Washington Update

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USF Court Challenge

Legal Theory

- Consumers' Research challenged the constitutionality of the USF contribution mechanism;
  - "Non-delegation" doctrine – a legal theory about the extent to which Congress can delegate authority to federal agencies;
  - CR claimed the FCC has the power – under 47 USC § 254 – to raise as much revenue as it chooses and spend it without constraint.

Legal Process

- 5th, 6th, and 11th circuits ruled the fund is constitutional.
- 5th Circuit (*en banc,* or rehearing, review) declared the USF contribution mechanism to be unconstitutional;
  - This was based on a "double-layered delegation" theory – the delegation to the FCC _and_ the sub-delegation of administrative tasks to USAC;
  - Case "remanded" to the FCC – USF _not_ "vacated."

USF Court Challenge

Supreme Court

- Oral argument took place March 26, decision in favor of the FCC issued June 30.
- The Court found that:
  - The "sufficiency" directive in Section 254 operates as a "qualitative" cap;
  - Section 254 "makes clear whom the program is intended to serve" and "defines the services those beneficiaries should receive";
  - Case should be remanded to the 5th Circuit.

Consumers' Research

- Not giving up...picking up on footnote 9 of majority opinion & Gorsuch dissent:
  - CR has sought rehearing in 5th Circuit on 254(c)(3) & (h)(2) issues not decided by the Court;
  - These provisions permit support for "advanced" and "additional" services for E-rate and Rural Healthcare beneficiaries – WiFi Hotspots/on School buses.

USF Court Challenge

What happens next?

– Consumers' Research 254(c)(3) & (h)(2) issue awaiting 5th Circuit action.

  • Rural industry will continue to support our USF brethren.

– Congress now takes up the mantle of long-term reform.

  • USF working group has restarted discussions on reform – on the table:

    ○ Contributions – including assessing broadband revenues & "big tech;"

    ○ Affordable Connectivity Program;

    ○ Distribution – including "future of USF" (sustainability/op ex funding).

USF Working Group

Bipartisan House & Senate Group Looking at Modernization of the USF

- Group began discussions on distribution and contribution reform in 2023.
- Discussions reportedly include bringing ACP into the USF.
- Assessing "big tech" for contributions was discussed as well.
- Discussions were "paused" as *CR v FCC* case made its way through Supreme Court.

Request for comment includes questions on

- Whether the program is effective.
- How to address accountability/upfront vetting of recipients.
- Other goals should the program pursue.
- Contribution reform.

RLEC USF

Existing Mechanisms (ACAM, cost)

- Enhanced ACAM:
  - FCC must adjust support levels (to account for better mapping data/competitive overlap) before end of 2025;
  - NTCA's proposed methodology for the locations subject to adjustment intended to limit large swings in support levels.

- ACAM 1& 2 CAF-BLS and HCLS – what's next? Wait for BEAD!
  - Better as a 2027 conversation, as we need:
    - Better political environment;
    - Better maps;
    - Better process for translating BDC data into funding decisions.

Other USF Distribution Issues

- **RDOF 2? – NO.**

- **Future of USF/NOI**
  - Sustainability support? Replacement capital?
  - Model vs actual cost vs something else?
  - Fix likely means embracing a "POLR" concept – *but it could mean welcoming in others . . .*

- **E-Rate – buses/hotspot, and overbuilding concerns.**

- **ACP gone – not USF, but a critical piece of the puzzle.**

Broadband Equity, Access, and Deployment (BEAD) Program

- **Technology shift is underway...to "Technological Neutrality"**
  - "Benefit of the Bargain;"
  - No fiber preference – "priority broadband project" = 100/20, 100ms latency and "scalability;"

- **Regulatory Burdens Eliminated**
  - Labor, Employment, and Workforce Development, Climate Change – gone;
  - Open Access/Net Neutrality and Local Coordination and Stakeholder Engagement – gone;
  - Middle Class Affordability Plan – gone; "low-cost" option = defined by subgrantee and pegged to Lifeline eligibility.

- **Bidding**
  - Lowest cost to program wins (with exceptions).

Administration Priorities

RUS programs

- Zeroed out in President's budget;
- House Appropriations funded the RUS programs.

Federal Staff Cuts

- Loss of knowledge at FCC complicates USF reform/IP transition advocacy;
- Loss of staff at other federal agencies is problematic as well.

One Big Beautiful Bill

Taxation of Broadband Grants

- Bonus depreciation for capital expenditures included;
- Broadband Grant Tax Treatment Act (introduced in both the House and Senate) was dropped.

Spectrum Authority Restored

- FCC under orders to raise $85 billion from spectrum auctions.

National Broadband Map

Broadband Serviceable Location Fabric

- Little insight into adjudication of Fabric challenges is available;

- Missing/mislabeled BSLs persist.
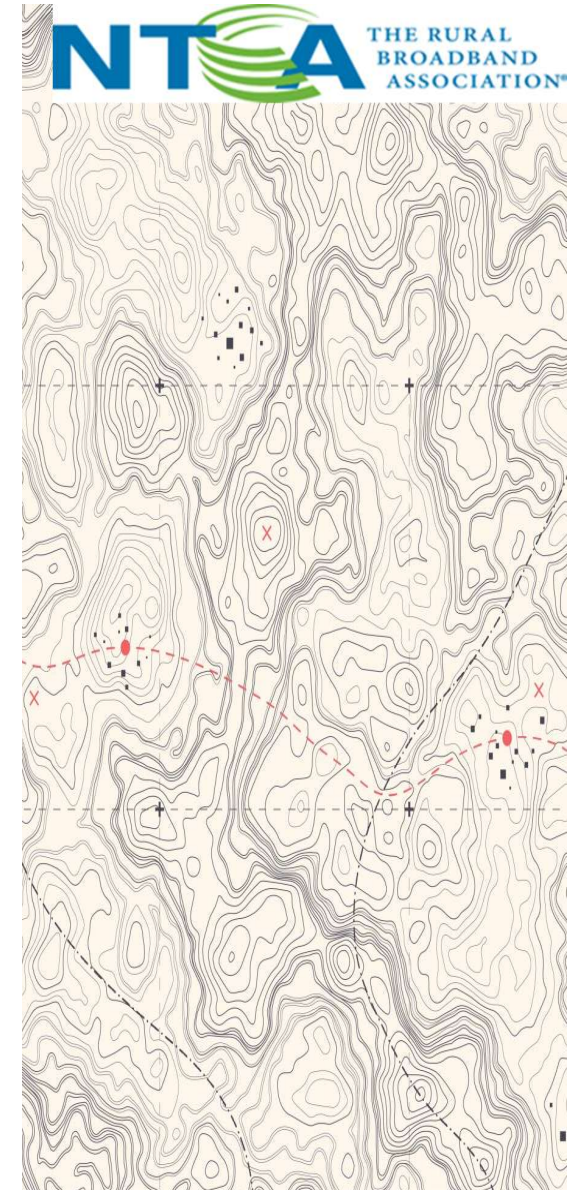
National Broadband Map

Availability problems

- Reporting standards are not based on **actual** performance, but on **advertised**;

- Overstatements of coverage remain on BDC;

- Speed test data not allowed for bulk availability challenges;

Translate of Coverage Data for USF Funding

- ***FCC should not blindly reduce or eliminate funding for an area based upon coverage claims***.
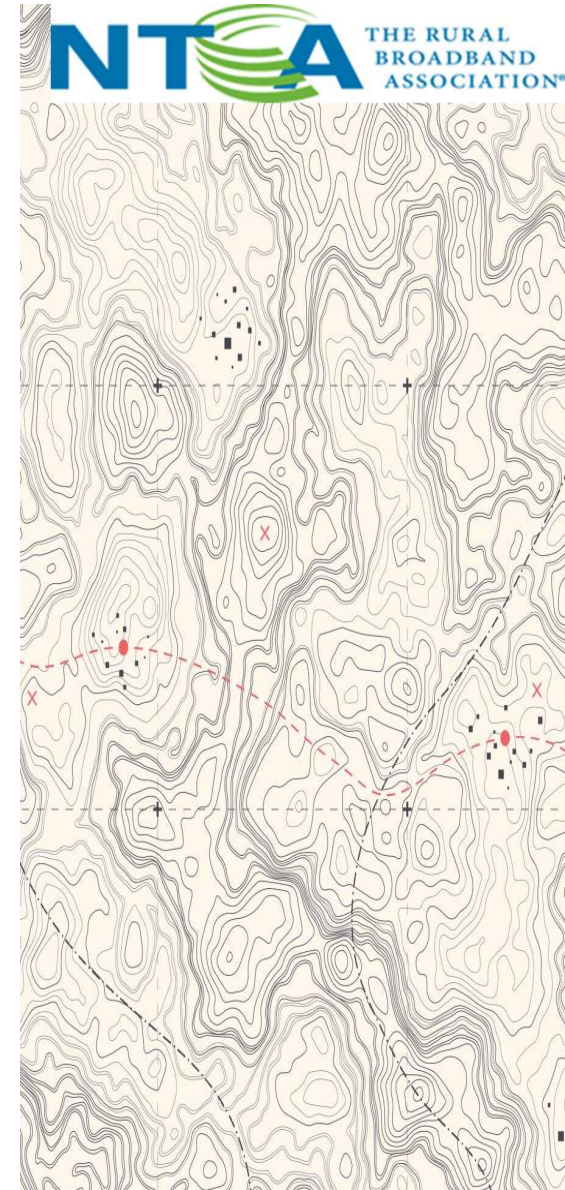
Unleashing Prosperity Through Deregulation

Executive Order 14192 (January 31, 2025)

- Agencies must repeal at least <u>10</u> existing regulations <u>for any new</u> regulation;

- Unclear what is a "new" regulation;

- Incremental cost of all new regulations shall be offset by cost of repealed regulations;

- Unclear is this applies to;
  - amended regulations;
  - across title 47 of the CFR for the FCC;
  - "guidance" documents;

- Each agency will be given a "total incremental cost allowance" for new regulations;

- *All new regulations with a cost of $100m or more must be approved by OMB*.

In Re Delete, Delete, Delete

FCC initiative to eliminate unnecessary/ineffective regulations

- NTCA proposals include certain:
  – USOA/separations/rate of return re-prescription rules;
  – Digital discrimination;
    * Required by statute, thus FCC or 8th Circuit could only pair them down;
  – Broadband labels rules
    * (again, required by statute so pairing back is only option);
  – MVPD rules;
  – Cybersecurity/cyberbreach reporting rules;
  – Disaster reporting rules.

Follow-on rulemaking proceedings will be needed in most cases.

Telephone Access Charges

SLCs and ARCs

- FCC seeking comment on mandatory detariffing of subscriber line charges ("SLCs") and access recovery charges ("ARCs"):

  - Proposal mistakenly assumes RLECs have significant rate flexibility to recover these revenues;
  - Customer confusion/frustration would ensue.

Business Data Services

NPRM seeks comment on:

- Eliminating ex ante pricing regulation and tariffing obligations for legacy lower-capacity (DS3 and below) end user channel termination services for all ILECs;

- Deregulating and detariffing rates charged for lower-capacity transport services provided by rate-of-return carriers.

IP Transition

FCC "technology transitions" docket opened in 2013 – disparity in results...

- NTCA members are leaders in the IP transition:
  - 86% of members' customers are connected by fiber-to-the-premises networks;
  - 83% have some IP-enabled switching capabilities within their networks today;
    - *TDM tandems remain in service across the US*;
    - These limit RLECs' ability to authenticate caller-ID.

- Existing FCC rules limit all providers' ability to move away from non-IP facilities:
  - NTCA members should have ability to transition to hosted/cloud VoIP without triggering discontinuance requirements or affecting ETC requirements;
  - IP interconnection rules are critical to continued affordability of voice;

Regulation and the Courts

"Digital discrimination" rules

- FCC adopted a discriminatory intent _**or**_ impact standard;
  - Latter means a business decision set in motion without any discriminatory intent but that nonetheless hinders "equal access" to broadband;
  - Pending decision in 8th circuit.

Data Breach Order

- Expanded categories of data that would be covered by breach notification rules;
- Pending decision in 6th circuit.

Permitting – A Maze of Red Tape

Federal:

- Time consuming (a year of more is common);

- Process varies from agency-to-agency (or office-to-office within an agency);

- Agencies have limited staff resources; and

- Streamlining efforts have focused on larger projects (pipelines).

State and local:

- State and local fees are increasing – and these now often include "per-linear-foot of fiber" rental fees;

- Application processing times are increasing as well;

- Railroads continue to exercise "gatekeeper" status.
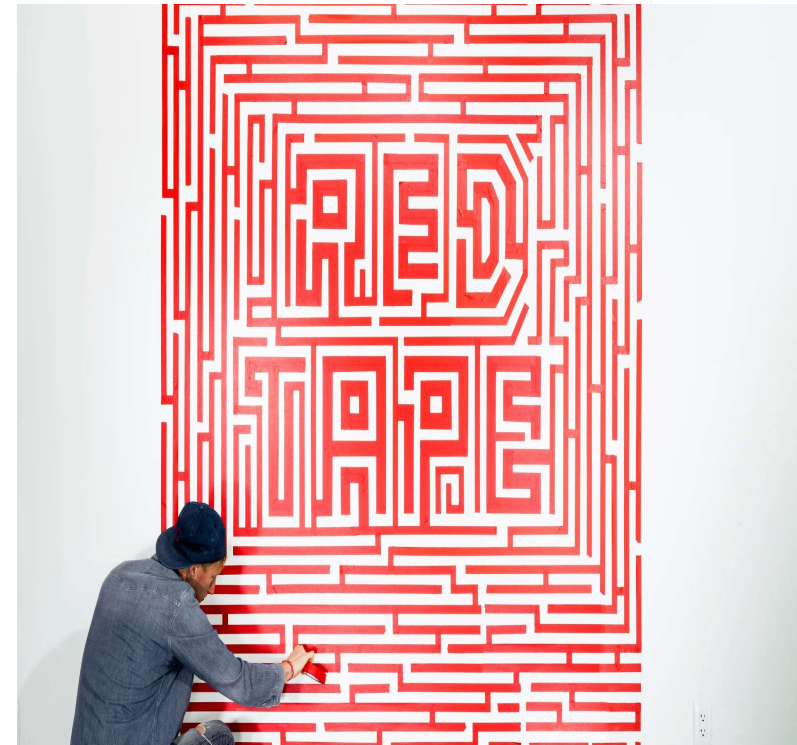
What is CyberShare?
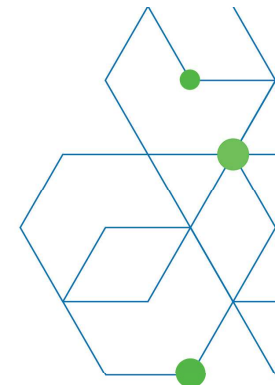
o   CyberShare is an Information Sharing and Analysis Center (ISAC) recognized by the National Council of ISACs.

o   CyberShare was introduced in 2020 to fill a gap in the intelligence sharing community to specifically help small broadband providers protect their networks and assets.

o   **ISACs** help critical infrastructure owners and operators protect their facilities, personnel and customers from cyber and physical security threats.

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