

Closed Captioning / ADA Requirements Where it Currently Stands for PEG

by Dave Garb, Legislative Committee Chair

Universal Service Fund - Latest Update

On January 19th, the 5th Circuit Appellate Court tried to decide if it should toss out a ruling that upholds the Federal Communications Commission's Universal Service Fund. The judges expressed their objections about the constitutionality of the practice of using an outside company to collect fees for the telecom assistance programs.

The USF was originally designed by having interstate long distance carriers appraised in order to subsidize telephone service to low-income households and high-cost areas. In 1996, the Telecommunications Act expanded this definition to include among other things rural health care providers and eligible schools and libraries.

But litigants have been challenging this fund in different circuits throughout the country as they have argued that this program is an unlawful authorization to the FCC by Congress' own taxing power.

Last March, the 5th Court upheld the FCC's authority totally, though in June they agreed to rehear the litigation.

During the September proceeding, the court seemed concerned by the way the fund was currently set-up. According to the figures in the court documents the USF seems to have grown to around \$7 billion in 2020, from just over \$1 billion in the mid-1990s.

An attorney for the FCC told the court that the FCC's universal service definition has been extended over the years to cover new technologies, while accounting for the growth of the program, as directed by regulation.

Though he did not provide thoughts on what it might cover in the future, the attorney went on to say that "There are many different ways that people communicate these days". But the key point in the case, is that Congress gave the FCC the clear legal authority to set up the universal service system.

Back in March, this was the crucial point that guided the Fifth Circuit court decision to uphold their authority. They held that Congress had properly limited the commission's revenue-raising activity while adequately providing the FCC with "intelligible principles" to guide the fund's administration.

Reform discussions are currently being held in a U.S. Senate working group. Their objective is to expand the revenue stream to go further than the interstate telecoms. They are looking to have it include all Broadband Internet Access Services in order to fund the Universal Service Fund programs.

FCC Chairwoman Rosenworcel Proposes to Restore Net Neutrality Rules and Authority Over Broadband Providers Under Title II

From the Office of Chairwoman Rosenworcel - Sept. 26, 2023:

The internet is too important to our society and economy not to have effective oversight. However, in 2018, the FCC abdicated its authority over broadband and repealed net neutrality. Today, FCC Chairwoman Jessica Rosenworcel shared with her colleagues a proposal that would begin the process of re-establishing the FCC's oversight over broadband and restoring uniform, nationwide net neutrality rules, which would allow the FCC to protect internet openness and consumers, defend national security, and advance public safety.

The Chairwoman is proposing the FCC take the first procedural steps toward reaffirming rules that would treat broadband internet service as an essential service for American life. As work, healthcare, education, commerce, and so much more have moved online, no American household or business should need to function without reliable internet service. This was especially true during the pandemic. Such rules would affirm—under Title II of the Communications Act—that broadband service is on par with water, power, and phone service; that is essential.

The proposed rules would return fixed and mobile broadband service to its status as an essential "telecommunications" service. The proposal will be made public and will allow for public input. The proposal seeks to largely return to the successful rules the Commission adopted in 2015.

How It Helps Consumers?

Openness – Establish basic rules for Internet Service Providers that prevent them from blocking legal content, throttling your speeds, and creating fast lanes that favor those who can pay for access.

Security – Reclassify broadband internet access to give the FCC and its national security partners the tools needed to defend our networks from potential security threats.

Safety – Allow the FCC to enhance the resiliency of broadband networks and bolster efforts to require providers to notify the FCC and consumers of internet outages.

Nationwide Standard – Establish a uniform national standard rather than a patchwork of state-by-state approaches, benefiting consumers and Internet Service Providers.

To hear the entirety of FCC Chairwoman Jessica Rosenworcel's remarks from the National Press Club on September 26, 2023, please visit the link below.

[Chairwoman Rosenworcel Remarks - 9/26/23](#)

Comments on Safeguarding and Securing the Open Internet Sought by the FCC

In order to re-establish the FCC's oversight over broadband and restoring uniform, nationwide net neutrality rules, the FCC has also put forth a notice of Proposed Rulemaking seeking comments for safeguarding and securing the Open Internet.

Public Notice - WC Docket No. 23-320:

On September 28, 2023, the FCC released a public draft of its Notice of Proposed Rulemaking (NPRM) seeking comment on proposed rules for safeguarding and securing the open Internet, which is planned for vote at the FCC's open meeting on October 19, 2023. The proposed draft would reestablish the Commission's authority over broadband Internet access service (BIAS) by classifying it as a telecommunications service under Title II of the Communications Act of 1934. There is currently no expert agency ensuring that the Internet is fast, open, and fair.

The draft NPRM proposes that the FCC take the first procedural steps toward reaffirming rules that would treat broadband internet service as an essential service for American life. As work, healthcare, education, commerce, and so much more have moved online, no American household or business should need to function without reliable internet service. This was especially true during the pandemic. Such rules would affirm—under Title II of the Communications Act—that broadband service is on par with water, power, and phone service; that is essential. More facts are listed in the fact sheet linked below.

Regarding accessibility for individuals with disabilities, the draft seeks comment on how the proposed reclassification of BIAS would affect:

- The availability and performance of IP-based telecommunications relay services (TRS);
- The FCC's authority to ensure that individuals with disabilities can communicate using IP-based services such as video communications and electronic messaging services, IP equipment, and mobile browsers;
- The requirement that Internet service providers (ISPs) comply with certain sections of the Communications Act (Sections 225, 255, and 251(a)(2)), and associated FCC rules, which advance access for persons with disabilities, and the Commission's proposal to forbear from (that is, refrain from) applying TRS Fund contribution requirements;
- Past analyses and conclusions that the Communications Act, as amended by the 21st Century Video and Communications Accessibility Act (CVAA), provides the FCC with authority to ensure that consumers with disabilities can access broadband networks regardless of whether BIAS is classified as telecommunications service or information service.
- Emergency communications and public safety of persons with disabilities by preventing the degradation of latency-sensitive and data-intensive applications;
- IP-based home health monitoring systems and other connected systems for individuals with disabilities;
- The implementation and enforcement of other laws, such as the Americans with Disabilities Act and the Rehabilitation Act, designed to protect individuals with disabilities.

The draft NPRM also asks about the accessibility of ISPs' website disclosures. Are more requirements needed to ensure accessibility? Should ISPs be encouraged to use the Web Accessibility Initiative guidance?

The comment and reply comment dates are proposed to be December 14, 2023 and January 17, 2024. More information about the filing procedures will be sent out through an AccessInfo after the draft is considered at the October open meeting.

Link to the draft Notice of Proposed Rulemaking:

URL: <https://docs.fcc.gov/public/attachments/DOC-397309A1.pdf>

Link to Fact Sheet: <https://www.fcc.gov/document/chairwoman-rosenworcel-proposes-restore-net-neutrality-rules>

STOP H.R. 3557

As we have been reporting on for the last few months, the **American Broadband Deployment Act of 2023** (H.R. 3557) was passed by the Congressional House Energy and Commerce Committee. If enacted upon, it would impose new restrictions on local authorities' ability to regulate a variety of state and local land use and zoning issues pertaining to the deployment of the telecommunications infrastructure. This would include wireless and wireline deployment, as well as new limits on requirements and renewals of cable franchise agreements.

To make sure everyone is totally informed on the ramifications of this act, JAG has created a short video that will relate an in-depth picture of HR 3557.

It can be found at: https://youtu.be/fzP_t_SPzGk Please share with all!

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