

May 12, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, DC 20510



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Dear Speaker Pelosi, Leader McCarthy, Leader McConnell and
Leader Schumer:

The American Civil Liberties Union (ACLU) strongly urges you to appropriate funds for equitable access to broadband connectivity and technology for students, seniors, and other underserved communities in the forthcoming Phase 4 COVID-19 package. Amidst the COVID-19 pandemic, most people in the United States have said that broadband service has been essential to their lives.¹ Broadband Internet access is necessary now more than ever for people to work, attend school, receive medical care, apply for essential benefits, order food and supplies, and exercise their constitutional rights to speak, protest, organize and associate safely during this time of social distancing.

Yet, even before the current crisis, many people lacked access to high-speed broadband. According to Pew Research Center, nearly 30% of people with lower incomes have no broadband Internet connection at home.² Moreover, with the current economic crisis, a majority of people with lower incomes that do have access are now reporting concern about their ongoing ability to pay for this essential service.³ With unemployment in some states rising as high as 25%, newly unemployed persons may find themselves unable to afford to continue broadband access, making finding new employment even more difficult.

We strongly recommend the forthcoming COVID-19 package:

- **Appropriate 2-3 billion dollars on an ongoing basis for the duration of the crisis and for at least 30 days after the crisis ends to provide an emergency broadband benefit to low-income households and households affected by the ongoing economic crisis, as more fully defined below.**

- **Appropriate an additional 4 billion dollars at a minimum for an Emergency Connectivity Fund in the E-Rate schools and libraries program to provide immediate assistance for students and library patrons that need access to technology to engage in remote and distance learning in their homes.**

The American Civil Liberties Union and all of our 54 state affiliates have been at the forefront of the fight to protect civil rights and civil liberties during the current public health crisis, including students' rights to access their education. Stories of students unable to access their schooling remotely continue to proliferate from Maine to Mississippi, from Colorado to West Virginia.⁴ In New York City, some students received tablets only to find themselves unable to connect remotely to their classes due to a lack of internet access at home.⁵ Many students of all ages and teachers are resorting to attending classes from school parking lots in an attempt to access an Internet connection.⁶ In Alabama, Gadsden State Community College recognized many of its students would face connectivity challenges and installed hot spots in designated parking lots for students to use from their

¹ Emily A. Vogels, Andrew Perrin, Lee Rainie, & Monica Anderson, *53% of Americans Say the Internet has Been Essential During the Covid-19 Outbreak*, PEW RESEARCH CENTER (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

² Monica Anderson & Madhumitha Kumar, *Digital divide persists even as lower-income Americans make gains in tech adoption*, PEW RESEARCH CENTER (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

³ Emily A. Vogels, Andrew Perrin, Lee Rainie, & Monica Anderson, *53% of Americans Say the Internet has Been Essential During the Covid-19 Outbreak*, PEW RESEARCH CENTER (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

⁴ See, e.g., Erica Breunlin, *How do you study online without a computer or internet access? It's a reality for many Colorado kids.*, COLO. SUN (Apr. 13, 2020), <https://coloradosun.com/2020/04/13/colorado-online-learning-remote-learning-students-teachers-coronavirus-internet/>; Shauna Johnson, *Pandemic puts pressure on already struggling West Virginia students says National Communities in Schools leader*, WEST VIRGINIA METRO NEWS (Apr. 12, 2020), <http://wvmetronews.com/2020/04/12/pandemic-puts-pressure-on-already-struggling-west-virginia-students-says-national-communities-in-schools-leader/>; Rachel Ohm, *For thousands of students without home internet access, remote learning is an extra challenge*, PORTLAND PRESS HERALD (Apr. 5, 2020), <https://www.pressherald.com/2020/04/05/for-thousands-of-maine-students-without-home-internet-access-remote-learning-is-an-extra-challenge/#>; Wilton Jackson and Ellen Ciurczak, *Remote Learning: How are Mississippi Teachers, students, and administrators coping?*, MISSISSIPPI CLARION LEDGER (Mar. 31, 2020), <https://www.clarionledger.com/story/news/2020/03/31/mississippi-teachers-students-coping-internet-remote-learning/2894820001/>.

⁵ Cecelia Kang, *Parking Lots Have Become a Digital Lifeline*, NYTIMES (May 5, 2020), <https://www.nytimes.com/2020/05/05/technology/parking-lots-wifi-coronavirus.html>; Dana Goldstein, Adam Popescu and Nikole Hannah-Jones, *As School Moves Online Many Students Stay Logged Out*, N.Y. TIMES (Apr. 2, 2020), <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html>.

⁶ See Chacour Koop, *WiFi buses and parking lot learning: Schools adapt to teaching kids without internet*, THE RALEIGH NEWS & OBSERVER (Apr. 6, 2020), <https://www.newsobserver.com/news/coronavirus/article241751376.html>.

cars.⁷ In response to these incidents, twenty-five of our affiliates have called upon their state and local government officials to act decisively and immediately to provide equitable access to the connectivity and technology necessary for remote and distance learning to *all* students and to ensure their privacy is properly protected while they access their education using educational technologies.

Broadband connectivity and internet-enabled technology are essential parts of ensuring students can access their education when all learning happens remotely, and states have the responsibility to provide needed services and devices. However, we recognize that state and local governments likely have significant challenges providing these necessities on their own. The federal government plays an essential role in ensuring access to modern communications for all of us, and for students in particular. The programs supported by the Universal Service Fund have provided needed support for access to communications by people and families with lower incomes, rural families, and schools and libraries for decades.⁸ USDA provides additional support to rural communities.⁹ Those existing program frameworks and regulatory regimes can be used to quickly address immediate needs for connectivity and technology until the pandemic subsides.

We strongly urge you to use the infrastructure of these existing programs to disburse emergency funds to provide broadband connectivity and internet-enabled technology to those who need it. In April, the ACLU joined The Leadership Conference on Civil and Human Rights and over 70 other civil society organizations calling on you to address the need for broadband connectivity for all people with lower incomes and people impacted by the ongoing economic crisis.¹⁰ In keeping with that letter, we again strongly urge Congress to:

- Appropriate \$2 to 3 billion per month for the extent of the crisis and for at least 30 days following to support an emergency broadband benefit that will provide free, sufficient, and sustained broadband Internet access service for all eligible households
- Provide that eligible broadband Internet access services available to eligible households is defined as internet access at minimum speeds of 100 megabits per second downstream/10 megabits per second upstream, or the highest internet access

⁷ Gadsden State Community College to use parking lots as WiFi hotspots for enrolled students, WVTM 13 Digital (Apr. 2, 2020), <https://www.wvtm13.com/article/gadsden-state-community-college-to-use-parking-lots-as-wifi-hotspots-for-enrolled-students/32023774#>.

⁸ FCC, Universal Service Fund, <https://www.fcc.gov/general/universal-service> (last visited May 5, 2020).

⁹ USDA, Programs & Services for Utilities, <https://www.rd.usda.gov/programs-services/programs-services-utilities> (last visited May 5, 2020).

¹⁰ Letter from the Leadership Conference on Civil & Human Rights to Senator Mitch McConnell, Senator Charles Schumer, Representative Nancy Pelosi, & Representative Kevin McCarthy (Apr. 14, 2020), <https://civilrights.org/resource/leadership-conference-letter-affordable-broadband-needed-for-public-health-economic-security/>.

speed available to a household. These benefits should also be tailored for tribal areas to ensure broadband access at the highest speeds possible for tribal communities.

- Define eligible households to include households in which at least one member of the household is within 135 percent of the federal poverty guideline, was recently laid off, furloughed, applied for or been approved for state unemployment insurance, participates in Supplemental Nutrition Assistance Program (SNAP), Medicaid, free and reduced school lunch, Supplemental Security Income (SSI), Federal Public Housing Assistance (FPHA), the Veterans Pension and Survivors Benefit, is eligible for any free or reduced price program currently offered by broadband service providers to low income households, or qualifies to live in low income housing based on the state or local guidelines of the household's location.
- Prohibit service providers from imposing any delay, co-payment, waiting period, or limitations for customers owing arrearages.

Title III of Division M of the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act), H.R. 6800, introduced today, represents a very good start and the right approach toward bridging the broadband connectivity gap.¹¹ The bill would accomplish many of the goals outlined above and would appropriate 4 billion dollars (authorizes 8.8 billion dollars) to fund the emergency benefit. It would also provide a benefit for connected devices and ensure service by requiring broadband service providers to provide these services upon request from an eligible household. This provision would go a long way to providing people the needed broadband services now and would provide the infrastructure to replenish the fund should it become necessary. The ACLU believes this emergency benefit for broadband service should be included in the final stimulus package.

Broadband Internet access will not be enough to close the digital divide or bridge the homework gap, however. Students thrust into distance and remote learning need connection-enabled devices¹² to access their classes, complete homework, and connect with their teachers. Pursuant to the Coronavirus Aid Relief and Economic Security Act ("CARES Act"), the United States Department of Education is making nearly 3 billion dollars available in grants to help states "address student needs arising from the COVID-19 related disruption of the current academic year."¹³ Additionally, the CARES Act provided for a 13.2 billion dollars fund to address the many impacts COVID-19 has had and continues to have on schools' ability to provide students' education.¹⁴ Those funds are a step

¹¹ H.R. 6800, 116th Cong. (2020), <https://docs.house.gov/billsthisweek/20200511/BILLS-116hr6800ih.pdf>.

¹² A connection-enabled device suitable for remote or distance learning must, at a minimum, be a laptop computer or tablet with a built-in or external microphone and webcam that is capable of connecting to advanced telecommunications services and information services.

¹³ U.S. Dept. of Ed., Governor's Emergency Education Relief Fund, <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/> (last visited May 5, 2020).

¹⁴ U.S. Dept. of Ed., Elementary and Secondary School Emergency Relief Fund, <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/> (last visited May 5, 2020).

in the right direction and they can be used to help address many of the issues schools are facing, but because there are other pressing funding needs, they will not be sufficient to close the “homework gap” between students with sufficient access to the internet and those without.

To bridge that gap, Senator Markey with 46 cosponsors in the Senate,¹⁵ and Rep. Meng with more than 100 cosponsors in the House,¹⁶ have introduced legislation that would create an Emergency Connectivity Fund within the existing E-Rate program, which is supported by a broad coalition of education and related national associations.¹⁷ Title II of Division M of the HEROES Act includes similar provisions and an appropriation of 1.5 billion dollars (authorization for 5 billion dollars) to the fund.¹⁸ We support these efforts and urge you, in the final legislative package, to:

- Appropriate at least 4 billion dollars for an emergency fund for schools and libraries using the E-Rate program infrastructure for fast and equitable distribution of the funds.
- Explicitly allow connected devices and broadband access services to be used in students’ and library patrons’ homes.
- Require eligible schools and libraries to prioritize the provision of eligible technology and access services to those students and library patrons who currently lack those technologies and services.

Finally, many people in both rural and urban areas completely lack access to broadband service or lack access at sufficient speeds because the infrastructure has not yet been deployed to their homes.¹⁹ Additional funding to deploy broadband infrastructure to rural, unserved, and underserved communities rapidly, especially Tribal lands, should also be seriously considered as part of the next stimulus package. Rep. Deb Haaland has

¹⁵ See, Press Release, Senators Markey, Schumer, Cantwell, Van Hollen, Bennet, Hassan, and Schatz Lead Colleagues on Legislation to Ensure All Students Have Access to Internet During Coronavirus Pandemic (May 12, 2020).

¹⁶ See Press Release, Meng Urges House and Senate Leaders to Ensure Students Have Internet Access for Remote Learning During COVID-19 Crisis (May 11, 2020), <https://meng.house.gov/media-center/press-releases/meng-urges-house-and-senate-leaders-to-ensure-students-have-internet>.

¹⁷ Letter from coalition of education and related national associations to Senator Mitch McConnell, Senator Charles Schumer, Representative Nancy Pelosi, & Representative Kevin McCarthy (Apr. 22, 2020), <https://educationvotes.nea.org/wp-content/uploads/2020/04/Homework-Gap-Coalition-bill-sign-on-letter2.pdf>.

¹⁸ H.R. 6800, 116th Cong. (2020), <https://docs.house.gov/billsthisweek/20200511/BILLS-116hr6800ih.pdf>.

¹⁹ In Arkansas, fully 23% of people lack home internet access according to one report. Amadou Diallo, *How to reach students without internet access during coronavirus? Schools get creative*, NBC NEWS (Apr. 11, 2020), <https://www.nbcnews.com/news/education/how-reach-students-without-internet-access-during-coronavirus-schools-get-n1186251>. See BROADBAND DATA AND MAPPING: ISSUES FOR THE 116TH CONGRESS, CRS REPORT R45962 (Oct. 16, 2019), <https://crsreports.congress.gov/product/pdf/R/R45962>.

introduced COVID-19 DISASTER in Indian Country Act, which would take steps in the right direction toward providing wireless broadband access on Tribal lands.²⁰

Right now students in every state are divided between those who are able to access their educations remotely and those who are not. But the shortcomings of our tech-driven COVID-19 world extend far beyond that. Older adults cannot use telehealth services and are placing their health at risk to receive medical attention in person or skipping doctors' visits. During this extended period of social distancing, people without access to broadband also may lack adequate access to communication with their families, to their religious services, to teletherapy,²¹ to their communities, to the most updated public health advice about the pandemic, and to their governmental representatives, which puts undue pressure on them to violate social distancing recommendations. The newly unemployed may also find themselves unable to safely look for new work if they do not have or lose access to broadband services that are essential to job searches.

With the crisis showing no signs of subsiding and the prospect of returning to everyday life uncertain in the near term, these disparities harm our constitutional rights to speak and associate freely. To alleviate the harms that disproportionately affect students, older adults, the newly unemployed and other vulnerable communities, Congress must take bold action across multiple fronts to ensure access to broadband and connectivity-enabled technology. We urge you to adopt these measures in the forthcoming stimulus package.

Thank you for your attention to this urgent request. Please do not hesitate to contact Kate Ruane, kruane@aclu.org, (202) 675.2336, with any questions.

Sincerely,



Ronald Newman
National Political Director



Kate Ruane
Senior Legislative Counsel

²⁰ Press Release, Haaland, Heinrich, Cole to Introduce Bill to Unleash Emergency Access to Broadband Internet in Indian Country (May 8, 2020), <https://haaland.house.gov/media/press-releases/haaland-heinrich-cole-introduce-bill-unleash-emergency-access-broadband>.

²¹ William Wan, *The coronavirus pandemic is pushing America into a mental-health crisis*, Wash. Post (May 4, 2020), <https://www.washingtonpost.com/health/2020/05/04/mental-health-coronavirus/>.

CC:

Senate Commerce Committee

Senate Appropriations Committee

Senate Health, Education, Labor, and Pensions Committee

House Energy and Commerce Committee

House Appropriations Committee

House Education and Labor Committee