-Rate) Program; and the Rural Health Care Program, in response to the pandemic and to address various aspects of social distancing.

The FCC and the Universal Service Fund

The USF was established in 1997 under the authority of the Telecommunications Act of 1996 (P.L. 104-104) to facilitate the deployment and adoption of fixed and mobile telecommunications and broadband services. The FCC is responsible for establishing USF policies and oversees the Universal Service Administrative Company (USAC), an independent not-for-profit organization tasked with administering the USF. The FCC has used the USF to address the growing connectivity needs and challenges Americans face during the COVID-19 pandemic. Three USF programs, the Lifeline Program, the Schools and Libraries (E-Rate) Program, and the Rural Health Care Program, have been viewed as instrumental to support the nation's connectivity and social distancing needs.

FCC Authority

The FCC, an independent regulatory agency responsible for the regulation of interstate and international communications services, is charged with, among other things, developing the policies to meet the principles and objectives of the universal service concept. This concept, which has evolved over time, currently embraces the principle that every American have access to broadband connectivity and that access to and adoption of broadband be a national goal. The FCC, under the provisions contained in the Communications Act of 1934, as amended, operates based on a public interest standard and as such has some flexibility when establishing and implementing rules and regulations. In general, rules may be waived by the FCC “on its own motion or on petition if good cause therefor is shown” (47 CFR §1.3). In evaluating good cause for waivers, the FCC has discretion to waive a rule when particular facts make compliance inconsistent with the public interest, and may take into account considerations of hardship, equity, or more effective implementation of policy. Under this authority, the FCC chose to leverage the USF to help meet the nation's growing pandemic-related telecommunications and broadband needs.

Since the pandemic began, the FCC has taken steps, including the temporary lifting or suspension of program rules, the modification of program requirements, the issuance of temporary waivers, and the increase of budgets, to modify USF programs to address public interest needs.

Lifeline Program

The implementation of social distancing measures to slow the spread of COVID-19 has led to a growing unemployment rate and financial hardship, coupled with the growing need for connectivity to broadband. The Lifeline Program, the only federal program focused on telephone and broadband adoption for eligible low-income households, is viewed as an instrumental program to address growing connectivity needs of households facing job and financial loss. The FCC has taken steps to protect current enrollees and increase enrollment opportunities to join the Lifeline program.

Usage requirements and de-enrollment procedures have been waived until May 29, 2020, to protect current subscribers from program removal. Temporary waivers regarding program recertification and reverification requirements have also been issued, according to the FCC, to enable Lifeline program providers to focus on increasing new enrollments and protecting current program subscribers. The FCC has also temporarily waived requirements that all enrollment representatives—individuals who represent providers and seek out new enrollees to subscribe to the USF Lifeline Program—register with the program administrator, USAC.

The private sector has also taken steps to expand and enhance its offered and funded low-income programs that are separate from the Lifeline program. (See “Industry Response,” below.)

School and Libraries Program

As schools increasingly move to distance learning options to address social distancing requirements, the need for connectivity so students can gain access to instruction and complete school assignments from home has surged. The USF E-Rate Program provides subsidies for eligible elementary and secondary schools and classrooms, as well as libraries, for internet access, internal network connections, and telecommunications services.

The FCC has taken some actions to temporarily modify program rules to facilitate distance learning objectives. The FCC waived gift rules, until September 30, 2020, to enable schools and libraries to solicit for and accept improved connections and additional equipment and devices to facilitate distance learning during the pandemic. The FCC

also reiterated that schools and libraries that are closed during the pandemic are permitted to allow general public use of E-Rate supported Wi-Fi networks while on school and library property. Steps taken to modify administrative and filing deadlines include extending the application filing windows and construction deadlines.

There is, however, growing pressure to further modify E-Rate Program rules to support home broadband access for school-aged children, but some, including FCC Chairman Pai, question whether the FCC has the authority to use the program to subsidize such services outside the classroom. The FCC has not, to date, taken steps to modify the program to expand connection subsidies beyond eligible schools and libraries. The private sector has taken initiatives to increase access to Wi-Fi networks and devices. (See “Industry Response,” below.)

Rural Health Care Program

Access to telehealth/telemedicine options is seen as a vital piece to ensuring the safety and care of health care providers and patients alike. Reducing the need to physically go to a doctor’s office or other medical facility to address health care needs, whether coronavirus related or not, can help prevent the spread of the coronavirus. The Rural Health Care (RHC) Program provides subsidies to eligible, largely rural, health care providers for telecommunications and broadband services to enable telemedicine services. The FCC has taken some steps through the RHC Program, as well as through congressional direction, to address the growing need for access to telehealth services during the pandemic.

The FCC, on April 2, 2020, released final rules to implement the Connected Care Pilot Program. This program is a three-year program to help subsidize up to 85% of eligible health care providers’ costs of providing connected care services to, in particular, eligible low-income Americans and veterans at their residence or mobile location. Funding for the program, which is set at no more than \$100 million, will come from the USF. The pilot program, while not developed in direct response to the pandemic, is expected to help assess how to help contain and treat health conditions during emergencies such as a pandemic. The application filing window date is pending.

Separately, the FCC announced, on April 2, 2020, the establishment of the COVID-19 Telehealth Program, a temporary program to help health care providers to purchase telecommunications services, broadband connectivity, and devices for providing telehealth services during the pandemic. Funding will be used to provide telehealth services to patients at their homes or mobile locations. The program is not funded through the USF, but through a \$200 million appropriation in the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136). The FCC is required to use the funds to “prevent, prepare for, and respond to coronavirus, domestically or internationally, including 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 during an emergency period.” The program will target areas hardest hit by COVID-19, but the program is

not limited to solely treating patients that have COVID-19. Full funding is available but the FCC does not anticipate awarding more than \$1 million to any single applicant. The application period opened on April 13, 2020. Funding has begun to be awarded on a rolling basis and will remain available until the funding is expended or until the current pandemic has ended.

Additional steps taken by the FCC include supplementing the current year RHC Program budget to fully fund all eligible services, extending the application window until June 30, 2020, and lifting gift rules until September 30, 2020, to allow health care providers to solicit for and accept improved connections and additional equipment for telemedicine from service providers.

Industry Response

Social distancing measures have resulted in an increase in demand for those seeking access to telecommunications and broadband networks, as well as an increase in usage demand for those already connected to the network. Telecommunications and broadband providers have taken voluntary actions to increase access to, and prevent drop off from, the network as well as to expand network capacity. One of the most public actions taken has been the commitment by providers to sign the FCC’s Keep Americans Connected pledge, a voluntary pledge signed by over 700 telephone and broadband service providers to date. The pledge makes a 60-day commitment that a provider will not terminate service to any residential or small business customers because of an inability to pay due to the pandemic; will waive any late fees that any residential or small business customer may incur due to the pandemic; and will open a company’s Wi-Fi hotspots to any American that needs them.

Individual providers have also voluntarily expanded access to and upgraded their low-income programs, raised broadband speeds, and expanded usage data caps. Other providers have expanded access to Wi-Fi hot spots at fixed locations and have provided devices and established Wi-Fi connections on neighborhood-positioned school buses to address student distance learning needs. Still others have requested and received from the FCC special temporary authority to share unused commercial spectrum to increase short-term network capacity to meet growing mobile broadband demand.

Industry’s voluntary actions, while helpful, have raised questions regarding how effective some measures are and whether providers can sustain these measures over time. Some have questioned how consistently the pledge is being upheld and to what degree providers are informing subscribers of its provisions. Others have questioned how long providers, particularly those that lack extensive financial reserves, can continue to offer assistance without reimbursement. Whether the FCC, other federal agencies, or Congress will take additional action to address Americans’ growing broadband and telecommunications needs remains to be seen.

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