

Washington Update

2024 OTA Technical Conference

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USF Court Challenge

- **Judicial Challenges**
 - Non-delegation doctrine and “intelligible principles” – essentially a legal theory about the extent to which Congress can delegate authority to federal agencies.
 - Arguments whether USF is a “tax” or a “fee” and USAC’s role.
 - 6th and 11th circuits dismissed the cases.
- **5th Circuit**
 - Declared the USF contribution mechanisms to be unconstitutional.
 - The decision was not based on the finding that the USF is a “tax” – but that finding did get the court to the nondelegation doctrine.
 - The court found that the “double-layered delegation” rendered the contribution mechanism unconstitutional.
 - Case “remanded” to the FCC, not “vacated.”



USF Court Challenge

- **What does it mean *today*?**
 - Nothing really - case was “remanded” to the FCC, not “vacated.”
- **Next Steps – FCC/Congress**
 - How does an agency “cure” a constitutional violation?
 - FCC could simply eliminate/bring in house USAC’s functions.
 - Yet language in the opinion could be a “roadmap” to future challenges.
 - Better approach would be Congress “inoculating” the USF from a future challenge.
- **Next Steps – Courts**
 - FCC is considering a “stay” or appeal to the Supreme Court.
 - A Decision would be handed down June 2025.



RLEC USF

- **ACAM 1 and 2, and E-ACAM**
 - 2026/2028/2038 Terms
 - Enhanced ACAM-
 - Support adjustments before end of 2025
 - PFR issues – overlap; 20% loss; buildout timing; grant-funded builds
 - ACAM 1& 2 – what next?
- **CAF-BLS and HCLS**
 - Issues
 - Buildout and overlap
 - BCM?
 - What else comes next?



Other USF Distribution Issues

- “RDOF 2”?? Not going to happen . . . BEAD etc.
- **Future of USF/NOI**
 - Penalty of Building Too Well
 - Sustainability support? Replacement capital?
 - Model vs actual cost vs something else?
 - Fix likely means embracing a “POLR” concept – *but it could mean welcoming in other ETCs . . .*
- **E-Rate – buses/hotspot, and overbuilding concerns**
- **ACP wind-down – not USF, but a critical piece of the puzzle**



How to Pay for All of this?

- **Reform Ideas**

- Broadband Revenues – USForward Report

- Funded by NTCA, INCOMPAS, and SHLB Coalition
 - Call to Action backed by 340+ organizations
 - Found contribution factor could be reduced from ~30% to ~3.5%
 - Stable, more equitable, fast, and transparent

- Broadband Connections – BRG Report

- Funded by NTCA
 - Found no material impact on adoption/retention based upon \$0.80 charge



How to Pay for All of this?

- **Reform Ideas**
 - Telephone Numbers
 - Big Tech
 - FCC Report to Congress
 - Strand Consulting Report – Funded by NTCA, USTelecom, and WTA
 - Legislative Efforts
 - Appropriations
 - ACP as the “Canary in the Coal Mine”



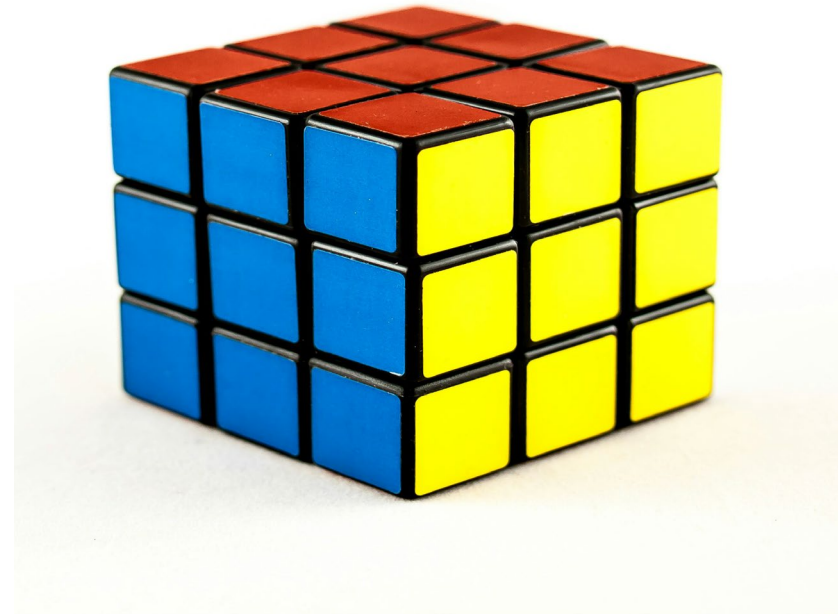
Digital Discrimination

- IJA directive to prevent and eliminate “digital discrimination of access”
 - Intended to address “policies or practices, not justified by genuine issues of technical or economic feasibility that differentially impact consumers’ access to broadband **based on** their income level, race, ethnicity, color, religion or national origin, or are intended to have such differential impact. ”
 - FCC adopted a discriminatory intent **or** impact standard.
 - Latter means business decision set in motion with any discriminatory intent but nonetheless hinder equal access.
 - Order stresses that companies can still make business/profit-related decisions but they also need to be aware of potential for discriminatory impact and seek to minimize it as much as possible.
 - Compliance with USF buildout obligations is not a “safe harbor” – only shifts the burden to complainant.



Digital Discrimination

- Disparate impact standard
- Wide net of covered entities
 - Contractors, MDU owners, municipalities
- Broad scope of corporate practices
 - Credit checks, marketing
- Unclear standards of “feasibility” and “success”





FNPRM

- * Reporting requirements
- * Formal internal compliance and review processes

Digital Discrimination: The appeals

- ~20 parties – telecom, construction, business
- NTCA files amicus brief
 - 60506 - technical deployment issues
 - Rate regulation beyond statute, conflicts with other laws
 - Unreasonable standard for technical, economic infeasibility
- Oral arguments scheduled for September



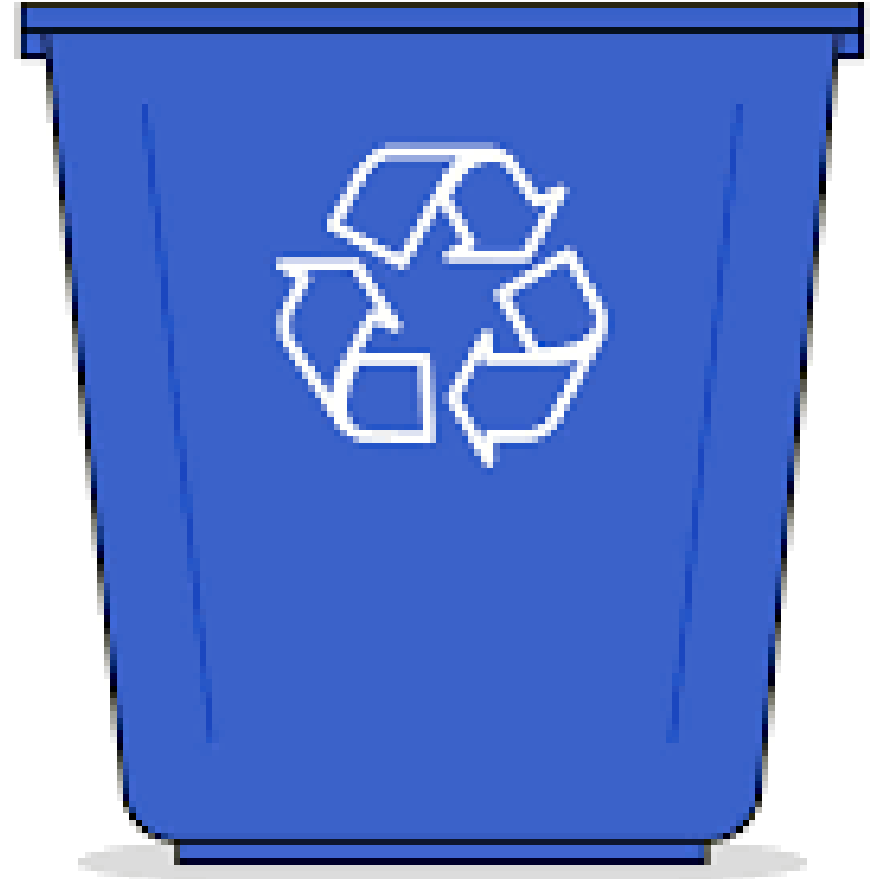
Loper Bright Enterprises v. Raimondo



- Invalidated “Chevron Deference”
 - Chevron Deference required courts to defer to agency interpretations of law if they are reasonable.
- Going forward, courts’ review of agency interpretations of law/assertions of authority will be more exacting.
- Digital Discrimination – 1st likely victim of post-Loper world?

Net neutrality

- FCC's binary view of the internet
- NTCA
 - *The customer facing market is operating and should be left alone*
 - *A regulatory backstop should ensure access to network platforms*
 - *And . . . USF – the FCC ceded its role in contribution reform*



Net Neutrality: The appeals

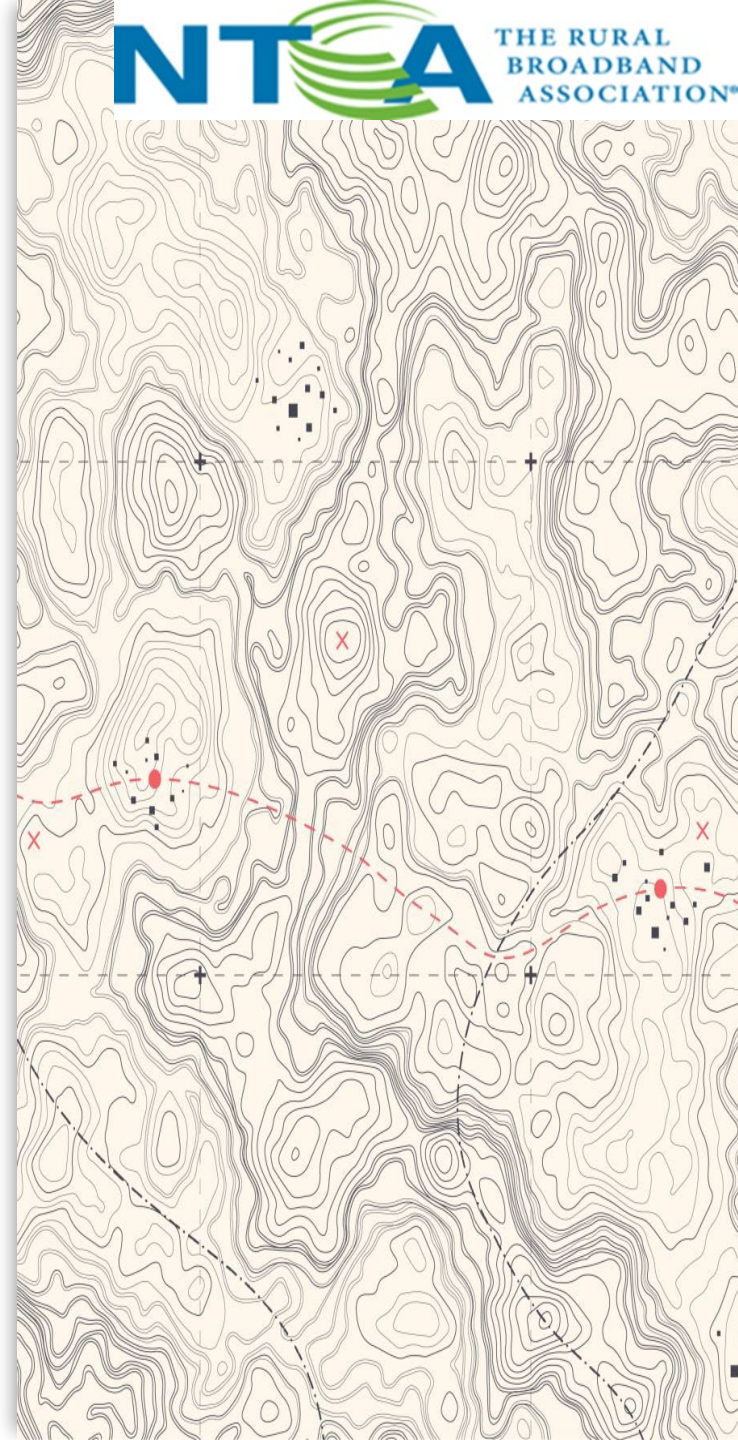


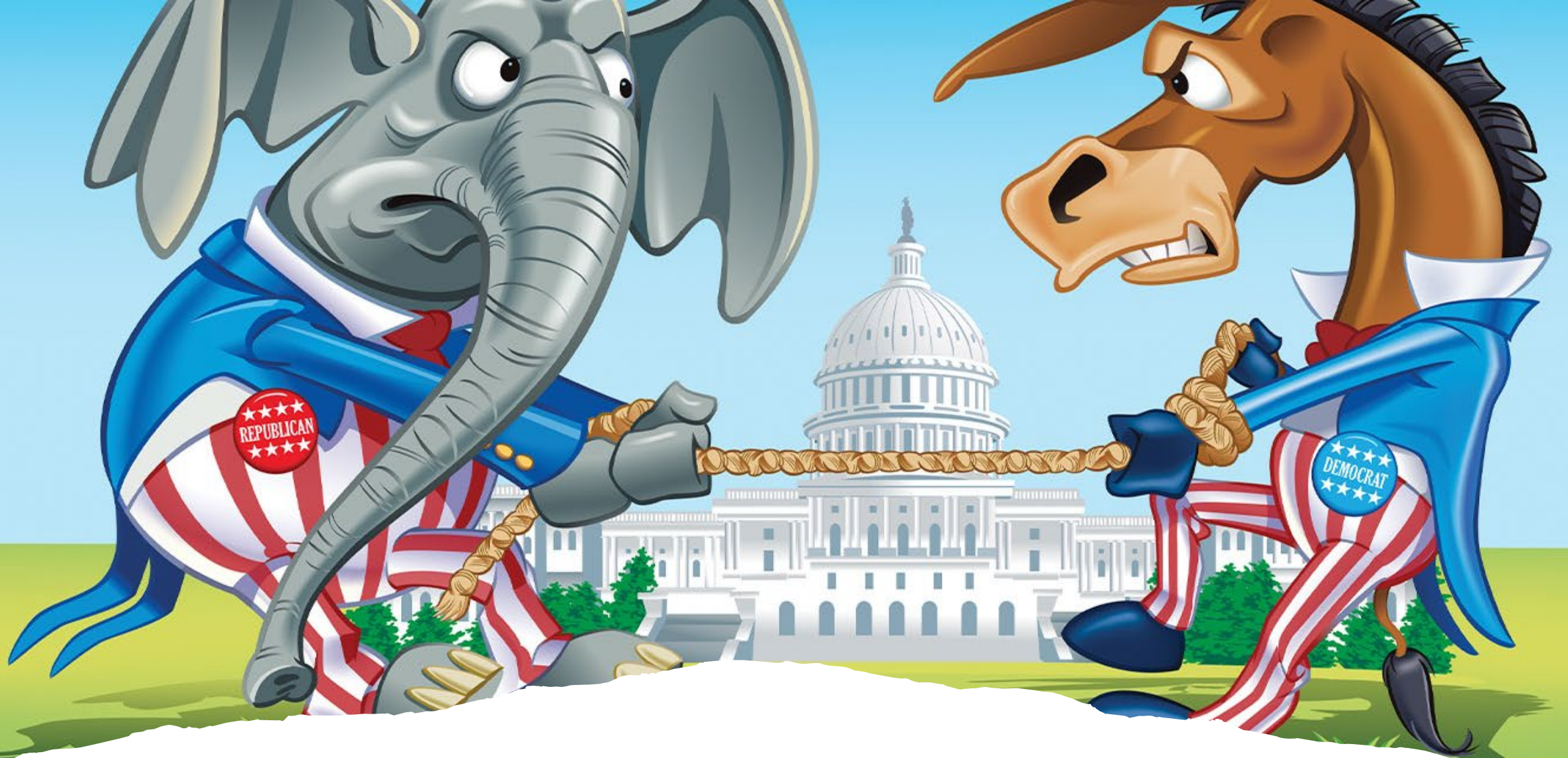
- Challenged in seven courts, lottery picks the 6th circuit
- Perceived as good for the industry (though perhaps a less-than-complimentary commentary on larger issues)
- 6th Circuit “stayed” the Order – reasoned that the FCC will lose on “Major Questions” doctrine.



National Broadband Map

- NTCA recommendations to fix problems within the National Broadband Map.
- Such as:
 - 1) Reporting standards on actual performance not just advertisement.
 - 2) Create public “heat maps” highlighting where numerous challenges and crowdsourcing concerns arise.
 - 3) Allow performance data to inform challenges.
 - 4) Allow for consequences for chronic overreporting of coverage.
 - 5) Do not reduce or eliminate funding for an area based upon coverage claims unless, under objective technical standards, the reporting provider can serve EVERY customer in that area.



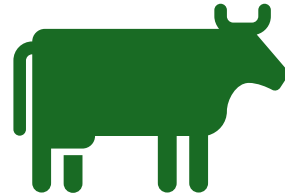


WHAT TO EXPECT IN A DIVIDED CONGRESS?

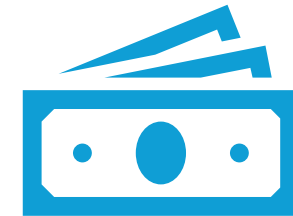
NTCA'S Legislative Priorities



USF Reform



Farm Bill



Taxation of Broadband Grants

Universal Service Contribution Reform

Reforming Broadband Connectivity Act (S. 975 and H.R. 1812)

- Directs the FCC to reform the USF contribution system by including internet service providers
- Introduced by Senators Amy Klobuchar (D-MN) and John Thune (R-SD) and Representative Neguse (D-CO)

Funding Affordable Internet with Reliable (FAIR) Contributions Act (S. 856)

- Directs the FCC to study the feasibility of funding the USF through contributions through edge providers
- Introduced by Senator Wicker (R-MI)

Lowering Broadband for Consumers Act (S. 3321)

- Directs the FCC to reform USF contribution system by including both internet service providers and edge providers
- Introduced by Senator Mullin (R-OK)

NTCA Farm Bill Priorities

Close
Coordination

Address
Permitting Delays

Matching Funds

No provider
preference based
on corporate
structure

Taxation of Broadband Grants

Broadband Grant Tax Treatment Act (S.341/H.R.889)

- Excludes broadband grants from 21% income tax
- Introduced by Senators Warner (D-VA) and Moran (R-KS) and Representatives Kelly (R-PA) and Panetta (D-CA)

Accelerate Long-Term Investment Growth Now (ALIGN) Act (S.1117/H.R. 2406)

- Permanently extends bonus depreciation
- Introduced by Senator Lankford (R-OK) and Representative Arrington (R-TX)



Other Priorities

Rip and Replace

Supporting full funding for the FCC's Secure and Trusted Communications Networks Reimbursement Program

ACP

Supporting reauthorization and a funding extension

ACCESS Rural America Act

Amends the Exchange Act to grant providers an exemption from certain unreasonable Security and Exchange Commission reporting requirements



CYBERSHARE

A Cyber-Threat information sharing platform for small communications providers to receive and share actionable threat information