

All Eyes On Congress After FCC Subsidy's High Court Win

By **Christopher Cole**

Law360 (July 1, 2025, 7:50 PM EDT) -- Supporters of the Federal Communications Commission's subsidies for phone and broadband service notched a clear win at the U.S. Supreme Court last week when justices upheld the Universal Service Fund's levy on telecom companies, but lawmakers now face pressure to beef up the \$9 billion program's revenue sources.

The court voted 6-3 to preserve the FCC's system of levying fees on telecommunications providers, including the use of an outside administrator to determine how much each contributing company pays and to collect the revenue every quarter. The justices' ruling reversed a Fifth Circuit ruling against the fund's structure.

That means there's no longer an immediate legal threat to the fund, allowing it to continue providing connectivity aid for schools and libraries, healthcare, rural internet deployment, and legacy phone services. But one of the issues that drove the legal backlash — continually rising quarterly rates due to an eroding contribution base — still must be resolved by Congress.

It's a problem that's going to keep plaguing Washington's telecom policymakers as long as the fund's revenue stream of traditional phone services keeps narrowing, driving up their costs and, ultimately, customers' monthly bills.

Telecom firms have long demanded that broadband providers and streaming companies contribute to the fund too, given the demands their businesses put on the U.S. communications networks and the benefit they receive from new deployment.

Harold Feld, senior vice president of the advocacy group Public Knowledge, told Law360 there was no question the high court's decision "was a total win for the FCC and the current statute," and that justices had firmly rejected the Fifth Circuit ruling that threw the fund's future into doubt last summer, leading to Supreme Court review.

"The problem of course, is that we still have the underlying problem with the Universal Service Fund, which is that it relies at the moment on long-distance telephone service," he said. "We need to do the actual reform to make this sustainable in the way that nobody has had the political courage to do, and it's still there."

"There are now no excuses for not getting this work done," Feld said, referring to the cloud of uncertainty cast by the ongoing judicial challenges to the fund. "The Supreme Court has said

unambiguously that you have authority, this is a proper exercise for Congress."

At this point, there is no reason Congress can't finish the job of "figuring out how to make this work for the 21st century," he said.

On Capitol Hill, some legislative options on the table include expanding the contribution base to bring major tech companies that rely on connectivity into the fold, and perhaps collecting fees from internet service providers.

Critics of the Universal Service Fund had been hoping, despite the tenor of oral arguments in March that seemingly favored the FCC, that justices would take the opportunity to restore the long-dormant nondelegation doctrine that weighs against Congress delegating its authority to a federal agency or an outside entity, in this case the Universal Service Administrative Co.

But in the wake of Friday's decision, even they agreed the time had come for a congressional fix to the funding mechanism, at least if the ultimate policy decision is to keep the fund intact in an era of rapidly rising costs.

"While the Supreme Court upheld the constitutionality of the FCC's universal service programs, I hope the challenge at least served to highlight the longstanding problems with the nearly \$10 billion per year Universal Service Fund," said Randolph May, president of the Free State Foundation, a think tank focused on free-market policies, in a statement.

May called the fund as it exists now "unsustainable."

"Consumers of traditional telephone services are now paying a tax of 36% on all their calls as the contribution base continues to shrink," he said. "Congress needs to get serious about engaging in a top-to-bottom examination of the program to determine its size and scope going forward, how it should be funded, or whether it should even exist."

On the Hill, lawmakers have been studying the ramifications of a dwindling contribution base for years, with much of the attention given by a handful of senators belonging to a working group on universal service. But some on the conservative side, notably Sen. Ted Cruz, R-Texas, staked out their own positions, with Cruz saying Congress should set annual limits on the fund.

Cruz, the Commerce Committee chair who would play an integral role in any near-term changes, has frequently derided the programs as wasteful. Cruz last August accused the fund of "burning through cash with only minimal government oversight of its budget." Cruz at the time called for subjecting universal service to the appropriations process, which means funding levels could easily shift from year to year.

But other policymakers have already stepped up with plans of expanding the contribution base to fuel its current structure, arguing the fund must be preserved at a time when America's broadband connectivity needs are only growing more urgent.

Just weeks shy of the Supreme Court decision, bipartisan groups of lawmakers in the U.S. House and Senate filed legislation to expand the fee base. Under that bill, the Lowering Broadband Costs for Consumers Act, the FCC would be directed to draw revenues for the fund not just from telecommunications providers but from technology companies and so-called edge providers, like video

streaming platforms that heavily rely on networks.

Kimberly Morning, of counsel at Morgan Lewis & Bockius LLP, who worked with amici to convince justices of the critical role of universal service programs, told Law360 on Monday that she was "thrilled with the outcome" of the case, while noting that issues remain pending in Congress. Morning represented the American Library Association and CoBank, which helps finance rural telecom providers.

Morning described the Senate working group, which just **reorganized** in the new Congress, as "very important" to the reform deliberations.

"We never actually saw proposed legislation publicly come out of that group" after it formed initially in 2023, Morning said, but hopes that with the court case resolved, the bipartisan group will now move forward with a plan.

While the instant legal threat to the fund has vanished with the decisive court ruling, Morning said policymakers from the Hill and FCC Chair Brendan Carr all see the issue as a top priority.

"There is less of a fire drill to save USF's existence, and then make sure it keeps operating," she said. "But I do think that that is tempered with the fact that Congress and Chairman Carr have already acknowledged the contribution factor as being significantly high."

"And I think now that in some ways, the court case being resolved opens up the doors for reform," she added. "It was hard to do a lot of work and changes while the court case was hanging over the FCC and Congress. They needed to see this resolved, and now they can move forward with improving the process."

--Editing by Jay Jackson Jr.