

COVID-19 Regulatory Update

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Broadband Stimulus and Related Initiatives in the HEROES Act

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The House Democrats recently unveiled their fourth COVID-19 bill, the **Health and Economic Recovery Omnibus Emergency Solutions Act** (HEROES Act.) The HEROES Act, which will be negotiated with the Senate, contains a number of provisions related to broadband and telecommunications access. At a high-level, the HEROES Act would result in the following:

- **\$4 Billion in Emergency Broadband Connectivity Funding** – provides for a monthly discount of up to \$50 to low-income households and those impacted by COVID-19, as well as reimbursement for providers who provide connected devices up to \$100.
- **\$1.5 Billion for Connectivity and Devices for Students Without Broadband Access** – provides \$1.5 billion in funding through the Federal Communications Commission's (FCC) E-Rate program to provide connectivity and devices, such as hotspots, to students, schools and libraries for use both at home and in the classroom.
- **Expansion of Broadband Connectivity Subsidies for Health Care Providers** – authorizes \$2 billion in additional funds for the FCC's Rural Health Care Program, expands eligibility to health care providers in urban areas, and increases the discount on broadband services, among other temporary changes to the program.
- **Telecom Provider Obligations: Restrictions on Terminating Service, Late Fees and Data Caps; Free Wi-Fi Hotspots** – prohibits telecommunication providers from terminating service, or charging late fees, due to an inability to pay related to COVID-19, codifying the FCC's Keep America Connected Pledge many telecommunication providers have voluntarily agreed to.
- **\$24 Million in Funding to Develop Maps of Broadband Coverage** – provides funding necessary for the FCC to develop improved broadband coverage maps to inform future subsidy programs.
- **Preservation of the T-Band for Use by Public Safety and Critical Infrastructure Entities** – repeals a mandate for the FCC to auction spectrum for commercial wireless use that is currently used by public safety entities and critical infrastructure operators.

Contact Information

The foregoing is subject to change as it moves through the legislative process. If you have any questions concerning this alert, please contact:

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- **Reasonable Rates for Prison Phones and Prohibiting Site Commissions** – requires that prison communication rates are “just and reasonable,” mandates that the FCC set maximum rates service providers may charge inmates and prohibits site commissions paid by telecom providers to prisons.
- **Enhanced Lifeline Benefits and Verification Systems** – requires Lifeline providers to offer unlimited minutes and data and provides funding for states to improve Lifeline eligibility verification systems.

The following provides additional detail on the various broadband-related provisions of the HEROES Act.

1. \$4 Billion in Emergency Broadband Connectivity Funding.

The HEROES Act would provide \$4 billion to establish a new Emergency Broadband Connectivity Fund. The fund would be administered by the FCC and would reimburse Internet service providers (ISPs) for a monthly discount of up to \$50 on certain households’ monthly Internet bill. The discount would be available to low income households and those who suffered a substantial loss of income because of COVID-19. ISPs could also seek reimbursement, up to \$100 per eligible household, for the provision of connected devices, such as laptops, tablets and smartphones distributed after enactment of the Act.

2. \$1.5 Billion for Connectivity and Devices for Students Without Broadband Access.

The HEROES Act provides \$1.5 billion in funding for connectivity and devices for students, schools and libraries to be administered through the FCC’s E-Rate program. The HEROES Act expands the products and services eligible for this E-Rate funding to include connectivity and devices used outside of the classroom, such as in-home hotspots. The FCC is required to prioritize access to devices and connectivity provided with such funds to those who do not currently have broadband access.

3. Expansion of Broadband Connectivity Subsidies for Health Care Providers

The HEROES Act would authorize \$2 billion in additional funding for, and institute a number of changes to, the FCC’s Rural Healthcare Program for the duration of the pandemic. The Rural Healthcare Program provides discounts on broadband connectivity for eligible health care providers, including most nonprofit rural health care providers. The HEROES Act would:

- Expand eligibility to nonrural health care providers, as well as temporary and satellite locations.
- Raise the discount rate for an eligible broadband expense from 65 percent to 85 percent for the 2019-2021 fund years, thereby increasing the amount each health care provider may be reimbursed for eligible broadband services.
- Reopen the window for submissions for the 2019 fund year to allow additional providers to file for reimbursement for services paid for during 2019.
- Establish a rolling application process requiring that the FCC act on applications within 60 days and disburse funding within 30 days from invoice submission.

- Require the FCC release all pending funding requests, except current requests under review for certain urban/rural rate issues would be released at 65 percent of the funding request, subject to a true-up following completion of the review.

4. Telecom Provider Obligations: Restrictions on Terminating Service, Late Fees and Data Caps; Free Wi-Fi Hotspots.

For the duration of the pandemic, the HEROES Act would prohibit telecommunication providers from terminating service or charging late fees to individuals or small businesses due to an inability to pay related to COVID-19. Additionally, broadband providers would be prohibited from imposing data caps on customers, or charging fees for exceeding data allotments, but may engage in reasonable network management practices. Broadband providers must also make available its Wi-Fi hotspots free to the public. This provision codifies much of the FCC's Keep America Connected Pledge, which more than 700 companies have voluntarily agreed to do, and which the FCC recently extended to June 30, 2020.

5. \$24 Million in Funding to Develop Maps of Broadband Coverage.

The HEROES Act would provide \$24 million in funding to implement the 2019 Broadband Deployment Accuracy and Technological Availability Act or the Broadband DATA Act, which requires the FCC to revise its methods for collecting information on the availability of broadband, and establishes requirements to testing of reported information, and an associated challenge process. These broadband maps would inform future broadband subsidies and deployments.

6. Preservation of the T-Band for Use by Public Safety and Critical Infrastructure Entities.

The HEROES Act would repeal a 2012 legislative mandate for the FCC to auction the T-Band (470-512 MHz) for commercial use. The T-Band is heavily relied upon today by public safety and critical infrastructure operators, particularly in urban areas. The repeal will enable these incumbents to continue leveraging their systems for critical day-to-day and emergency response communications.

7. Setting Reasonable Rates for Prison Phones and Prohibiting Site Commissions.

The HEROES Act would create a requirement that "all charges, practices, classifications and regulations for an in connection with prison communications services," such as prison phones, are "just and reasonable." The Act would also require the FCC to issue rules, within 18 months, setting the maximum rates prison communications services may charge. The Act sets interim rate caps at \$0.04 per minute for debit or prepaid calling, and \$0.05 per minute for collect calling. The Act also mandates that all charges be "per-minute," prohibits additional per-communication or per-connection charges and prohibits ancillary charges, except for an interim list of ancillary charges or those authorized by the FCC in the FCC's associated rulemaking. Under the Act, telecommunication providers would no longer be able to provide "site commissions" to prison facilities, which are generally fees paid by the telecommunication provider to the prison facility for the right to operate within the prison.

8. Enhanced Lifeline Benefits and Verification Systems.

The HEROES Act would require providers of Lifeline, a voice and broadband subsidy program for low income households, to offer unlimited minutes and data for the duration of the pandemic. The Act also provides \$200 million in funding to states to improve their Lifeline eligibility verification systems.

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