



May 28, 2020

Federal Advocacy Report for Palm Beach County, FL

To: Rebecca DeLaRosa, Director of Legislative Affairs

From: Jim Davenport, Partner

Re: Monthly Report

REMOTE WORK ON CAPITOL HILL

The House recently implemented a rule change allowing Members to submit votes for up to ten absent lawmakers by proxy and permit committees to convene hearings, markups, and depositions through a chief administrative officer-approved software platform. These changes will only last 45 days before needing renewal and will not extend beyond the 116th Congress. While some Members are in Washington, most offices will allow their staff to work remotely until after Labor Day.

FUTURE CONGRESSIONAL ACTIVITY

In addition to negotiating COVID-19 relief legislation with the Senate, in the weeks ahead House leadership expects to utilize the remote work flexibilities to convene virtual hearings, markups, and consideration of key 2020 legislative priorities including fiscal year (FY) 2020 appropriations, the National Defense Authorization Act (NDAA), and reauthorization of expiring Surface Transportation and Water Resources Development programs.

COVID-19 Relief Package: State and Local Government Funding

Funding for state and local governments is a key pillar of the HEROES Act, which passed the House on May 15. While there is bipartisan agreement that more needs to be done to help stymie economic hardships for these entities, allocating additional funding has become a divisive issue within the Republican conference. But while some Republican Senators are opposing a “blue state” bailout, more than a handful are supporting state and local relief, and that bodes well for another round of COVID relief legislation sometime in June.

As you know from our previous correspondence, the HEROES Act would provide \$500 billion for states and \$375 billion for cities and counties, which could offset revenue losses. The \$375 billion would be equally split, allocating \$187.5 billion to counties and \$187.5 billion to cities. For cities, the \$187.5 billion would be distributed as follows: \$131.25 billion allocated under the formulas used to distribute CDBG funding (if you are an entitlement city) and \$56.25 billion for non-entitlement cities allocated via population.

In addition to the HEROES Act, a proposal by Senators Bob Menendez (D-NJ) and Bill Cassidy (R-LA) (S. 3752) would provide \$500 billion in aid to state and local governments (of all sizes), territories, and tribes to deal with the COVID-19 pandemic. Funding would be allocated as follows:

- One-third would be distributed based on each state or territory's percentage of the U.S. population. Counties and municipalities would each get one-sixth of the state allocation, in proportion to their share of the state's population.
- One-third would be distributed according to each share of nationwide COVID-19 infections, with counties and municipalities again getting one-sixth of their state's money based on population.
- The final third would be parceled out based on each state's revenue losses as a percentage of combined state losses over the course of this year. Counties and municipalities again would get their one-sixth share, based on their revenue losses in proportion to overall losses in their state.
- Each state would receive at least \$2 billion from the first two tranches — up from \$1.25 billion in the March law — on top of any money they get from revenue losses in the third tranche.
- The funds could be used for pandemic-related costs occurring in 2020 through the end of 2022, or to replace lost revenue during that period.

Paycheck Protection Program (PPP)

Congressional leadership has expressed optimism about reaching a deal that would provide loan recipients from the Small Business Administration's (SBA) PPP with more time and flexibility in using the funds. House Majority Leader Steny Hoyer (D-MD) stated recently that there is a “general consensus” in both chambers that the current eight-week period in which businesses must use the funds is too short, while Senate leadership is pushing for unanimous consent passage of legislation that would address these concerns. The lower chamber passed a [bill](#) from Reps. Dean Phillips (D-MN) and Chip Roy (R-TX) on May 28 that would give businesses 24 weeks to spend the funds instead of eight and eliminate a non-statutory requirement preventing non-payroll costs from accounting for more than 25 percent of loan forgiveness. If the two sides are able to reach an agreement, it's possible that Senators could pass a compromise measure by unanimous consent during the upper chamber's *pro forma* session, placing the bill on President Donald Trump's desk for signature very soon.

Highway Trust Fund

Congress faces a hard deadline of Sept. 30 to address funding for the Highway Trust Fund, providing lawmakers with a potential legislative vehicle to address other pressing infrastructure needs. Senate Environment and Public Works Chairman John Barrasso (R-WY) introduced a five-year, \$287 billion highway-only portion of a Surface Transportation Reauthorization [measure](#) last July, but the bill has yet to advance beyond the Committee for full consideration in the upper chamber despite unanimous support from within the Committee. Conversely, House Transportation and Infrastructure Chairman Peter DeFazio (D-OR) and other House Democrats have focused on supporting a comprehensive infrastructure bill that would address broader programs in addition to the surface transportation funding.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) is currently funded through Sept. 30 and has seen 15 short-term reauthorizations since the end of FY 2017. Lawmakers have yet to coalesce behind an

approach as House Financial Services Chairwoman Maxine Waters (D-CA), Energy and Commerce Chairman Frank Pallone (D-NJ), and Sen. Bob Menendez (D-NJ) have offered dueling proposals for long-term NFIP reauthorization and reform.

RECENT CONGRESSIONAL HEARING COVERAGE –

SENATE AGING COMMITTEE HEARING ON CARING FOR SENIORS AMID THE COVID-19 CRISIS

On May 21, the Senate Special Committee on Aging held a [hearing](#) focusing on care for seniors in nursing homes during the COVID-19 pandemic. There was bipartisan agreement on the need for additional testing in nursing homes during the crisis, and NYU's **Dr. Mark Mulligan** said that the most important tool in combatting the disease would be a vaccine, though promising monoclonal antibody treatments would be important as well. **Ranking Member Bob Casey (D-PA)** repeatedly called for hazard pay for frontline workers, including nursing home workers, and **Sen. Kirsten Gillibrand (D-NY)** called for a "health force" to bolster the public health infrastructure.

Senators and **Dr. Tamara Konetzka** of the University of Chicago noted that star ratings appeared to be uncorrelated with COVID-19 cases in nursing homes. Several Senators highlighted the need for data collection and transparency in nursing homes, with **Sen. Elizabeth Warren (D-MA)** calling for additional data collection in assisted living facilities that receive little Medicare or Medicaid funding as well. Home care services were referenced as an important tool in the pandemic, and **Sen. Mike Braun (R-IN)** brought up the idea that there is a trend happening of moving senior care from congregate care facilities to increased care at home. The risks of nursing home care during the pandemic have underscored the utility of home health care, Dr. Konetzka told him.

Witness Testimony

- **Dr. Mark Mulligan**, Director of the Department of Medicine at the NYU Grossman School of Medicine ([testimony](#)), said that there is a lot that we still do not know about diagnosis, prevention, and treatment of COVID-19. He noted that seniors are at increased risk to the disease due to declining immune systems, and he said that just 11 percent of COVID-19 U.S. infections have been in nursing homes, but those account for a third of deaths. He called a vaccine the most important tool in combatting the disease but highlighted monoclonal antibody treatments and antivirals as well.
- **Dr. R. Tamara Konetzka**, Professor of Health Services Research at the University of Chicago ([testimony](#)), said that nursing homes are often understaffed and that they compete with hospitals for both testing and PPE. She also noted that there is a "strong and consistent" relationship between race and COVID-19 cases and deaths. In addition, there was no meaningful relationship between nursing home five-star ratings and the probability of at least one case of death. Some nursing homes did better than others, she said, but even high-quality nursing homes were unprepared for the crisis. She closed by saying that nursing home payment is fragmented, leading to underfunding in essential areas. Hopefully, she added, this could lead to a fundamental rethinking of payment for long-term care.

- **Dr. Steven Landers**, President and CEO of the Visiting Nurse Association Health Group ([testimony](#)), said that his home health provider is able to maintain care because it is able to maintain its supply of PPE. “Staggering” quantities are required, he said, and his company is paying seven to ten times the normal price. He called for reimbursing home health agencies for telehealth services, noting that it can play an important role in home health. He also emphasized the importance of continuing to allow physicians and nurse practitioners to continue to do home health certifications via telehealth.

Discussion and Questioning

PPE, Testing, and Best Practices

- In response to a question from Chairman Collins, Dr. Konetzka said that it is important to test all residents, regardless of being symptomatic or not. She also said that there needs to be a rapid response to prevent transmission to other residents and staff.
- Ranking Member Casey lamented that there is no national strategy on nursing homes and an insufficient supply of PPE, saying that frontline workers do not need gratitude, they need support. He highlighted a bill ([S. 3768](#)) he introduced to provide \$20 billion in emergency funding to invest in “what works.”
- **Sen. Tim Scott (R-SC)** noted the disproportionate impact of the disease on African Americans and that a large number of African Americans work in senior care — essentially, one vulnerable population taking care of another. He called for a large testing effort and asked about other steps to assist providers and communities. Dr. Konetzka called for technical assistance to nursing homes and Dr. Mulligan called for expanded opportunities to participate in research, such as a monoclonal antibody study.
- **Sen. Mike Braun (R-IN)** asked about what best practices exist for combatting infections in nursing homes. Dr. Konetzka called for regular testing in nursing homes and Dr. Mulligan called for further investments in research and clinical trials.

Reporting

- Ranking Member Casey asked about the need for data and transparency, and Dr. Konetzka said that while it is tempting to downplay data collection during the crisis, it is necessary to know where resources should be directed.
- **Sen. Martha McSally (R-AZ)** brought up assisted living facilities, noting that they get less attention because they receive few Medicare and Medicaid dollars. **Sen. Elizabeth Warren (D-MA)** continued in the same vein, calling for data collection in assisted living facilities and noting that she, **Sen. Ed Markey (D-MA)**, and **Rep. Carolyn Maloney (D-NY)** have launched an investigation into how assisted living facilities track COVID-19 infections and how they prevent infection.

Workforce Issues

- Ranking Member Casey and **Sen. Richard Blumenthal (D-CT)** called for the federal government to fund hazard pay for frontline workers.

- **Sen. Kirsten Gillibrand (D-NY)** called for offering paid leave to health care and long-term care workers. Dr. Konetzka told her that such a measure would provide flexibility for workers but emphasized that there would still be a crisis staffing shortage.
- Sen. Gillibrand also called for creating a “health force,” which would conduct contact tracing, testing, and down the road, vaccinations.
- Sen. Braun asked if the crisis would speed a move from nursing homes to home care over time, and Dr. Landers confirmed a trend of increased interest in home care. Later, Dr. Konetzka told Ranking Member Casey that it is essential to enable more people to receive home- and community-based services (HCBS) now.

Telehealth and Combatting Isolation

- Chairman Collins worried that older people are increasingly isolated during the pandemic. Dr. Landers said that homebound people need access to interaction between home health visits, which can include telehealth check-ins

SENATE COMMERCE HEARING ON BROADBAND AMID COVID-19

On May 13, the Senate Commerce Committee held a hearing entitled “[The State of Broadband Amid the COVID-19 Pandemic](#).” There was bipartisan concern over the lack of affordable and accessible high-speed internet, particularly for students that have seen their classrooms go virtual. Senators also pointed out the broadband gap impacts with telehealth in rural areas and applauded the inclusion of several telehealth provisions in the CARES Act. Further, while most Members voiced their support for the work the Federal Communications Commission (FCC) has been doing to rapidly increase broadband, some voiced their concern over the lack of broadband mapping conducted by the FCC.

Many panelists discussed the challenges small carriers are facing, similar to all small businesses, and some noted carriers are unable to attain the necessary personal protective equipment (PPE) required for employees to visit nursing homes and hospitals. The panelists also voiced their support for the [Emergency Education Connections Act](#), which would provide \$4 billion to K-12 schools to be equipped to host classes online, and the [Keeping Critical Connections Act](#), which would direct the FCC to create an emergency fund for reimbursing small broadband providers if they provide free or discounted broadband services or upgrades.

Opening Statements

- **Chairman Roger Wicker (R-MS)** ([opening statement](#)), noted as the pandemic has hit the United States, broadband usage has increased by 47 percent as work, school, and healthcare have moved online. While bridging the broadband gap has been important before, Chairman Wicker emphasized it is has become an urgent issue. He applauded the FCC’s initiatives, including the Keep Americans Connected Pledge and the Universal Service Fund (USF), as measures to increase broadband availability.

- **Ranking Member Maria Cantwell (D-WA)**, echoed the same urgency to increase broadband, as the FCC recently reported 18 million Americans lack access to broadband. Sen. Cantwell pointed out the Emergency Education Connections Act, introduced by Senator Ed Markey (D-MA), which would provide \$4 billion to K-12 schools for Wi-Fi hot spots, modems, routers, and internet-enabled devices. She applauded Senator Brian Schatz (D-HI) on leading the effort to support a telehealth package in the next COVID-19 related legislation - noting 90 percent of patient's initial contact with doctors will happen online in Washington. Lastly, the Ranking Member was the first of a handful of Senators to bring up the stark broadband gap within Indian country.

Witness Testimony

- **Mr. Steven Berry** ([testimony](#)), President and Chief Executive Officer, Competitive Carriers Association (CCA), noted that all carriers have experienced increased network use due to the pandemic, as Americans try to stay connected. Broadband has also become necessary as classrooms have moved online, which has become difficult for some to maintain as many Americans are seeing financial hardships. For this reason, Mr. Berry notes CCA carriers, and others, have signed on to the FCC's Keep Americans Connected Pledge, which means carriers agree to not terminate service, waive late fees, and open Wi-Fi hotspots. While carriers are doing as much as they can, Mr. Berry expressed many are small businesses that need federal assistance. The FCC's Stay Connected Voucher proposal would help Americans requiring internet service and small carriers via a voucher program.
- **Ms. Shirley Bloomfield** ([testimony](#)), Chief Executive Officer, NTCA – The Rural Broadband Association, discussed the need to expand the FCC's Universal Service Fund Lifeline programs to those in rural areas where costs are higher to deliver broadband services and establish an emergency broadband benefit program for low-income users. Ms. Bloomfield also noted Congress should give additional flexibility to providers to repay loans issued by the Department of Agriculture's Rural Utility Service (RUS) Program.
- **Mr. Gene Kimmelman** ([testimony](#)), Senior Advisor, Public Knowledge, touted broadband as an essential service that is not universally accessible. The FCC has estimated it would cost \$80 billion to increase broadband throughout the country. Mr. Kimmelman noted the need to first implement a broadband mapping program before spending dollars on deployment, stating the FCC has delayed implementing the provisions within the Broadband DATA Act.
- **Mr. Jonthan Spalter** ([testimony](#)), President and Chief Executive Officer, US Telecom – The Broadband Association, argued for the next to expand current proven programs, such as RUS, the Rural Digital Opportunity Fund (RDOF), and the Alternative Connect America Cost Model (ACAM), rather than haphazardly trying to create new initiatives in a time when broadband is most needed.

Discussion and Questioning

Mapping

- **Senators John Thune (R-SD), Jacky Rosen (D-NV), Jon Tester (D-MT), Jerry Moran (R-MO), and Marsha Blackburn (R-TN)** directed their line of questioning towards mapping in terms of

deploying broadband in rural areas. All the panelists applauded the Broadband DATA Act (S. 1822) being signed into law earlier this year — which establishes guidelines for updating broadband maps — citing the importance of accurately identifying underserved areas and deploying broadband effectively. However, the panelists did express their concerns with the project not going forward yet, calling on the FCC to begin updating the broadband coverage maps. Mr. Spalter noted funding this project could be done at an estimated \$25 million with annual plus ups.

E-Rate Program

- **Sen. Markey** noted the need to expand the E-Rate program which supports connectivity for K-12 schools, which the panelists agreed with. Mr. Kimmelman stated E-Rate funding could be utilized to help serve communities. He gave an example of a school district in Colorado that will extend its fiber network to nearby low-income housing complexes. He also noted the program could be expanded to including postsecondary institutions. Mr. Kimmelman also noted this program could be expanded to include telehealth, rather than creating new unproven programs.

Other discussions

- **Senators Mike Lee (R-UT), Dan Sullivan (R-AK), Tom Udall (D-NM)**, and Tester spoke on the importance of closing the broadband divide in Indian country.
- **Chairman Wicker and Senators Thune and Brian Schatz (D-HI)** and Thune noted the need to loosen regulatory barriers, such as permitting, in order to deploy broadband quickly to areas that need it the most. Mr. Berry pointed out the burdensome regulations required to expand broadband into rural areas that might also have federally protected land.

FCC CHAIRMAN DISCUSSES TELEHEALTH, BROADBAND ISSUES AT HOUSE E&C FORUM

On May 19, the House Energy and Commerce Subcommittee on Communications and Technology held a [teleconference forum](#) with Federal Communications Commission (FCC) Chairman Ajit Pai to discuss items related to the COVID-19 pandemic, including access and affordability of broadband. There was bipartisan agreement throughout the forum that the **priority is keeping all Americans connected via broadband**, as the majority of the country is working from home and classrooms have gone virtual. The Chairman also responded to questions regarding telehealth, the E-Rate program, and the Keep Americans Connected Pledge.

Among the key topics of the forum:

- **Telehealth** — Chairwoman Anna Eshoo (D-CA) pressed Chairman Pai on the \$200 million telehealth program authorized by the CARES Act, in which Chairman Pai noted the FCC has approved \$33 million in funding with only one certified invoice. He went onto discuss the nuances behind a newly established program and cited the bureaucratic process as a reason for the delay in pushing out the funding. Full Committee Chairman

Frank Pallone (D-NJ) said he would appreciate input on how regulatory barriers could be removed to make telehealth more accessible.

- **E-Rate** — Chairman Pai noted the FCC does not have the authority to expand the E-Rate program — which subsidizes broadband for schools and libraries — to subsidize broadband at home for students. If Congress were to give the FCC this authority, he noted that the program could be designed to function in a way that’s similar to the Commission’s telehealth program established via the CARES Act.
- **Keep Americans Connected Pledge** — Chairman Pai mentioned that the FCC has received over 2,000 complaints over the course of the COVID-19 pandemic, noting that nearly 500 pertain to internet service providers not fulfilling their Keep Americans Connected Pledge — which signees agree not to terminate service, waive late fees, and open Wi-Fi hotspots. Chairman Pai stated most of the complaints have been resolved by the carriers, whereas other issues were related to billing and network issues. He also pointed out that the pledge has been extended Jun. 30.
- **Broadband Mapping** — Chairman Pai highlighted the need to update broadband maps with the goal of efficiently deploying broadband to rural and low coverage areas. He urged Congress to provide additional funding in this regard.
- **Ligado and 5G** — Rep. John Shimkus (R-IL) supported the FCC’s decision to approve Ligado Network’s 5G plan. Rep. Shimkus and Chairman Pai acknowledged the Pentagon and Senate Armed Services Committee are not supportive of the plan as it could scramble GPS signals. Chairman Pai reiterated that there are safeguards in place in case there is any GPS interference and could limit Ligado’s power.

Please contact us with any questions.