



## Key Broadband Topics and the FCC March 30, 2017

On January 23, 2017, President Trump nominated Commissioner Ajit Pai to serve as the new Chairman of the Federal Communications Commission (FCC). Since that time, there has been significant conversation around several broadband topics that affect Connected Nation's communities and stakeholders. The following policy brief serves as an update on these topics and any FCC activity of interest.

*Because of the constantly-changing nature of these topics, please note that this information is current as of March 30, 2017.*

### Lifeline

The FCC's Lifeline program helps make communications services more affordable for low-income consumers by providing subscribers a discount on monthly telephone service purchased from participating providers in the marketplace. On March 31, 2016, under Chairman Tom Wheeler, the FCC approved [rules to modernize Lifeline](#) so that subscribers can also purchase discounted broadband from participating providers. This modernization gives participating households a \$9.25 per month credit they can use for Internet access.

On February 3, 2017, the FCC, under Chairman Ajit Pai, blocked nine providers from offering Lifeline service. The [FCC stated](#) that they were moving these 9 companies to "pending" status and that reexamining the petitions will "promote program integrity" and give the FCC "additional time to consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline program."

Opponents came out in full force of the Order declaring the harmful effects it will have on low-income households, particularly those with students.

Chairman Pai wrote a [blog post](#) to further explain the Order stating that the action "only impacted 9 of the over 900 providers participating in the Lifeline program"; that these providers' applications were not officially rejected, but rather in pending status; that "all but one of the newly designated providers covered by the order do not yet have *any* customers"; and that the original FCC actions did not follow the well-established process for approving such applications with numerous issues such as not coordinating with Tribal governments. Pai went on to state that many of the approvals were made in the last hours of the Obama administration (just days before Inauguration Day), which he felt was inappropriate.

Nonetheless, on March 2, 2017, the FCC issued two Public Notices seeking comment on two appeals regarding the February Order. The [first notice](#) seeks comment on

the appeal filed by a large group of public interest organizations, and the second notice seeks comment on an appeal filed by Spot On Networks. Comments were due March 16 with Replies due March 23.

**UPDATE:** In a press release that came out just yesterday, Chairman Pai said that broadband will remain in the Lifeline program as long as he is Chairman. However, he also announced some significant news: Pai stated that “Congress gave state governments, not the FCC, the primary responsibility for approving which companies can participate in the Lifeline program under Section 214 of the Communications Act” but that under the previous administration, the FCC “rejected this bipartisan consensus, snatching this legal responsibility away from states and deciding to create its own federal ‘Lifeline Broadband Provider’ designation process.” **As a result, he will not defend the FCC against the twelve states currently challenging the legality of the FCC’s order and he will soon begin a proceeding to eliminate the new federal designation process. Lastly, in response to the nine pending Lifeline applications, he does not recommend their approval.**

## E-rate

The FCC’s E-rate Program connects the nation’s schools and libraries to broadband. In 2014, E-rate was modernized to “maximize options for schools and libraries seeking to purchase high-speed broadband and adjusting the E-rate spending cap to \$3.9 billion,” according to the FCC.

On February 3, 2017, Chairman Pai retracted the “E-rate Modernization Progress Report” which had just been released (under the previous administration) on January 18, 2017. This action led many to question what the future held for the E-rate Program, specifically whether or not the funding level would be maintained.

In a letter to Congress on March 7, 2017, Pai stated “a more effective E-Rate program—one that promotes better connectivity for students and library patrons alike—can be a powerful tool to help bridge that divide” and that E-rate was a “program worth fighting for.” Pai went on to express that he has advocated for program support which “follows the student, rather than being distributed through a complicated, outdated priority system” and that the FCC must “streamline the E-rate funding process, making it easier for schools to apply for and obtain funding without having to fill out seven different series of forms and/or spend scarce funds (which should be devoted to students) on outside consultants.”

## Net Neutrality

**Definition:** Net neutrality, or open Internet, is the concept that providers should give consumers access to all legal content and applications on an equal basis, without favoring some sources or blocking others (Source: USA Today). Net Neutrality remains a partisan and controversial issue garnering much conversation and speculation nationally.

**FCC Activity:** Under Chairman Wheeler, the Open Internet rules went into effect on June 12, 2015, and aimed to ensure consumers and businesses have access to a fast, fair, and open Internet. There are two main components:

1. ISPs now fall under the category of telecommunications services (as opposed to information services), so they are bound by the regulations of Title II of the Telecommunications Act of 1934, which provides the FCC the authority to regulate them as a public utility (Source: [Forbes](#)).
2. The inclusion of “Bright Line Rules”:
  - No Blocking: broadband providers may not block access to legal content, applications, services, or non-harmful devices.
  - No Throttling: broadband providers may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices.
  - No Paid Prioritization: broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind—in other words, no “fast lanes.” This rule also bans ISPs from prioritizing content and services of their affiliates.

In a recent [Forbes](#) article, the author examines the future of Net Neutrality and states that the rules are most certainly “doomed.” Chairman Pai has stated numerous times that he believes there was great government over-reach when the FCC classified broadband Internet service as a public utility; and, according to the article, “he also sides with ISPs on allowing zero-rating plans, and as soon as he became Chairman, the FCC rescinded the claim that AT&T and Verizon were violating net neutrality with their zero-rating plans.” (Note: zero-rating refers to data cap exemptions—when ISPs choose not to charge consumers for data used by *specific* applications).

All may not be lost, however, since Pai *does* support open Internet. This support may take form in lighter-touch regulations to continue, in his eyes, to support investment and innovation. He mentioned in [his speech at the Mobile World Congress](#) last month that, “government does have a role to play when it comes to broadband. For example, a marketplace that isn’t competitive doesn’t serve consumers well. So our approach will be not zero regulation, but light-touch regulation—rules backed by long-standing principles of competition law.”

### **USF Connect America Fund**

At its February 23, 2017, meeting, the FCC [established rules](#) for the next phase of the Connect America Fund: the “reverse auction” that will see up to \$1.98 billion provided over the next 10 years for rural broadband.

Long in the making, the CAF reverse auction creates a system where interested broadband providers will compete to provide the lowest-cost, high-quality

broadband and voice-capable service. A reverse auction is designed to ensure that broadband funding will ultimately connect more unserved/underserved homes and businesses across the country by creating cost efficiencies.

Performance Tier	Speed	Usage Allowance	Weight
Minimum	≥ 10/1 Mbps	≥ 150 GB	65
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	45
Above Baseline	≥ 100/20 Mbps	2 TB	15
Gigabit	≥ 1 Gbps/500 Mbps	2 TB	0

Table 1 - Source: Federal Communications Commission.

The CAF reverse auction is designated for unserved census blocks in states where price cap carriers declined the last phase of CAF funding, as well as locations considered “extremely high-cost census blocks.” In CAF Phase II, price cap carriers accepted funding to provide broadband to close to 7.3 million locations in 45 states, but declined a further \$175 million in broadband subsidy.

The FCC’s order follows its 2016 framework and rules for the Phase II reverse auction, and establishes a process whereby competing bids that seek to provide more robust broadband (determined by higher speed, higher usage caps, and low latency) receive a higher bidding weight against other competing bids.

These criteria follow four “technology-neutral performance tiers,” which include:

- **Minimum performance** – No less than 10 Mbps download/1 Mbps upload, with a minimum usage allowance of 150 Gb/month;
- **Baseline performance** – No less than 25 Mbps download/3 Mbps upload, with a minimum usage allowance of 150 Gb/month;
- **Above-Baseline performance** – No less than 100 Mbps download 20 Mbps upload, with a minimum usage allowance of 2 Tb/month; and
- **Gigabit performance** – No less than 1 Gbps download 500 Mbps upload, with a minimum usage allowance of 2 Tb/month.

After a comment period on the auction mechanics, the FCC will schedule a vote for final approval of the auction. The Commission also released a map of eligible areas for CAF Phase II auction which can be found here: <https://www.fcc.gov/reports-research/maps/caf-2-auction-preliminary-areas/>.

## USF Mobility Fund

Also at its February meeting, the FCC voted to provide \$453 million each year for 10 years to support 4G LTE mobile wireless service in rural areas and Tribal lands.

Also created in the 2011 USF/ICC Transformation Order that established the Connect America Fund, the Mobility Fund seeks to achieve the goal of “mobile networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.” Through two phases, the Mobility Fund provided up to \$300 million in one-time subsidies through a reverse auction and \$50 million in similar subsidies solely for Tribal lands, followed by up to \$500 million/year in ongoing subsidies.

The February 23 Order is designed to close an estimate gap of 575,000 square miles that remain unserved by 4G LTE mobile wireless service, even after the two phases of the Mobility Fund.

Over the next ten years, the Mobility Fund II Auction will provide an additional \$453 million in annual subsidy to provide 4G LTE service in “any portion of a census block not fully covered by unsubsidized 4G LTE coverage with a minimum advertised download speed of 5 Mbps.”

The Order states that the areas eligible for subsidy will be determined using Form 477 data and will come after a “robust challenge process.” Comments can be made on the challenge process as part of a Further Notice of Proposed Rulemaking adopted along with the Mobility Fund order.

In order to receive a subsidy, a bidder must commit to providing service that includes:

- Median data speeds of 10 Mbps download/1 Mbps upload;
- Latency of less than 100 milliseconds (ms); and
- Rates that are reasonably comparable to urban rates.

The auction will be structured to provide funding through a multi-round reverse auction where bids are measured using geographic area as the metric, because that most closely reflects the FCC’s goal to ensure mobile wireless broadband availability everywhere people live, work, or travel.

Those interested in filing comments have until 30 days after the Order’s publication in the Federal Register, while anyone wishing to file reply comments has 45 days after comments appear in the Federal Register. Instructions on how to file can be found in the order, but the simplest way to do so is online via: <http://apps.fcc.gov/ecfs>.

## National Broadband Infrastructure

Since the inauguration of President Donald Trump, there have been many references to a proposed national infrastructure plans. Members of Congress and others have expressed the desire to have rural broadband funding included in any final infrastructure plan.

As covered in a previous Connected Nation Policy Brief, at a March 15, 2017, speech at Carnegie Mellon University's Software Engineering Institute in Pittsburgh, Pennsylvania, FCC Chairman Pai expressed his support for broadband infrastructure funding. In his speech, Chairman Pai stated, "In the digital age, I believe our wired and wireless broadband networks are core components of our nation's infrastructure. That's why my position is clear: If Congress moves forward with a major infrastructure package, broadband should be included."

Chairman Pai went on to state that any broadband infrastructure funding should be channeled through the framework of the Universal Service Fund, as opposed to grant programs like the NTIA's Broadband Technology Opportunities Program or the RUS Broadband Initiatives Program, which were both created and funded by the American Recovery and Reinvestment Act.

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