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Legislative Update

Your Municipal Communications Resource

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News from Washington DC and Communication Sessions at the New Jersey League of Municipalities Annual Conference

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!



Special Sessions on:

**Broadband - Available Federal Funding,
Using Your Existing Infrastructure and H.R. 3557,
The American Broadband Deployment Act of 2023
& New Ways You Can Communicate with Your Citizens Beyond the
Traditional Cable Television Channels!**

The New Jersey League of Municipalities will be holding their 2023 Annual Conference in Atlantic City, November 14th through the 16th.

JAG will be joining forces with the League to present two timely sessions on broadband that will not only be of interest but must for you to know about to help you steer you through its deployment.

Follow the Money - The Sequel Wednesday, November 15th at the Atlantic City Convention Center-Room 413 at 10:45AM, will guide you through the federal funding that is available to ensure broadband access. Billions of dollars have begun to flow to the states for distribution. This panel will explore the status of NJ's broadband deployment program, how municipalities can access the money, and what to do with it once it arrives at the local level. Panelist: Robert Boyle - CEO, Planet Networks; Valarry Bullard - Transparency Officer & Broadband Advisor, Governor's Office of Disaster Recovery; Bob Duthaler - President, JAG & Station Manager, Bloomfield Township; Joseph Rivera - Manager, Broadband Access, NJ Board of Public Utilities; Nancy Werner, Esq., Partner, Bradley Werner, LLC. Moderator: Brian C. Wahler - Mayor, Piscataway Township - Past President, NJLM

Using Existing Infrastructure to Enhance Broadband Deployment, Thursday, November 16th in Room 315 at 9AM, Here you will learn how utilities and municipalities can work together to accelerate broadband deployment for their communities. Discover strategies, options, and real-world success stories, and learn about the legislative efforts that could assist or hinder these goals (HR 3557) Panelists: Robert Boyle - CEO, Planet Networks; Edward Purcell, Esq., Attorney, Price Meese Shulman and D'Arminio; Nancy Werner, Esq., Partner, Bradley Werner, LLC. Moderator: Brian C. Wahler - Mayor, Piscataway Township - Past President, NJLM

In addition to these broadband sessions, JAG will also be hosting a special discussion for those interested in Local Access Television, called: **Municipal Television: It's Not Just Cable Anymore**, Thursday, November 16th in Room 409 at 10:45AM. In this lively forum you will explore the various ways a municipality can communicate with their citizens beyond the traditional cable television channels. Panelists: Geoff Belinfante - TV Commissioner, WM-77 West Milford Township; Bob Duthaler - President, JAG & Station Manager, Bloomfield Township; Gina Forbes - Station Manager, Woodbridge Television; Joe Fernandes - Assistant Manager, Woodbridge Television.

Please join us and see how we can prepare you for the broadband transformation and also help you to communicate better with your specific audience.

JAG (Jersey Access Group) is an organization that advocates, promotes, and preserves the right to media production, distribution, civic engagement, and education in support of diverse community voices, through Public, Educational and Government access facilities and other forms of media.

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