

COVID-19: What Communications Service Providers Need to Know

March 23, 2020

As COVID-19 has reached pandemic levels, the Federal Communications Commission ("FCC") has been active to keep communications services available through various waivers and actions. Kelley Drye's Communications practice group is tracking these actions and what they mean for communications service providers. CommLaw Monitor will provide regular updates to its analysis of the latest regulatory and legislative actions impacting your business. [Subscribe](#) to receive these alerts.

If you have any questions, please contact your usual Kelley Drye attorney or any member of the Communications Practice Group. For more information on labor, advertising, and other issues, visit [Kelley Drye's COVID-19 Response Resource Center](#).

Chairman Pai Unveils 'Keep Americans Connected' Pledge

On March 13, 2020, Chairman Ajit Pai [called on](#) broadband and telephone service providers to forgo service terminations due to inability to pay, waive late fees, and open Wi-Fi hotspots for those who need them for the next 60 days. The [March 13](#), [March 16](#), and [March 19](#) releases each included lists of participating providers, and the FCC's [Keep Americans Connected](#) page lists 475 participating service providers and 10 trade associations. The providers that have taken the pledge have agreed to, for the next 60 days: (1) not terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic; (2) waive any late fees that any residential or small business customers incur because of their economic circumstances related to the coronavirus pandemic; and (3) open its Wi-Fi hotspots to any American who needs them. The list of participating providers includes major carriers like AT&T, Verizon, T-Mobile, Sprint, Comcast, Charter and RCN.

Chairman Pai also asked providers to expand or implement programs for low-income Americans, and to relax data cap policies in appropriate circumstances. Several carriers have already [rolled out](#) modified service offerings aimed at providing Internet access for free or at a reduced cost to low-income individuals and households, as well as K-12 households. Providers that have not yet taken the pledge should seriously consider whether they can do so, or if they can in some other way make their services more accessible, available or affordable to their customers.

FCC Temporarily Grants Wireless Carriers Access to Additional Spectrum

On March 15, 2020, the FCC began granting Special Temporary Authority to several U.S. carriers, allowing them access to additional spectrum for the next 60 days in order to handle the increase in network traffic because of social distancing and stay-at-home orders issued in response to the COVID-19 pandemic. [T-Mobile](#), [Verizon](#) (also [here](#)), [U.S. Cellular](#), and [AT&T](#) have all received permission to utilize additional spectrum. Commissioner Jessica Rosenworcel, in a [tweet](#), questioned

whether U.S. networks can handle increased traffic and called on the FCC to utilize the disaster reporting system for COVID-19 and expand reporting requirements beyond telephone service to reflect the “broadband age.”

FCC Grants Waivers to Permit Schools, Libraries and Rural Healthcare Providers to Accept Free or Discounted Services

On March 18, 2020, the Wireline Competition Bureau released an [order](#) (DA 20-290) waiving gift rules in the Rural Health Care and E-Rate programs to “enable service providers to offer, and RHC and E-Rate program participants to solicit and accept, improved broadband connections or equipment for telehealth or remote learning.” The order is intended to allow schools, libraries and rural healthcare providers to meet anticipated short-term demands outside of the restrictions of the programs. By waiving the gift rules, applicants are free to accept – and service providers are free to offer – arrangements that would otherwise qualify as gifts. For example, a service provider might make significantly discounted service available, might waive data caps or might provide free (or loaner) equipment to meet additional demand, all of which might have disqualified the service provider from future E-Rate or RHC bidding. Under the order, the gift rules (47 C.F.R. sections 54.503(d)(1), 54.603(b), 54.611(b)(2), 54.622(h)(1), 54.623(a)(1)(vi), 54.627(c)(3)(ii)(H), and 54.627(d)(1)(ii)(F)) will be waived through September 30, 2020.

FCC Clarifies that Hospital, Healthcare Provider and Government COVID-Related Communications Fall Within “Emergency Purposes” Exception to the TCPA

On March 20, 2020, the FCC’s Consumer and Governmental Affairs Bureau released a [Declaratory Ruling](#) (DA 20-318) regarding the TCPA’s “Emergency Purposes” exception to the consent requirement. The Bureau order declares that COVID-19 constitutes an emergency under the TCPA’s exception, thus allowing communications (voice calls and texts) related to the emergency without consent. The order specifically permits calls/texts where (1) the communication is made by a hospital, healthcare official, state, local or federal government official or a person or entity acting on their behalf; and (2) the communication is informational, directly related to the COVID-19 pandemic and related to the imminent health or safety risk of the pandemic. The order provides several non-exhaustive examples of communications that would fall within the emergency purposes exception. The Bureau made clear, however, that marketing messages may not be included in the communications.

It is important to note that this clarification applies to both voice calls and text messages that are sent by the designated entities (so long as the content related to the COVID-19 crisis). The order is designed to ensure that time-sensitive messages are delivered promptly and are not impeded by the TCPA’s consent requirements. For entities not identified in the Bureau’s clarification, we recommend that you obtain the advice of counsel to determine how the TCPA applies to the proposed call or message.

FCC Waives Lifeline Reverification and Recertification De-Enrollments for 60 Days, But Fails to Address De-Enrollments Due to Non-Usage

On March 17, 2020, the Wireline Competition Bureau issued an [order](#) (DA 20-285) waiving the Lifeline program’s recertification and reverification requirements (sections 54.405(e)(4) and 54.410(f) of the Commission’s rules) until May 16, 2020. This FCC order follows several state orders and decisions prohibiting or discouraging public utilities from disconnecting consumer’s communications services. The FCC order also postpones the March 26, 2020 effective date of the requirement under section 54.406(a) of the Commission’s rules that eligible telecommunications

carriers must require their enrollment representatives to register with USAC to May 25, 2020. However, the order does not waive the de-enrollment requirement for non-usage of the Lifeline service, setting up a conflict with at least one state public utility commission non-disconnection order.

In addition, the FCC took the following actions in response to the pandemic:

- On March 19, 2020 the Wireless Telecommunications Bureau issued an [order](#) (DA 20-291) waiving the Commission's rules requiring licensees to transition their part 90 operations to part 96 operations in the 3650-3700 MHz band. This applies to licensees that would have had to transition between April 17, 2020 and October 17, 2020, and the new deadline is October 17, 2020. The Commission did not want the customers of the part 90 licensees to lose any broadband and essential services during the declared state of emergency and recognized the difficulties with implementing transition plans during this time. Moreover, in the order, the Bureau suspends acceptance and processing of new site registrations for all part 90 wireless broadband licensees in the 3650-3700 MHz band effective with applications received on or after March 19, 2020.
- On March 16, 2020, the Consumer and Government Affairs Bureau issued an [order](#) (DA 20-281) waiving several telecommunications relay services ("TRS") rules and at-home Video Relay Service ("VRS") pilot program requirements in response to increased demand for communications assistants ("CAs") and an anticipated reduction in the number of CAs able to work from call centers. Under the order, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, the provisions of sections 64.604 and 64.606 of the Commission's rules are waived through May 15, 2020.
- On March 17, 2020 the FCC issued a [public notice](#) (DA 20-282) directing any television station scheduled to complete phase 9 of the post-incentive auction transition to submit a waiver request if they are delayed in meeting the May, 1, 2020 deadline due to COVID-19.
- On March 20, 2020, the FCC issued a [public advisory](#) and launched a [webpage](#) in response to consumer and news reports that scammers are using the COVID-19 outbreak to spread misinformation and conduct fraudulent activity using robocalls and text messages.
- On March 13, 2020, the Wireline Competition Bureau issued a [public notice](#) (DA 20-273) directing USAC to extend the deadline for E-Rate applicants to submit their Funding Year 2020 FCC Form 471 applications to April 29, 2020. Additionally, the public notice directed USAC to automatically provide all applicants with a 14-day extension for any Program Integrity Assurance ("PIA") requests.