

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

USF Prevails: Supreme Court Upholds FCC Subsidy Program

The FCC's Universal Service Fund survived a legal challenge that claimed the \$8 billion subsidy program is unconstitutional as currently constructed. On Friday, the **U.S. Supreme Court** ruled 6-3 that USF is constitutional, reversing a Fifth Circuit decision that centered on USF's method of funding and whether Congress had the authority to delegate its taxing power in the Telecommunications Act of 1996.

"We hold that no impermissible transfer of authority has occurred," Justice *Elena Kagan* wrote in the Court's decision. "Under our nondelegation precedents, Congress sufficiently guided and constrained the discretion that it lodged with the FCC to implement the universal-service contribution scheme. And the FCC, in its turn, has retained all decision-making authority within that sphere, relying on the Administrative Company only for non-binding advice. Nothing in those arrangements, either separately or together, violates the Constitution."

Saturday marks one year since the Supreme Court [overturned the Chevron doctrine](#), which came a month before the [Fifth Circuit's USF ruling](#). Both took place at the same time another FCC initiative, the Affordable Connectivity Program, was reaching its conclusion due to a lack of additional funding by Congress. Now, 364 days later, the FCC and the industry at large have clarity on the program that subsidizes telecom and broadband services in an effort to offer affordable and accessible options for all Americans.

The High Court heard oral arguments on USF [back in March](#).

Primarily making the push that USF violated the nondelegation doctrine was the conservative nonprofit group **Consumers' Research**, which claimed "universal-service contributions are taxes" and that tax statutes "must satisfy a special nondelegation rule." However, the Court determined that USF meets the "intelligible principle" standard, affirming that Congress outlined sufficient guidance when it gave the FCC control over administering the program in 1996. That approval extends to the FCC's decision to grant the **Universal Service Administrative Company**, a private entity, oversight of USF.

"The Commission is, throughout, the final authority—just as the agency was in *Sunshine Anthracite*," the decision said, referencing the *Sunshine Anthracite Coal Co. v. Adkins* case the Court heard in 1940. "The Administrator, following the FCC's rules, makes recommendations. But the Commission decides whether or how to use them in setting the contribution factor."

The three dissenting Justices (*Gorsuch*, *Thomas* and *Alito*) argued that the Constitution only allows for elected representatives to decide which taxes the government can collect and at what rates.

"Today, the Court departs from these time-honored rules. When it comes to 'universal service' taxes, the Court concludes, an executive agency may decide for itself what rates to apply and how much to collect. In upholding that arrangement, the Court defies the Constitution's command that Congress 'may not transfer to another branch' powers which are strictly and exclusively legislative," *Gorsuch* wrote in the dissenting opinion.

Gorsuch concluded his opinion with an optimistic outlook, or so he writes. While the Court ruled in favor of the FCC in this battle,

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Gorsuch pointed to other provisions that could call into question the agency's power to support "advanced" and "additional" services.

"The Court today cannot bring itself to say that §§254(c)(3) and (h)(2) survive even its milquetoast version of the intelligible principle test. The Court also refuses to sustain §254(c)(1) as enacted, feeling obliged instead to rewrite that provision before upholding it. I can imagine worse outcomes than those small steps toward home," he wrote. "But we can and should do better. When it comes to other aspects of the separation of powers, we have found manageable ways to honor the Constitution's design. This one requires no less of us."

How the Industry is Reacting

The USF decision was met with a tidal wave of support from industry leaders. FCC Chairman *Brendan Carr* and Commissioner *Anna Gomez* each issued statements that highlighted the benefits of the program, as well as the possible ramifications if USF were to be struck down. Both Carr and Gomez, however, still noted a desire to reform USF.

"I am glad to see the Court's decision today and welcome it as an opportunity to turn the FCC's focus towards the types of reforms necessary to ensure that all Americans have a fair shot at next-generation connectivity," Carr said.

Good news for them, a pair of Congressmen said their focus is shifting to USF reform. Reps. *Brett Guthrie* (R-KY) and *Richard Hudson* (R-NC) issued a joint statement, "The Committee on Energy and Commerce can now turn its attention to reforming the USF so it can continue to provide every American with access to the connectivity they need to participate in the 21st century economy." Guthrie helms the **House Committee on Energy and Commerce**, while Hudson is the Chair of the **Subcommittee on Communications and Technology**.

INCOMPAS, **Public Knowledge**, **NTCA**, **USTelecom** and **NCTA—The Internet & Television Association** were also among the cheers. **ACA Connects** President/CEO *Grant Spellmeyer* applauded the move as well, noting the association's desire to work with lawmakers to establish more certainty for independent providers when connecting remote communities.

"This U.S. Supreme Court decision finding that USF does not violate the non-delegation doctrine is good news. It resolves a longstanding question and offers certainty, which encourages companies to commit to deployment and affordability efforts," Spellmeyer said, also nudging Congress to review USF and ensure its long-term sustainability.

Unsurprisingly, Consumers' Research Executive Director *Will Hild* was disappointed with the Court's decision. "The Supreme Court unfortunately got this case wrong and left consumers without the protection against tax increases that our Founders clearly desired," he [said](#) on X. "Even though the Constitution makes perfectly clear

that taxation power resides with the Legislative Branch, the USF is run by unelected FCC bureaucrats in the Executive Branch who off-loaded their authority to USAC. By doing so, the FCC recklessly empowered a private company to tax consumers billions of dollars every year, under penalty of law, without any public accountability."

ECHOSTAR AVOIDS DEFAULT ON INTEREST PAYMENTS

EchoStar said in an [8-K filing](#) Friday that it will make an overdue \$326 million cash interest payment on its spectrum backed notes and DISH DBS Corporation secured and unsecured notes, which were due on May 30 and June 2, respectively. The operator's choice to not make the payments at the time triggered a 30-day grace period, at the end of which the non-payment would constitute a defined event of default that would make the bonds immediately payable, which **New Street Research** analysts said, "would almost certainly trigger a Chapter 11 filing." EchoStar said in the 8-K that it was making the overdue payments in order to "extend the timeline" to work towards a resolution with the **FCC**, which is currently investigating the operator's use of wireless spectrum. That said, EchoStar has elected not to make a \$114 million interest payment on DBS notes due July 1, which will trigger another 30-day grace period, as the company "continues to explore potential resolution pathways." It was [reported](#) last week that President *Trump* met with EchoStar CEO *Charlie Ergen* and FCC Chairman *Brendan Carr* to urge a deal. Carr declined to confirm the accuracy of the report at a press conference following Thursday's Open Meeting, although he remarked that his position on the EchoStar situation was that "the status quo needs to change." New Street's translation of Carr's comment is that he "believes that the status quo he wants to change is SATS spectrum position; that is, he wants to force a reallocation of spectrum from SATS to others." Those others could include **SpaceX**, which has complained in the past about EchoStar's AWS-4 spectrum.

STARZ, HALLMARK BUNDLE UP ON PRIME VIDEO

Starz and **Hallmark+** are bundling up on **Prime Video** in the U.S. New subscribers can get both streaming services for \$13.99/month, which the companies say is 25% savings. Through the bundle, customers not only get Starz' movie library and original programming, such as the upcoming prequel "Outlander: Blood of My Blood," but also plenty of holiday cheer via Hallmark's "Christmas in July" marathon that kicks off today.

FREECAST LAUNCHES 'BEST' CHANNELS FOR PROGRAMMERS

Streaming company **FreeCast** announced the launch of a new offering for its programming partners: Broadcast-Enabled Streaming Television or "BEST" Channels. FreeCast says that BEST integrates broadcast channels with streaming FAST tech to provide small programmers with a cost-effective way to deliver a unified viewing experience across both OTA and digital streaming platforms. Citing saturation and slowing growth in the FAST market, FreeCast believes the BEST approach will allow local broadcast stations, diginets, FAST channel providers and other small content providers to take advantage of cutting-edge streaming and broadcast advancements, such as ATSC 3.0, to stay competitive with the major networks.

DOING GOOD

Charter is awarding \$1.1 million in grants to 55 nonprofit orgs through its Spectrum Digital Education program. The nonprofits receiving these grants work to expand access to digital tools, skills training and resources in communities served by the ISP. Among this year's winners are Human-I-T, which will use the funding to distribute refurbished laptops to low-income seniors in Southern California, and Dallas City Homes, which will build a computer lab inside an affordable housing community.

PROGRAMMING

The Africa Channel will mark 20 years on the air with special programming, including a documentary "TAC 20: The Africa Channel Story" that looks back on the network's most important moments and legacy. The network is also launching four thematic legacy programming blocks revisiting the music, comedy, travel, culinary stories and pivotal documentaries that defined TAC.



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Social Media Hits



Adam Crews
@adamgcrews



I spent two years of my life defending the Universal Service Fund in six cases across four circuits, and now I'm 15 minutes away from finding out whether it worked 🙄



Adam Crews
@adamgcrews



VICTORY!!!!



Adam Crews @adamgcrews · 7h

I spent two years of my life defending the Universal Service Fund in six cases across four circuits, and now I'm 15 minutes away from finding out whether it worked 🙄



Michael Mulvihill
@mulvihill79



The paradox of the business is that streaming has surpassed broadcast and cable combined "while also" marquee sports keep hitting multi-year or record highs on broadcast.

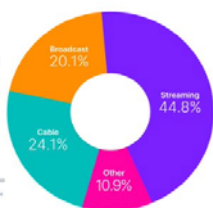
Only makes sense if you think of Live and On-Demand as distinct businesses, as we've been saying for years.

... **Medium Buying** @MediumBuying · Jun 17
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The Gauge™
Nielsen's Total TV and Streaming Snapshot

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Quotable

"If we are going to win the AI race against China, which this administration is very focused on, then we cannot allow a wasteful and inefficient approach to introduce further delay in deployments for states and possibly subpar service for communities. To many, the answer is to simply have satellite and fixed wireless be the low-cost option for BEAD to fund. I don't disagree with that approach for certain scenarios ... but while fixed wireless is a good alternative, it has capacity limitations and it is more expensive in the long run. Satellite service has great promise, but it remains an unproven technology at scale."

- FCC Commissioner Anna Gomez on a potential AI moratorium and its implications on BEAD



Up Ahead

JULY 1: [Cablefax Voices of Impact and Workplace Culture Awards Entry Deadline](#)

JULY 17: [Fiber Broadband Association Regional Fiber Connect, Anchorage, Alaska](#)

JULY 24: [FCC July Open Commission Meeting, Washington, D.C.](#)

JULY 27-29: [NTCA Summer Symposium, Hilton Head Island, S.C.](#)

JULY 28-29: [C2HR CON, Brooklyn](#)

AUG. 10-13: [The Independent Show, Salt Lake City:](#)