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WHAT THE INDUSTRY READS FIRST

SCOTUS Signs: High Court Hesitant to Roll Back Longstanding USF Program

The FCC's Universal Service Fund had another day in court Wednesday as the **U.S. Supreme Court** heard oral arguments in the most recent challenge to the program. **Boyden Gray** Partner *Trent McCotter*, counsel for **Consumers' Research**, claimed that the FCC has violated the nondelegation doctrine by allowing the **Universal Service Administrative Company** to determine the contribution factor for the fund, but most of the justices seemed skeptical of the merits of his argument.

He argued that the statute dictating how the USF program is run ultimately sets no rule that limits the amount the FCC can raise, meaning there is no cap on how high the agency can set the contribution factor that providers must pay on a quarterly basis to support universal service programs. The 5th Circuit voted 9-7 in July that the current method of funding universal service was unconstitutional because the FCC may have acted outside its power by delegating taxing power to USAC, a private entity.

Acting Solicitor General *Sarah Harris* from the **Department of Justice** represented the FCC, claiming that while there is no numerical ceiling Congress set to ensure the agency wasn't collecting more funding than it should, there are a number of qualitative caps that limit its power. For instance, the funding can only be directed to specific programs—the E-Rate program, the Rural Health Care Program, the High-Cost Program and Lifeline. With those in mind, a number of the justices seemed to question why there was a need to go through the exercise

of setting a quantitative cap, something McCotter insinuated would address the concerns of Consumers' Research.

"Your position would say, I think, that a solution to the problem you identify could be a \$1 trillion cap or \$100 billion cap. What exactly are you trying to accomplish?" Justice *Brett Kavanaugh* said.

Justice *Amy Coney Barrett* continued his line of questioning, wondering why SCOTUS should be throwing a number out there for the sake of throwing a number. She said that ultimately seems like a meaningless exercise, to which McCotter countered with a note that it would require more accountability from the FCC.

Justice *Elena Kagan* noted that typically when SCOTUS is called to interpret regulatory statutes, it either interprets them straight up or it does so in a way that limits agency authority. In this case, she believed McCotter was asking the justices to do something wholly different.

"What you're saying is that we should read this statute as expansively as possible to give the agency as much power as it could possibly be viewed as given, and all in order to, in the end, blow the statute up," Kagan said. "I think that's just not a right way to think about the interpretation of regulatory statutes."

She went on to note that she believes the statute lays out plenty of clear limits for the USF program, including that the Commission can only raise as much funding through the contribution factor as to provide basic connectivity services for health, safety, education and beyond that the substantial majority of Americans do. She pointed specifically to the use

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of the word “sufficient” in the statute when talking about how much funding is required to accomplish the goal of universal service, arguing that it does impose a limit.

“When I call the pizza operator and say I want you to send my pizza sufficient for 10 people, and then an 18-wheeler shows up, that is not an accurate understanding of what I asked for,” she said, drawing laughs from those in the courtroom.

FCC Commissioner *Anna Gomez* spoke in support of USF during a press conference hosted by the **Schools Health & Libraries Broadband Coalition**, calling it an essential program providing connectivity to those most in need. She argued that connectivity for all is not a red or blue issue, and that the USF has had bipartisan support from lawmakers since its inception.

“There is no way that we can ensure connectivity for all if we accept that market forces and realities will simply leave schools, hospitals and low-income people—especially those in hard-to-reach areas—on the wrong side of the digital divide,” Gomez said. “Failure to protect the program would disproportionately impact those who need connectivity the most, deepening economic and social inequalities.”

Should USF survive this court challenge, it doesn’t mean it’s in the clear. Instead, conversations around the need for USF reform will continue. FCC Chair *Brendan Carr* vocalized his opinions during an appearance at the **Free State Foundation’s** annual policy conference Tuesday, saying he believes conversations at the agency should begin around what the program would look like if lawmakers were to conceive of it today. That should provide a base from which lawmakers could begin crafting meaningful legislation around its reform.

“If you are going to keep the program, and there’s fundamental questions about that, I do think that looking to the different corporations that benefit from those expenditures and asking them to contribute a fair share. This idea that I pushed before, I think it still makes a lot of sense,” Carr said.

New Street Research believes that USF will survive the SCOTUS challenge and expects an opinion in June, but what happens next is still a major question mark.

“A combination of the Supreme Court case and upcoming decisions on BEAD are likely to finally force Congress and the FCC to address those issues, making the upcoming two years the most pivotal time for USF since the Congress and FCC created the modern system through the 1996 Telecom Act,” the firm told clients. “We think the current system will survive the legal threat, but the situation remains uncertain and unstable due to changing political incentives and technological changes, particularly given the political power of a person whose economic interests lie with preventing federal subsidies going to his competitors in serving low-density areas.”

OPTIMUM CEO SAYS LACK OF FIBER NO EXCUSE FOR SUB LOSS

It’s no secret that **Optimum’s** been working on a turnaround since *Dennis Mathew* joined as **Altice USA** CEO in October 2022, but it was a bit of a stunner to hear him say he’s happy that the operator’s tools for customer interactions now actually work. “When I started, they didn’t turn on. I would go around the country and have roundtables, and I just would leave crying. [Employees] were like, ‘Dennis, I love my job. I love my customers. By the way, multiple times a week, I can’t even log in. I can’t service our customers,’” he said during a **New Street Research** conference appearance Wednesday. The CEO said his first two years have been about stabilizing the network and tools to take care of customers. The upshot is that Optimum’s not tied to any particular system. “We are very happy to hit control, alt, delete now that it’s stable and we can leapfrog everyone and now lean into digital and automation and AI,” Mathew said. Now, CSRs can use the company’s AI Ava tool for customer retention instead of a previous system of scrolling through “a thousand lines” on a spreadsheet to find the right product offer. Another interesting moment in the conversation came when Mathew was asked about what it’s costing the company not to have fiber in Optimum West systems. “Nothing... We have fiber in the East. We don’t have fiber in the West. And when I joined, we were losing as much in the East and the West... So clearly, fiber is not the solution,” he said. “The solution is delivering great service, delivering great value and making sure that we’re meeting the customer expectations.” That doesn’t mean he isn’t excited about having fiber in the East with 8 gig symmetrical speeds. But he said the lack of fiber shouldn’t be an excuse in the West, given its robust HFC network and the leveraging of OFDM and OFDMA. Mathew reiterated his confidence in Optimum’s ability to get back to growth in subs, ARPU and EBITA in the medium to long term. It’s completed Phase 1 of its turnaround by delivering \$500 million in value. “I really view the next 24 months as critical, as an opportunity for us to deliver even more value—we said \$400 million in terms of value—and ultimately free cash flow through continuing to drive efficiency in our operations and also by launching new products and new services and driving penetration, accelerating growth of mobile to 1 million... and continuing to drive the growth of fiber.”

YOUNG RETIRING, LARSEN UPPED

A big changing of the guard at **Mediacom**. *Joseph Young* is retiring as general counsel after 23 years at the company. *Tom Larsen* will move into the role of SVP, General Counsel. Larsen joined the company from **Adelphia** in 2006 as VP, Law & Public Policy. Young got our attention over the years by often injecting dry legal filings with his trademark wit. One of our favorites

evoked Homer Simpson scolding Marge for “living in a world of make-believe! With flowers and bells and leprechauns and magic frogs and funny little hats”—an imaginary world that Young suggested **NAB** also dwells in. Doh! Big shoes, Tom!

VIAMEDIA NABS LOCALFACTOR

Independent ad rep firm **Viamedia** closed on its purchase of **LocalFactor**, a digital ad company that specializes in omnichannel programmatic solutions for large regional and national brands and agencies. With the move, LocalFactor Founder/CEO *Evan Rutchik* was named President and Chief Strategy Officer for Viamedia, where he'll continue to oversee LocalFactor in addition to the integration process into Viamedia's portfolio.

CARRIAGE

NBCUniversal is launching 40 FAST channels on **LG** smart TVs. Among the additions are **NBC News NOW**, **Dateline 24/7** and **SNL Vault**, with collections of shows like “Little House on the Prairie” and “Saved by the Bell” also included. In the future, LG will add shoppable features to those FAST channels. Users with pay TV subscriptions will be able to watch programs such as **Bravo's** “Below Deck” and shop directly on screen within the LG ecosystem.

RATINGS

The numbers are in for the first and second rounds of the NCAA women's basketball tournament on **ESPN** platforms. The first round averaged 367,000 viewers, up 43% from 2023 and serves as the second most-watched first round since 2013. The second round came in at 982,000 viewers, up 60% from 2023. ESPN itself posted 991,000 viewers for the round, while **ESPN2** had 755,000 across two games. In total through two rounds, the tournament is averaging 602,000 viewers. Elsewhere in ESPN's world, **Formula 1** made it a second consecutive week of setting record U.S. viewership for an event. The live running of the Chinese Grand Prix, which began at 3am, averaged 824,000 viewers on ESPN. That's the largest U.S. TV audience ever for the race and follows last week's Australian Grand Prix that had a record 1.1 million viewers.

HONORS

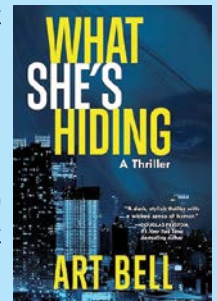
The T. Howard Foundation will celebrate five individuals at its [2025 Awards Dinner](#) in NYC on April 22. **WNBA** Commissioner *Cathy Engelbert* will receive the Executive Trailblazer Award, while **Disney** Global Advertising President *Rita Ferro* will be honored with the Executive Leadership Award. Other honorees include **Fuse Media** Chairman and CEO *Mike Roggero* and “Today” co-anchor *Craig Melvin*. *R. Thomas Umstead*, former *Multichannel News/Broadcasting & Cable* Senior Content Producer, will receive the Lifetime Achievement Award. The Foundation is dedicated to advancing representation and opportunity in media, entertainment and technology primarily through its internship and career alumni program.

What We're Reading



What happens when a former Court TV and Comedy Central exec writes a thriller? A pretty good mystery with legal doings intertwined with steady, dry wit.

Art Bell's first novel “What's She Hiding” ([released](#) Tuesday by Ulysses Press) follows his 2020 memoir “Constant Comedy: How I Started Comedy Central and Lost My Sense of Humor,” which



detailed how as an executive at **HBO** in the late 1980s, he pitched the idea for **Comedy Channel**. It launched in late 1989, a few months before **MTV** premiered its own comedy network, **Ha!**. The two eventually merged into one becoming **Comedy Central**. Bell went on to become president of Court TV after his comedy run and has now dedicated himself to writing, with various short stories, nonfiction and satire published in several journals.

What's She Hiding features Henry Gladstone, a lawyer at an elite New York law firm, whose ex-wife is a piece of work. She suddenly shows up again in his life and brings a Russian-mob load of problems with her. From there, it's a mad dash through NYC to figure out—*what she's hiding*—and to stay alive. The novel has a classic noir style and pacing reminiscent of Harlan Coben's Myron Bolitar series, complete with a best friend to help Henry along the way. And Bell has an impressive list of authors blurbing his novel—from Tess Gerritsen (The Martini Club series) to Douglas Preston (coauthor of the Pendergast series with Lincoln Child).

This book isn't about the cable industry, but there are certainly bits that made me think about back in the day. Such as Bell's description of how Henry's assistant is the best way to get clued in on office gossip. “If you want to know anything about what goes on in a big law firm, check with the assistant network. It's like the internet, only with more information.” Reporters found this to be true too—though it's become less the case as technology has evolved the role.

I asked Bell if any parts of his book were inspired by his time in cable. “My writing owes a lot to my experience at both networks. I've always loved comedy, and my Comedy Central experience inspired me to include humor in almost everything I write,” he said. “I didn't intend What She's Hiding as a comedied thriller, but since there's humor in almost every human experience, I was pleased that Henry's sense of humor came through even when he was in danger.”

— Amy Maclean