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When It Rains It Portlands: Navigating Federal Telecom Policy and Broadband Funding Opportunities

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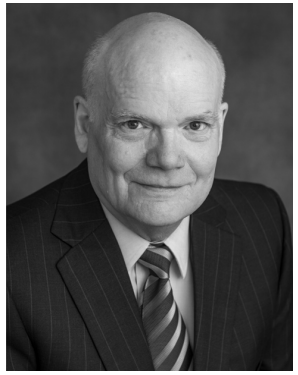

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OUTLINE

Wireless
Cable
Broadband

Wireless Update

Changes to Section 6409 or EFR Rules – litigation and FCC update

RF Emissions regulation– recent cases

Small Cell Order – potential circuit split

Section 6409 Rules Update

Section 6409 (a) Facility modifications

(1) In general

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request

For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

Section 6409 Rules Update

- Implementing rules are codified in 47 CFR § 1.6100 (formerly § 1.40001)
  - EFR rules renumbered in 2018 when FCC codified other shot clock rules
- FCC orders adopting rules are critical to understanding requirements
  - *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd. 12865 (Oct. 17, 2014), amended by 30 FCC Rcd. 31 (Jan. 5, 2015) ("Original Order")
  - *Implementation of State & Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, 35 F.C.C. Rcd. 5977 (2020) ("Clarifications Ruling")
  - *Implementation of State & Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012,* 35 F.C.C. Rcd. 13188 (2020) ("Expansions Order")

Section 6409 Rules Update

- *Original Order* (2014)
  - 60 day shot clock
  - deemed granted remedy
  - specific parameters for EFR affecting structures within and outside PROW
- Upheld *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015)

Section 6409 Rules Update

- *Clarifications Ruling* (2020)
  - Interprets FCC rules, does not change their wording
  - Re-defines “concealment” to exclude ordinary concealment (such as hiding an antenna on the back of a roof or installing it under a tree line).
  - Protections for concealment elements only apply to stealth facilities
  - Limit of 4 ground-mounted cabinets applies separately to each EFR and is not cumulative
  - Excludes from definition of “cabinet” smaller pieces of equipment in their own housing
- Order is in effect
- Appeal pending: *League of Cal. Cities et al. v. FCC*, No. 20-71765 (9th Cir. 2021)
  - Court has agreed to FCC request to keep case on hold until 11/14/2022

Section 6409 Rules Update

- *Expansions Order* (2020)
  - Modifies rules for macro sites only
- Revised definition of "site" to provide that current boundaries are those that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government,
  - if the approval of the modification occurred prior to the Spectrum Act or
  - otherwise outside of the section 6409(a) process
- Expanded possible non-substantial changes to allow excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction
  - But site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site
- In effect; FCC reconsideration petition pending

Section 6409 Cases Update

- *ExteNet Systems, Inc. v. Village of Pelham*, 377 F.Supp.3d 217 (D. NY. 2019)
- *Bd. of Cty. Commissioners for Douglas Cty., Colorado v. Crown Castle USA, Inc.*, 2018 WL 6620760
  - 47 USC § 1983 remedy of damages is incompatible with the Spectrum Act's regulatory enforcement scheme (deemed granted remedy and declaratory judgment enforcement action)

Section 6409 Cases Update

- *Bd. of Cty. Commissioners for Douglas Cty., Colorado v. Crown Castle USA*, Inc., 2020 WL 109208 (D. Colo. 2020)
  - Review was a "Presubmittal Review" not a denial because County didn't use its form specifically designed to deny or approve applications
  - Deemed granted letter has no substantive effect ("purely procedural, a way for applicant to "mark the culmination of the application process"")
  - Request was not a valid EFR because it would defeat specific concealment elements
  - County didn't prohibit applicants from providing wireless services because they chose the deemed granted notice route rather than alternative modifications suggested by County

Section 6409 Rules Update

- ***Los Angeles SMSA Ltd Partnership dba Verizon v. City of Malibu*, 2021 WL 6104872 (C.D. Cal.)**
  - City and Verizon did not agree on application eligibility as EFR
  - City believed it denied application and pursued incompleteness items for collocation multiple times
  - Verizon believed City did not act and sent deemed granted letter for EFR; then sued
  - Court agreed that City staff acted to deny EFR within shot clock and Verizon failed to pursue court remedy within 30 days of EFR denial so court action was untimely

Section 6409 Cases Update

- *T-Mobile v. City and County of San Francisco*, 2021 WL 1056788 (N.D. Cal.)
  - T-Mobile sued City seeking court order to issue the permits and approve pending and future applications w/in 60 days.
  - City not required to *issue* permits for EFR applications in response to deemed granted notice because the Spectrum Act only prohibits State or local governments from denying qualifying applications (*but note* statute says "may not deny, and shall approve")
  - T-Mobile's deemed granted applications should nevertheless be treated as granted
  - City barred from imposing penalties or preventing T-Mobile from proceeding with installations for applications deemed granted because City didn't act w/in 60 days

RF Emissions – FCC Authority

- Telecommunications Act of 1996, Pub. L. No. 104-104, § 704(b), 101 Stat. 56, 152 (directing FCC to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions")

- 47 USC §332(c)(7)(B)(iv):

  "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

RF Emissions - Cases

- Status of FCC guidelines:

  Proposed Changes In The Commission's Rules Regarding Human Exposure To Radiofrequency Electromagnetic Fields Reassessment Of Federal Communications Commission Radiofrequency Exposure Limits And Policies Targeted Changes To The Commission's Rules Regarding Human Exposure To Radiofrequency Electromagnetic Fields, 34 FCC Rcd. 11687 (2019) ("RF Order")

  - FCC took various actions in this Order
  - In 2013, the FCC inquired whether it should reevaluate its RF exposure limits and policies in light of recent scientific opinions, authoritative expert views, changes in RF devices, and/or the prevalence and usage patterns of RF devices
  - Resolution of Notice of Inquiry terminated inquiry into possible amendments to FCC's existing RF emission exposure limits

RF Emissions - Cases

- Status of FCC guidelines

- *Environmental Health Trust et al. v. FCC & USA*, 9 F.4th 893 (D.C. Cir., 2021)
- Majority held the FCC's decision to end the inquiry was arbitrary and capricious for various failures to adequately address record evidence
  - The Court did not overturn the existing FCC guidelines
  - The Court did not order the FCC to change the guidelines but said the FCC must provide a "reasoned explanation" for deciding no changes were warranted
  - "To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF radiation – we merely conclude that the Commission's cursory analysis of material record evidence was insufficient as a matter of law. As the dissenting opinion indicates, there may be good reasons why the various studies in the record, only some of which we have cited here, do not warrant changes to the Commission's guidelines."

RF Emissions - Cases

- Cell phone warnings at point of sale:
  - (1) Conflict with federal law?
  - (2) Violate retailers First Amendment rights?

***CTIA--The Wireless Assn v. City and County of San Francisco,* 494 Fed. Appx. 752 (9th Cir. 2012)**

- Majority found that ordinance did not conflict with federal law
  - "The field of consumer disclosures to cell phone purchasers has not been occupied by the FCC."
- BUT did violate the retailers' First Amendment rights

RF Emissions - Cases

***CTIA - The Wireless Assn. v. City of Berkeley*, 854 F.3d 1105 (9th Cir. 2017)**

- Courts found the ordinance compelled disclosure of factual and noncontroversial information to consumers, thus not violating the retailers' First Amendment rights

***CTIA--The Wireless Assn v. City of Berkeley*, 201 L. Ed. 2d 1092 (June 28, 2018)**

- SCOTUS granted cert and vacated the Ninth Circuit's decision, instructing them to consider a recently issued Supreme Court decision on First Amendment

***CTIA v. City of Berkeley, California*, 928 F.3d 832 (9th Cir. 2019)**

- On remand, the Ninth Circuit again affirmed the denial of Plaintiff's motion to stay enforcement of the ordinance
  - Ordinance compelled disclosure of factual and noncontroversial information to consumers, thus not violating the retailers' First Amendment rights
  - SCOTUS denied cert petition, 205 L.Ed.2d 387 (2019)

RF Emissions - Cases

***CTIA v. City of Berkeley*, 487 F. Supp. 3d 821 (N.D. Cal. 2020)**

- Plaintiff's motion for judgement on the pleadings, after FCC's RF Order issued
- FCC filed Statement of Interest in support of CTIA
- Court found that the Berkeley ordinance as drafted was preempted:
  - "The Statement of Interest is consistent with the 2019 RF Order in recognizing that additional disclosures pose a risk of overwarning. Furthermore, even if the Berkeley ordinance specifically is (as the Ninth Circuit indicated) literally true and not misleading, it does not necessarily follow that there is no risk of "overwarning" – especially given that the FCC is tasked with balancing the competing objectives of ensuring public health and safety and promoting the development and growth of the telecommunications network and related services."
  - "Given the specificity of the warning required by the Berkeley ordinance, the implied risk to safety if the warning is not followed (a risk the FCC has concluded does not exist), and the acknowledged "controversy concerning whether radio-frequency radiation from cell phones can be dangerous if the phones are kept too close to a user's body over a sustained period," CTIA, 928 F.3d at 848, the FCC could properly conclude that the Berkeley ordinance – as worded – overwarns and stands as an obstacle to the accomplishment of balancing federal objectives by the FCC."
  - "Court does not opine whether an ordinance stripped of any implication about public safety would be preempted."

RF Emissions - Cases

Americans with Disabilities Act (ADA) Claims

- *Firstenberg v. City of Santa Fe, N.M.*, 696 F.3d 1018 (10th Cir. 2012)
  - Plaintiff attempted to argue that there was no preemption issue because the ADA trumped the TCA preemption
  - The district court held the TCA preempted any state or local regulations on radio frequency matters
  - Appeals Court on jurisdictional issue ordered district court to vacate and remand to state court

RF Emissions - Cases

Santa Fe All. for Pub. Health and Safety v. City of Santa Fe, New Mexico, 993 F.3d 802 (10th Cir. 2021), cert. denied, 212 L. Ed. 2d 234 (Mar. 7, 2022)

- Alliance alleged (among other things) that the TCA, the state law exempting facilities on public rights-of-way from local land use review, and local implementing ordinance, infringed upon its members' First Amendment rights to free speech and to petition the government because local officials could not adopt their position in opposition to RF emissions exposure
- Court held: First Amendment rights not violated because nothing in the TCA or the Amendments to Chapter 27 punishes, restricts, or prohibits any individual from speaking against RF emissions; First Amendment right to petition is not a guarantee of success

RF Emissions - Cases

ADA and Fair Housing Act (FHA) Claims

- *Children's Health Defense v. FCC*, 25 F.4th 1045 (2022)
  - Challenge to update of FCC's OTARD rules expanding its regulatory preemption of state and local restrictions for installation on private property of antennas capable of both receiving radio waves and transmitting signals for single property owner and multiple customers in one location, in order to include antennas serving as hub sites or relay service to other locations
  - Ct held FCC's order did not facially violate ADA and FHA
    - In order to succeed in their facial challenge, petitioners had to show that there are no circumstances in which amendment of the regulation would be valid

RF Emissions - Cases

ADA and FHA Claims

Wolf v. City of Millbrae, 2021 WL 3727072 (N.D. Cal)

- Plaintiff claimed that RF emissions from a cell tower above his housing complex caused him to suffer from "electromagnetic hypersensitivity" (EHS), and requested that City order accommodations be made under the ADA and FHA by either turning the tower off or requiring the company to relocate the tower site
- Court held that Plaintiff's claims against the City for violation of the ADA and FHA were unreasonable because his requests would require the City to violate § 332(c)(7)(B)(iv).
  - Court found that “it would be improper under the ADA to subject a defendant to the threat of litigation for the purpose of accommodating a plaintiff under the ADA.”
  - Court applied the same reasoning for Plaintiff's FHA claim—”granting Plaintiff's accommodation request would require the City to regulate RF emissions in violation of the TCA and its implementing regulations. This accommodation would require the City to face liability for violating federal law and is thus not reasonable.”

RF Emissions - Cases

State tort and consumer fraud

Cohen v. Apple Inc., 46 F.4th 1012 (9th Cir. 2022)

- Plaintiffs alleged that Apple breached state tort and consumer-fraud laws by misrepresenting and failing to disclose the dangers of RF radiation emitted by iPhones
- Appeals Court held plaintiffs conceded that iPhones comply with the FCC's RF radiation regulations, but argued state-law causes of action premised on RF emission standards more protective than those prescribed by the FCC are not preempted
- Plaintiffs' concession that Apple's iPhone complies with FCC emission levels prescribed by the FCC is fatal to their appeal
  - FCC's adoption of specific RF radiation limits for cell phones is the result of the agency's striking a balance between the conflicting policies of public safety and the public's access to telecommunications technologies
  - FCC's upper limits on the levels of permitted RF radiation preempt state laws that impose liability premised on lower levels
  - Allowing state tort law to prescribe lower levels of RF radiation would interfere with the nationwide uniformity of regulation that is the aim of the Act, and would render the FCC's statutorily mandated balancing essentially meaningless
  - Savings clause in § 414 of the 1934 Act does not help plaintiffs. (“Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.”).

Small Cell Order Circuit Split?

City of Portland v. FCC and USA, 969 F.3d 1020 (9th Cir. 2020); cert. den. 210 L.Ed.2d 962 (2021)

- Petitioners' Supreme Court brief included an argument based on *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, Inc., 467 U.S. 837 (1984) and *National Cable & Telecomms. Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005) that Ninth Circuit affirmance of FCC Order is inconsistent with other circuits:
  - *Once a court, based on plain language, declares what the law is, an agency is not free to trump that determination.*
  - *Under Brand X, the FCC was not free to simply cast aside the plain language decisions of federal courts of appeals, and the Ninth Circuit failed to consider whether the FCC's resolution, based on the purported characteristics of 5G, properly took into account the other circuits' plain language determinations of what the law is. Even on technical issues, the FCC is bound by the statutory language as authoritatively interpreted by the federal courts. The FCC's Order exceeds those bounds.*
  - *Some parties will surely claim that the Order, having been upheld in the Ninth Circuit, is the definitive nationwide interpretation of the statute. But at least one circuit court has concluded that an agency's revision to existing circuit precedent is "not legally effective . . . until [the circuit court] discharge[s] its obligation under Chevron step two and Brand X to determine that the statutory provisions at issue were indeed ambiguous." Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1145 (10th Cir. 2016) (Gorsuch, J.).*

Small Cell Order Circuit Split?

- Plain language jurisdictions
- Second and Fourth Circuits found, on plain language, a single permit denial could not be an effective prohibition without considering the materiality or severity of the impact on service and whether the adverse impacts could be avoided by alternate tower locations
- Eighth Circuit's plain language holding was that prohibitory effects must be actual, and not merely speculative under Section 253

Small Cell Order Circuit Split?

ExteNet Sys., Inc. v. Village of Flower Hill, 2022 WL 3019650 (E.D.N.Y. July 29, 2022)

- Court found that the Village's denial of Plaintiff's permit application was supported by substantial evidence, and did not violate the TCA's ban on prohibiting personal wireless services
  - ExteNet argued board's denial was preempted because it constitutes an effective prohibition of "personal wireless services"
    - Court must give *Chevron* deference to the FCC's Small Cell Order ruling that "an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service."
  - Court followed Second Circuit Court's opinion in *Sprint Spectrum L.P. v. Willoth,* 176 F.3d 630 (2d Cir. 1999), which had held the federal ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to land-lines.
    - Although the Second Circuit found the phrase "personal wireless services" "opaque", it ultimately relied on the plain statutory language to define it. Therefore, the phrase was not ambiguous as *Chevron* deference requires
  - Court noted the circuit court may wish to reconsider its definition in light of new technology, but the district court is not in a position to ignore its binding pronouncement
- Appeal was filed to Second Circuit, and then parties stipulated to withdraw with prejudice and case was dismissed

Small Cell Order Circuit Split?

CNSP, Inc. v. Webber, et. al (City of Santa Fe), 2022 WL 4536132 (D.N.M., Sept. 28, 2022)

- Challenge to 2% franchise fee for use of PROW for telecommunications (fiber internet only; not wireless internet or VoIP phone service revenue)
- CNSP urged court to adopt FCC's *Small Cell Order* rule that any fee imposed must be cost-based
- Court acknowledged Tenth Circuit had adopted a "materially inhibits" standard for effective prohibition (like the FCC *Small Cell Order*)
- But Court rejected FCC's "hardline statement against revenue-based fees" on two grounds
  - FCC *Small Cell Order* applies only to 5G wireless networks, and CNSP's franchsie excludes wireless from any fee
  - Controlling precedent in Tenth Circuit binds the this Court.
  - "…the Court, despite the norm for deference to agencies found in [*Chevron]*, is not persuaded that an administrative "Declaratory Ruling" expressing a preference on a split in caselaw controls the courts…... The Tenth Circuit has taken a view opposite of the FCC's preference, concluding that when assessing fairness and reasonableness of fees, the Court does not measure by the city's cost, but rather uses a totality of the circumstances test… This Court remains bound by the Tenth Circuit—which has not adopted a view antagonistic to revenue-based fees for wireline infrastructure." (citations omitted)

Cable Update

Remand of FCC's 3rd §621 Order

State Video Franchising Law Fee Litigation

Other Video Streaming Service Issues

Remand of FCC's 3rd §621 Order

Third Section 621 Order

- In-Kind Rule: Most in-kind franchise obligations (other than buildout and PEG capital cost obligations) count against the Cable Act's 5% fee cap; in-kind obligations valued at "fair market value" (47 CFR §76.42(a))
- Mixed-Use Rule: An LFA may not regulate the provision of any services other than cable services offered over the cable system of a cable operator, with the exception of channel capacity on I-Nets. (47 CFR §76.43)

Remand of FCC's 3rd §621 Order

What the Sixth Circuit Sent Back to the FCC

- In-Kind Rule: Upheld the rule, *except* only the "marginal cost" of fulfilling a franchise obligation – *not* fair market value – constitutes a "franchise fee"
  - FCC must revise the rule on remand
- Mixed-Use Rule: Questioned the rule as written, saying it "does not follow from the Act's terms," and concluded LFAs may regulate a cable operator's non-cable services unless inconsistent with the Cable Act. But it found a cable operator's franchise included the right to use its system, located in the ROW, to provide information services
  - The FCC should address the rule's textual inconsistency with the Act

Remand of FCC's 3rd §621 Order

- FCC expected to conduct a short rulemaking on remand, probably in early 2023
- Comment and reply comment period will provide an opportunity for local governments to persuade the FCC to address key issues left open or subject to dispute

State Video Franchising Law Fee Litigation

- Between 2005 and 2015, over 20 states enacted laws giving the state (rather than local governments) franchising authority over cable operators and “video service providers.”
- Generally, the laws require “video service providers” to (1) obtain a franchise from the state, and (2) pay a 5% franchise fee to local governments.
- “Video service” is defined to include video programming in IP, but excludes video provided over the “public internet.”
- “Video service provider” is defined as a provider of video service that “uses” the ROW.

State Video Franchising Law Fee Litigation

- Beginning in 2021, lawsuits have been filed by municipalities in 13 states against Netflix and Hulu, the leading “over the top” (OTT) providers of video streaming services.
- The claim: Netflix, Hulu and other OTT providers (1) provide “video service” and “use” the ROW to provide the service (via other parties’ broadband networks in the ROW), and therefore (2) must obtain a state video franchise and owe the plaintiff municipalities 5% video franchise fees.

State Video Franchising Law Fee Litigation

- Key issues:
  - Whether local governments have a right of action under the state video franchising law to sue OTT providers for failing to obtain a state video franchise
  - Whether OTT providers' video streaming services are a "video service" or instead fall within the "public internet" exception to the "video service" definition
  - Whether OTT providers "use" the ROW when they own no ROW facilities
- So far, municipalities have not fared well, largely losing at the trial court level.
- In September, Ninth Circuit and Eighth Circuit held oral arguments in local governments' appeals of adverse district court decisions concerning Nevada's and Arkansas's state video franchising laws.

Other Video Streaming Issues

- There are strong, but unresolved, arguments that revenues a cable operator receives from streaming services over its system are subject to cable franchise fees:
  - Delivering video or other programming services in IP does not change a cable service into a non-cable service.
  - Delivering those programming services via the public Internet (as is claimed by most cable operators) is not dispositive (nor is it clear all streaming services are delivered via the public Internet).
  - Efforts to draw a line between what an operator calls “managed cable services” and other video services are also not dispositive.

Other Video Streaming Issues

- Whether any particular revenues should be subject to cable franchise fees is likely to turn on specific facts regarding the relationship between the cable operator and the streaming service, including:
  - Any common ownership relationship between cable operator & OTT provider?
  - How is the OTT service provided?
  - How is the OTT service marketed?
  - Under what compensation arrangement (if any) does the operator (or its affiliate) receive or collect revenues for the OTT service or for promoting that service?
  - To what degree are the OTT services integrated with traditional linear cable services?

Other Video Streaming Issues

Governing Law

- Local franchising authorities are entitled to assess a franchise fee on a "cable operator's gross revenues derived … from the operation of the cable system to provide cable services." 47 U.S.C. § 542(b).
- Questions to be answered:
  - Is the revenue of the cable operator, and
  - Is the revenue derived from the operation of the cable system to provide cable services.
- Strong argument that the revenue need not be revenues *from* a cable service per se; the revenue need only be derived in connection with the operation of the system to provide cable services.

Other Video Streaming Issues

Cable Service Definition

"Cable service" is defined as:

- (A) the one-way transmission to subscribers of (i) video programming, or (ii) ***other programming service***, and
- (B) subscriber interaction, if any, which is required **for the selection or use** of such video programming or other programming service." 47 U.S.C. §522(6).

Other Video Streaming Issues

Video Programming Definitions

"Video programming" means

- programming provided by, or generally considered comparable to programming provided by, a television broadcast station," 47 U.S.C. §522(20);

"Other programming service" means

- **information that a cable operator makes available to all subscribers generally**, §522(14).

Other Video Streaming Issues

Factors That May Be Relevant

- Whether the cable operator exerts sufficient control over what programming is delivered to subscribers, and how it is delivered to them, such that it can be considered to be "transmitting" the programming to subscribers.
- Whether the services are so interactive in nature, beyond interaction "for the selection or use" of the service, that the services cannot be treated as a cable service, and must instead be treated as non-cable services.
- Whether the electronic pathways used to deliver streaming services are legally distinct from the elements of the network that are treated as the "cable system."

Other Video Streaming Issues

Don't Surrender OTT Fee Revenue Issues In Your Renewal Franchise

A community can contractually agree in a franchise to impose a franchise fee that is less than the maximum the Cable Act allows -- for example, by agreeing to exclude from the franchise fee revenue base classes of revenues on which the Cable Act would allow the fee to be imposed. LESSONS --

- Do not agree to broad gross revenue exemption language excluding revenues received from services delivered via the Internet, or revenues from information services.
- Consider adding language stating that your franchise's "gross revenue" definition is to be construed as broadly as applicable law permits.

Other Video Streaming Issues

Preserve Rights Over Other Users of Cable System

Cable Act provides that "Nothing in this chapter shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator." 47 U.S.C. § 542(h).

* This language makes clear that the Cable Act does not prohibit the imposition of a 5% fee or tax on the subscription revenues of OTT service providers unaffiliated with the operator.

BUT … whether subscription revenues received by a OTT provider that does not bill through the cable company can be taxed is a distinct question that depends significantly on other federal and state laws

Other Video Streaming Issues

Don't Forget Your ROW Authority

- For non-cable services and systems in the ROW that are not subject to the Cable Act (e.g., broadband-only providers), authority over use of ROW is largely a state law issue.
- Do you have options under state law to manage & obtain compensation for use of the ROW by these non-cable providers?
  - ROW fees applicable to all communications service providers (Oregon)
  - ROW fees applicable to all utilities & other ROW users
  - Other communications & entertainment tax options (Virginia, Chicago)
- Is there work to do at the state level to preserve ROW authority over non-cable companies?

Other Video Streaming Issues

Beware Of State Laws

- Texas Law -- Pay for One, Get One for Free
- Louisiana Law -- Barring OTT Fees

Internet for All Programs

Connecting the Urban Unconnected.

Broadband Money For Cities

- ARPA
- IIJA
  - BEAD
  - Digital Inclusion
  - Emergency Connection Fund
  - DHS Cybersecurity Grant Program
- FCC's Affordable Connection Program
  - Benefits per household
  - Outreach Grants (awaiting release from FCC.)

What's the Threat?

- There are some in DC and in State Capitals that believe none of the money should end up in urban America.
  - "We must reject calls for government-subsidized overbuilding, which jeopardizes the operations of businesses that risked their own capital to serve local communities. Instead we need to direct funding to communities that have been left behind, rather than those that already benefit from high-speed Internet services today."
    - Comm Brendan Carr (3/16/22)

Next Steps/Decisions

- Will you dedicate ARPA funds for Broadband?
- What are you doing to drive up Affordable Connectivity Subscribership
- Local governments should contact their governor's office to determine the status of the state's application processes and how your community's needs are being addressed.
  - BEAD
  - Middle Mile
  - Digital Inclusion
  - Cyber Security

American Rescue Plan Act (ARPA)

Coronavirus State and Local Fiscal Recovery Funds

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ARPA was signed into law on March 11, 2021

Sections 602 and 603 provides $350 billion in support to state, local, and tribal governments to respond to COVID-19's impact on their communities, residents, and businesses

On May 10, 2021, the U.S. Treasury released the Interim Final Rule which outlines the terms for use and preliminary reporting obligations

On June 17, 2021, the U.S. Treasury released the Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds

On January 27, 2022, the U.S. Treasury published the Final Rule for the State and Local Fiscal Recovery Funds in the Federal Register

ARPA Funds Dedicated To Broadband Services Or Infrastructure

- ARPA Funds can be used to support broadband services.
  - Funds under those categories may be used to provide assistance to households facing negative economic impacts due to COVID-19, including digital literacy training and other programs that promote access to the Internet.
- Broadband infrastructure investments, like water infrastructure should be able to report how the funds have been used to achieve the goals and types of projects being pursued.
- Projects eligible for infrastructure investments must provide reliable minimum speeds of 100 Mbps download and 100 Mbps upload.
  - Where impracticable, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed

Timeline for the Use of ARPA Funds

Funds are able to be used to cover eligible costs incurred during the period of March 3, 2021 and ends on December 31, 2024

Funds may be used in a retrospective way when being used to provide premium pay, and in some instances for assistance to households, and businesses

Funds must be obligated by December 31, 2024 and must be expended by December 31, 2026

Broadband Funding Oppourtunities

Question /Program	Emergency Broadband Program/ Replaced by ACP	Emergency Connection Fund Applications Open June 29, 2021	CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND	Covid Capital Projects Fund Explanatory Page on Treasury
Lead Federal Agency/Department	Federal Communications Commission EBB Report and Order Resource Page	Federal Communications Commission ECF Report and Order	Treasury Department Interim Final Rule Fact Sheet Comments due by 7/16/2021	Treaseuy
What does the program do?	Funds are available to households that meet certain needs categories for a $50.00 per month subsidy for a broadband connection from an EBB program certified provider. (This is not just for traditional universal service providers.) FCC Reports more than 1 million folks signed up in the first week.	Program is built on the existing E-Rate program that provides reimbursement of expenses associated with bringing advanced services to schools and librarians. Congress expanded the program to allow funds to be used to bring services to student, faculty and library patrons at locations other than schools or libraries.	American Rescue Plan provides funding directly to local governments, Providing citizens assistance to pay for internet services and digital appear an eligible expense. (p. 33 of Report) Investments in broadband. Infrastructure that is scalable to 100 Mbps symmetrical for unserved or underserved areas are also eligible..	Capital Projects Fund for states, territories, and Tribal governments to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to (COVID–19).
How much	$3.2B	$7.17B	Look to your community's allocation -- here	$10 billion
Status on Funding	Program went live May 12, 2021.	Awiaitng a new window – approx. 1 B remains	First tranche of funding to be receive from Treasury in 2021 – Second half in 2022	Applications will be accepted Summer 2021
When does funding lapse	Until exhausted or six months after end of pandemic per HHS.	Until exhausted or 9/30/2030	12/31/2024	12/31/2024
Who is eligible	Funding to eligible user for up to $50 per month ($75 on tribal land) for connection and $100 for device with $10-$50 copay.	Entities that are eligible under E-Rate program – Schools and Libraries --	Money is sent directly to local government	States, territories, and tribal governments
Are funds available for construction	No	Likely No or limited	Yes, upon demonstration of the non-availability of wireline service of 25/3 speed.	Yes

Reminders of Broadband Resources and Status

- ARPA Spending Tracker (Brookings, NLC and NACo) – gives you an idea how people are spending ARPA funds.
- Common Sense Broadband Funding Chart (Outlines all the Broadband funding programs and use criteria.)
- NTIA Local Government Resources Page.
- FCC's Affordable Connection Program Resource Page.
- BB&K DHS Cybersecurity Grant Program Alert.

Federal Broadband Funding Opportunities

by common sense

Uses Key

Deployment	Construction and improvement of infrastructure
Devices	Provision of computers and tablets
Affordability	Cost support programs, provision of free/reduced cost connectivity
Inclusion	Digital literacy training, digital skills training, tech support

Infrastructure Investment and Jobs Act (IIJA)
Signed into law November 15, 2021.
$1.2 trillion total

Program Name	Agency	Type	Amount	Recipients	Timeline	Uses	Resources
Broadband Equity, Access, and Deployment Program (BEAD)	NTIA	Formula allocation	$42,450,000,000	Block grants to states (or administering agency selected by governor), territories, and tribes. Funds may be subgranted.	NOFO likely by end of May 2022. Initial planning funds available after NOFO; remainder likely available in 2023 and after FCC releases new maps.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Benton Analysis K&H Analysis MDU Uses NCTA FBA Playbook ACAC/NCTA Tracker
Block grants to states; each will get at least $100 million (most get much more). Eligible uses include: deploying infrastructure to un/underserved areas and anchor institutions; providing affordable devices; installing/providing wifi for multifamily residential buildings; mapping and planning; and other projects determined by NTIA. Deployment must: first prioritize areas where 80% residents lack 25/3, then areas where 80% lack 100/20, then anchor institutions; offer 100/20 speeds; provide a low-cost option; and not exclude municipal and cooperative providers. Subgrants should use 25% matching funds, but in-kind or CARES/ARPA funds are acceptable. States can initially access $5 million for planning and coordination with local stakeholders.						
State Digital Equity Capacity Grant Program	NTIA	Formula allocation	$1,500,000,000	Block grants to states (or administering agency selected by governor), territories, and tribes. Funds may be subgranted.	$60m for planning available in FY2022. $1.4 b available between FY 2022-2026. States have 5 years to spend awards.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Benton Analysis NDIA Webinar Telecompetitor
This program consists of two subprograms: one $60 million program to support the development of state digital equity plans, and a second $1.4 billion program to fund the implementation of those plans. To be eligible for the second program, a state must have its digital equity plan be approved by the NTIA. These plans must include: measurable objectives for promoting internet adoption in vulnerable populations; assessments of plan's impact on state goals for the economy, workforce, education, health, and civil society; and identification of and collaboration with stakeholders.							
Digital Equity Competitive Grant Program	NTIA	Competitive grant	$1,250,000,000	Public entities, private companies, nonprofits, and cooperatives. State entities that receive State Digital Equity Capacity grants are ineligible.	$250m available per year FY 2022-2026. Awardees will submit annual evaluation reports. Grants must be spent within four years.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Benton Analysis NDIA Webinar Telecompetitor
Public and private entities (except for those state agencies that receive allocations from the above program) may apply to the NTIA for grants from this program. Eligible uses include: digital inclusion activities; digital navigators; workforce training programs; low-cost devices; and deployment of public broadband. NTIA will prioritize projects that: expand access and adoption among vulnerable populations; represent geographically diverse regions; and do not duplicate other programs. Awardees must submit regular program evaluations to NTIA.							
Middle Mile Broadband Infrastructure Grant Program (MMBI)	NTIA	Competitive grant	$1,000,000,000	State/local governments, tribes, private companies, public utilities, nonprofits, cooperatives, consortia.	NOFO likely by end of May 2022. Funds available until Sep. 30, 2026	☑ Deployment ☐ Devices ☐ Affordability ☐ Inclusion	Benton Analysis K&H Analysis
Funds middle mile projects that reduce the cost of connecting un/underserved areas and/or promote resiliency by creating redundant network connections. Priority is given to projects that: adopt fiscally sustainable strategies; offer non-discriminatory interconnection to last-mile providers; collaborate with partners that will provide financially sustainable last-mile service; utilize other forms of support (e.g. waived permitting fees); and benefit national security and the DoD.							
Affordable Connectivity Program (ACP)	FCC	Consumer subsidy	$14,200,000,000	Consumers and participating ISPs. Devices must be purchased through ISPs (note: some ISPs do not offer devices).	Transition from EBB to ACP on Dec 31, 2021. ACP lasts until funds exhausted.	☐ Deployment ☑ Devices ☑ Affordability ☐ Inclusion	Benton Analysis Common Sense Page Telecompetitor
This is an extension and modification of Emergency Broadband Benefit (EBB) program. It makes the EBB permanent, decreases the benefit amount from $50/mo to $30/mo, and changes some eligibility criteria. Participating ISPs must: promote the benefit; allow the benefit to be applied to any service offering; notify subscribers of the transition; and implement new consumer protections.							
Continuation and Modification of Emergency Broadband Benefit (CCA21)							
Tribal Broadband Connectivity Funding	NTIA	Competitive grant	$2,000,000,000	Tribal governments, organizations, and universities	Not currently accepting applications. First awards made in Nov. 2021, and remainer expected by Spring 2022.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Benton Analysis Original NOFO NTIA Page
Adds funds to the Tribal Broadband Connectivity program and modifies the program's rules to relax the original emergency timeline. The additional funding may be used for projects that were not funded in the first round of awards and to potentially open another window for applications. The program's rules are modified to allow: 18 months to commit funds (rather than the original 6 months); 4 years to expend funds (rather than the original 1 year); and additional spending on planning and feasibility studies. NTIA can extend deadlines if necessary.							
Continuation of Tribal Broadband Connectivity Program (CAA21)							

American Rescue Plan Act (ARPA) Signed into law March 11, 2021. $1.9 trillion total	**Coronavirus Capital Projects Fund**	Treasury	Formula allocation	$10,000,000,000	Block grants to states (or administering agency selected by governor), territories, and tribes. Funds may be subgranted.	Request funding from Sep. 24 – Dec. 27, 2021 (Tribes Oct. 1 – June 1, 2022). Submit grant plan by Sept. 24, 2022. Funds must be expended by Dec. 31, 2026.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Treasury Overview State Allocations Treasury Rules NDIA Analysis Benton Analysis Pots and Pans
	Block grants to states; each state will get at least $100 million. Eligible uses include: deploying infrastructure to areas that lack reliable wireline speeds of 100/20 and/or where service is unaffordable for a majority of residents; fostering adoption with low/no-cost devices, free wi-fi, digital literacy training, and tech support; and building or improving community anchor institutions to enable public internet access. Deployment projects should: offer a low-cost option; accept ACP/Lifeline; deliver 100/100 where possible; and prioritize last mile connections. Treasury encourages use of public, nonprofit, and cooperative networks. No matching requirements.							
	Coronavirus State and Local Fiscal Recovery Fund (SLFRF)	Treasury	Formula allocation	$350,000,000,000	Block grants to states, territories, tribes, metropolitan cities, and counties. Funds may be subgranted.	Treasury is accepting submissions. Funds should be incurred by Dec. 31, 2024. Projects should be completed by Dec. 31, 2026.	☑ Deployment ☑ Devices ☑ Affordability ☑ Inclusion	Treasury Overview Treasury Rules NCSL Tracker Pots and Pans ILSR Projects List ILSR Analysis
	Block grants to state/county/city governments for general COVID-19 relief, but recipients may use funds on broadband infrastructure, digital literacy training, and other programs that promote access to the internet. Projects should: prioritize areas with an identified need for additional broadband infrastructure investment (note: there is no specific speed requirement); prioritize last mile connections; deliver speeds of 100/100 and use fiber technology wherever feasible; offer low-cost service options; and encourage public, nonprofit, and cooperative service providers. RDOF and other grant areas are eligible for funding.							
	Emergency Connectivity Fund (ECF)	FCC	Competitive grant	$7,170,000,000	Schools, libraries, consortia that qualify for E-Rate and/or the Libraries Services and Technology Act.	The first two application windows have closed. A third window may be announced for the remaining ~$1 billion.	☑ Deployment* ☑ Devices ☑ Affordability ☐ Inclusion	FCC Overview Common Sense Page Misconceptions Approved Grants
	Intended to support remote education. Eligible schools and libraries apply to be reimbursed for costs associated with providing devices, hotspots, and internet service (including service to student homes) between July 1, 2021 and June 30, 2022 (future funding rounds may expand this window). *Spending on infrastructure is allowed only where infrastructure not otherwise available.							
	Homeowner Assistance Fund (HAF)	Treasury	Formula allocation	$9,900,000,000	States, territories, and Tribes.	The application windows have closed.	☐ Deployment ☐ Devices ☑ Affordability ☐ Inclusion	Treasury Overview Treasury Guidane
	Intended to help mid- and low-income homeowners who have experienced financial hardship after January 21, 2020. Each state receives a formula-determined allocation and may use it to help homeowners with eligible expenses. May be used to help homeowners pay for internet service.							
	Elementary & Secondary School Emergency Relief (ESSER III)	OESE	Title I formula	$122,700,000,000	State educational agencies (SEAs) and then subgrants to local educational agencies (LEAs).	All funds awarded as of Sept. 30, 2021. Funds must be obligated by Sept. 30, 2022.	☐ Deployment ☑ Devices ☑ Affordability ☐ Inclusion	OESE Overview
	Intended to help educational agencies and school districts operate safely and address the impact of the pandemic. Funding distributed to state educational agencies (SEAs) via formula, and SEAs provide subgrants to local educational agencies (LEAs). Funds may be used on hardware, software, and connectivity for students.							
2021 (CAA21) , 2020.	**Emergency Broadband Benefit Program (EBB)**	FCC	Consumer subsidy	$3,200,000,000	Participating ISPs. Devices must be purchased through ISPs (note: some ISPs do not offer devices).	Enrollment began May 2021. Program was transitioned into the Affordable Connectivity Program on Dec. 31, 2021.	☐ Deployment ☑ Devices ☑ Affordability ☐ Inclusion	FCC Overview NDIA Explainer Common Sense Page Provider Finder
	Provides eligible low-income households with a monthly benefit up to $50 for broadband service ($75 on Tribal lands) and a one-time benefit of $100 for purchase of a device (if the recipient also contributes $10–$50). Households eligible if they: fall below 135% of federal poverty level; receive certain federal assistance (Lifeline, Medicaid, SNAP, free/reduced-price lunch, Pell Grant, certain Tribal programs, etc), or participate in an ISP's low-income program.							
	Broadband Infrastructure Grant Program	NTIA	Competitive grant	$288,000,000	Partnerships between governments and fixed broadband providers, including public, nonprofit, and cooperative providers.	Not currently accepting applications. Awards pending.	☑ Deployment ☐ Devices ☐ Affordability ☐ Inclusion	NTIA Overview NTIA Guidance Benton Analysis
	Grants for broadband infrastructure in predominantly rural areas with less than 25/3 and in which no entity is receiving federal or state funding to build infrastructure.							

Other Broadband Programs	**ReConnect Grant Program**	RUS	Competitive grant	$1,150,000,000	Private companies, cooperatives, nonprofits, state and local governments, tribes, territories	Accepting applications until Feb. 2, 2022.	☑ Deployment ☐ Devices ☐ Affordability ☐ Inclusion	USDA Overview Benton Analysis
	Eligible projects must serve areas that lack speeds of 100/20 (was previously 10/1) and provide service of 100/100 to ever location in its service area. Projects will be prioritized if they: target low-density and/or low-income rural areas that lack speeds of 25/3; offer low-cost service options; agree to strong labor standards; are submitted by a local or tribal government, nonprofit, or cooperative. ReConnect offers multiple types of awards, including 100% funded grants, 75% grants, loan/grant combinations, and loans. RDOF and other grant areas are eligible for funding.							
	Good Jobs Challenge	EDA	Competitive grant	$500,000,000	State, local, and tribal governments, nonprofits, and educational institutions.	Accepting applications until Feb. 10, 2022.	☐ Deployment ☐ Devices ☐ Connectivity ☑ Adoption	EDA Overview NOFO
	Grants for projects that bring together employers and workforce trainers to develop and implement programs that train workers in the digital skills that lead to good-paying jobs. EDA prioritizes projects that reach historically underserved populations.							
	Lifeline	FCC	Consumer subsidy	N/A	Consumers and participating ISPs.	Eligible consumers may apply by contacting their ISP.	☐ Deployment ☑ Devices ☑ Affordability ☐ Inclusion	FCC Overview USAC Overview Companies Near Me Eligibility Criteria
	Monthly subsidy to help low-income consumers afford telephone and broadband bills. Provides $5.25/mo for telephone or $9.25 /mo for broadband (and up to $34.25 for those living on Tribal lands). Only one benefit allowed per household. Program funded by the USF.							

BroadbandUSA

Broadband Planning Resources for Local Governments

Below are broadband planning resources for local governments can utilize to enhance broadband connectivity and promote digital inclusion across their communities.

1 Indicators of Broadband Need Map



The Indicators of Broadband Need map is an interactive tool that allows users to explore various datasets and see areas across the country that lack access to high-quality internet.

The map uses public and private data to show broadband availability on county, census tract, and census block levels. Layers in this map were created using data sourced from the American Community Survey collected by the U.S. Census, Ookla, Measurement Lab (M-Lab), Microsoft, and the Federal Communications Commission (FCC).

How Can This Help My Community? The map can help you plan *how* and *where* to improve broadband services for your community. The data can also be used to help policymakers make informed decisions to expand broadband access and close the digital divide.

2 Interactive Federal Funding Guide



NTIA's Interactive Federal Funding Guide provides a step-by-step format which filters through more than 90 broadband-related programs compiled from 12 federal agencies and the Federal Communications Commission. It highlights key information about each program, including program descriptions, important dates, contact information, and links to program websites.

How Can This Help My Community? Use the guide to identify federal funding opportunities relevant to your community.

3 State Broadband Programs



BroadbandUSA has compiled information on state broadband programs of all 50 states and 6 territories. Click on the interactive map to find links to each state's broadband website, contact information, program and funding opportunities, and the state broadband plan.

How Can This Help My Community? Learn about your home state's broadband program, connect with local contacts, and identify funding opportunities to help expand broadband access and meaningful use.

Explore additional BroadbandUSA resources online:

www.broadbandusa.ntia.doc.gov

BroadbandUSA@ntia.gov

About Us: The U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) promotes innovation and economic growth by working to expand broadband connectivity and use across America.

NTIA

Home / Consumer /

Affordable Connectivity Program

Español | 한국어 | 繁體中文 | Tagalog | Tiếng Việt



The Affordable Connectivity Program is an FCC benefit program that helps ensure that households can afford the broadband they need for work, school, healthcare and more.

The benefit provides a discount of up to $30 per month toward internet service for eligible households and up to $75 per month for households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute more than $10 and less than $50 toward the purchase price.

The Affordable Connectivity Program is limited to one monthly service discount and one device discount per household.

Who Is Eligible for the Affordable Connectivity Program?

A household is eligible for the Affordable Connectivity Program if the household income is at or below 200% of the Federal Poverty Guidelines, or if a member of the household meets at least *one* of the criteria below:

- Received a Federal Pell Grant during the current award year;
- Meets the eligibility criteria for a participating provider's existing low-income internet program;
- Participates in one of these assistance programs:

ACP: What It Is & How It Works



Helping families get connected to broadband during the pandemic.

Video: Chairwoman Rosenworcel | en español | American Sign Language

Update: Over 10 Million Households Enrolled in ACP (2/14/22)

Homeland Security Unveils State, Local and Cybersecurity Grant Program

- **Application Process & Timeline:**
  - DHS issued a Notice of Funding Opportunity (NOFO) this month. All funding requirements and details can be found at that link. The first deadline is **Nov. 15, 2022**.
  - Estimated total funding of $1 billion budget in 2022: $185,024,069
  - Minimum award size: $500,000
  - A total of 56 grants are anticipated — one for each state and territory.
  - Only states and territories are eligible to apply for grant awards under the SLCGP. (The tribal grant NOFO has yet to announced.)
  - Local entities receive sub-awards through their states. At least 80% of funds awarded to states must go to local governments, with a minimum of 25% of the allocated funds distributed to rural areas.
  - Eligible entities can submit an application via Grants.gov. Applications appear to have two minimum requirements: creation of a state Cybersecurity Planning Committee and a completed state Cybersecurity Plan.

Cybersecurity Grant Program: Committee

The Planning Committee will identify and prioritize statewide efforts, including identifying opportunities to consolidate projects to increase efficiencies through partnership with at least one representative from relevant stakeholders, including:

- The eligible entity;
- If the eligible entity is a state, then representatives from counties, cities and towns within the jurisdiction of the eligible entity;
- Public education within the jurisdiction of the eligible entity;
- Public health; and
- Rural, suburban and high-population jurisdictions.

Cybersecurity Grant Program: Plan

Cybersecurity Plan is a statewide planning document that must be approved by the Cybersecurity Planning Committee and the CIO/CISO equivalent, be updated in fiscal 2024 and 2025, and contain the following components:

- Incorporate, to the extent practicable, any existing plans to protect against cybersecurity risks and cybersecurity threats to state, local or territorial owner or operated information systems
- Demonstrate input from local governments and associations of local governments, and outline individual responsibilities of the state and local governments in implementing the Plan
- Include all required elements outlined in Appendix C of the NOFO
- Outline the necessary resources and a timeline for implementing the plan and summary of associated projects
- Outline metrics to measure progress

Next Steps

Local governments should contact their governor's office to determine the status of the state's application process and how their community's needs are being factored into the state's plan.

In Summary: What's at Stake

INFRASTRUCTURE ACT* CREATES ~$65B IN BROADBAND FUNDING

NTIA will administer ~$48B of this new funding

B.E.A.D.

$42.45B

Formula-based grant program for U.S. states and territories. BEAD aims to close the access gap for unserved & underserved areas of the country.

DIGITAL EQUITY

$2.75B

Title III – Digital Equity Act

Three programs, established for planning & implementation of programs that promote digital equity, support digital inclusion activities, and build capacity related to the adoption of broadband.

TRIBAL

$2.00B

Title II - Tribal Connectivity Technical Amendments

Furthers current Tribal Broadband Connectivity Program by investing an additional $2B to fund broadband adoption and infrastructure projects.

MIDDLE MILE

$1.00B

Title IV - Enabling Middle Mile Broadband Infrastructure

Provides funding to extend middle mile capacity to reduce cost of serving unserved and underserved areas and enhance network resilience.

FCC to administer ~$14B

$14.2B

For Affordable Connectivity Program, which will replace the EBB program

USDA to administer $2B

$2.0B

Via the Rural Utilities Service

Private Activity Bonds $600M

$600M

Authorizes State/local gov'ts to use private activity bonds for rural broadband

** Infrastructure Investment and Jobs Act, Division F, Pub. L. 117-58 (Nov. 15, 2021)*
Note: funding amounts inclusive of all administrative set-asides.

Locals Are Protected

A state's plan must be developed in coordination with, and be sensitive to the needs of local governments. The Act specifically requires:

- "5 years plan shall … be informed by collaboration with local and regional entities" (Section 60102(e)(1)(D)(i)(I).)
- "[A]ddress local and regional needs in the eligible entity with respect to broadband service" (Section 60102(e)(1)(D)(ii)(I)) and;
- State plans must "include localized data with respect to the deployment of broadband service in the eligible entity, including by identifying locations that should be prioritized for Federal support with respect to that deployment." (Section 60102(e)(1)(D)(ii)(III).)

But Only If We are Proactive

- **Initial State Plan**
  - Act requires plan "…identifies, and outlines steps to support, local and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide; and … describes coordination with local governments, along with local and regional broadband planning processes…."
  - "The Assistant Secretary shall establish local coordination requirements for eligible entities to follow, to the greatest extent practicable"
  - "[A]t a minimum, an opportunity for political subdivisions of an eligible entity to … submit plans for consideration by the eligible entity; and … comment on the initial proposal of the eligible entity before the initial proposal is submitted to the Assistant Secretary." Section 60102(e)(3)(A)(ii)(aa), (bb).
- **Final Proposal**
  - NTIA "… to the greatest extent practicable, [but in no case less] an opportunity for political subdivisions of an eligible entity to …submit plans for consideration by the eligible entity; and …comment on the final proposal of the eligible entity before the final proposal is submitted…" Section 60102(e)(3)(A)(ii)(I), (II).
- **Challenge Process**
  - Act reserves to local governments the right to challenge any initial proposal that fails to include in a plan a particular location or community anchor institution that is eligible for the grant funds as it is unserved or underserved. The Act further provides that the challenge takes place before any funding is allocated and that the state "shall ensure a transparent, evidence-based, and expeditious challenge process under which a unit of a local government … can challenge a determination" on non-eligibility for funding. Section 60102(e)(4).

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