

Broadband Connectivity and COVID-19: The FCC's Response

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As [states and localities](#) have directed their citizens to stay home in response to the COVID-19 outbreak, internet traffic in the United States has [shifted dramatically](#). The greater number of individuals working remotely over the internet, participating in online education, and seeking online sources of entertainment threatens to place [an increasing strain](#) on American internet networks. The Federal Communications Commission (FCC or Commission) has thus far focused its response on expanding internet access and [ensuring that networks can support increased traffic](#). Along with its widely publicized [Keep Americans Connected Initiative](#)—an elective pledge for communications providers—the FCC has taken a number of regulatory actions aimed at promoting internet connectivity. This Sidebar provides an overview of how COVID-19 has affected the FCC's operations, some ways the FCC has responded thus far, and common criticisms and perceived shortcomings of the FCC's approach.

Operations Affected by COVID-19

The FCC's regulatory authority under the [Communications Act of 1934](#) encompasses communications made by wire or radio in interstate or foreign commerce. Over time, this authority has evolved to include a growing number of responsibilities relating to the provision of wireless internet and telephone services. The FCC also oversees a number of programs aimed at advancing internet and telephone accessibility among rural, low-income, and disabled individuals.

Regulatory Authority over Wireless Internet Services

Title III of the Communications Act establishes a [federal policy](#) of controlling radio spectrum in the United States and licensing its use. The FCC has [primary responsibility](#) for allocating non-federal radio spectrum—*i.e.*, designating the uses for bands of spectrum—and then licensing those bands to a variety of entities. When executing this authority, the Commission must [consider](#) “whether the public interest, convenience, and necessity will be served” by granting an entity a spectrum license.

Among those who license spectrum from the FCC are wireless internet and voice service providers. The Commission has historically licensed spectrum to these providers from a band of frequencies known as the [Advanced Wireless Services](#) band. The FCC grants licenses to operate at a given frequency such that a particular entity's use of spectrum [does not cause interference](#) with another entity's. The amount of

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internet traffic a given provider can support at a time is limited by the amount of spectrum licensed to the provider. Since the outbreak of COVID-19, the Commission thus has tried to adjust the regulatory burdens placed on spectrum licensees to allow for greater internet connectivity.

Universal Service Fund Administration

The FCC oversees a number of programs through its [Universal Service Fund \(USF\)](#) aimed at promoting access to high-speed internet, particularly for [rural areas](#), [low-income individuals](#) (Lifeline), [schools and libraries](#) (E-Rate), and [rural healthcare providers](#) (Rural Health Care). [Section 254](#) of the [Telecommunications Act of 1996](#) authorizes the Commission to pursue these objectives. The FCC has taken a number of actions relating to its USF programs in response to expected increases in demand for high-speed internet due to the COVID-19 emergency, particularly in connection with [telehealth services](#).

FCC Response Actions

Thus far, the FCC has responded to the network pressures produced by COVID-19 with several regulatory tools at its disposal. For wireless internet service providers, the Commission is exercising authority to grant temporary spectrum access, allowing providers to expand network capacity. As for the FCC's USF programs, the Commission has waived several program rules to relax burdens on program participants, both individuals and institutions. The FCC has also waived rules that, while not directly related to its oversight of USF programs or allocation of spectrum, relate to internet connectivity. Finally, the Commission is responsible for disbursing funds allocated to it by the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act).

Special Temporary Authority

Generally, an entity seeking to license spectrum must [file an application](#) with the FCC, which must act on the application as provided for in the Communications Act. However, in “extraordinary circumstances requiring temporary operations in the public interest,” the Commission may grant “special temporary authority” to use designated spectrum for up to 180 days. Wireless internet providers, citing [increased traffic and the prospect of strained network capacity](#), have increasingly approached the FCC for grants of special temporary authority to bolster their networks, and the FCC has granted [several](#) of these requests. In response to the growing number of applications for special temporary authority, the Commission has also [released a guide](#) with filing instructions.

Waiver of Rules

The FCC [may](#), on its own motion or in response to a petition, waive or suspend its own rules or regulations “for good cause shown.” The Commission has waived several rules relating to USF programs on its own motion. For example, the FCC [waived](#) a number of requirements for participants in its Rural Health Care program, [finding](#) that “the scale of the current public health emergency, the extensive disruption to health care providers throughout the country, and the enhanced need for telehealth and telemedicine services caused by COVID-19” justifies waivers of its rules. On top of waiving USF program requirements, the FCC has waived several regulations that might otherwise affect connectivity. Notably, the Commission [waived](#) its rules preventing access arbitrage (or “traffic-pumping”) as applied to a telephone company that provides service for the conference calling platforms Zoom and WebEx. The Commission has also [extended deadlines](#) for spectrum licensees and [postponed](#) an upcoming spectrum auction. **Table 1** lists, by USF program, a selection of rules waived in response to the COVID-19 outbreak. For more information on how COVID-19 has affected USF programs, see CRS In Focus IF11520, *The Universal Service Fund and COVID-19: The FCC and Industry Response*, by Angele A. Gilroy.

Table I. Orders Waiving USF Rules and Regulations in Response to COVID-19

Program Affected	FCC Action
Rural Health Care	Multiple deadlines waived or extended for 2020; requirements for “evergreen” contract extensions waived for 2020
Universal Service Fund	Service area restrictions for mobile wireless providers waived (allowing carriers who receive funding to use funds outside a designated geographic area)
Lifeline	Usage requirements, de-enrollment procedures, recertification, and reverification rules waived; involuntary de-enrollment suspended
E-Rate	Filing and service implementation deadlines waived; participants granted automatic 30-day extension for information requests
E-Rate and Rural Health Care	Gift rules waived
Lifeline	Income qualification rules waived

Source: CRS analysis of orders posted to <https://www.fcc.gov/>.

Note: The most current list of FCC actions taken in response to COVID-19 is available at <https://www.fcc.gov/coronavirus>.

Disbursement of CARES Act Funds

The [Coronavirus Aid, Relief, and Economic Security Act](#) provides the Commission with \$200 million “to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services during an emergency period.” On April 2, 2020, the FCC [released an order](#) establishing a COVID-19 telehealth program to [provide](#) “funding for telecommunications services, information services, and devices necessary to enable the provision of telehealth services.” Recognizing the urgency of the COVID-19 outbreak, the Commission [directed](#) its Wireline Competition Bureau to review applications and award funds “as rapidly as possible on a rolling basis.” Under the Commission’s [order](#), funds will be available “until they are expended or until the current pandemic has ended.” To date, the FCC has [provided](#) more than \$50 million to 82 healthcare providers.

Common Criticism and Potential Limits of the FCC’s Approach

The FCC’s response to COVID-19 has not been without critics, who argue that the agency can and should go further to meet current connectivity needs. FCC Commissioner Jessica Rosenworcel has [advocated](#) for permitting schools and libraries to use E-Rate funds to purchase Wi-Fi hotspots for students without home internet access. A group of senators has [echoed](#) this idea. The Telecommunications Act [provides](#) that telecommunications providers shall provide services “to elementary schools, secondary schools, and libraries for educational purposes.” The FCC has issued [guidance](#) clarifying that schools and libraries may leave their wireless networks on for community use, though the guidance is limited to use of the networks “while on the school’s campus or library property.” [Library parking lots](#) have consequently drawn traffic from families without home internet access.

Commissioner Rosenworcel is not the first to suggest that E-Rate funds also [should be used](#) to support off-site educational activities. Interested entities have [petitioned](#) the Commission to allow the use of E-Rate funds for these purposes, so the Commission may have an opportunity to clarify whether using E-Rate funds to support off-site activity is permissible. Indeed, in another context, the Commission has interpreted its authority to extend beyond the physical locations of supported facilities: the [Connected Care Pilot Program](#) provides funding for health care providers to use on patient internet access outside of the provider’s facilities.

Further, while a number of internet providers have taken the Commission's [Keep Americans Connected Pledge](#)—which promises, among other things, that a provider will not disconnect internet service due to a customer's inability to pay—taking the pledge is voluntary. In a 2018 order, the FCC [classified](#) broadband service as an “information service” subject to light regulation. Thus, the Commission may lack authority to compel any action from broadband providers. The U.S. Court of Appeals for the D.C. Circuit largely [upheld the](#) Commission's order, but remanded the matter to the FCC for further consideration of three issues, one of which was the order's effect on [public safety](#). The Commission originally sought comment [no later](#) than March 30, but because of COVID-19 [extended](#) the deadline by 21 days.

Considerations for Congress

Criticism of the FCC's response to COVID-19 highlights several areas in which Congress could clarify the Commission's power. Whether E-Rate funds may support off-site educational activities, for example, is ambiguous from the statutory provision authorizing the E-Rate program. The Telecommunications Act [directs](#) the FCC to support “elementary schools, secondary schools, and libraries,” but does not specify where supported activities may occur. FCC Chairman Ajit Pai has [previously stated](#) that E-Rate funds may not be used for home devices under the Communications Act as currently written.

Another candidate for potential congressional clarification is the Commission's classification of broadband service as an “information service.” The FCC's authorizing statute does not consistently define or classify broadband access. By amending the Communications Act to include a classification of broadband access as either an information service or a telecommunications service, or by subjecting broadband service to specific regulation, Congress could resolve any ambiguity regarding the regulatory treatment to which broadband is subject and clarify the scope of the Commission's authority over broadband. However, an explicit statutory definition and classification of broadband may also prevent the Commission from adapting its regulatory position to future economic and technological changes.

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