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NEWS AND ANALYSIS

DESPITE \$42.5 BILLION IN NEW FEDERAL BROADBAND FUNDS, FINANCIAL CHAOS CHALLENGES RURAL TELECOM INDUSTRY

By Thomas M. Smith, Editor-In-Chief

Although the federal government is providing an unprecedented amount of money to deploy broadband in rural America that could offer a financial windfall for many small and rural independent carriers, the rural telecommunications industry finds itself in February 2023 on a path that very well could lead to financial chaos over the long term for many companies.

If the headline for this analysis caught your attention, that is an indication that the 22nd year of the *Independent Telecom Report*, which is scheduled to be its last, may look and sound a little different this year as we turn our attention to some of the most significant challenges confronting the future of the rural telecommunications industry, including the distribution of nearly \$42.5 billion in new federal broadband funds.

The Broadband Equity, Access, and Deployment (BEAD) grant program, which was developed as part of legislation championed by President Joe Biden to build and repair U.S. infrastructure for the 21st century, includes nearly \$42.5 billion that will be distributed to state governments to manage the deployment of broadband services to unserved and underserved Americans – living mostly in rural areas. Although not even a penny of the BEAD funds have made their way yet to broadband service providers operating in rural America, an unprecedented amount of federal money for broadband deployment in rural America has been distributed already by the states.

This money comes primarily from COVID economic relief
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DESPITE \$42.5 BILLION IN NEW FEDERAL BROADBAND FUNDS, FINANCIAL CHAOS THREATENS RURAL TELECOM INDUSTRY

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measures, including the American Rescue Plan Act (ARPA), which were approved by the U.S. Congress and signed into law by President Biden. The projects funded by ARPA through state and local grants already are perceived as having an impact on closing the digital divide between urban and rural America.

How that federal money has been distributed, however, may offer some bad news for the rural telecommunications industry as they prepare to compete for the new BEAD funding.

Although cumulative statistical data is not yet available on which categories of companies have received ARPA broadband funding, anecdotal reports from the media, state and local governments, and individual telecommunications companies highlight that a significant portion of these funds have been soaked up by large cable and telecommunications providers, municipal governments, and rural electric cooperatives – even in the most rural of states. For the most part, small and rural independent telecommunications companies – despite having records of serving small rural communities – seem largely to have been left on the sideline, received only minimal funding, or find themselves in the position of playing catch-up.

Large cable and telecommunications companies and the rural electric industry have used the ARPA grant process almost as if it was rehearsal for the “Big Show” – the \$42.5 billion BEAD grant program. They have long understood the need for more meaningful visibility in the U.S. Congress and in state capitals in all 50 states, and they have committed the resources to sell their message in recent years that they are best positioned to bridge the digital divide.

Taking Back The Narrative

Perhaps, this explains the message that pervaded the recent annual Rural Telecom Industry Meeting and EXPO (RTIME) convened by NTCA – that NTCA members need to “take back the narrative of providing broadband to rural America.”

You can only “take back” what you have lost or no longer have. So, does even suggesting small and rural independent carriers need to “take back the narrative” acknowledge that carriers are facing serious disadvantages in competing for the BEAD funding? **If ‘taking back’ the narrative is not intended either or both as such an acknowledgement or a new, albeit overdue, clarion call, it should be!** This effort is unfortunately needed at this late date in the process– despite the fact that small and independent carriers are almost-natural built-in recipients of the funding, given their demonstrated achievements in already serving large portions of America’s rural telecommunications frontier.

Each rural telco industry member had been designated, under the Communications Act, an ETC (“Eligible Telecommunications Carrier”) with the statutory obligation to provide universal service at evolving service levels. In exchange for committing to fulfill the obligations of ETC status, the FCC is

statutorily required to provide “sufficient” universal service funding in order to enable ETCs to achieve the continuing and evolving obligation to provide the communities they serve with universal service.

The Infrastructure Act and the resulting BEAD reflect no recognition, much less incorporation, of this established policy and the results it nurtured in bringing broadband to rural areas served by rural telcos. Instead, the states can establish BEAD funding distribution rules that continue to ignore this foundation.

The essential rural telco industry message should have been and should be: “We’re doing our job; don’t waste the effort that rural telco universal service policy has already achieved; help us finish our job by providing sufficient USF to provide broadband service at the new benchmark levels Congress has established.”

In addition to the challenge of effectively delivering this message to state lawmakers and state broadband office executives, there are also 76 new members of the U.S. House of Representatives and 7 new members of the U.S. Senate sworn into office this past January. That is a significant number of new lawmakers that need to be educated with **simple and unequivocal** messages about rural telecom. That takes lots of time and resources – and probably should have been part of an organized outreach campaign long ago.

Some might say that the lobbying for BEAD funding in Congress is over and the action now turns to the states. That would be a mistake, especially now that Republicans have captured a narrow fragile majority in the U.S. House. House lawmakers, in particular, are determined to try to undermine Biden’s bipartisan achievement in securing passage of the Infrastructure Investment and Jobs Act – and the \$42.5 billion in new federal broadband spending that is a significant part of the measure. They already have signaled their commitment to using the oversight process to frustrate efforts to distribute the funds in a timely way by delaying distribution of the funds to states and providers until Biden’s term is completed.

Many GOP lawmakers in both the House and the Senate already are expressing concerns about the size of the BEAD grant program, raising flags about funds going to duplicate broadband networks before a single state has even developed its state broadband grant plan that is a requirement for securing the federal funds. Many are pushing for changes in the rules established by the National Telecommunications and Information Administration and have pledged to use the oversight process as a way to delay the distribution of BEAD funding. Their concern about funding of duplicative efforts, however, provides an opportunity if proactively utilized in a bipartisan-directed effort to get both BEAD and the USF “right.”

Larger cable and telecommunications providers are leading the lobbying effort in Congress to impose new limits on the BEAD funding – using the overbuilding argument – to encourage rulemaking and legislation that will give them an advantage in securing the bulk of the \$42.5 billion in funding. They are playing on the antagonism and cynicism of a large portion of Republican lawmakers who bash the federal government constantly as wasteful, corrupt, immoral, and unnecessary. But, the large cable and telecommunications providers are also making inroads to rural industry friends, including key Republicans in the U.S. Senate such as Senators Roger Wicker (R-MS) and John Thune (R-SD) – long considered by the rural industry to be their reliable supporters.

Gearing Up To Protect USF

Today's lawmakers in the U.S. Congress are the same people that the rural telecom industry will need to rely on to protect the Universal Service Fund (USF). If lawsuits engineered by conservative right-wing advocates succeed in winning a court decision that finds the USF unconstitutional, lawmakers will need to enact legislation to secure the future of universal service and the USF. That is not an unrealistic scenario as NTCA indicated in a recent letter to lawmakers.

Given how lawmakers have handled their jobs over the first two months of the 118th Congress, it stretches reasonable minds to imagine how the current Congress, especially the U.S. House of Representatives, could move beyond their ideological commitment to free markets and their political partisanship – that is wielded almost like a poison to discredit the ideal of representative democracy – to reach consensus on the need for a support mechanism for a group of telecommunications carriers that would ensure universal service throughout the U.S.

The loss of USF would have a significant impact on the ability of many carriers to deploy new broadband or to maintain and update existing networks. The USF and many other national programs implemented and traditionally maintained on a bipartisan basis could be ignored and fall victim to the partisan political battles. Some in the new House leadership, for example, seems intent instead to advocate for a “national divorce” between red and blue states rather than giving serious and informed attention to the nation's most serious challenges.

The threats to USF, however, do not begin or end with the upcoming federal court decisions on the constitutionality of USF. The industry needs lawmakers to enact legislation giving the FCC authority to expand the contributions base. In its current form, the program is not sustainable.

Instead of lawmakers now taking steps to address the USF contributions base, many are parroting the views of other conservative free market lobbyists who long have considered USF to be a tax that should be eliminated. These free-market advocates add that no additional federal subsidies for broadband, including USF, should be distributed until the BEAD program money is distributed, new networks deployed, and the program assessed and evaluated.

BEAD Also Offers Hope For The Industry As Responsible Stewards Of Public Monies

Nevertheless, the \$42.5 billion in federal BEAD money that has been dedicated to bridge the digital divide offers much hope for the future of broadband in the U.S. And the rural telecommunications industry can be instrumental in the program's success. But, it is going to take more than simply words about taking back the “narrative” to ensure that a fair portion of the BEAD grant funding and adequate USF makes its way to the companies that know rural America better than anybody – the small and independent rural carriers that comprise the rural telecommunications industry.

This requires more than slogans, jingles, old political alliances, coffee mugs, and lengthy filings and letters to lawmakers. It is going to take hard work, persistence, creativity, and unequivocal messaging that clearly ties rural telco efforts - and the impact of those efforts on the communities that the rural telcos serve - to a grass-roots effort that educates the local, state and federal office holders

representing those communities about the importance of sustaining and supporting the rural telco universal service efforts for their constituents.

Also, the industry needs to project a clear, focused, and reasoned understanding of the political dynamic in Congress free of the influence of individuals' political bias or ideological leanings.

The rural industry needs to rely on the facts and root its argument in the notion that receiving government funding demands responsible stewardship. Not only are small and independent rural companies as community-providers uniquely positioned to use the BEAD funding and USF efficiently, they – unlike their competitors – already have proven themselves, as history has demonstrated, to be responsible stewards of public monies.

IN MAJOR NEWS ...

U.S. SENATE COMMERCE COMMITTEE HOLDS THIRD HEARING ON GIGI SOHN NOMINATION

After 15 Months Of Partisan Wrangling, FCC Nomination Hearing Breaks No New Ground

Although it was Valentine's Day, Republican members of the U.S. Senate Committee on Commerce showed no love for President Joe Biden's nomination of Gigi Sohn at her third nomination hearing held on February 14. Sohn was first nominated to the position in October, 2021; again in January 2022; and again by Biden in January 2023 despite the failure of the Democratic majority Senate to act on the nomination. The February 14 hearing broke no new ground and only served as a repeat of the two previous two hearings with Senators – from both parties – asking the same questions or making the same speeches about why Biden's choice is either the best or the worst nominee to sit on the FCC.

In opening the hearing, Senator Maria Cantwell (D-WA), the Committee Chair, noted Sohn's previous appearances "so we know a lot about her background, her views, and important transparency issues." But, she expressed a hope that this third hearing on Sohn's nomination would "help bring issues that haven't been brought to light further to light."

Sohn, herself, seemed to feel the need to defend Biden's decision to nominate her for a third time to the FCC despite not yet passing muster with the Senate over the last 15 months.

"First, I care deeply about the mission of the FCC and have dedicated my entire career to that mission," she said, "ensuring that everyone regardless of income level, race, gender, sexual orientation, or where they live has access to affordable and robust communications networks, so they can be full participants in our economy, our education and health care systems, our culture, and our democracy."

She added that it was critical for at least one member of the FCC to be a consumer advocate "who has spent a career not beholden to any interest but that of the public." She also stressed her qualifications for the job, and she criticized opponents of her nomination.

“I believe deeply that regulated entities should not choose their regulator,” Sohn told the Committee. “Unfortunately, that is the exact intent of the past 15 months of false and misleading attacks on my record and my character. My industry opponents have hidden behind dark money groups and surrogates because they fear a pragmatic, pro-competition, pro-consumer policymaker who will support policies that will bring more, faster, and lower-priced broadband and new voices to your constituents.”

**Republican Senators Recycle Criticism Of Sohn As Unethical And Dishonest;
Try To Label Her As Part Of The “Extreme Left”**

It did not take long, however, for the Committee’s Republican leadership to recycle the same arguments that were made against Sohn’s confirmation at the two previous nomination hearings. Although he acknowledged her qualifications for the position, Senator Ted Cruz (R-TX), the Committee’s new ranking member, said Sohn did not have the temperament for the position. He accused her of a litany of misdeeds, including misleading the Committee at her two previous nomination hearings; contributing to Democratic Senators’ political campaigns after being nominated to the FCC; numerous conflicts of interests; and as antagonistic to conservative issues and causes.

"We know enough from today’s extreme left what happens when power is put in the wrong hands," Cruz said. "It doesn’t take much to imagine a partisan FCC going down a dark path in attempting to censor what we see, hear, read, and ultimately, think. As such, our responsibility as Senators is to make sure an FCC nominee not only has the expertise to be an independent regulator, but also possesses good judgment and temperament. The nominee must be fair, ethical, and perhaps most importantly, honest.

“On all these fronts, Gigi Sohn fails.”

Senator John Thune (R-SD), the ranking member of the Senate Commerce Subcommittee on Communications, reiterated much of Cruz’s criticism, but added that Sohn was particularly hostile to the interests of rural America.

**Former Trump RUS Administrator and Fox Exec Counter GOP Criticism Of Sohn;
Cite Sohn’s Commitment To Rural Telecom**

Shortly after Thune made this statement, the Committee heard a glowing recommendation for Sohn from an unlikely witness – Chad Rupe, the former Administrator of the U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS) under the Trump Administration. Prior to being named by Trump to lead the RUS, Rupe was the USDA Rural Development State Director of Wyoming and was recognized as a leader for rural broadband. He served at the time on the Rural Development State Directors Broadband Working Group and assisted state government with efforts to deploy broadband in rural Wyoming.

Rupe, who was the State Broadband Program Manager for the state of Montana after leaving the RUS, is now the General Manager of Ponderosa Communications, a small family-owned company established in 1908 operating in rural Central Valley, California.

“It was as the State Broadband Program Manager for Montana that I got to know Gigi Sohn and see how she approaches challenges like bringing broadband to rural America,” Rupe said. “I saw

that Gigi was deeply passionate about the importance of working to close the digital divide for all of our communities. I saw that she understands the term ‘rural’ means much more than a designation given to an area based on population. She knows that each one is unique and presents varying challenges to connectivity.

“Importantly, I saw that she firmly believes that these are not partisan issues,” he continued. “And when we make them partisan, we fail to serve the folks in those rural communities who are just looking to ensure their families are able to enjoy the many benefits that come from broadband connectivity.”

Rupe said that Sohn would be a “great addition” to the Commission.

“I would say to this Committee that I was proud to learn that there are over 400 organizations and leaders that agree with me,” Rupe said. “Gigi will be a great Commissioner. They include Republican and Democratic state and local legislators, business leaders, consumer advocates, and over 350,000 citizens. I urge this Committee and the Senate to swiftly confirm her to the post.”

Rupe was not the only seemingly unlikely advocate for Sohn at the hearing.

In a letter referenced by Cantwell at the hearing that had received significant publicity in advance of the hearing, Preston Padden, a former lobbyist for Fox and Disney, was highly critical of Sohn’s opponents calling their tactics a “smear campaign” to prevent her from being seated as the FCC’s fifth Commissioner.

Padden noted that Sohn was helpful in his efforts as a top Fox executive to secure the FCC waivers needed to start the Fox network and “fend off” fierce lobbying from the three major networks in the process.

Cantwell included Padden’s letter in the record of the hearing.

The letter was particularly critical of Sohn’s opponents.

“I fear that this esteemed Committee, like Ms. Sohn, is in danger of falling victim to the worst and most cynical and baseless smear campaign ever waged against a nominee to serve on the FCC,” Padden wrote. “Ms. Sohn’s only sin is that she roots for the underdog and for consumers. As a result, some of the dominant cable TV companies and Internet service providers have stooped to lows never before seen to smear Ms. Sohn.

“They correctly fear that she would be a vote to require them to compete fairly and to respect consumers.”

Paddon referenced a series of news stories “ginned up by Ms. Sohn’s opponents” as being “scurrilous” and “beneath the dignity of this Committee.” He referred to the criticism as “rubbish” and “tabloid trash.”

Committee Chair Offers Spirited Defense Of Sohn

Cantwell also offered a spirited defense of Sohn in her opening comments.

“If we want someone on the FCC who is truly committed to the job, then I believe Ms. Sohn fits the bill,” Cantwell said.

Cantwell has come under criticism from some of Sohn’s supporters for not taking a more aggressive posture to secure confirmation of Sohn’s nomination. But, that criticism did not deter Cantwell from stressing Sohn’s qualifications for the position and noted that many of the attacks against Sohn by her critics were personal in nature.

“Ms. Sohn has a history of putting the public interest first,” Cantwell added, “regardless of whether that means supporting policies endorsed by Republicans or Democrats. She is well-known for convening a broad range of stakeholders from both sides of the aisle on almost every part of the debate that we are looking at. That is why her nomination is supported by such a diverse group of people.”

Cantwell even displayed a chart at the hearing listing Republicans and conservatives that support Sohn’s confirmation, including Christopher Ruddy, the CEO of Newsmax, a conservative cable news network. Ruddy has previously said that Newsmax owes its existence to Sohn.

Cantwell said that she has concluded that opposition to Sohn was based on industry fears that Sohn’s backing of affordable broadband could cost them billions of dollars in lowered broadband bills.

“I kind of started thinking with all these attacks against you, I thought this is a proxy fight for net neutrality,” Cantwell said. “But, the vitriol of all these attacks made me think that no, it’s even more than this. That you are a smart, talented individual that’s going to go there and fight for affordable broadband anywhere. And somehow if affordable broadband gets deployed anywhere, then somehow more affordable broadband might get deployed everywhere.

“So, I think there’s probably billions of dollars at stake here and that is why the vitriol is coming at you.”

As GOP Recycles Talking Points, Some Dems Point Fingers At Industry For Sohn Nomination Controversy

In reality, the hearing was little more than a rehash of previous hearings. As Republicans repeated criticism of Sohn’s nomination almost verbatim from two previous nomination hearings, some Democratic Senators were blunt in pointing a finger at big-industry providers for the controversy over Sohn’s nomination. Some Democratic Senators accused industry groups of trying to sabotage Sohn because of concerns that her tie-breaking vote on the Commission could result in consumer-driven rules that could impose added costs to companies’ operations.

Cruz and several other Republican Senators cited numerous social media postings or “likes” by Sohn to suggest she was not qualified to serve on the FCC. They questioned her character – even saying she would expose children to “filth” on TV – and that she was too partisan.

Cruz called her “one of the most radical and ethically compromised nominees” put forward for the FCC.

Most of the Republican members of the Committee used their time to express their opposition to Sohn's nomination instead of asking questions. When Sohn sought to respond to their criticism, they did not allow her to respond reminding her that they had asked no questions.

Meanwhile, Senator Ed Markey (D-MA) also came to Sohn's defense saying that she was one of the most highly qualified candidates for any position that falls within the jurisdiction of the Committee. He added that every day the FCC is without Sohn is a win for giant telecom companies "because she believes in consumer protection and Darwinian competition."

Senator Ben Ray Lujan (D-NM), the chair of the Senate Commerce Subcommittee on Communications, said that Republican opposition to Sohn was less about Sohn and more about maintaining a 2-2 political deadlock at the FCC.

He stressed "the dire need to fill the FCC" and criticized attempts to delay Sohn's confirmation. He attributed much of the vitriol around Sohn's nomination to industry lobbyists.

"It's been 755 days that we don't have a fully functioning FCC," Lujan said. "With each additional day, more ink is spilled over this nomination. Frankly, we get more deliberate attempts to extend this vacancy for as long as possible.

"Fundamentally, this position remains vacant because the companies that are lawfully subject to oversight by the FCC don't want a watchdog. They don't want to be regulated, and these companies have spent an immense amount of money and influence to keep this position vacant."

Other Democratic Senators used their time to ask Sohn to clarify her position on some of the controversial issues raised by Republican Senators. For example, Senator Hillary Rosen (D-NV) asked Sohn to address opposition to her nomination from the Fraternal Order of Police (FOP). Senator Krysten Sinema (I-AZ) asked Sohn to address her support for reclassifying broadband as a telecommunications service.

In response to Rosen, Sohn said she could not explain the FOP opposition and stressed that many of the issues raised by the FOP related to retweets she had made on social media fall outside the scope of the FCC.

In response to Sinema, Sohn said she preferred that Congress approve network neutrality legislation. Congress' failure or inability to pass network neutrality put the burden on the FCC to take action, Sohn added, and it was within the scope of the FCC's authority to consider network neutrality regulations.

During the hearing, Sohn stressed that she could be helpful in working on the new broadband maps that will determine the level of funding available to states from the \$42.5 billion Broadband Equity, Access, and Deployment (BEAD) Program.

"One of my frustrations of not having been confirmed yet is I would love to be able to help the FCC ensure that they have the most accurate broadband map that they can possibly have," Sohn said. "Now, I

can't fix it myself. But, I have unbelievable relationships with the states, including many of the states of folks that sit on this dais, and I would love to help improve that broadband map.”

Sohn Supporters Call On Congress To Reject Personal Attacks On Her Nomination

Prior to the hearing, several different groups wrote letters to the Committee expressing concerns about the efforts to smear Sohn. It was an unprecedented defense of Sohn that also served to put on the record the highly volatile criticism of Sohn from some conservative groups and media outlets.

Three leading media justice and civil rights groups called on the Senate leadership to condemn attacks against Sohn that they labeled anti-Semitic, homophobic, and racist. The letter documented a series of discriminatory attacks against Sohn, who is Jewish and would be the first agency Commissioner who is openly a member of the LGBT community.

Another 30 groups, whose focus is women's reproductive rights, said Sohn's confirmation was critical to protect consumer privacy, safety and women seeking to cross state lines to receive reproductive care, including abortions.

They expressed fear about the failure of the FCC to take action to protect consumers from being involuntarily recorded or tracked. They specifically referenced state legislative efforts in some states to make it illegal for women to seek abortions beyond the borders of states that may prohibit abortion and then use telecommunications technology to track pregnant women leaving the state in order to prosecute them.

Twenty-two LGBTQ advocacy groups cited news stories appearing on *Fox News* and in the *Daily Mail* and *Breitbart* accusing Sohn of supporting sex trafficking as an attempt to smear the FCC nominee. They also mentioned that she has been referred to as a “she male” and a “fringe lunatic” as part of the smear campaign. They said the delay in confirming Sohn was the result of “homophobic tropes and attacks.”

Even before the hearing was over, Free Press, a consumer advocacy group that is strongly supportive of Sohn's nomination, released a statement criticizing Republicans' comments at the hearing. Free Press called it a “coordinated smear campaign.”

“While the deep-pocketed telecom and broadcast lobby has worked with right wing operatives to falsely portray Sohn as divisive,” Free Press said in the statement, “her years of experience tell a different story about a highly regarded expert who has reached across political divides to support policies that benefit the public.”

However, Senator Mitch McConnell (R-KY), the Senate Minority Leader, made it clear that he was not about to make it easy for Senate Democrats to confirm Sohn to the FCC. Shortly after the hearing, McConnell delivered remarks on the Senate floor indicating his continued opposition to Sohn's confirmation.

“Sohn is no more qualified to be installed on the FCC,” McConnell told his Senate colleagues, “than she was back in 2021 or 2022.”

IN BEAD INFRASTRUCTURE GRANT PROGRAM NEWS ...

(With this issue, *The Independent Telecommunications Report* initiates a new section for news specifically related to the National Telecommunications and Information Administration (NTIA) \$42.5 Billion Broadband Equity, Access, and Deployment (BEAD) Infrastructure Grant Program.)

NTIA Moves Forward With Broadband Infrastructure Grant Schedule Despite Broadband Map Challenges

The FCC reported last month that it received more than 4 million challenges to update inaccuracies in the first draft of its new National Broadband Map released in November 2022. The map is intended to show specific level information about the availability of broadband services throughout the country, and replace the census-block data that many critics said overestimated the number of Americans with broadband access. The map reflects broadband coverage information provided by more than 2,500 facilities-based providers of fixed and mobile mass-market broadband Internet access services. The release of the map kicked off a public challenge process that is intended to help improve the overall accuracy of the map.

The FCC referred to the draft map as a “pre-production draft” to highlight the fact that the National Broadband Map is still a work in progress.

The FCC asked for all map challenges to be submitted by January 13, 2023 so that the Commission can create a final version of the map by June 30 to facilitate the process of allocating broadband infrastructure funding to the states.

The National Telecommunications and Information Administration (NTIA) will rely on the map to distribute \$42.5 billion from the Broadband Equity, Access, and Deployment (BEAD) infrastructure grant program. The map will be used to target funding to deploy broadband in unserved and underserved areas of the country.

Following release of the map, many members of Congress – both Republican and Democratic – called on the FCC and the NTIA to extend the deadline for submitting challenges even if it meant delaying NTIA’s schedule to distribute the BEAD funds for broadband deployment. Senator Roger Marshall (R-KS) called the FCC and NTIA timeline “too aggressive.” A bipartisan group of 26 U.S. Senators cautioned that the process for revising the map should not be “shortcut” because “millions of Americans in need of broadband risk being short-changed.” Another dozen Senators joined in a letter led by Senator Maria Cantwell (D-WA), the chair of the Committee on Commerce, that asked for states and individuals to be given more time to submit challenges to the maps.

Nevertheless, some key lawmakers discouraged the NTIA and the FCC from extending the January 13 target date for submitting challenges or the June 30 target date for allocating the BEAD program funds. In a letter to NTIA Administrator Alan Davidson and FCC Chairwoman Jessica Rosenworcel, Senators Amy Klobuchar (D-MN) and Angus King (I-ME) and U.S. Representative James Clyburn (D-SC) said that any improvements in the map resulting from a delay in the target timeline would be “outweighed” by the harm to unserved and underserved communities.

“For this reason,” the lawmakers wrote, “we do not support an extension of the January 13 target date to submit service area mapping challenges because such an extension would result in the delay of NTIA’s June 30 target date for the allocation of BEAD program funds.

“The seven months between November’s draft of the FCC broadband maps and NTIA’s June 30 target date for allocation of BEAD funds provides ample time to ensure the maps are accurate, especially as your agencies continue to fine tune the maps based on additional data collection process – a process that will ultimately inform where projects funded by BEAD Program dollars will be built. This iterative process is the right balance of speed and accuracy.”

NTIA rejected the requests for delaying challenges to the maps last month.

“We have heard concerns from some states and other stakeholders,” NTIA said in a release last month announcing its decision, “and we have received requests to delay the timeline to give states more time to participate in the FCC’s processes for challenging and improving the National Broadband Map. Several other states have expressed to us that they want us to maintain this target so that they can begin developing quality plans and begin their sub-grant programs as soon as possible.

“Unfortunately, a delay in the timeline would mean a delay in providing funding to communities who desperately need it, and it will not address many of the process concerns we have heard.”

NTIA said it was committed to working with the FCC to continue to revise the National Broadband Map, but would not alter its timeline for distributing the funds.

“Every day we delay is another day that communities are not connected,” NTIA said. “We feel the urgency to getting this funding out the door so it can be put to work for everyone in America.

“We encourage states to continue to submit challenges to this map, which is meant to be a living document. Continued improvements will move us that much closer in making Internet for All a reality.”

In a subsequent letter to several U.S. Senators, including Cantwell, FCC Chairwoman Jessica Rosenworcel stressed that the January 13, 2023 date for submitting challenges was a “target” date, not a “deadline.”

“The Commission continues to accept and resolve local and availability challenges so that they may be included in future iterations of the map,” Rosenworcel said. “The Commission rules make clear that the agency will accept challenges to the map on a rolling basis at any time. The Commission stands ready to continue to work with all stakeholders to receive feedback and continue to improve our map over time.”

She noted the maps already had been updated as a consequence of the challenges and that “millions of adjustments to the data” were incorporated in the revised maps or will be incorporated in future iterations of the map.

Lawmaker Warns That Providers Are Submitting False Broadband Data To Gain Competitive Leverage In BEAD Grant Program; Rosenworcel Commits To Enforcement Action

At the recent hearing convened by the U.S. Senate Committee on Commerce to consider the nomination of Gigi Sohn to be the 5th FCC Commissioner, Senator Ben Ray Lujan (D-NM), the chair of the Senate Commerce Subcommittee on Communications, referenced various news reports that some Internet service providers (ISPs) had submitted false data for the FCC's broadband mapping process to gain a competitive advantage in the BEAD grant program.

“Multiple reports have found that ISPs, big and small, provided false data to the FCC’s maps in an anti-competitive effort to block rival companies from getting a share of the \$42.5 billion this Committee provided for broadband,” Lujan said.

Recent news reports have focused particularly on fixed wireless services provided by T-Mobile and Verizon with the reports suggesting that the companies have “overclaimed” what they can serve. One state official was quoted as saying the companies reported “hypothetical service, not actual service” and “create the false impression” that much of rural America is already connected.

Other reports also have focused on Comcast's service operations in Colorado and Jefferson County Cable in Ohio.

Nevada officials said they found more than 20,000 errors in the state involving carriers reporting coverage that did not exist. Vermont officials said the map includes more than 60,000 errors that list service availability beyond what the state has found through its mapping.

In a recent letter to congressional lawmakers, FCC Chairwoman Jessica Rosenworcel stressed that the FCC will not hesitate to impose enforcement penalties on carriers that intentionally misstate broadband availability data. She noted that carriers may need more time to become familiar with the FCC's new broadband availability reporting system; but she added the FCC already has an investigation underway.

“We recognize that as providers gain familiarity with this new system,” she said, “efforts to intentionally misstate service may be subject to enforcement action. In fact, we already have an investigation underway.”

U.S. Senators Introduce Measure To Exempt Broadband Grants From Taxation

U.S. Senators Mark Warner (D-VA) and Jerry Moran (R-KS) introduced bipartisan legislation recently that would exempt broadband grants authorized by the Infrastructure Investment and Jobs Act (IIJA), the American Rescue Plan ACT (ARPA), and the Tribal Broadband Connectivity Fund from being treated as taxable income. The measure was first introduced last year. The measure would undo tax law changes pushed and signed into law by President Donald Trump in 2017 as part of the 2017 Tax Cuts and Jobs Act. That measure actually created new taxes on companies receiving government grants.

The new legislation would mandate that a companies' gross income not include any qualified broadband grant made for purposes of broadband deployment. The exemption would be retroactive to March 11, 2021.

The legislation has strong support from NTCA and USTelecom.

All States Receive BEAD Planning Grants

The National Telecommunications and Information Administration (NTIA) announced late last year that it had awarded preliminary grants from the Broadband, Equity, Access, and Deployment (BEAD) grant program to all 50 states to help them in planning their BEAD state grant programs.

States are required to develop their broadband grant programs to submit to NTIA for approval before any grant funding can be distributed to facilitate broadband deployment.

States Could Get Average Of \$743 Million In BEAD Infrastructure Funding, According To New ACA Connects Report

States will get an average of \$743 million in funding through the Broadband Equity Access and Deployment (BEAD) program, according to an estimate from a report developed by ACA Connects. BEAD is the state grant program that was established in the infrastructure investment legislation approved by Congress and managed by the National Telecommunications and Information Administration (NTIA).

According to the ACA report, Texas will receive the most BEAD funding – approximately \$3.5 billion. Michigan would receive the second highest amount of funding, according to the report. Other states in the report's top ten are Missouri; Alabama; Georgia; Florida; Virginia; Arkansas; California; and Louisiana.

All the top ten states are likely to receive at least \$1.3 billion, the research study said.

Official allocations are scheduled to be released by the NTIA on June 30. Rules for the program call for BEAD funding to be allocated based on each state's percentage of unserved locations in the U.S. NTIA will base its allocations on data that the FCC is currently gathering about where service is available.

IN USF-RELATED NEWS

Long-Thought Rural Telecom Advocate In U.S. Senate Offers Platform For Group Advocating End To USF

When Senator John Thune (R-SD), the ranking member of the Senate Commerce Subcommittee on Communications, issued a news release late last year announcing that he would be launching a nationwide

oversight effort to review federal broadband programs, it made few waves within the rural telecommunications industry. Thune accompanied the release with a letter to various industry, public interest, and advocacy organizations seeking comment on federal broadband programs.

Although Thune said his primary goal was to hold federal agencies accountable and ensure that federal broadband funding is being used in the most efficient way possible to protect taxpayer dollars, his first action was to provide a platform for conservative free market groups – who are not stakeholders in telecommunications policy debate and who have longstanding records of opposing federal support for rural telecommunications – to question the need for USF and recommend it be eliminated.

In his letter seeking comment on federal broadband programs, Thune also sought input on issues related to the implementation of the Infrastructure Investment and Jobs Act (IIJA) and specifically about the \$42.5 billion Broadband Equity, Access, and Deployment (BEAD) broadband grant program created by the IIJA, including whether the program rules should be revised. Since then, some Republican lawmakers in Congress have been pushing to roll back the funding provided in the IIJA or limit distribution of other support funds, including USF, until all BEAD funding is spent.

Americans for Tax Reform (ATR) was one of the groups that Thune contacted as part of his “oversight” efforts. Americans for Tax Reform is a right-wing conservative group founded in 1985 that opposes any taxation and has long referenced USF as a tax that should be eliminated. The organization has no expertise in telecommunications policy issues, but it was eager to submit an 11-page response to Thune with comments on federal broadband spending, including USF and the BEAD program.

In its response to Thune, ATR advocated for the elimination of all federal broadband programs now that Congress has put in place the \$42.5 billion Broadband Equity, Access, and Deployment (BEAD) infrastructure grant program. They called for the elimination of a separate middle mile grant program that was established in 2021 and for the Rural Development Opportunity Fund (RDOF) and the Rural Utility Service (RUS) to be merged or even discontinued.

“BEAD’s substantial investment should be enough to get the last unserved areas over the finish line,” ATR wrote, “making any future broadband expansion programs unnecessary and enabling Congress to eliminate the 130 different programs dedicated to this issue. In the short term, the Universal Service Fund (USF) should undergo substantial reforms and return its focus to its original jurisdiction, which was telephone service.

“Although we believe that RDOF and RUS have been more successful than other programs, there is little reason to continue both of them. At the very least, these programs ought to be merged.”

ATR also called on Congress to prohibit any future funding for a local market that already is served by the private sector.

“Private ISPs do a better job of delivering reliable broadband service and should not have to compete with taxpayer-funded efforts that do not need to charge market rates,” the group said in a shot directed at companies receiving USF support.

The group also called for limiting BEAD funding only to unserved areas.

ATR also said that the lack of funding was not an obstacle to delivering services in rural America. Instead, it cited regulatory barriers that “increase the expense of projects and delay their completion” as the primary reason unserved areas are not receiving broadband services in the U.S.

In its final recommendation to Thune, ATR said that Congress should freeze all broadband funding until the full \$65 billion allocated for broadband in the Infrastructure Investment and Jobs Act (IIJA), including the \$42.5 billion BEAD grant funding, is spent – and only after Congress can assess the program’s success and make a determination of “best practices” for broadband expansion.

NTCA Warns Congress To Prepare Legislative Response To Court Challenges That Could Lead To “Catastrophic Loss” Of USF Support

NTCA was among the industry groups invited to respond to Thune’s letter expressing concern about federal broadband programs and the amount of funding being allocated to ensure universal broadband services. In its 27-page response to Thune’s letter, NTCA warned Thune that Congress needs to be prepared to address the consequences of any court challenge to the existence of USF. Two separate lawsuits are moving through the federal courts in which a conservative right-wing think tank has alleged that the USF is unconstitutional.

NTCA warned that the challenges, if successful, would lead to a “catastrophic loss” of access to USF support.

“NTCA encourages Congress to remain mindful of the potential concerns raised by several currently pending federal lawsuits challenging the constitutionality and legality of the congressional delegation of authority to the FCC to collect contributions in support of its critical USF mission,” NTCA said. “To the extent that any of these challenges were successful, the FCC’s ability to carry out the congressionally mandated purpose of universal service will be at risk.

“If a court decision undermines these essential mechanisms, Congress will need to act quickly to ensure that services will not fail and that rates will not increase exponentially for rural communities and users of all kinds across the nation.”

NTCA also called on Congress to take steps to update the existing USF contribution mechanism.

“Those that make the most use of and benefit most from our nation’s interconnected broadband networks should contribute their fair share to the national goal of ensuring every American has access to robust and affordable broadband,” NTCA said.

While supporting a technology-neutral approach to the BEAD program in the response to Thune, NTCA also stressed that Congress and state governments should ensure that BEAD funding is used prudently and responsibly. NTCA has been one of the strongest advocates for limiting BEAD funding to fiber deployment projects.

“Not all technologies are equally capable and it does not violate a principle of ‘technological neutrality’ to take stock of and account for the relative attributes and limitations of different technologies as demonstrated in the marketplace,” NTCA said. “With billions of dollars and millions of unserved Americans at stake, it is prudent and responsible for the federal government (and, in turn, the state governments leveraging federal resources) to invest taxpayer resources based upon more than speculation as to potential future performance, marketing hype, and overstated claims of capability not borne out by real-world applications throughout rural America.

“By contrast, a thoughtful and practical strategy for making effective use of government funds, thereby delivering on the promise of broadband for those long in need, rightly should look first to proven methods of delivery and promote the deployment of networks that without question can meet the demands of rural communities and users for decades to come.

“For these sound reasons,” NTCA continued, “the National Telecommunications and Information Administration (NTIA) wisely chose to weight certain kinds of networks with an award preference based upon actual, real-world experience and the broader benefits certain technologies provide.”

IN OTHER CONGRESSIONAL NEWS ...

After Political Wrangling, Congress Gets Down To Business

The 118th U.S. Congress got off to a rocky start in early January as a narrow and deeply fractured Republican majority in the U.S. House of Representative took four days and 15 rounds of voting to elect Representative Kevin McCarthy (R-CA) to be the new Speaker of the House. Republicans hold a small 9-seat majority in the House. The U.S. House is now comprised of 222 Republicans and 213 Democrats.

Representative Hakeem Jeffries (D-NY) was elected the new leader of House Democrats.

On the Senate side, Democrats hold a 51-49 edge over Republicans. Senator Chuck Schumer (D-NY) was elected the Democratic Majority Leader. Senator Mitch McConnell (R-KY) was elected the Republican Minority Leader after a bitter challenge from Senator Rick Scott (R-FL).

The House Committee on Energy and Commerce will consist of 52 members during the 118th Congress – 29 Republicans and 23 Democrats. Representative Cathy McMorris Rodgers (R-WA) is the new Committee Chair and Representative Frank Pallone (D-NJ), who chaired the Committee over the last four years, will become the new ranking Democrat on the Committee.

The House Energy and Commerce Subcommittee on Communications, which has jurisdiction over telecommunications policy issues in the House will be chaired by Representative Bob Latta (R-OH). Latta is a co-founder of the bipartisan Rural Broadband Caucus in the House. Representative Buddy Carter (R-GA) was named Vice Chair of the Subcommittee. Representative Doris Matsui (D-CA) is the new ranking Democrat on the Subcommittee.

Other Republican members of the Subcommittee are Representatives Gus Bilirakis (R-FL); Tim Walberg (R-MI); Neal Dunn (R-FL); John Curtis (R-UT); John Joyce (R-PA); Randy Weber (R-TX); Rick Allen (R-GA); Troy Balderson (R-OH); Ross Fulcher (R-ID); August Pfluger (R-TX); Diana Harshberger (R-TN); Kat Cammack (R-FL); and Jay Oberholte (R-CA).

Other Democratic members of the Subcommittee are Representatives Yvette Clarke (D-NY); Marc Veasey (D-TX); Darren Soto (D-FL); Anna Eshoo (D-CA); Tony Cardenas (D-CA); Angie Craig (D-MN); Lizzie Fletcher (D-TX); Debbie Dingell (D-MI); Annie Juster (D-NH); and Robin Kelly (D-IL).

Democrats on the U.S. Senate Committee on Commerce will hold a 14-13 edge in Committee membership this year. Previously, the Committee had an equal number of Democrats and Republicans. Senator Maria Cantwell (D-WA) will continue to chair the Committee. Senator Ted Cruz (R-TX) will become the new ranking Republican on the Committee.

The Senate Commerce Subcommittee on Communications, which has jurisdiction over telecommunications policy issues in the Senate, will be chaired by Senator Ben Ray Lujan (D-NM). Senator John Thune (R-SD) will continue as the ranking Republican on the Subcommittee. All members of the full Committee on Commerce also will serve on the Subcommittee on Communications.

The other Democratic members of the Committee are Senators Amy Klobuchar (D-MN); Brian Schatz (D-HI); Ed Markey (D-MA); Gary Peters (D-MI); Tammy Baldwin (D-WI); Tammy Duckworth (D-IL); Jon Tester (D-MT); Jacky Rosen (D-NV); John Hickenlooper (D-CO); Raphael Warnock (D-GA); and Peter Welch (D-VT), who formerly was co-chair of the U.S. House Rural Broadband Caucus. Senator Krysten Sinema (I-AZ) organizes with the Democrats despite recently changing her party affiliation from Democrat to Independent.

The other Republican members of the Committee are Senators Roger Wicker (R-MS); Deb Fischer (R-NE); Jerry Moran (R-KS); Dan Sullivan (R-AK); Marsha Blackburn (R-TN); Todd Young (R-IN); Ted Budd (R-NC); Eric Schmitt (R-MO); J.D. Vance (R-OH); Shelley Moore Capito (R-WV); and Cynthia Lummis (R-WY).

Scott, who previously served on the Committee, made headlines recently when he charged McConnell with removing him from the Committee in retaliation for running against him for Senate Republican leader.

Senators Renew Legislative Effort To Alter ReConnect Program

U.S. Senators John Thune (R-SD), Ben Ray Lujan (D-NM), Amy Klobuchar (D-MN), and Deb Fischer (R-NE) have joined together to offer bipartisan legislation in the U.S. Senate that they say will “streamline and bolster” broadband programs that are housed within the U.S. Department of Agriculture. The legislation is specifically targeted to the USDA Reconnect Program.

Specifically, the legislation would require that all ReConnect funding go to areas most in need of reliable broadband by limiting funding to areas where at least 90 percent of households lack access to broadband service. It would remove barriers that would “enhance the participation of all types of

broadband providers.” The measure also would require the USDA and the FCC to improve their coordination of broadband programs.

“Our bipartisan legislation would help bridge the digital divide by improving USDA’s ReConnect program to ensure its funding goes to truly unserved areas,” Thune said.

Klobuchar added that the legislation would make “key improvements” in the program by facilitating a more convenient application process and more efficient deployment.

The legislation has the support of NTCA; USTelecom; NCTA – the Internet and Television Association; the American Farm Bureau Federation; the American Seed Trade Association; and the National Cattlemen’s Beef Association.

Without Congressional Action, FCC Spectrum Auction Authority Set To Expire March 9

When Congress approved a \$1.7 trillion funding measure at the end of 2022 to keep the government open, the measure included language extending the FCC’s spectrum auction authority to March 9, 2023. Democrats in Congress wanted to extend the authority beyond March 9; Republicans insisted on the short 10-week extension.

According to some reports, negotiations between Democrats and Republicans to provide a multi-year extension of the FCC’s spectrum auction authority broke down over funding for the FCC’s rip and replace program. Democrats wanted to allocate the proceeds from spectrum auctions to supplement funding for the FCC’s rip and replace program to reimburse small companies for ripping out Huawei and other Chinese equipment from their networks and replacing it with equipment that was thought to not pose a national security threat.

Previously, Congress set aside \$1.98 billion to reimburse carriers for the rip and replace program. However, the FCC has received more than \$5.5 billion in funding requests from small carriers leaving a shortfall in funding of nearly \$3.08 billion.

Republicans did not support the additional funding and in fact issued statements critical of the FCC for companies’ failure to complete the rip and replace process.

Although no specific measure has been formally introduced in Congress yet to extend the FCC’s spectrum auction authority, Republicans in Congress now are releasing statements and giving media interviews saying that extending the FCC’s authority to auction spectrum is a high priority.

Recently, Representative Cathy McMorris Rodgers (R-WA), the chair of the House Committee on Energy and Commerce, said that she is hoping to reach an agreement with Democrats in both the House and Senate on a spectrum measure.

“It’s important that we reach an agreement as soon as possible and that we ensure that the FCC can be opening up new spectrum bands and ensuring that we continue to lead in the allocation of spectrum,” she said.

She added that U.S. spectrum policy is a national security issue.

“American leadership matters, and we see a growing threat from China,” she said. “China is making it very clear that they want to lead from an economic and technological as well as a military power. They want to be the dominant power. All of that is informing our efforts and only underscores the importance when it comes to an issue like spectrum.

“It is a national security issue.”

On the Senate side, Senate Republicans stress the importance of extending the FCC’s authority, but do not appear to be in any hurry to complete the job given a recent statement from Senators Ted Cruz (R-TX), the ranking member of the Commerce Committee, and John Thune (R-SD), the ranking member of the Senate Commerce Subcommittee on Communications.

“With the looming March 9 deadline for spectrum auction authority,” they wrote, “we are committed to developing a spectrum proposal that achieves the greatest value possible for American taxpayers while protecting our national security interests. But developing a spectrum proposal is complex, which is why lawmakers shouldn’t rush into a bad deal just to secure any deal.

“A successful outcome on spectrum will maximize use of this finite resource, which is critical to economic growth and international leadership. We look forward to working with our Senate and House colleagues to craft common-sense legislation that will protect taxpayers, meet the challenge of the moment, and put the United States on a path for economic success and progress.”

NTCA Outlines Rural Policy Blueprint For U.S. Congress

In a 6-page letter to all members of the U.S. Congress earlier this month, NTCA outlined a 4-point “policy blueprint” for the nation to achieve and sustain universal broadband access in rural America. The industry association said the policy blueprint was the result of rural companies’ experiences in delivering broadband throughout rural America.

“These four overarching areas of focus – which arise out of decades of real-world experience in serving deeply rural areas, low income consumers, and community schools and libraries and in working with various government connectivity initiatives – represent a proven and effective roadmap for ensuring that every American, regardless of circumstance, can get and stay connected,” NTCA said in the letter.

First, NTCA said it was important for Congress to take steps to promote universal service to ensure sustainable and affordable connectivity. In order to achieve this goal, the association stressed the importance of updating key high-cost USF mechanisms; making the Affordable Connectivity Program (ACP) permanent and supporting the FCC’s Lifeline as a complement to the ACP; and

working with the FCC “on an emergency basis” to expand the USF contributions base to support USF initiatives.

Second, NTCA called on the Congress to ensure effective and efficient use of the \$42.5 billion broadband infrastructure grant funding. In addition to supporting accurate broadband mapping and coordination among federal and state agencies, the association stressed that the funding should be used only for “proven” technologies and providers.

“Recent failures in certain broadband programs make clear that agencies should avoid gambles on speculative claims regarding technological capabilities or providers with no history of serving rural markets,” NTCA said. “It is important that preferences be afforded in funding awards not based on corporate or organizational form, but instead based upon demonstrated community presence and commitment and a history of investment and operation in rural areas for years or even decades.”

Third, the association called on Congress to align tax policies with incentives and goals for broadband investment.

And fourth, NTCA called on Congress to promote “right-sized” regulation targeted to market needs and market failures.

Omnibus Funding Measure Included ReConnect Earmarks

When Congress approved a \$1.7 trillion omnibus spending measure in late December 2022 to fund the government through September 30, 2023, the measure included several designated earmarks for projects funded through the U.S. Department of Agriculture (USDA) ReConnect Program. The earmarks were requested for twelve projects – eight requested by Republicans and four requested by Democrats.

Republican-Requested Broadband Earmarks

U.S. Representative Jefferson Van Drew (R-NJ) requested and received \$3.75 million to improve fiber connectivity in Cumberland and Salem Counties in New Jersey. Despite inclusion of the earmark in the omnibus measure, Van Drew voted against the omnibus funding bill saying it “will lead to even more inflation, even higher interest rates, and an even larger national debt.”

Representative Elise Stefanik (R-NY) requested and received \$1 million for a broadband expansion project in Franklin County, NY, and another \$1 million for a broadband expansion project in Washington County, NY. Like Van Drew, Stefanik voted against the omnibus measure saying on the House floor that “Republicans will rein in reckless spending.”

Representative Robert Aderholt (R-AL) requested and received \$1.7 million for the Cullman Electric Cooperative for its Sprout Fiber Internet Project in Cullman, AL.

Representative Blaine Luetkemeyer (R-MO) requested and received nearly \$1 million for the Co-Mo Electric Cooperative in Central Missouri.

Representative Carol Miller (R-WV) requested and received nearly \$1 million for a broadband project in Beckley, WV to provide broadband in the historic downtown area.

Representative Pete Stauber (R-MN) requested and received nearly \$500,000 for the city of Cromwell broadband project to connect 100 residential locations and nearly 25 businesses.

Representative Sam Graves (R-MO) requested and received \$375,000 for the Ralls County Electric Cooperative to connect 45 households in Ralls County.

Representative Ashley Hinson (R-IA) requested and received \$330,200 for the Osage Municipal Utilities Orchard Fiber Project.

Democratic-Requested Broadband Earmarks

U.S. Representative Kurt Schrader (D-OR) and U.S. Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) requested and received \$3 million for the Tillamook County, Oregon, Fiber Network.

Representative Jim Costa (D-CA) and Senator Dianne Feinstein (D-CA) requested and received \$1.35 million for the city of Gustine to improve Internet access for low-income residents.

Representative Sanford Bishop (D-GA) requested and received \$562,490 for the city of Donalsonville, GA to connect more than 1,200 households to the Internet.

Representative Elaine Luria (D-VA) requested and received nearly \$200,000 to provide broadband services in Northampton and Accomack Counties.

GAO Calls On FCC To Enhance ACP Oversight

The Government Accountability Office (GAO), the research arm of the U.S. Congress, has called on the FCC to enhance its oversight of the Affordable Connectivity Program (ACP) to better prevent fraud. This was the conclusion of a new GAO Report on the ACP released late last month.

The GAO concluded that the FCC has taken steps to manage fraud risk, but those steps do not align fully with the GAO's leading practices. GAO called on the Commission to develop an anti-fraud strategy to mitigate identified risks in the program and conduct regular fraud assessments.

In addition to concerns about managing fraud, GAO's report also concluded that the FCC's performance goals and measures "do not fully align with key attributes of effective performance management." The report said the FCC's goals and measures "lack specificity and clearly defined targets" and raise questions about how the FCC can gauge the program's achievements and identify improvements.

The GAO also called on the FCC to develop a better outreach plan for the program and give particular attention to improving materials targeted to non-English speaking populations.

Senators Ted Cruz (R-TX), the ranking member of the Senate Commerce Committee, and John Thune (R-SD), the ranking member of the Senate Commerce Subcommittee on Communications, called on the Commerce Committee to convene an oversight hearing to address the GAO report.

FCC Marketplace Report Concludes Consumers Have Insufficient Choice For Home Broadband

The FCC filed its Communications Marketplace Report recently which concluded that consumers have insufficient choice for home (fixed) broadband. However, the Commission noted that the market is on the cusp of generational change based on federal investment in broadband deployment and adoption.

In fact, the overall tone of the report is that the communications marketplace is in a substantial state of change and reexamination. The report added that the COVID-19 pandemic demonstrated the necessity for broadband connectivity and affordability in the U.S.

“Currently, available data demonstrates that millions of Americans lack access to high speed broadband or can only access high speed broadband through a single provider,” the report said.

The report also assessed the state of competition for mobile broadband and concluded that 94 percent of the U.S. population live in areas with 4G LTE coverage by at least three service providers and 58 percent of the population has at least three 5G providers. The report also noted that mobile-only households have been declining to about 12 percent and tend to be younger in age and in lower income brackets.

The FCC report also highlighted the need for more action to lower the barriers to building broadband networks.

For the first time, the report also provided information for prices charged by the top 11 home broadband providers. The report noted that the median cost of high speed Internet service was \$74.99 per month and approximately half of the households are paying between \$60 and \$90 per month.

The report also for the first time offered a snapshot of providers that are using data caps for home Internet service. Three of the top providers use data caps, according to the report, as well as 130 additional providers throughout the U.S. The report also included details about the technologies offered by the 11 largest home providers.

Rip And Replace Program Floundering, Says CCA

The Competitive Carriers Association (CCA) recently referenced a new FCC report to Congress on the status of the Commission’s rip and replace program to express concern that the program is “clearly floundering” in the absence of full funding by Congress. The FCC was required to provide Congress with an update on the Secure and Trusted Communications Networks Act, which authorized the rip and replace reimbursement program.

The rip and replace program was mandated by Congress amid concerns that Chinese suppliers, like Huawei, threaten the nation's security. According to the FCC's status report, roughly half of respondents indicated to the agency that a lack of funding is a challenge. About two percent of respondents indicated they will not start work on their removal and replacement projects unless they receive additional funding.

It was expected that Congress would provide additional funding for the rip and replace program as part of a funding measure that Congress approved in December. However, Congress failed to reach agreement on the funding measure for the rip and replace program and it was not included in the final measure. CCA was a major proponent for additional funding for the program.

Congress appropriated only \$1.9 billion to fund the program; but applications for the program indicate that \$5.5 billion is needed to reimburse carriers. The FCC said it can only fund 39.5 percent of the costs incurred by operators.

“The FCC’ status report shows that the program is clearly floundering in the absence of full funding by Congress,” CCA said in response to the FCC report. “For example, half of respondents indicated that a lack of funding is a challenge in completing their projects and some even indicated that they will not start work on their projects unless they receive additional funding. The need for full funding is very urgent in order for the program to succeed and Congress’s national security objectives to be met.”

CCA has warned that small telecom operators could go out of business without enough funding to replace Chinese gear in their networks.

Congress Should Appropriate Additional Funding For ACP, Former GOP FCC Commissioner Says

The FCC's Affordable Connectivity Program (ACP) is set to run out of funds as early as 2024, which already is sparking a debate over the future of the program. Congress created the program to provide financial support for Americans unable to afford broadband services. A surprising advocate for the program, however, has emerged – former GOP FCC Commissioner Michael O’Rielly.

In a recent opinion article published in *The Hill*, O’Rielly, who has long criticized federal subsidies and advocated for shrinking the federal budget, said that conservatives, in particular, should support additional funding for the ACP.

“There is bipartisan agreement that access to broadband can be a key tool for citizen self-sufficiency and upward social mobility,” O’Rielly said, “and because of this, ensuring every American has access is a national policy priority. Broadband will remain inaccessible to poorer families if affordability is ignored.”

O’Rielly noted that broadband adoption reduces governmental costs to function and opens doors for businesses.

“Let’s recognize that American poverty is not isolated to urban areas but distributed throughout our country in so-called Red areas and Blue ones,” O’Rielly wrote. “The opportunity gap resulting from unequal broadband access impacts all regions. That is why every American neighborhood and small town hopes to see their broadband access protected and expanded.

“ACP is our best solution to address broadband affordability so far. Its primary attribute – what conservatives have fought for – is that the benefit flows to the consumer.”

O’Rielly called on Congress to allocate additional funds for the ACP “without tinkering with its consumer-focused and technology-neutral structure.”

“If Congress fails to act,” O’Rielly added, “members will see 15-plus million American households lose out. ACP represents our best available means to promote and sustain Internet adoption for consumers in need, which should overcome my fellow conservatives’ traditional concerns.

“Congressional action to extend this program in 2023 should be a priority.”

IN THE STATES

Arkansas

State Designates Federal ARPA Funds For Broadband Projects

The Arkansas State Legislature has approved a plan from the state’s Department of Commerce to use \$53.3 million in federal American Rescue Plan Act (ARPA) funds for eight broadband projects and \$2 million for broadband administrative expenses. The proposed broadband projects will serve residents of Ashley, Baxter, Chico, Clark, Columbia, Hot Spring, Logan, and Lonoke counties.

Recipients of the funding include Wave Rural Connect LLC/Cox Communications; Connect2First Internet; Cable South Media; Ashley-Chico Electric Cooperative; Four States Fiber; South Central Connect LLC/Central Arkansas Telephone Cooperative; and NEXT Powered.

Action by the state was delayed after newly elected Governor Sarah Huckabee Sanders repealed an executive order issued by her predecessor – Governor Asa Hutchinson – that established a steering committee to determine how to spend the ARPA money.

Colorado

City Partners With Google To Bring Fiber To Westminster

The city of Westminster, Colorado, has entered into a deal with Google to bring fiber to the city. The deal will make gig-speed fiber Internet available to those in the city. Construction of the fiber optic network will begin this year in the city’s right of way and easements. Service will become available as network segments are completed.

Florida

Florida Announces First Awards Through State Broadband Grant Program

The state of Florida has announced that it will award more than \$144 million for 58 broadband projects in 41 Florida counties. The grants are estimated to impact nearly 160,000 unserved residential, educational, business, and community locations.

Georgia

Georgia Announces \$234 Million In State Broadband Funding

Georgia has announced more than \$234 million in state broadband funding with nearly \$67 million of the funding going to Comcast. In all, the state made 29 grants to serve more than 76,000 locations. The funding comes from the federal government's American Rescue Plan Act (ARPA), a COVID economic relief measure approved by the U.S. Congress and signed into law by President Joe Biden in March 2021.

Combined with the matches from grant recipients, the projects will involve an investment of almost \$455 million.

Other recipients included Spectrum Southeast – another name for Charter – which received nearly \$50 million. Windstream received nearly \$35 million and Cox Communications was granted slightly more than \$8 million.

Idaho

City Of Eagle Uses Federal ARPA Funds To Build Fiber Network

The city of Eagle, Idaho is using \$4.7 million of its federal COVID-relief American Rescue Plan Act (ARPA) funds to plan and develop a fiber broadband network in the Boise suburb. The city declared last year that broadband is an essential public utility and now requires developers to install Internet fiber connecting every home as part of new building projects.

The city is planning to offer 1 gigabyte service for \$50 per month. "It didn't make sense for a private company to do," Eagle Mayor Jason Pierce said. "We don't have to make money. We need to provide services."

Illinois

Bluebird Network Announces New Service In Five Markets

Bluebird Network, a communications infrastructure provider and operator of two data centers and more than 11,000 miles of fiber, announced recently the completion of its 126-fiber route mile network in Illinois. The new service will connect the communities of Aurora, Dixon, DeKalb, Sterling, and Rock Falls.

Indiana

Comcast And State Agree On \$49 Million Fiber Project

Comcast announced it will spend \$36 million to deploy fiber broadband to unserved and underserved areas of 19 Indiana counties. The state will contribute an additional \$13.6 million toward the total project costs.

Kansas

Kansas Announces \$67.6 Million In Broadband Grants

Kansas Governor Laura Kelly announced that the state was awarding \$23.1 million to six service providers to bring high speed broadband to nearly 4,200 homes, businesses, schools, health care facilities, and other institutions in unserved and rural areas of the state in the first of two rounds of funding recently announced.

The grants were focused on last mile projects in 14 counties. An additional \$44.5 million in funding was provided to nine broadband providers in a second round of funding. That funding will serve 18,468 locations in 15 counties.

Funds for the state grant program come from the U.S. Department of Treasury's Coronavirus Capital Projects Fund. The federal program is a \$10 billion initiative available to states, territories, and Tribal governments under the American Rescue Plan Act (ARPA) to fund capital projects.

Kansas received 141 applications for the funding with providers requesting a total of \$693 million. With matching funds from the service providers receiving the state funding in both rounds, the total broadband investment surpasses \$155.5 million, according to the state.

Recipients of the first-round funding included IdeaTek (\$7.9 million); KwiKom (\$1.8 million); Moka Dial (\$6.9 million); PGB Fiber (\$1.8 million); S&T Communications (\$997,000); and WTC (\$3.5 million).

Second round funding recipients included AT&T (\$2.2 million); Butler Rural Electric Cooperative Association (\$9.8 million); Cox Communications (\$6.3 million); Cunningham Communications (\$1.2 million); GBT Rural (\$6.7 million); Iowa Tribe (\$1.4 million); Moka Dial (\$5.5 million); Nex-Tech (\$10.7 million); and WANRack (\$400,000).

Maine

Maine Connectivity Authority Awards \$34 Million In Grants In 31 Communities

The Maine Connectivity Authority (MCA) announced more than \$34 million in grant funding for 12 projects to expand access to high-speed broadband across 31 communities in nine counties of the state. The grants are the single largest investment in Maine's broadband infrastructure to date and will provide

broadband service to more than 16,000 homes and businesses, and will leverage more than \$17 million in private investment from communities and service providers.

MCA received 29 applications for the funding with requests totaling more than \$102 million. Among the recipients are Premium Choice Broadband (\$8.8 million) for six projects; Axiom Technologies (\$2.3 million) for two projects; Unitel/Direct Communication (\$3 million); Consolidated Communications (\$25.7 million for three projects); and TDS (\$1.6 million).

Funding for the state broadband grant program was made available through the federal government's American Rescue Plan Act (ARPA).

Michigan

State Opens Grant Program

The state of Michigan has announced it is seeking applications for \$238 million in grant funding for last mile and middle mile broadband infrastructure projects in unserved areas. The funds were provided by the federal government through the U.S. Treasury Coronavirus Capital Projects Fund. The application window will close on March 14, 2023.

Missouri

Missouri Announces \$261 Million In Broadband Grants

The state of Missouri announced recently that it has awarded a total of \$261 million through the federally-funded American Rescue Plan Act. The state has provided the awards to 60 recipients for projects that will expand and improve Internet access statewide. Projects receiving funds are expected to create more than 55,000 connections in locations that previously lacked adequate Internet access. \$43 million was awarded to Chariton Valley to bring high speed fiber broadband to homes, businesses, and farms in rural areas of Macon, Monroe, Ralls, and Shelby Counties.

Nebraska

Great Plains Launches 2 Gbps Symmetrical Service

Great Plains Communications announced it has launched 2 Gbps symmetrical service in 10 communities, primarily in Nebraska. The company said the offering is supported by XGS-PON fiber broadband equipment. Key vendors are Adtran and Calix.

New Hampshire

Consolidated Wins \$40 Million State Grant

Consolidated Communications has won a \$40 million grant from the state of New Hampshire to expand fiber broadband service to 24,757 unserved and underserved locations across seven counties in the

state. The funding comes from the federal COVID-relief American Rescue Plan Act and will cover about 75 percent of the cost of the project.

Construction is set to begin later this year and will be completed by the end of 2024.

Pennsylvania

\$4.1 Million Project Will Expand Broadband Access In Dauphin County

Dauphin County and Comcast have announced a new \$4.1 million partnership to expand broadband access for northern parts of Dauphin County. The new partnership will bring service to nearly 500 homes and businesses.

The county will fund 75 percent of the project and Comcast will commit the remaining funds to build the network. Comcast will be responsible for maintaining the network. Construction of the network is slated to begin next year.

South Carolina

Lumos Makes \$100 Million Investment In State

Lumos announced that will make a \$100 million investment to deploy new fiber optic technology in underserved areas of the state's Richland and Lexington Counties. The project will build approximately 1,200 miles of fiber optic technology.

South Carolina Distributes \$132.8 Million In Federal Funds For Broadband Expansion

The state has announced it will distribute \$132.7 million for 56 projects to 15 Internet service providers in 33 counties. The funds were provided to the state recently by the federal government through the American Rescue Plan Act.

An additional \$123 million in private investment will help to fund the projects.

AT&T and Comcast are among the top six winners of the funding. The biggest winner was West Carolina Rural Telephone Cooperative which was awarded \$27.3 million. Also in the top six were Palmetto Rural Telephone Cooperative, TruVista Communications, and Farmers Telephone Cooperative.

The projects must be completed by December 31, 2024.

Tennessee

Tennessee Gives \$53.5 Million in State Funding For State Broadband Network

The state of Tennessee has provided \$53.5 million in state funding to a group of Tennessee providers to provide high speed fiber or wireless broadband to more than 14,000 underserved locations in Middle

Tennessee. The project known as UNITE is spearheaded by United Communications, and also includes Middle Tennessee Electric and Duck River Electric.

The \$53.4 million state grant is being supplemented by a \$14 million investment from United Communications and more than \$10 million committed by county governments for a total infrastructure investment of more than \$77 million.

In Brief ...

- **Court Sets Oral Argument In Conservative Group’s Challenge To USF:** The U.S. Court of Appeals for the Sixth Circuit, based in Cincinnati, Ohio, announced recently that oral argument has been set for March 17, 2023 in a case in which Consumers’ Research, a conservative think tank, has challenged the statutory authorization for the USF program. As part of shopping for a court that would rule in the group’s favor, Consumers’ Research also filed legal action in the U.S. Court of Appeals for the Fifth Circuit based in Ocala, Florida. The 5th Circuit already has held oral arguments. Both courts have reputations for being comprised mostly of conservative-leaning judges. The legal proceedings put the future of USF at risk.
- **AT&T Argues Against ACAM Changes:** AT&T recently filed comments warning the FCC about enhancing the Alternative Connect America Cost Model (ACAM). AT&T said that changes to the program could have the effect of increasing the size of the current Universal Service Fund and drive up the contribution factor. The company argued that the contributions base is already on the “brink of collapse.” AT&T also noted that additional funding will be available to carriers through the Broadband Equity, Access, and Deployment (BEAD) Fund. If the Commission decides to move forward with adopting Enhanced ACAM, AT&T said it has a responsibility to incorporate reforms of the USF contributions system.
- **FCC Appears To Kill Media Merger:** The FCC Media Bureau has designated the Standard General-Tegna-Cox Media transaction for a hearing before an administrative law judge in what some say will have the effect of killing the deal. Standard General has been trying to acquire Tegna’s 64 TV stations and other assets, but the FCC said the administrative law judge needs to weigh in on “material concerns in the record related to how the proposed transaction could artificially raise prices for consumers and result in job losses.” Standard General agreed to acquire Tegna in an \$8.6 billion deal that includes the assumption of \$3.2 billion in debt. Apollo Global Management (AGM), a private equity company is providing some of the funding for the deal. AGM control Cox Media Group, which will own some of the Tegna stations if the deal is approved. FCC Chairwoman Jessica Rosenworcel said the review was necessary to ensure the transaction serves the public interest. FCC Commissioners Brendan Carr and Nathan Simington did not agree with the Media Bureau decision, saying that the deal would help the new stations fill a void left by the hundreds of newspapers that have shut down across the U.S.
- **U.S. Treasury Announces Broadband Grants To Ten States:** The U.S. Department of Treasury announced late last year that it has awarded new broadband grants to the states of Arizona; Illinois; Indiana; North Carolina; Alabama; Kentucky; Nevada; Tennessee; Texas; and Wyoming. The funding comes from the American Rescue Plan’s Capital Projects Fund. The funding will connect more than 652,000 homes and businesses to affordable, high-speed Internet. Arizona will receive

\$99.4 million to connect 127,807 households and businesses. Illinois will receive \$253.7 million in funding to connect 87,163 households and businesses through a competitive state broadband grant program. Indiana will receive \$203 million to connect 55,349 households and businesses through a competitive state broadband grant program. North Carolina will receive \$177.7 million to connect 78,100 households and businesses through a state competitive grant program. Alabama will receive \$191.9 million to connect 55,000 households and businesses through a state competitive grant program. Kentucky will receive \$182.8 million to connect 45,000 households and businesses through a state competitive grant program. Nevada will receive \$55.2 million to connect 40,000 households and businesses through a state competitive grant program. Tennessee will receive \$185 million to connect an estimated 50,000 households and businesses by deploying middle mile and last mile infrastructure. Texas will receive \$363.8 million to connect 152,000 households and businesses through a state competitive grant program. Wyoming will receive \$70.5 million to connect 11,700 businesses and households through a competitive grant program to fund last mile broadband infrastructure projects.

- **USDA Announces \$63 Million Rural Broadband Investment In Four States:** The U.S. Department of Agriculture (USDA) announced it is investing \$63 million to bring high speed Internet access to people living and working in rural parts of Illinois, Michigan, Minnesota, and Mississippi. The funds in the form of grants come from the third funding round of the ReConnect Program. The grants include \$18 million to McDonough Telephone Cooperative to deploy a fiber-to-the-premises network in Illinois that will connect 1,583 people, 274 farms, and 41 businesses; \$19.5 million to Alpha Enterprises to deploy a fiber-to-the-premises network in Chippewa and Mackinac counties in Michigan to connect 1,023 people, 19 businesses, and 10 farms; \$10 million to Paul Bunyan Rural Telephone Cooperative to deploy a fiber-to-the-premises network in rural Minnesota in Hubbard, Itasca, and St. Louis counties that will connect 3,529 people, 71 businesses, 35 farms, and two public schools; and \$15 million to Uplink Internet to deploy a fiber-to-the-premises network in Coahoma, Quitman, and Tunica counties in Mississippi that will connect 2,340 people, 143 farms, 45 businesses, and one public school.
- **U.S. Supreme Court Hears Arguments In Two Challenges To Section 230 Liability Provisions Of The Communications Act:** The U.S. Supreme Court heard arguments in two separate cases last week challenging the constitutionality of Section 230 of the Communications Act. Section 230 protects websites from lawsuits stemming from content posted on those sites by third parties, and allows websites to remove content they deem objectionable. Several members of the Court previously indicated an openness to revising the law. However, the Supreme Court Justices seemed wary at the prospect of making changes with one Justice noting that the Justices of the Supreme Court are not “the nine greatest experts on the Internet.” The Court seemed reluctant to narrow legal protections for Internet companies, but is likely to render a decision later this year. Two additional cases stemming from laws passed by Texas and Florida to limit the scope of Section 230 in those states could be headed to the High Court in the near future.
- **NARUC Approves Two Telecom Resolutions, Including One On Rip And Replace Funding:** The National Association of Regulatory Utility Commissioners (NARUC) approved two telecommunications-related resolutions at its recently concluded Winter Policy Summit. The first resolution states that proceeds won in the Rural Digital Opportunity Fund (RDOF) Phase I auction by a bidder for a jurisdiction should remain in that jurisdiction following any FCC decision to reject the

bidder's applications. The second resolution supports extending the FCC's spectrum auction authority which is set to expire next month and divert some auction proceeds to state grants for NG911 programs and to support the FCC's rip and replace program.

- **Rosenworcel Warns Of Risks To Privacy And Security Stemming From 5G Deployments:** In a recent speech at the Center for Strategic and International Studies, a defense-oriented think tank, FCC Charwoman Jessica Rosenworcel warned of a range of risks to privacy and security as the world moves forward with 5G deployments. "The United States and authoritarian regimes have different views on how to use 5G technology," she said. Rosenworcel added that 5G poses "big security challenges" for the U.S. "The truth is that 5G networks connecting so much more in our lives will mean a broader attack surface for cyber events," she warned.
- **Commission Establishes Space Bureau And Office Of International Affairs:** The FCC voted in early January to modernize the Commission by establishing a Space Bureau and Office of International Affairs. The reorganization is intended by Chairwoman Jessica Rosenworcel to better support the needs of the growing satellite industry, promote long-term technical capacity at the FCC, and enable the agency to navigate 21st century global communications policy. As part of the plan, the FCC eliminated the International Bureau. "The satellite industry is growing at a record pace," Rosenworcel said, "but here on the ground our regulatory frameworks for licensing have not kept up. A new Space Bureau at the FCC will ensure that the agency's resources are appropriately aligned to fulfill its statutory obligations, improve its coordination across the federal government, and support the 21st century satellite industry."
- **FAA To Require Airplanes To Install 5G-Tolerant Altimeters:** The FAA announced recently that it will require both cargo and passenger airplanes in the U.S. to install 5G C-band tolerant radio altimeters by February 24, 2024. The FAA said the directive is an update to a previous requirement that prohibited passengers and cargo planes from operating in the vicinity of 5G C-band wireless transmitters unless they were approved by the FAA.
- **Two U.S. Senators Urge FCC To OK Use Of Connected Vehicle Technology:** U.S. Senators Gary Peters (D-MI) and Cynthia Lummis (R-WY) have called on the FCC to move quickly to grant some automakers, universities, and others the ability to use some spectrum in the 5.9 GHz spectrum block to deploy connected vehicle technology intended to prevent crashes. Specifically, the two lawmakers are asking the FCC to approve waiver requests to enable deployment of Cellular Vehicle-to-Everything (C-V2X) technology. The Senators noted that 42,915 people died in traffic crashes in 2021, the deadliest year on U.S. highways since 2005. The FCC said in 2020 that it intended to offer waivers, but none have yet been granted. "Swift action on these waivers is essential given C-V2X technology's potential to reverse rising roadway fatalities," the lawmakers said. Entities seeking waivers include Ford Motor; Volkswagen; Audi; Jaguar Land Rover; the Virginia Transportation Department; Panasonic; the Utah Transportation Department; the University of Michigan; and the New York City Department of Transportation.
- **FCC Report Says 11 ISPs Cover 5 Percent Or More Of U.S. Population:** According to a recently released FCC report, there are 2,021 Internet service providers (ISPs) that offer residential fixed terrestrial service at speeds of at least 200 kbps in at least one direction in the U.S., but only 11 of the providers cover 5 percent or more of the population. Of the 11 carriers, T-Mobile was top carrier

covering 60 percent of the U.S. population. AT&T and Verizon followed T-Mobile with each of the companies covering 40 percent of the U.S. population. Next was Comcast at 36 percent; Charter at 33 percent; Lumen/CenturyLink covering 17 percent; TDS and Frontier – each covering 11 percent; and Cox and Altice – each covering 7 percent. The 11th carrier was Rise Broadband which covered about 5.4 percent of the U.S. population.

- **T-Mobile Considers Buying Mint Mobile:** According to various news reports, T-Mobile is considering acquiring Mint Mobile, the budget wireless provider backed by actor Ryan Reynolds. Reynolds owns about one-fourth of Mint Mobile, according to the reports. Mint Mobile offers budget cell phone plans on the T-Mobile network.
- **U.S. Court Hears Appeal Of New York State Broadband Mandate Decision:** The U.S. Court of Appeals for the Second Circuit heard oral arguments last month in a case regarding a New York law that would have mandated that ISPs offer a \$15 service option for low-income consumers. Industry groups challenged the law saying the state was preempted from imposing the mandate. A U.S. District Court judge sided with the industry, but New York appealed the decision. There is no timeline for a decision in the case.
- **Appalachian Regional Commission (ARC) Awards \$6.3 Million To Boost Broadband Access Across 50 Appalachian Communities:** The Appalachian Regional Commission, an economic development agency of the federal government and 13 state governments, has awarded \$6.3 million in grants to help 50 underserved communities throughout Appalachia to plan for broadband access and growth. The grants will cover projects in 12 states of the region. The grants are intended to help the communities across Appalachia to compete for some of the \$42.5 billion from the Broadband Equity, Access and Deployment (BEAD) grant program.
- **U.S. Court Of Appeals Denies China Telecom Challenge To FCC Revocation Order:** The U.S. Court of Appeals for the District of Columbia issued an Order in late December denying a petition from China Telecom that challenged an FCC Order revoking the domestic authority and terminating the internal authorization issued to China Telecom. China Telecom had argued the Order was arbitrary, and not supported by evidence. The court said it found “no merit” in China Telecom’s claims. The court said it was reasonable for the Commission to conclude that China Telecom poses a national security risk to the U.S.
- **T-Mobile Data Breach Impacts 37 Million Accounts:** T-Mobile disclosed last month that personal information for 37 million current postpaid and prepaid customers’ accounts were breached. The data was stolen beginning in late November 2022, but was not detected by T-Mobile until early January 2023. According to T-Mobile, the breach affected only a limited set of customer account data, but not financial account information or government ID numbers, such as driver’s licenses or social security numbers. This is the eighth data breach T-Mobile has experienced since 2018. A federal class action lawsuit has been filed against T-Mobile for its failure to protect and properly secure customers’ sensitive personal identity information.
- **Frontier Says It Has Received \$440 Million In Broadband Grants:** Frontier CFO Scott Beasley said recently that the company has received \$440 million in government grants to deploy broadband. Most of that money came from the Rural Digital Opportunity Fund (RDOF), Beasley said. Frontier

was one of the top 10 bidders in the RDOF Phase I auction. Frontier's winning bids totaled slightly more than \$370 million. The remaining portion of the broadband grants came from the American Rescue Plan Act (ARPA), a COVID-relief measure approved by the U.S Congress, and other state and municipal funding, the company said. ARPA directed \$350 billion in funding to states and municipalities for infrastructure projects, including broadband. Beasley said the company plans to pursue additional government funding.

- **USTelecom Outlines Views On Net Neutrality:** USTelecom has released an issue brief outlining its support for “modern” net neutrality legislation that would apply to all online commerce, search, social media, and broadband companies. USTelecom also indicated opposition to legislation that would reclassify broadband as a utility. The trade association added that only legislation can provide the certainty needed to avoid the FCC “playing ping pong” with the issue as the political leadership of the FCC changes.
- **Frontier Adds Record Number Of Fiber Broadband Customers:** Frontier reported that it added 75,000 fiber broadband customers in the fourth quarter of 2022, the largest quarterly increase the company has ever experienced. The company ended the 2022 calendar year with 17 percent more fiber broadband customers than it had at the end of 2021.
- **FCC Finishes Reviewing CAF II Rural Broadband Funding Winners:** Four years after the Connect America Fund (CAF) II auction was completed, the FCC announced last month that it has completed the process of reviewing long form applications from all winning bidders. There were 195 authorized applicant/state combinations totaling \$1.48 billion as well as some defaults. Those authorizations include 708,494 locations in 45 states.
- **Analysts Report Broadband Market In U.S. Is Saturated:** Craig Moffett, the influential principal and senior analyst at MoffettNathanson, said recently that new government figures from the FCC indicate that the penetration rate for wired broadband in the U.S. is 87.4 percent of broadband-available homes. According to Moffett, this indicates the broadband industry is “saturated.” He added the most critical question facing investors is whether subscriber growth flatlines or if companies experience a market share loss. “What’s left to penetrate will have to compete with headwinds that include poverty, illiteracy, and of course, relevance,” Moffett said. “We’ve seen estimates that suggest that fully half of broadband-enabled but unsubscribed homes don’t own computers. We don’t suggest that 87 percent penetration of homes is a ceiling, but it is likely not far from one.”
- **Lawmakers Reintroduce Legislation Requiring FCC To Publish List Of Companies With Foreign Ownership:** U.S. Representatives Elise Stefanik (R-NY), Ro Khanna (D-CA), and Mike Gallagher (R-WI) reintroduced legislation recently to require the FCC to publish a list of companies that may be owned by foreign adversarial governments and whether those companies hold FCC authorizations, licenses, or other grants of authority. The legislation was introduced last year by the same lawmakers, but was not approved by the Congress.
- **NTIA Awards Broadband Grants To Minority-Serving Colleges And Universities:** The National Telecommunications and Information Administration (NTIA) announced it has awarded slightly more than \$55 million in grants as part of the agency’s Connecting Minority Communities

Pilot Program (CMC). The grants were awarded to minority-serving colleges and universities in California; Missouri; Louisiana; Alabama; Arizona; Florida; Illinois; Kentucky; North Carolina; Ohio; and Puerto Rico. NTIA awarded \$5.3 million to California State University, Dominguez Hills; \$3.3 million to Loma Linda University in California; \$2.4 million to California State University in Fresno; \$2.9 million to Lincoln University of Missouri; \$6.2 million to Southern University and A&M College in Baton Rouge, LA; \$1.6 million to the University of West Alabama; \$2 million to H. Council Trenholm State Community College in Alabama; \$3 million to the University of Arizona; \$3 million to Florida-based Broward College; \$2.7 million to St. Augustine College in Illinois; \$2.6 million to Dominican University in Chicago; \$2.7 million to Simmons College of Kentucky; \$2.1 million to North Carolina-based Elizabeth City State University; and \$3 million to Central State University in Ohio. The FCC also awarded nearly \$3 million to the Universidad del Sagrado Corazon in San Juan, Puerto Rico.

- **NTIA Awards \$36 Million In High-Speed Internet Grants For Tribal Lands:** The National Telecommunications and Information Administration (NTIA) announced it has awarded two grants totaling more than \$36 million to expand high speed Internet service and provide training in digital skills on Tribal lands. NTIA awarded \$18.7 million to the Leech Lake Band of Ojibwe of Minnesota and \$17.2 million to the Department of Hawaiian Homelands. NTIA also awarded \$500,000 to the Passamaquoddy at Pleasant Point in Maine.
- **FCC Proposes \$62 Million Penalty For Company Violating EBB Program Rules:** The FCC proposed a fine of \$62 million against Q Link Wireless LLC for violating rules for the Commission's Emergency Broadband Benefit (EBB) Program. According to the Commission, the company "overclaimed" support for hundreds of thousands of computer tablets. The company received at least \$20 million in improper disbursements from the program, the Commission said.
- **Rosenworcel Indicates Support For Hotspot Device Subsidy:** FCC Chairwoman Jessica Rosenworcel told a recent meeting of the U.S. Conference of Mayors that subsidizing mobile hotspot devices is a "great idea" and hinted the FCC may take some action on the idea in the future. The suggestion was raised by the mayor of a Texas city, who said that his jurisdiction had a program that lends out connectivity hubs in parts of the town for residents seeking Internet access. He asked Rosenworcel if the FCC could fund such a program. Rosenworcel also indicated that the Commission has been exploring broadening of the E-Rate program and that the agency may be able to expand E-Rate to include funding for hotspot devices. "Stay tuned," Rosenworcel said, "because I think you're onto something."
- **Dish To Raise \$500 Million For 5G Network:** Dish Network said it plans a debt offering of about \$500 million of its senior secured notes to use for the buildout of its 5G wireless network. The latest debt offering from Dish follows a \$2 billion debt offering that the company finalized last November. That offering also was to be used for building the company's 5G network.
- **More Fiber Deployed In 2022 Than Ever Before, FBA Survey Says:** More fiber was deployed in 2022 than ever before, according to a new survey from the Fiber Broadband Association (FBA). The survey shows that fiber providers passed 7.9 million additional homes in the U.S. in 2022 – the highest annual deployment ever despite challenges in materials supply chain and labor availability. According to the survey, there are now a total of 68 million fiber broadband passings in the U.S., a 13

percent increase over the past 12 months and an increase of 27 percent over the last two years. Fiber has been deployed to nearly half of all primary homes in the U.S. and about 10 percent of second homes, according to the survey.

- **FCC Proposes Largest Robocall Fine:** The FCC recently proposed a record \$300 million fine against an auto warranty scam robocall campaign. According to the FCC, the robocall scheme made more than 5 billion robocalls to more than half a billion phone numbers during a three-month span in 2021 using pre-recorded voice calls to press consumers to speak to a “warranty specialist” about extending or reinstating their car’s warranty.
- **FCC Seeks Comment On Media Ownership Rules:** The FCC has initiated its quadrennial review of the Commission’s media ownership rules to determine whether the media ownership rules are necessary and in the public interest. The Commission is required by legislative statute to review its rules every four years.
- **FCC Commits \$163 Million For ECF:** The FCC announced recently it has awarded \$163 million to provide support from the Emergency Connectivity Fund to support more than 1.06 million students in off campus environments in 19 states and Puerto Rico. The latest funding focuses on students in Alaska; Colorado; Florida; Idaho; Illinois; Indiana; Maryland; Massachusetts; Michigan; Minnesota; Missouri; Nebraska; New Jersey; North Carolina; Nevada; Ohio; Oklahoma; Texas; Washington; Wisconsin; and Puerto Rico. The funding will support more than 1,065 schools, 73 libraries, and 101 consortia.
- **China’s Hikvision Sues U.S. Over FCC Ban:** Chinese video surveillance company Hikvision is suing the U.S. government as well as the FCC over a Commission Order issued in November limiting the sale of Hikvision’s products in the U.S. Hikvision argues that the FCC exceeded its authority in issuing its November Order. The FCC cited national security concerns as the reason for imposing restrictions on the company’s operations in the U.S. The company has been criticized for reportedly operating surveillance systems in mass internment camps in Xinjiang, China.
- **Cox To Deploy Cox Mobile To Its Broadband Users:** Long after other major U.S. cable companies, like Comcast and Charter, launched mobile services combining wholesale MVNO access to Verizon’s wireless network, Cox Communications has announced that it now will use its MVNO relationship with Verizon to deploy Cox Mobile to its nearly 5.6 million broadband users across 18 states.
- **T-Mobile Announces Layoffs:** Despite adding a record number of customers during the 4th quarter, T-Mobile announced recently it plans to lay off about 600 employees, including employees holding various management positions. T-Mobile attributed the layoffs to a change in retail strategy in which the company would move away from brick-and-mortar stores and rely more on mobile outlets and kiosks in big-name retail outlets.
- **Nextlink Buys Nebraska Fiber Operator:** Nextlink Internet, which was one of the top 10 winners in the Rural Digital Opportunity Fund (RDOF) rural broadband funding auction, has purchased most of the assets of Bluestem Network, a fiber broadband provider based in Lancaster and Seward

Counties in Nebraska. Nextlink said it plans to use Bluestem's assets as a base to continue growing the company's fiber Internet presence across southeast Nebraska.

- **Southeast Missouri's Big River Broadband/Circle Fiber Purchased By i3 Broadband:** Southeast Missouri's Big River Broadband/Circle Fiber has been acquired by i3 Broadband, a leading Midwest fiber-to-the-home provider. The acquisition will allow i3 Broadband to further expand its ultra high-speed fiber-optic footprint to residential and commercial customers across central Illinois and eastern Missouri. The company will make an additional \$100 million investment, according to i3, that is intended to grow the southeast Missouri market and provide next generation broadband services to additional communities. The transaction is expected to close in the second quarter of 2023.
- **Robocalls Increase In January:** According to a new report from Robokiller Insights report, robocalls went up modestly in January with Americans receiving an estimated 5.5 billion of the automated calls during the month. This compares to 5.3 billion calls in December. Robokiller noted that it has seen a drop of calls in some of the most malicious robocall categories involving car warranties, student loans, and home mortgages. Robokiller attributes the decline to the FCC's efforts to curb robocalls.
- **Free Press And 40 Other Consumer Advocacy Groups Urge FTC To Protect Telecom Consumers From Junk Fees:** Free Press, a consumer public interest group, has called on the Federal Trade Commission (FTC) to take steps to combat junk fees that add undue costs to consumers' telephone bills. Free Press was joined in its comments by the Consumer Federation of America and 40 other public interest groups. "Big ISPs, like AT&T and Comcast, have gotten away with nickel-and-diming consumers for far too long," the groups said. "We would welcome rules that protect consumers from fees that exacerbate the digital divide and make communications services unaffordable for many households." The groups added that billing in the telecommunications sector is "notoriously rife with surprise fee and hidden costs."
- **Biden Renominates FTC Commissioner:** President Joe Biden recently announced his intention to reappoint Rebeca Kelly Slaughter to a new term as a Commissioner on the Federal Trade Commission (FTC). Slaughter was first sworn in as an FTC Commissioner in 2018. Prior to serving on the FTC, Slaughter was Chief Counsel to U.S. Senator Chuck Schumer (D-NY). In related news, FTC Commissioner Christine Wilson, whose term does not expire until 2025, announced her intention to resign from the Commission. Wilson, who is the lone Republican Commissioner on the FTC at the present time, cited Chairwoman Lina Khan's "disregard for the rule of law and due process and the way senior FTC officials enable her" as the reason for her resignation. Wilson objected to Khan's decision to not recuse herself in an antitrust case related to Meta's acquisition of Within, a virtual reality gaming company.
- **Starry Files For Chapter 11 Bankruptcy Protection:** Starry Group Holdings, a licensed fixed wireless provider, announced the company has filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. The company said it has entered into a restructuring agreement with lenders holding the company's debt. Starry's customer and network operations during the restructuring process will continue as normal within its five core operating markets: Boston, New York, Los Angeles, Denver, and Washington, D.C.

- **Pay-TV Cord-Cutting To Jump In 2023, Says Analyst:** Pay TV cord-cutting is expecting to increase by as much as 7 percent in 2023, according to Wells Fargo analyst Steven Cahall. Cahall estimates that Pay TV lost 5.175 million subscribers in 2022, a 6 percent decline, and penetration of TV households by pay-TV service is down now to about 53 percent from a peak of 80 percent in 2015. In addition to a 7 percent decline in 2023, Cahall, expects another 6.7 percent decline in 2024 and 7 percent again in 2025.
- **Verizon Gets Deal With NFL:** Verizon recently has entered into a five-year deal with the National Football League (NFL) to deliver a managed private wireless solution across each of the 30 U.S. NFL stadiums.

What's Up...

- The next regularly scheduled open meeting of the FCC is March 16, 2023. The Commission is expected to take up rules to improve the STIR/SHAKEN caller ID authentication framework to require intermediate phone providers to authenticate certain calls in addition to expanding robocall mitigation requirements for all providers and adopting more robust enforcement tools; finalize its rules on text messaging scams to require mobile service providers to block robotext messages highly likely to be illegal; consider a proposed framework for increased collaboration between terrestrial mobile network operators and satellite service providers; begin the process of implementing a new law that gave the FCC authority to combat unfair prison phone rates within a state's borders; update its equipment testing standards rules; seek comment on expanding audio description to all remaining broadcast markets; and consider two items from the Enforcement Bureau.
- The U.S. House Energy and Commerce Subcommittee on Innovation, Data, and Commerce will convene a hearing on March 1 to consider a national standard for consumer privacy.
- The U.S. Senate Commerce Committee has scheduled no telecommunications-related hearings at this date.

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