

Broadband-related legislation has been a popular topic in the 115<sup>th</sup> Congress, with a number of bills introduced in both the House and Senate aimed at improving broadband access for all Americans. Here, we outline two pieces of impactful legislation as well as offer updates on the \$600 million in Rural Utility Service funding doled out during the 2018 omnibus.

### **RAY BAUM'S Act of 2018**

On March 23, 2018, the [Consolidated Appropriations Act of 2018 \(H.R. 1625\)](#), also known as the omnibus, was signed into law. Included in this omnibus is the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), which reauthorizes the [Federal Communications Commission \(FCC\)](#), addresses spectrum use, and much more.

The RAY BAUM'S Act of 2018 is named after Ray Baum, personal friend of Committee Chairman Greg Walden (R-OR) and former House Energy and Commerce Committee staffer, who lost his battle with cancer in February 2018. Mr. Baum served with Chairman Walden in the Oregon legislature, following him as House Majority Leader. Later, Mr. Baum served on the Oregon Liquor Control Commission and the Oregon Public Utility Commission before coming to Washington to serve as Senior Policy Advisor to the House Energy and Commerce Committee. Most recently, he served as Staff Director for the Committee.

### **FCC Reauthorization**

In the Act, the FCC appropriated \$333,118,000 for fiscal year (FY) 2019 and \$339,610,000 for FY 2020. The Act also eliminated duplicative authorization of appropriations in Section 710 of the Telecommunications Act of 1996, specifically stating that any funds in the FCC appropriation account that were collected in excess of the amounts provided for in prior appropriations acts should be transferred to the general fund of the U.S. Treasury for deficit reduction.

Also included in the FCC Reauthorization was language stating that the U.S. Treasury must accept bidding deposits for spectrum auctions held by the FCC and that the deposits of successful bidders must be used for deficit reduction.

Finally, the Act assessed fee structures by amending Section 8 of the Communications Act of 1934. It stated that application fees must be assessed at rates to recover costs associated with processing applications and that regulatory fees must be assessed to recover the costs of employee pay, other employee benefits, and nondiscretionary costs. Additionally, Congress must be given notice of any adjustments made to fees, but such adjustments are not subject to judicial review. The FCC must assess specified late fees and interest, and may

dismiss an application or revoke an instrument of authority held by a licensee for failure to pay fees and penalties in a timely manner.

### **Application of Antideficiency Act**

The Antideficiency Act (ADA) is legislation passed by Congress to prevent government entities from making obligations or expenditures in excess of appropriated amounts. In 2004, however, the Universal Service Administrative Company's (USAC) interpretation of the ADA implied that E-rate funding commitment letters could not be sent out until enough money had been collected to cover those commitments. To comply with the ADA, USAC would need to significantly increase the program's cash-on-hand and diminish investments to schools and libraries. To solve the issue, Congress exempted the Universal Service Fund (USF) from the ADA by passing regular, temporary exemptions.<sup>1</sup>

This portion of the RAY BAUM'S Act addresses the renewal of the exemption. The exemption is continued for a one-year term, until December 31, 2019.

### **Securing Access to Networks in Disasters**

RAY BAUM'S Act calls for the FCC to submit to Congress, and publish on the FCC's website, a study of public safety benefits, technical feasibility, and cost of providing the public with access to 9-1-1 services during times of emergency and when mobile service is unavailable, through:

- Telecommunications service provider-owned WiFi access points and other communications technologies operating on unlicensed spectrum, without requiring any login credentials;
- Non-telecommunications service provider-owned WiFi access points; and
- Other alternative means.

The FCC must complete this study within 36 months of the law's enactment.

Additionally, the Robert T. Stafford Disaster Relief and Emergency Assistance Act was amended to expand the categories of essential service providers that may access a disaster site to restore and repair essential services in an emergency or major disaster without being denied or impeded by a federal agency. Essential services include: wireline or mobile telephone service, internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service.

### **FCC Consolidated Reporting**

The law also makes edits to the FCC's reporting requirements, mandating that the FCC release a communications marketplace report on its website and submit the report to Congress every two years. The report must describe the FCC's actions in the marketplace and its agenda for the next two years.

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<sup>1</sup> <https://www.fundsforlearning.com/news/2018/03/universal-service-ada-exemption>;  
<https://www.benton.org/blog/now-ray-baum%E2%80%99s-act-law-whats-it>

Specifically, the FCC must:

1. Assess the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service, multichannel video programming distributors, broadcast stations, providers of satellite communications, internet service providers, and other providers of communications service;
2. Assess the state of deployment of communications capabilities, including advanced telecommunications capability (high-speed switched broadband telecommunications), regardless of the technology used for such deployment;
3. Assess whether laws, regulations, regulatory practices (whether those of the federal government, states, political subdivisions of states, Indian tribes or tribal organizations, or foreign governments), or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services;
4. Describe the agenda of the FCC for the next 2-year period for addressing the challenges and opportunities in the communications marketplace; and
5. Describe the actions that the FCC has taken in pursuit of the agenda described in the previous report submitted.

### **Additional Provisions**

A series of additional provisions are laid out in the law including:

- FCC Inspector General – The Inspector General Act of 1978 was amended by the RAY BAUM’S Act to require the President to appoint the FCC Inspector General. Currently, the FCC appoints the FCC Inspector General.
- FCC Chief Information Officer – This provision ensures that the Chief Information Officer of the FCC will have a significant role in— 1) The decision-making process for annual and multi-year planning, programming, budgeting, and execution decisions, related reporting requirements, and reports related to information technology; 2) The management, governance, and oversight processes related to information technology; and 3) The hiring of personnel with information technology responsibilities.

The CIO will also be responsible for the FCC spending on information technology.

- Spoofing Prevention – A provision expands the prohibition against knowingly transmitting misleading or inaccurate caller identification information to apply to: 1) persons outside the United States if the recipient is within the United States and 2) text messages.
- Broadband Internet Access for Veterans – The bill includes another provision that requires the FCC to submit a report to Congress on promoting broadband access for veterans, in particular low-income veterans and veterans residing in rural areas. In the report, the FCC will examine access and how to promote it, plus provide findings and recommendations for Congress with respect to broadband access and how to promote it.

In preparing the report, the Commission is required to provide the public with notice and an opportunity to comment on broadband internet access service for veterans, in particular low-income veterans and veterans residing in rural areas, and how to promote such access.

- Methodology for Collecting Mobile Service Coverage Data – The law requires that not more than 180 days after the conclusion of the Mobility Fund Phase II Auction, the FCC must establish a methodology for collecting coverage data for its universal service programs. The methodology must:
  1. Contain standard definitions for different available technologies such as 2G, 3G, 4G, and 4G LTE;
  2. Enhance the consistency and robustness of how the data are collected by different parties;
  3. Improve the validity and reliability of coverage data; and
  4. Increase the efficiency of coverage data collection.
- Accuracy of 9-1-1 Dispatchable Locations – Congress gave the FCC 18 months to conclude a proceeding to consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone systems.
- NTIA Study on Interagency Process Following Cybersecurity Incidents – Congress required the NTIA to, within 18 months, submit to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation a report detailing the findings and recommendations of a study on how the NTIA can best coordinate the interagency process following cybersecurity incidents.
- Tribal Digital Access – Congress also required the FCC to, within 1 year, submit a report to Congress evaluating broadband coverage in Indian country and on land held by a Native Corporation. The resulting report is to include: 1) an assessment of the areas that have adequate broadband coverage and 2) an assessment of unserved areas. Additionally, the FCC has 30 months to complete a proceeding to address the unserved areas identified in the report.
- Terms of Office and Vacancies – The legislation also required that the Communications Act of 1934 be amended to address FCC Commissioners’ terms and practices. Specifically, it states that Commissioners are appointed for five-year terms and may continue to serve at the end of their term until a successor is appointed, confirmed, and takes the oath of office. He or she may not, however, continue to serve after the Congressional session ends.

Additionally, the law states that any person who chooses to fill a vacancy at the FCC must be appointed for the unexpired term of the FCC Commissioner being succeeded. He or she may continue to serve after the end of the fixed term that the person succeeds until a successor is appointed, confirmed, and takes the oath of office. As in the case above, he or she may not continue to serve after the Congressional session ends.

Finally, the law states that no vacancy in the Commission impairs the right of the remaining commissioners to exercise all the powers of the Commission.

- Joint Board on Universal Service – Congress included a provision of RAY BAUM’S Act that prevents the FCC from acting on a 2004 recommendation from the Federal-State Joint Board on Universal Service that called for the FCC to limit the scope of Universal Service Fund support for rural households to a single connection.
- Press Releases – Additionally, Congress instructed the FCC that its press releases regarding the issuance of a notice of apparent liability should include a disclaimer stating that the notice should be treated only as allegations and that the amount of any forfeiture penalty proposed in the notice represents the maximum penalty that the Commission may impose.
- Reports Related to Spectrum Auctions – Congress instructed the FCC that it must make publicly available what systems of competitive bidding for licenses and permits will be used during the next 12-month period, and identify, if possible, the bands of frequencies expected to be auctioned.

### **MOBILE NOW Act**

Language from U.S. Senator John Thune’s (R-SD) MOBILE NOW Act was also included in the RAY BAUM’S Act. MOBILE NOW, which stands for “Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act,” tackles spectrum policy. Below are summaries of what is included in this legislation.

**Identifying 255 Megahertz** – Congress required that by December 31, 2022, the NTIA and the FCC must identify a total of at least 255 megahertz of federal and non-federal spectrum for mobile and fixed wireless broadband use. The spectrum will include:

- A. 100 megahertz below the frequency of 8000 megahertz shall be identified for use on an unlicensed basis;
- B. 100 megahertz below the frequency of 6000 megahertz shall be identified for use on an exclusive, licensed basis for commercial mobile use; and
- C. 55 megahertz below the frequency of 8000 megahertz shall be identified for use on either a licensed or unlicensed basis, or a combination of licensed and unlicensed.

Additionally, a number of ineligible spectrum are laid out in the legislation. The following spectrum will not be counted:

- A. The frequencies between 1695 and 1710 megahertz.
- B. The frequencies between 1755 and 1780 megahertz.
- C. The frequencies between 2155 and 2180 megahertz.
- D. The frequencies between 3550 and 3700 megahertz.

**Millimeter Wave Spectrum** – Within two years, the FCC must publish a notice of proposed rulemaking (NPRM) to consider service rules to authorize mobile or fixed terrestrial wireless operations, including for advanced mobile service operations, in the radio frequency band between 42000 and 42500 megahertz.

**3 Gigahertz Spectrum** – Within two years, NTIA shall submit to the Commission and the appropriate committees of Congress a report evaluating the feasibility of allowing commercial wireless services, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz.

Within 18 months, the FCC must provide the NTIA and the appropriate committees of Congress an evaluation of the feasibility of allowing commercial wireless services, licensed or unlicensed, to share use of the frequencies between 3700 megahertz and 4200 megahertz.

**Communications Facilities Deployment On Federal Property** – Federal easements, rights-of-way, and leases are addressed in an effort to streamline communications facilities deployment on federal property. In addition, by March 2020, the NTIA must develop recommendations to further streamline deployment applications and report to Congress on the implementation of those recommendations by March 2022.

**Broadband Infrastructure Deployment** – To facilitate the installation of broadband infrastructure, the Secretary of Transportation is required to promulgate regulations to ensure that each state that receives funds does the following:

1. Identify a broadband utility coordinator that may have additional responsibilities related to facilitating the broadband infrastructure right-of-way efforts within the state;
2. Establish a process for the registration of broadband infrastructure entities that seek to be included in those broadband infrastructure right-of-way facilitation efforts within the state;
3. Establish a process to electronically notify broadband infrastructure entities identified under subparagraph (B) of the state transportation improvement program on an annual basis and provide additional notifications as necessary to achieve the goals of this section; and
4. Coordinate initiatives carried out under this section with other statewide telecommunication and broadband plans and state and local transportation and land use plans, including strategies to minimize repeated excavations that involve the installation of broadband infrastructure in a right-of-way.

**Communications Facilities Installation** – Within 60 days, the Administrator of General Services is required to issue a notice for public comment regarding the ability of the federal real property to support a communications facility installation. The legislation lays out next steps such as notification of agency heads about formatting information for inclusion in the database as well as outreach expectations for state and local governments.

**Reallocation Incentives** – Within two years, the NTIA is required to submit to the appropriate committees of Congress a report that includes legislative or regulatory recommendations to incentivize a federal entity to relinquish, or share with federal or non-federal users, federal spectrum for the purpose of allowing commercial wireless broadband services to operate on that federal spectrum.

**Bidirectional Sharing Study** – Within 18 months, the FCC, in collaboration with the NTIA, is required to conduct a bidirectional sharing study to determine the best means of providing federal entities flexible access to non-federal spectrum on a shared basis across a range of short-, mid-, and long-range timeframes, including for intermittent purposes like emergency

use; and submit to Congress a report on the study, including any recommendations for legislation or proposed regulations.

**Unlicensed Services In Guard Bands** – The FCC must adopt rules that permit unlicensed services, in certain feasible locations, to use any frequencies that are designated as guard bands to protect frequencies.

**GAO Assessment of Unlicensed Spectrum And Wi-Fi Use In Low-Income Neighborhoods** – The Comptroller General of the United States is required to conduct a study to evaluate the availability of broadband internet access using unlicensed spectrum and wireless networks in low-income neighborhoods.

**Rulemaking Related To Partitioning Or Disaggregating Licenses** – Within 1 year, the FCC must initiate a rulemaking proceeding to assess whether to establish a program, or modify existing programs, under which a licensee that receives a license for the exclusive use of spectrum in a specific geographic area may partition or disaggregate the license by sale or long-term lease.

**Unlicensed Spectrum Policy** – The law states that it is the policy of the United States:

1. To maximize the benefit to the people of the United States of the spectrum resources of the United States;
2. To advance innovation and investment in wireless broadband services; and
3. To promote spectrum policy that makes available on an unlicensed basis radio frequency bands to address consumer demand for unlicensed wireless broadband operations.

**National Plan For Unlicensed Spectrum** – Within 18 months, the FCC, in consultation with the NTIA, is required to develop a national plan for making additional radio frequency bands available for unlicensed or licensed by rule operations.

**Spectrum Challenge Prize** – The Department of Commerce is required to conduct prize competitions to accelerate the development and commercialization of technology that improves spectrum efficiency and is capable of cost-effective deployment.

**Wireless Telecommunications Tax And Fee Collection Fairness** – The law also addressed taxes on wireless telecommunications services. Congress prohibited a state or local jurisdiction from requiring a person who is not a resident or a business (with its primary place of business in the state/jurisdiction) from collecting a local tax, fee, or surcharge imposed on a purchaser or user of any wireless telecommunications service within the state, unless the collection is in connection with a financial transaction.

In a joint statement on the RAY BAUM'S Act of 2018, Senate Commerce Chairman John Thune (R-SD), Ranking Member Bill Nelson (D-FL), as well as House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Ranking Member Frank Pallone (D-NJ), stated, “[t]his legislation, combining provisions that have previously passed both the House and Senate, does what no legislation has done in 28 years – it reauthorizes the FCC and includes provisions that help make sure that the Commission is transparent, efficient, and ready for the 21st century communications landscape. This bipartisan, bicameral product puts consumers first and solidifies the nation’s critical telecommunications infrastructure, giving the U.S. a

global edge in the race to 5G and improving internet services across the country. Importantly, it includes spectrum legislation that passed the Senate unanimously last year and authorizes reimbursement for broadcasters who were displaced in the successful incentive auctions. We look forward to continued bicameral, bipartisan work to make sure RAY BAUM'S Act is signed into law.”

### **\$600 Million Rural Utility Service Funding**

Also included in the omnibus is an allotment of \$600 million to go to the U.S. Department of Agriculture's (USDA) [Rural Utilities Service \(RUS\)](#) to conduct a new broadband loan and grant pilot program. The omnibus language requires that at least 90 percent of the households to be served by a project receiving a loan or grant under the pilot program must be in a rural area without sufficient access to broadband, defined for this pilot program as 10 Mbps download/1 Mbps upload, which shall be re-evaluated and re-determined, as necessary, on an annual basis by the Secretary of Agriculture.

Other provisions laid out in the law include that recipients shall not use the loan or grant to overbuild or duplicate broadband expansion efforts made by any entity that has received a broadband loan from the RUS. Additionally, no more than 4% percent of the funds can be used for administrative costs to carry out the program, and up to 3% percent may be utilized for technical assistance and predevelopment planning activities to support the most rural communities.

On July 27, 2018, USDA [announced](#) it was accepting comments on the implementation of this funding allotment. The program was given a title – “e-Connectivity Pilot Program” – and comments are due September 10, 2018.

The announcement further explains that Congress allows these new federal funds to be deployed in rural areas with a population of 20,000 or less. A wide variety of entities is eligible for funding, including incumbent and competitive rural telephone and broadband service providers, rural electric cooperatives, private firms (but not sole proprietors or partnerships), nonprofits and governmental bodies. The requirements on build-out speeds are not specified by the law and are therefore under development.

USDA is thus seeking input from stakeholders with an interest in rural broadband deployment, specifically asking comments on the following issues:

1. Ways of evaluating a rural household's “sufficient access” to broadband e-Connectivity at speeds of 10 Mbps downstream and 1 Mbps upstream, and how broadband service affordability should be factored in.
2. Best options to verify speeds of broadband service provided to rural households.
3. Best leading indicators of the potential project benefits for rural industries such as agriculture, manufacturing, e-commerce, transportation, health care and education, using readily available public data.

## **Broadband in the 2018 Farm Bill**

As explained by the Senate Committee on Agriculture, Nutrition, and Forestry, “[e]very five years, Congress passes legislation that sets national agriculture, nutrition, conservation, and forestry policy, commonly referred to as the ‘[Farm Bill](#)’.” In 2018, the Farm Bill looks to add to broadband-related funding and set forth plans for the expansion of high-speed access to rural, unserved areas. Currently, a House version and a Senate version have been passed with several discrepancies.

One such discrepancy is in the form of RUS restrictions. The Senate version of the Farm Bill places new restrictions on the USDA’s RUS Broadband Loan Program in order to focus RUS funding on truly unserved populations. As reported by [Telecompetitor](#), the current RUS broadband programs state that as much as [85% of a project area](#) can include homes that already receive broadband from another service provider. The Senate Farm Bill, however, calls for that number to decrease to just 10% plus restricts loans to areas with two or fewer existing broadband providers.

The Senate version of the bill requires the USDA to verify that a particular area is unserved using data from the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC); additionally, broadband providers will be given the opportunity to challenge that the proposed area for funding is indeed unserved.

The House version of the Farm Bill does not include these restrictions.

Senate Majority Leader Mitch McConnell (R-KY) has stated that he [expects](#) to see a conference report on the bill in early September, at which point discrepancies will ideally be resolved. The current Farm Bill expires September 30, 2018.

Look for a future Connected Nation policy brief outlining the Farm Bill in its final form.

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