



## ***En Banc* Decision: 5th Circuit Finds USF Funding Mechanism Unconstitutional**

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The 5th Circuit Court of Appeals has ruled the Universal Service Fund (USF) funding mechanism is unconstitutional. The full court, sitting *en banc*, rejected the framework established by the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) for determining and collecting USF contributions.

In its ruling, the court found fault with the Communications Act for conferring broad discretion upon the FCC to establish USF contribution rates. This, the court held, empowers the FCC to make significant policy decisions without adequate congressional oversight and strays from the intended legislative control.

The court also found that the delegation of administrative functions to USAC was not authorized by the Act. That delegation was therefore unconstitutional. In the court's view, even if the delegation of the functions that the Act did authorize had been constitutional, the combination of the delegations from Congress to the FCC and from the FCC to USAC meant that the Act's overall delegation would have been unconstitutional.

The decision has broad implications for the governance of telecommunications funding in the United States and the future of the USF and its programs. It calls into question the roles and authority of regulatory bodies like the FCC and USAC in the administration of federal funds, and may lead to legislative or policy changes to ensure that future funding mechanisms are implemented in a manner consistent with the Constitution.

To learn more, please find our detailed analysis linked [here](#).

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