

The FCC's 2022 Agenda Will Have Broad Impacts on Multifamily and Broadband Providers

Now that the Biden administration has settled in, the FCC is setting an agenda that will affect broadband in multifamily.

By Kevin Donnelly / *National Multifamily Housing Council* and Valerie M. Sargent / *Broadband Communities*

Whenever presidential administrations change, placing new leadership to oversee agencies and fulfilling campaign promises can be a lengthy process. Now that the Biden administration has settled into office with a full year under its belt, everything is finally falling into place at the FCC. Let's examine some changes and priorities to come.

FCC MAKEUP: ROSENWORCEL CONFIRMED AS CHAIR; AWAITING SOHN CONFIRMATION

The dust has finally begun to settle at the FCC after nearly a year of operating without a permanent chairperson in place. After months of speculation, President Biden nominated FCC Commissioner Jessica Rosenworcel to serve as chairwoman of the commission and for another five-year term. In relatively short order, she was confirmed to the post with bipartisan support in December 2021. Rosenworcel had served as acting chairwoman since January 2021.

In this role, the chairwoman is expected to tackle an ambitious plan, including reinstituting Obama-era net neutrality regulations, addressing the homework gap, and continuing to work at ending the digital divide across the country. The timing of much of this work is uncertain as the FCC still lacks a Democratic majority, with President Biden's last FCC appointee, Gigi Sohn, still pending in the Senate.

Sohn's nomination has been resubmitted, and though confirmation is not guaranteed, it is likely. Until then, many high-profile issues the administration prioritized cannot move forward because the commission is currently deadlocked with two Democrat and two Republican members.

THE FCC AGENDA

The multifamily industry is currently watching a handful of key agenda items related to broadband services. Here are some highlights to monitor:

1. Net Neutrality

The FCC under Rosenworcel and an expected Democratic majority will face an aggressive schedule. Of particular note, one item that will undoubtedly take considerable time and is likely to suck a lot of air out of the room is attempting to reinstitute net neutrality regulations. Former FCC Chairman Ajit Pai rolled back the Obama-era order during the Trump administration, so many of the same arguments will likely be put forward.

Those in opposition to reclassifying broadband providers under Title II of the Communications Act of 1934 have argued that it would unfairly open the possibility of price regulation of their services. Those in favor of net neutrality rules, including President Biden and Chairwoman Rosenworcel, believe they are necessary to maintain an open internet and prevent broadband providers from blocking or throttling web traffic.

Again, without a Democratic majority at the FCC, action on this high-priority issue will have to wait. However, the debate surrounding it will undoubtedly dominate for quite a while.

2. Affordable Connectivity Program

Another key FCC priority this year will be ensuring smooth implementation and operation of the Affordable

FCC chairwoman Jessica Rosenworcel is in favor of net neutrality, but without a Democratic majority at the FCC, the issue will have to wait.

Connectivity Program (ACP). This is essentially an extension of the COVID-19 relief program, the Emergency Broadband Benefit program (EBB), which many Americans (and providers) benefited from during the pandemic.

An extension was included as part of the Bipartisan Infrastructure Deal President Biden signed into law, and \$14.2 billion was allocated to the program. Though the new program reduces the benefit amount from \$50 to \$30 per month, it will still help millions of Americans seeking affordable access to the internet.

The National Multifamily Housing Council (NMHC) and many in the broader real estate industry are seeking one reform to the program: ensuring that automatic eligibility for ACP extends to residents of housing supported through U.S. Department of Housing and Urban Development programs. Section 8 helps very low-income families, older people and people with disabilities afford decent, safe, sanitary housing in the private market, and Section 202 provides very low-income older people with options that allow them to live independently in an environment that provides support activities, such as cleaning, cooking, transportation, etc.

Both the EBB and Lifeline programs already provide automatic eligibility for residents of federal public housing. Still, the FCC has not afforded the same benefit to low-income renters in federally assisted housing, which private housing operators typically own. This discrepancy requires low-income renters to initiate the

application process themselves, thereby placing obstacles in their path to participation. NMHC hopes the FCC and other policymakers will look to address this issue in the coming months.

3. Multi-Tenant Environment (MTE) Proceeding

A less high-profile agenda item on the docket is a proceeding that the multifamily industry and many in the provider community are tracking closely to collect information on the state of broadband in the multitenant (which includes multifamily, commercial and retail) environment.

In late January, Chairwoman Rosenworcel began circulating a set of new rules at the commission that would prohibit certain types of agreements between broadband providers and property owners and increase transparency of others. As of this writing, details were still pending, but it appeared likely that the FCC would attempt to adopt a prohibition on providers entering into graduated revenue share arrangements, clarify that sale-and-leaseback wiring arrangements are prohibited by existing FCC rules, and require providers to disclose whether an exclusive marketing agreement is in place with the building owner.

While the industry continues to review the potential rules changes, apartment owners remain steadfast in their commitment to delivering reliable, high-speed broadband to their renters. Some at the FCC tout this move as improving competition in apartment communities, but in reality, competition is already strong in the parts of the market that are working.

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As we have shared with **BROADBAND COMMUNITIES** readers before, NMHC has demonstrated through industry survey data that broadband deployment in the multifamily area is working as intended, with nearly 80 percent of apartment properties having two or more broadband providers on-site.

The results indicated that the multifamily industry and its residents were well served by the existing partnership model between property owners and broadband providers, facilitating competition and ultimately leading to the deployment and operation of reliable, high-speed broadband networks at apartment communities. In fact, through filings and other comments to the FCC, many broadband providers have agreed with multifamily owners and other experts in the industry in warning the FCC not to harm the existing model, which promotes competition; increases service standards for renters; and ensures access to high-quality, high-speed broadband.

The FCC has not signaled whether this will be the only rules change it seeks on the proceeding, but multifamily stakeholders will continue pressing policymakers to avoid imposing new regulations on providers and property owners that will ultimately work against the shared goal of boosting deployment and modernizing broadband infrastructure, especially in low-income and smaller properties that desperately need these investments.

4. Bipartisan Infrastructure Bill

The bipartisan infrastructure bill is an opportunity for both providers and multifamily owners, to the tune of \$42.5 billion.

As we have written about previously, never has broadband deployment and the need to eliminate the digital divide been given such priority in Washington. Though not the original \$100 billion President Biden

proposed through the bipartisan infrastructure bill, Congress ultimately approved a historic \$65 billion for broadband deployment and expansion.

Such a level of funding and federal commitment to getting broadband to every American is unprecedented. An essential program under this funding that is of note to both broadband providers and multifamily operators is the inclusion of \$42.5 billion for the Broadband Equity, Access, and Deployment Program (BEAD), administered by the National Telecommunications and Information Administration (NTIA).

BEAD will direct funding to states for broadband deployments, adoption programs and other broadband agendas. Each state will get at least \$100 million (territories will receive a minimum of \$20 million). The balance of the funds will be allocated by need, primarily based on the number of household and business locations unserved by high-speed broadband. Broadband providers that receive funding to deploy under this program will need to provide network speeds of at least 100/20 Mbps and ensure they offer at least one affordable service plan.

As part of this funding, Congress directed that states make multifamily properties eligible to access broadband deployment funds to deploy wired or Wi-Fi broadband infrastructure or provide reduced-cost service in low-

income apartment communities. This is critical because broadband providers often have been unable or unwilling to serve because of the cost involved. With this level of funding, significant progress can be made to ensure that service is built out to places it doesn't exist today. It will enable the improvement and modernization of broadband networks in affordable housing communities across the U.S.

NTIA is expected to establish different program parameters throughout early 2022 while soliciting feedback from the industry and other stakeholders. The promise of these funds to communities of all kinds across the nation is exciting and unprecedented. It's an opportunity that broadband providers and multifamily operators cannot let pass.

UNIVERSAL INTERNET PROMISE

2022 is a year of high stakes for the FCC, NTIA and policymakers at all levels of government in ensuring that the incredible momentum and resources at hand are not lost. It's clear that only through coordination and cooperation between the public and private sectors, can the shared goal of closing the digital divide once and for all be achieved, ensuring that all Americans – regardless of where they live or how much money they make – can benefit from the promise of the internet. All Americans bear the responsibility to capitalize on this moment. ❖



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