

COVID-19 Illustrates Need to Close the Digital Divide

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SUMMARY. The COVID-19 pandemic has heightened the need for internet connectedness – school and work closures and social distancing measures to slow the spread of COVID-19 require individuals to rely even more heavily on internet access to participate in telehealth programs, distance learning, and job opportunities. Yet, there remains a large digital divide in the United States, with many households lacking access to reliable broadband services. This digital divide has long been a factor limiting the achievement of public health goals for individuals that lack essential broadband infrastructure and COVID-19 response efforts have further limited internet access for those that rely on public internet access points such as public libraries. This Chapter will explore law and policy opportunities to reduce the digital divide and the resulting public health consequences flowing from the digital divide.

Introduction

One goal of the Federal Communications Commission’s (FCC) 2010 Connecting America: The National Broadband Plan was that “[e]very American should have affordable access to robust broadband service and the means and skills to subscribe if they so choose.” Access to broadband is essential to parity in public health, yet many households in the United States lack consistent access to broadband services due to lack of broadband infrastructure and the high cost of service (Crock Bauerly et al., 2019; Tomer et al., 2020). While the digital divide is shrinking, there remain large pockets of rural and urban Americans that do not have consistent access to broadband – this creates disparities in educational opportunities, job prospects, and telehealth availability (Tomer et al., 2020). As the FCC noted in a 2015 rulemaking order:

Today, broadband is essential to participate in society. Disconnected consumers, which are disproportionately low-income consumers, are at an increasing disadvantage as institutions and schools, and even government agencies, require Internet access for full participation in key facets of society.... [S]tudent access to the Internet has become a necessity, not a luxury.

Because broadband availability so greatly influences the social determinants of health, it is sometimes called a super-determinant of health (Crock Bauerly et al., 2019).

The majority of disconnected households are in urban areas, but rural rates of broadband adoption are lower, 79%, when compared to 84% adoption rates in urban areas (Tomer et al., 2020). Even where infrastructure is accessible, some 23.7% of Americans have only one option for purchasing broadband service (Kruger & Gilroy, 2019). Disconnected households are more prevalent in majority

Black neighborhoods, where adoption rates are only 67.4%, compared with much higher adoption rates, 83.7%, in majority-white tracts (Tomer et al., 2020). For individuals living on Tribal lands, 32% have no access to any fixed broadband with reliable speeds, and 36.1% only have access to reliable service from one provider (Kruger & Gilroy, 2019). These broadband disparities can exacerbate economic, educational, and health inequities. For more detailed information related to disparities in access to telehealth services, see Chapter 16.

Educational inequities tied to disparities in broadband access – sometimes called the homework gap – impact the ability of millions of children to meaningfully engage in schoolwork. The COVID-19 pandemic has contributed to the severity of the homework gap, particularly in Black, Native American, Hispanic, and low-income communities (Alliance for Excellent Education, 2020). School closures intended to mitigate the spread of COVID-19, are likely to worsen educational disparities, leaving children that do not have home broadband unable to participate meaningfully in classes and educational activities that have moved on-line to accommodate distance learning. The numbers are staggering: 16.9 million children lack home high-speed internet, including over 30% of Black, Latinx, and Native American households with school-aged children (Alliance for Excellent Education, 2020). Even before the COVID-19 pandemic, Black teens were more likely to face a homework gap due to the digital divide: 25% of Black teens reported that the lack of a home computer or internet service prevented them from completing homework, and 21% relied on public Wi-Fi to complete homework (Andersen & Perrin, 2018). For those households with home broadband access prior to the pandemic, the economic consequences of the COVID-19 pandemic also increase concerns about the ability to pay for household internet service, with 54% of Hispanic users saying they worry about being able to pay for their

home internet services, compared to 36% of Black users and 21% of white users (Vogels et al., 2020).

Federal, State, and Local Broadband Policies and Laws

Unlike other essential infrastructure, broadband is largely provided by private companies, without significant federal oversight over prices or infrastructure development. Nothing in federal law requires internet service providers to provide the same level of service, or to provide service at all, to residents and businesses within their service area, and in 2018 the FCC reclassified broadband as an “informational service” subject to light regulation (rather than a telecommunications service subject to additional federal requirements). This leaves many lower income communities subject to anticompetitive pricing for this essential service, and creates digital deserts in rural areas and areas with higher poverty rates, where private companies may not see an economic benefit from development of this essential infrastructure (Tomer et al., 2020). However, some Tribal and local government entities, where not preempted by state law, are stepping in to fill the voids left by private telecommunications companies, providing public broadband in some 900 communities (Park, 2020).

Federal Broadband Policies and Laws

FCC programs, such as the Rural Digital Opportunity Fund, provide billions of dollars to deploy high-speed broadband to the bidders with the lowest cost request. The U.S. Departments of Agriculture; Housing and Urban Development; and Labor, Employment and Training Administration; and the Institute of Museum and Library Services also administer several programs intended to reduce the digital divide in rural, urban, and tribal areas via loans and grants to fund construction and improvements needed to expand service to underserved communities (Rachfal, 2020).

The FCC also holds authority over several long-standing programs that reduce the economic burdens of broadband services, including E-rate, Lifeline, Connect America, and the Rural Health Care Program. These programs fall under the umbrella of the Universal Service Fund, created in 1934 to ensure access to telephone services, and supported via revenue from telecommunications companies, rather than congressional appropriations (Rachfal, 2020). FCC also recently launched the Connected Care Pilot Program to improve access to telehealth, including funding for the purchase of broadband services for patients that lack home broadband (Holmes, 2020). While these Universal Services programs have provided some relief, the FCC should strengthen and expand these programs to further reduce the digital divide.

There are also federal efforts to collect better information about the digital divide. Concerns over the quality of usage data prompted the 2020 Broadband Deployment Accuracy and Technological Availability Act, which requires the FCC to issue rules governing broadband access data collection and includes measures to increase the accuracy of broadband availability and access maps.

State Broadband Policies and Laws

State governments also have at their disposal a variety of legal and policy interventions to promote broadband, with some states

promoting broad statewide adoption goals, such as Minnesota’s Coordination of Broadband Infrastructure Development law that aims to achieve internet access for all households and business no later than 2022 and requires coordination of broadband installation in conjunction with other infrastructure projects. Conversely, some states hinder efforts by local governments to close the digital divide, using state laws to ban or restrict local governments – such as cities, tribal governments, and utility cooperatives – from providing broadband services (Park, 2020). In *Tennessee v. FCC*, the Sixth Circuit held that federal law did not clearly authorize the FCC to preempt such state laws that place restrictions on municipal broadband services. However, some view community broadband networks as essential to bridging the digital divide (Park, 2020). Eliminating these state law restrictions could increase competition and broadband availability and accessibility in unserved and underserved communities. Federal legislation preventing states from restricting public broadband has been introduced in several legislative sessions, but to date has not been adopted by Congress.

The Legal and Regulatory Response to COVID-19

The U.S. COVID-19 response efforts not only highlight existing inequities in broadband deployment, but also increase the need for reliable broadband at speeds sufficient to support work from home requirements and equitable access to telehealth and remote learning. The equitable provision of reliable broadband is particularly important to prevent a stark expansion of educational disparities, where children that lack home broadband service will fall behind in school.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act includes several programs meant to expand rural broadband deployment and telehealth access, and to assist schools and libraries during closures, including:

- \$13 billion in funding for education agencies to purchase technology, including connectivity, to support remote learning;
- \$3 billion in emergency education relief for states to improve remote learning;
- \$200 million to expand telehealth access; and
- \$50 million to the Institute for Museum and Library Services to “expand digital network access, purchase internet accessible devices, and provide technical support to citizens to address digital inclusion efforts and related technical support.”

While helpful, this funding alone cannot remedy the public health disparities arising from the digital divide.

One of the FCC’s early efforts to eliminate broadband service disruptions was the Keep America Connected pledge, which asked broadband service providers to commit to waiving late fees and not terminating service to small business or residential users that are unable to pay their bills, and to opening their Wi-Fi hotspots to any individual who needs them (FCC News, 2020). These voluntary commitments expired on June 30, 2020, and the FCC’s decision to classify broadband as an “information service” may limit the FCC’s opportunity to require action from broadband providers (FCC News, 2020; Holmes, 2020). The FCC Chairman has urged congressional action to ensure “doctors and patients, students and teachers,

low-income families and veterans, [and] those who have lost their jobs and livelihoods due to the pandemic and the accompanying lockdowns” remain connected throughout the pandemic response (FCC News, 2020). Since mid-March, FCC has also made a variety of short-term adjustments to its affordability programs for the benefit of broadband consumers with increased internet usage needs and uncertain economic futures (Holmes, 2020).

E-Rate Program

Access to high-speed internet has become increasingly essential for school-aged children, particularly as the COVID-19 pandemic has led many schools to opt for continued distance learning into the fall. The FCC’s E-Rate program, codified at 47 C.F.R. § 54.500 et seq., can help ease the burden by providing elementary and secondary schools and libraries with discounts, ranging from 20% to 90%, on broadband services.

As many schools throughout the nation turned to distance learning, the FCC issued a series of orders meant to assist schools and libraries during COVID-19 related closures. First, the FCC waived the gift rules that prevented E-Rate participants from accepting free improved connections or additional equipment for remote learning in a March 2020 order (Holmes, 2020). The waiver allows schools and libraries participating in the E-rate program to accept free upgrades, improved capacity, Wi-Fi hotspots, networking gear, and other equipment and services to support teachers, students, and librarians during the COVID-19 outbreak response. The waiver will allow schools and libraries to partner with service providers to provide mobile hotspots and other wireless devices or direct free broadband services directly to students, and can help “ensure students with limited or no internet connection are connected at home and prevent them from falling behind their peers, furthering the effects of the digital divide.” The FCC order also encourages private sector broadband providers to “partner with schools and libraries to provide mobile hotspots and other broadband-enabled devices to students to help bridge the digital divide during the coronavirus pandemic.”

The FCC also clarified that during COVID-19 related closures, the public can access E-Rate supported Wi-Fi networks while on library and school property (Holmes, 2020). However, the FCC has not taken steps to authorize the use of E-Rate support to provide broadband services more directly to students that lack broadband access at home. Under FCC’s current rules, E-Rate support cannot be used to provide broadband services outside school or library property. Indeed, FCC will reduce E-Rate funding to schools that do provide offsite internet access. Eliminating this funding penalty would encourage more schools to seek other forms of funding to develop offsite broadband directly to student homes (GAO, 2019).

While the FCC has developed a pilot program, the Connected Care Pilot Program, that authorizes the use of Universal Service Funds to support offsite broadband for patients utilizing telehealth services, the FCC has questioned its statutory authority to provide similar offsite E-rate support for offsite broadband for students (GAO, 2019; Holmes, 2020). If the FCC does not move to authorize use of E-rate funds for offsite broadband, federal legislation or directed

funding should be used to clarify the availability of E-rate support for broadband provided offsite to student’s home.

Federal legislation could also help close the homework gap and disparities in access to education during school closures by providing funds for libraries, schools, and tribal entities to purchase hotspots that can be loaned out to provide home internet access or to turn school buses as mobile hotspots (GAO, 2019).

Lifeline Program

The federal Lifeline program, codified at 47 C.F.R. § 54.400 et seq., reimburses telecommunications providers for a \$9.25 monthly discount on broadband and phone services that is passed on to low-income subscribers, with an additional \$25 monthly discount on services provided to rural residents of tribal lands. Eligible households have income less than 135% of poverty guidelines, or participate in federal assistance programs such as Supplemental Nutrition Assistance Program (SNAP), Medicaid, and Head Start, among others. Lifeline subscribers may only utilize the Lifeline discount on one service and must choose to use their discount on either telephone or broadband service, or a bundled service that includes both broadband and phone service. Federal legislation or regulatory revisions that increase the monetary discount provided through Lifeline and allow households to receive a separate discount for telephone and broadband services could help homes that are struggling financially to access broadband services during the COVID-19 pandemic.

To make the program more accessible to a broader array of customers during the COVID-19 pandemic, the FCC recently waived some requirements of the program. Individuals no longer must provide three months of income verification to gain eligibility for the program, making it easier for the recently unemployed to utilize the service (Holmes, 2020). Until August 31, 2020, individuals can confirm their income eligibility for the program using documentation such as a notice of unemployment benefits. In addition, Lifeline providers may not de-enroll subscribers during this waiver period.

The FCC Commissioner has also sought to coordinate with other federal agencies to provide enrollment information to households that are newly eligible for federal services due to the COVID-19 pandemic (Holmes, 2020). Allowing applicants for other federal assistance programs to simultaneously apply for Lifeline support could increase utilization of this program among newly eligible households.

Telehealth and The Rural Health Care Fund

(Note: for additional detailed information on telehealth accessibility and changes to federal and state laws, regulations, and executive orders intended to expand access to telehealth services, see Chapter 16).

The Healthcare Connect Fund, part of FCC’s Rural Health Care Program and codified at 47 C.F.R. § 54.600 et seq., provides significant discounts for broadband connectivity to rural health care providers. As the need for telehealth services has skyrocketed

since the COVID-19 pandemic, FCC has waived the gift rules that previously prevented health care providers participating in the Rural Health Care Program from accepting free improved connections or additional equipment for remote learning.

FCC is also managing \$200 million from the CARES Act to promote telehealth during the COVID-19 response, and an additional \$100 million as part of the newly launched Connected Care Pilot program. Funds from the Connected Care Pilot program will support health care providers' efforts to improve access to telehealth, including offsite broadband services for patients that lack home broadband (Holmes, 2020). This pilot could serve as a model for more permanent programs that bring the benefits of household broadband to many previously disconnected individuals.

Assessment

Many of the programs implemented to provide broadband services during the COVID-19 pandemic provide some relief to individuals that are newly working from home, distance learning, or are newly unemployed. Many households stand to benefit if the FCC were to permanently extend these policy changes. However, the FCC's programmatic responses to the COVID-19 pandemic have failed to bridge the digital divide that prevents many households from accessing the myriad of internet-based school, work, and health related activities that have become routinely internet based as the COVID-19 pandemic persists. Regardless, additional policy changes must be implemented if the United States is to achieve the long-term change needed to quickly, and equitably, close the digital divide and homework gap that preceded the pandemic response, and are heightened by the pandemic response. 🌟

Recommendations for Action

Federal government:

- Congress should enact federal legislation, amending Title 47 of the United States Code, to classify broadband as a telecommunications service, or otherwise provide needed oversight that could help increase competition and eliminate the digital divide.
- Congress should enact federal legislation, amending Title 47 of the United States Code, that prohibits state preemption of local broadband markets and decision-making.
- The FCC should issue an order authorizing the use of E-Rate funding to support offsite broadband access on school buses, at community anchor institutions, and at student homes; and waiving the E-rate funding penalty for schools that provide offsite broadband services. FCC should revise its regulations, at 47 C.F.R. § 54.500 et seq, to codify these changes and expand the E-Rate program.
- The FCC should revise its Lifeline regulations, at 47 C.F.R. § 54.400 et seq., to increase the amount of the Lifeline discount.
- The FCC should work with other federal agencies to bundle Lifeline enrollment with enrollment in other federal programs.
- The FCC should collect data on affordability and availability of broadband service throughout the United States, including demographic data such as language, race, and ethnicity.
- Congress should enact federal legislation requiring broadband infrastructure to be built in conjunction with other government funded construction projects.
- Congress should provide additional funding to libraries, community anchor institutions, and schools for the purchase of mobile hotspots that can be loaned to individuals or used to benefit underserved and unserved communities.

State governments:

- State legislatures should eliminate state laws that preempt communities from establishing municipal broadband services.
- State legislatures and agencies should adopt laws and regulations requiring broadband infrastructure to be built in conjunction with other government construction projects.
- State legislatures should adopt statewide connectivity goals and deadlines.

Local governments:

- Local governments should increase the number of mobile hotspots provided by cities, counties, schools, buses, community anchor institutions, and public health departments. Hotspot-equipped buses can be parked in low-income neighborhoods when not in use.
- City governments should provide free city wide wireless.
- Provide broadband services through community anchor institutions.
- Cities and counties should require broadband infrastructure to be built in conjunction with other government construction projects.
- Local governments should promote competition by creating local public utilities and cooperatives.
- Cities, counties, schools, community anchor institutions, and public health departments should develop public private partnerships to support broadband connectivity.
- Cities and counties should develop community wide connectivity goals.



About the Author

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