



Key Broadband Topics: The White House and Congress

April 13, 2017

In a previous [Policy Brief](#) by Connected Nation, the FCC's actions around six key broadband topics of particular importance to CN's communities and stakeholders were discussed. This Policy Brief serves as a follow-up to that assessment by analyzing those same six topics—Lifeline, E-rate, net neutrality, Connect America Fund (CAF), the Mobility Fund, and infrastructure spending—and giving an overview of White House and Congressional activity to date. Lastly, the brief also looks at the new appointment of FCC Broadband Deployment Advisory Committee members.

Because of the constantly changing nature of these topics, please note that this information is current as of April 13, 2017.

Lifeline

In our previous Policy Brief, we discussed the FCC's actions toward Lifeline, most notably, the [declaration by Chairman Pai](#) that the FCC will not uphold the previous administration's creation of a federal "Lifeline Broadband Provider" designation. Instead, Pai stated that the FCC will begin a proceeding to eliminate the new federal designation process while further recommending that the nine Lifeline applications placed in "pending" status *not* be approved.

Congressional response to Pai's declaration has been largely partisan—many Republicans like Senator John Thune (R-SD) who chairs the U.S. Senate Committee on Commerce, Science, and Transportation praised Chairman Pai's actions and said [in a statement](#), "Chairman Pai is correcting FCC overreach that threatened accountability and, therefore, the success of the Lifeline program."

Meanwhile, many Democrats came out strongly in opposition of Pai's decision. Energy and Commerce Ranking Member Frank Pallone, Jr. (D-NJ), Communications and Technology Subcommittee Ranking Member Mike Doyle (D-PA), and Representative Doris Matsui (D-CA) released a [joint statement](#) that said, "This is another effort by President Trump's FCC to inflict death by a thousand cuts on the Lifeline program. Through lawyerly maneuvering, the FCC is trying to disguise its efforts to eliminate a system designed to make it easier for anyone who needs access to broadband to get it—no matter where they live. We will continue to fight for this important program that keeps struggling families across the country connected."

Added support for Chairman Pai may come in the "[Preserving State Commission \(PSC\) Oversight Act](#)" which was introduced in February 2017 by Senator Deb Fischer (R-NE) and Senator Tom Udall (D-NM). The bill (S.421) aims to "reinforce existing law and ensure that states have primary authority to determine which carriers participate in the FCC universal service Lifeline program" according to a [press release](#) from

Senator Fischer's office. Representative Kevin Cramer (R-ND) introduced companion legislation, [H.R. 1139](#), in the House of Representatives.

Complicating matters for Congressional supporters of an expanded Lifeline program may be recent [survey results](#) released by the Pew Research Center indicating that 54% of Americans believe that the price of broadband is low enough to make government subsidies for monthly subscriptions unnecessary.

E-rate

As stated in a previous policy brief, Chairman Pai provided a [letter to Congress](#) on March 7, 2017 stating, "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 [digital] divide." Pai also touched on the importance of simplifying the E-rate application process for schools and libraries.

On March 17, 2017, Senators Edward Markey (D-MA) and Dan Sullivan (R-AK) sent Chairman Pai a [letter](#) requesting continued FCC support for E-rate. As Funds for Learning [explains](#), "Senator Markey was one of the original authors of the E-rate program in 1996 when he was in the House of Representatives and Senator Sullivan is a Member of the Senate Commerce Committee that has jurisdiction over FCC oversight and believes the E-rate is vital for his schools and libraries in Alaska."

Net Neutrality

With the recent passage of a resolution pursuant to the Congressional Review Act (CRA) repealing the FCC's broadband privacy rules, conversations quickly shifted to whether the FCC's open Internet/net neutrality rules would face the same fate. When it comes to net neutrality, rolling back the rules will primarily be a job for the Executive Branch, particularly the Federal Communications Commission (FCC).

Potential Congressional Action:

Barring the passage of statutory language curtailing the FCC's net neutrality rules, Congress is limited in its power to revoke those rules. Initial speculation swirled that Congress may use the Congressional Review Act—the same authority used to repeal the FCC's broadband privacy rules—to curtail the FCC's net neutrality rules. However, the use of the CRA has its statutory limits.

Rules state that when there is a change in administrations, the CRA allows an [additional 60-day legislative calendar window](#) to look backward toward passed legislation. When a disapproval resolution is enacted, the agency rule may not take effect and the agency may not issue substantially similar rules without subsequent statutory authorization. When a rule is disapproved after going into effect, it is "treated as though [it] had never taken effect."

Since the FCC's broadband privacy rules fell within the CRA's review window, Congress had the power to fast-track repealing the rules. Conversely, the FCC's net neutrality rules were [approved two years ago in 2015](#), well beyond the CRA's window

for such review. Therefore, Congress may not use the CRA to curtail the net neutrality rules unless done via a statutory enactment.

When it comes to net neutrality, Congress has indicated that it should be up to the FCC to make the first move. Senate Commerce Chairman John Thune (R-SD) has stated, “I don’t think it hurts for the FCC to move [on net neutrality].” House Communications and Technology Subcommittee Chairman Marsha Blackburn (R-TN) has stated, “let’s let the FCC go in and do what they are able to do [with net neutrality], make the first move on that.”

Potential White House Action:

The White House and the FCC have both signaled that they are prepared to roll back previously enacted net neutrality rules. After Congress passed the CRA resolution repealing the FCC’s broadband privacy rules, White House spokesman Sean Spicer hinted at the reversal of the net neutrality rules. Spicer mentioned the impact the net neutrality rules had on Internet service providers (ISPs). Spicer said President Trump had “pledged to reverse this overreach,” further saying that the rules were an example of “bureaucrats in Washington” placing restriction on one kind of company—ISPs—and “picking winners and losers.”

However, the White House’s ability to roll back the net neutrality rules is limited due to the FCC’s status as an independent regulatory agency. As an independent regulatory agency, the FCC acts independent of the executive branch and free of political influence when developing and enforcing regulations. This status insulates the FCC from influence from the president. Therefore, the White House’s power is limited to policy statements setting the agenda and signing legislation into law.

Potential FCC Action:

Due to Congressional and White House statements, it will likely be up to the FCC to unilaterally make the first move on rolling back net neutrality rules. Though we are beginning to see signs of movement, Chairman Pai has not indicated a timeline for rolling back the rules.

In recent days, Chairman Pai has hinted toward curtailing the agency’s net neutrality rules. On April 3, after President Trump signed Congress’s CRA resolution repealing the FCC’s broadband privacy rules, Chairman Pai said, “The [FCC] will be working with the Federal Trade Commission to restore the FTC’s authority to police [ISPs’] privacy practices.” On April 5, Chairman Pai announced his plans for developing an Office of Economics and Data, incorporating economists in rulemakings, transactions, and auctions of the commission. This move toward more informed, economic decisionmaking is consistent with his criticisms of the net neutrality/Title II rules. Pai critiqued that without economists in rulemaking proceedings like net neutrality, “the practice significantly raises the odds of policies that do more harm than good, actually producing net negative benefits.”

An additional substantive development comes in recent reports from April 7 that Chairman Pai has indicated to major telecommunications trade associations that he plans to replace the net neutrality rules with voluntary agreements to adopt open

Internet principles. Pai wants to introduce regulations under which ISPs would voluntarily agree to not obstruct or slow consumer access to web content.

During a meeting between Chairman Pai and the Internet Association on April 11, Pai heard strong support for the net neutrality rules. The Internet Association includes companies like Google, Netflix, Facebook, and Amazon, many of which supported the rules during their development and implementation. As part of the association's required filing at the Commission regarding the meeting's agenda, it told the Chairman that "the Internet industry is uniform" in its support for the existing rules that it believes should be "kept intact."

A major piece of rolling back the net neutrality rules upon which the FCC has been silent is the prospect of reversing the net neutrality order's Title II reclassification of ISPs. Prior to the adoption of the net neutrality rules, broadband was classified under Title I of the Telecommunications Act of 1996 as "information services." This classification meant that ISPs were subject to less burdensome regulations. With the adoption of the net neutrality order, broadband was reclassified under Title II of the Telecommunications Act of 1996 as a "telecommunications service." The result of this reclassification meant that ISPs were now "common carriers," subject to heightened, more burdensome regulations. This resulted in regulatory authority over matters such as privacy to be shifted from other agencies to the FCC.

Restoring privacy authority to the FTC means the FCC will need to reclassify broadband back under Title I, which is both a political and regulatory challenge. Because of the burdens of the rulemaking process and the high amount of public attention the net neutrality order received in 2014 (the net neutrality proceeding yielded over one million comments), Chairman Pai may elect to wait and see what the courts have to say. Although the D.C. Circuit Court of Appeals upheld the net neutrality order in June 2016, industry advocates filed an appeal for rehearing of the case by a full panel of the D.C. Circuit. If this appeal is denied, industry advocates are likely to appeal their case all the way up to the United States Supreme Court.

USF Connect America Fund

On April 11, 2017, 56 Members of the Senate, including the leadership of the Senate Broadband Caucus, signed a letter to FCC Chairman Pai about the need to "continue working to advance broadband deployment in high-cost rural areas to give rural Americans the opportunity to obtain affordable broadband."

Circulated by Sen. Deb Fischer (R-NE) and Sen. Amy Klobuchar (D-MN), the letter references Congressional support for the FCC's actions to modernize the USF but notes that much work remains to be done, that broadband speeds remain too slow, and that prices for last-mile consumers in rural areas remain out of reach for many households. Connected Nation's national broadband adoption research has shown that rural households adopt at lower than average rates, although that gap has narrowed in recent years, and that price remains a significant barrier to broadband adoption, with 21% of non-adopters citing it as the number one reason they do not have broadband.

The letter concludes with a request to Pai that the FCC “consider any changes to the High-Cost mechanism that may be necessary to ensure it can achieve the goal of making affordable broadband available to Americans in high-cost rural areas.”

USF Mobility Fund

Bi-partisan bill H.R. 1814, the Rural Spectrum Accessibility Act, sponsored by Representatives Adam Kinzinger (R-IL) and Dave Loebsack (D-IA), seeks to encourage wireless carriers holding unused spectrum to leave it to smaller companies in need of spectrum.

In a joint press release, both Kinzinger and Loebsack stressed the importance of broadband access in rural areas, with Kinzinger referencing small business and agriculture. Loebsack stated, “The future of economic development in Iowa and across the country depends, in large part, on access to the Internet and mobility...”

National Broadband Infrastructure

There has been much speculation about the timing, nature, and content of an infrastructure proposal from President Trump. The possible plan, widely believed to contain at least \$1 trillion in new spending, may or may not include funding for broadband deployment.

Congressional Letters Supporting Broadband:

The House Broadband Caucus, co-chaired by Representatives Bob Latta (R-OH), Kevin Cramer (R-ND), Mark Pocan (D-WI), and Peter Welch (D-VT), sent a letter to the President in January in support of including broadband in any national infrastructure package, stating that “No other technology has produced as much innovation, competition, and economic growth.”

In February, the Senate Broadband Caucus, which was founded in July 2016 by Senators Shelly Moore Capito (R-WV), Angus King (I-ME), Amy Klobuchar (D-MN), Heidi Heitkamp (D-ND), and John Boozman (R-AR), organized a letter on this topic to President Trump. Signed by a total of 48 Members of the Senate, the letter urged the President to include broadband “In order to maintain the United States’ position as a global leader for innovation...”

On April 10, 2017, the Information Technology and Innovation Foundation released A Policymaker’s Guide to Rural Broadband Infrastructure, which urged that any federal infrastructure plan focus on unserved areas while relying on proven methods such as reverse auctions. This report should bolster FCC Chairman Pai’s call that broadband deployment funding should flow through the Universal Service Fund at the FCC.

President Trump is expected by many to introduce his infrastructure plan to Congress sometime in May 2017.

Congressional Hearings:

In the meantime, Congressional committees have held a handful of hearings on broadband deployment.

Senate: On March 1, 2017, the Senate Committee on Commerce, Science, and Transportation held a hearing: "Connecting America: Improving Access in Infrastructure for Communities Across the Country." This hearing had a broad focus on infrastructure, including roads, bridges, railways, water and sewer systems, as well as broadband infrastructure. Both Committee Chairman John Thune (R-SD) and Committee Ranking Member Bill Nelson (D-FL) spoke about the need for broadband investment, with Thune referencing regulatory hurdles to deployment, funding, and legislation such as the bipartisan MOBILE Now Act, which is designed to make more spectrum available for mobile wireless broadband.

This hearing also included testimony from NTCA – the Rural Broadband Association, which spoke to the job-creating power of broadband in rural America, citing research that rural broadband provided the means for \$100 billion in online economic activity in 2015. NTCA also argues that new broadband investment should focus on unserved areas, not on creating new competition in places that already have access; new networks should be fast enough to provide long-term viability; that regulations impeding deployment are a real barrier; and that the FCC's Universal Service Fund is the best delivery vehicle for funding.

House: On March 21, the House Committee on Energy and Commerce's Subcommittee on Communications and Technology held a hearing: "Broadband: Deploying America's 21st Century Infrastructure."

This hearing, which examined discussion drafts for two bills "aimed at alleviating the burden and eliminating the red tape when it comes to deploying broadband throughout the country."

Hearing witnesses included the Competitive Carriers Association, U.S. Cellular, the Wireless Infrastructure Association, CostQuest (which produced the models for CAF and the Mobility Fund), the Saint Regis Mohawk Tribe, Mosaik Solutions, and CTC Technology & Energy.

During the hearing, Subcommittee Chairman Marsha Blackburn (R-TN) called for the reduction of red tape through streamlined permitting and reduced regulation, and also stated "we must accurately collect and aggregate data to update the National Broadband Map...It is imperative that we fix the map, but doing so is a fool's errand without precise data."

FCC's Broadband Deployment Advisory Group

Finally, on April 6, 2017, the FCC announced the membership of its Broadband Deployment Advisory Committee, as well as the group's leadership and working groups.

Consisting of 29 members with broad and diverse portfolios, the Advisory Group's five working groups include:

- Model Code for Municipalities;
- Model Code for States;
- Competitive Access to Broadband Infrastructure;
- Removing State and Local Regulatory Barriers; and
- Streamlining Federal Siting.

Among the Advisory Groups members is the long-time former President of Connected Nation, Brian Mefford, whom Connected Nation heartily congratulates on his appointment.

The FCC will also be appointing an additional 58 members to the Working Groups. The Advisory Group's inaugural meeting will be held at the FCC on April 21, at 10:00 a.m. ET, and will be livestreamed at www.fcc.gov/live for those who cannot attend in person.

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