



Post-Election Outlook | The Post-Election Future of the Universal Service Fund

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The constitutionality of the Universal Service Fund (USF) funding mechanism is currently being litigated, and its future has long been the subject of debate in Congress. The U.S. Court of Appeals for the 5th Circuit found the funding mechanism unconstitutional, a holding that is in conflict with decisions from the U.S. Courts of Appeals for the 6th and 11th Circuits upholding the constitutionality of the program. The Supreme Court has accepted the case and will hear arguments in the coming months. Should the Supreme Court find the funding mechanism unconstitutional, Congress will need to step in to keep the program funded. Former Federal Communications Commission (FCC) Chairman Ajit Pai supports Congress appropriating the dollars to fund USF in order to escape the current situation in which the USF obtains “more and more money from a declining base of contributors.” There has been a bipartisan working group in Congress focused on reforming the program, but those efforts have yet to produce legislation. The most straightforward fix may be for Congress to move the funding to the regular appropriations process and fund it annually. However, defenders of the current program have argued that this will create uncertainty and make it difficult for carriers who depend on the funding to operate. Republicans have advocated for reforming the program and giving Congress more oversight, which would come with direct funding.

Additionally, Commissioner Brendan Carr has voiced support for expanding the contribution pool beyond traditional telecom providers and including online platforms. Commissioner Carr has noted that while Big Tech derives “tremendous value from the federal government’s universal service investments – using those federally supported networks to deliver their products and realize significant profits – these large corporations have avoided paying a fair

share into the program.” By requiring traditional telephone customers to contribute to a fund that is “increasingly used to support broadband networks,” Commissioner Carr has argued that the FCC’s current approach is “the regulatory equivalent of taxing horseshoes to pay for highways,” suggesting that Congress should require Big Tech companies “to start contributing an appropriate amount.” Commissioner Carr has conceded that an act of Congress would be necessary to accomplish this, as the FCC presently has no jurisdiction to do so on its own.

Categories

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