INCOMPAS Policy Summit Calls for Consistency, Fairness in Rolling Out Broadband

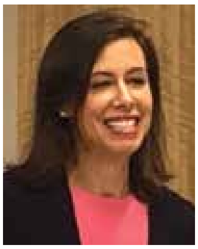
It is a transformational time for broadband in the U.S. The Infrastructure Investment and Jobs Act will dole out $42.2 billion to states to provide funding for new projects. During the INCOMPAS Policy Summit in Washington, D.C., a group of Congressional leaders, service providers and public advocacy groups discussed the impact of federal funding and how to drive new competition in the multiple-dwelling-unit market.

By Sean Buckley / *Broadband Communities*

Jessica Rosenworcel: MDU Broadband Consumers, Businesses Deserve Competitive Options

Finding broadband choice in multiple-dwelling-unit (MDU) properties remains a challenge for consumers and businesses. Because one-third of U.S. residents live in MDUs, including in apartment buildings, public housing, mobile homes, and condominiums, the multifamily market segment for broadband is a sizeable one for service providers.

"There's often only one provider in [an MDU] building – there's no competition," Jessica Rosenworcel, chairwoman of the FCC, said at the INCOMPAS Policy Summit. "That means consumers in multitenant units could pay higher prices for lower-quality service."


Jessica Rosenworcel

The FCC is seeking to address the MDU broadband competition issue. In September, the agency looked at competitive access to broadband in apartment and office buildings.

"We asked questions about how the FCC can promote increased competition, consumer choice, and lower prices for people working and living in these buildings," Rosenworcel said.

The FCC found that building owners and providers have been crafting revenue-sharing deals.

Sometimes, a service provider gives a building owner a cut of its revenue to obtain access to the building and tenants. If a tenant switches to another provider, the building owner loses money.

"This means that the building owner has a financial incentive to impede competitive providers from reaching their tenants," Rosenworcel said. "Sometimes this means graduated revenue-sharing arrangements, [in which] the higher the number of tenants the ISP serves, the [more] revenue goes to the building owner."

In January, Chairwoman Rosenworcel circulated a proposed Report and Order and Declaratory Ruling to promote competition and increase choice for broadband services for people living and working in multi-tenant environments (MTEs), which the commission adopted in a 4–0 vote along bipartisan lines.

Later in February, the FCC adopted rules to unlock broadband competition for people living and working in apartments, public housing, office buildings and other multitenant buildings. The regulations prohibit broadband providers from entering into certain revenue-sharing agreements with building owners that keep competitive providers out of buildings. Providers are also required to inform tenants about exclusive marketing arrangements.

Some ISPs and building owners have entered special arrangements in which the ISP sells the wiring to the building owner and leases it back on an exclusive contract.

"Some of these arrangements are complicated, but the idea is simple: Let's make sure that everyone who lives in an apartment building or any multitenant unit has a fair shot at getting broadband choices," Rosenworcel said. "This is not only about competition, but also about making broadband available to more people in more places."

CONSUMER, SMB IMPACTS

The FCC has a long record of complaints from consumers and small businesses about MDU broadband. "When I was a kid, my parents used to tell me you get what you get, and you don't get upset," Rosenworcel said. "That phrase might be appropriate for children, but it's not okay to say this to tens of millions of people when they sign up for an essential that's going to cost them hundreds of dollars a year."

The MDU broadband problem is not just a consumer issue. Small businesses are also affected by a lack of broadband choice.

A recent GAO study cited two recent surveys by the National Federation of Independent Business and Google that revealed 8 percent – or about 2 to 3 million – U.S. small businesses couldn't access broadband or didn't have any choice in providers. Making matters worse, GAO said a lot of the literature it reviewed suggests that the FCC's 25/3 Mbps broadband definition is "too slow to meet many small business speed needs."

One filer on MDU broadband told the FCC that its storefront needs more than one ISP to ensure customers can complete transactions when its current provider is down. Unfortunately, Rosenworcel said, this small business claims it's "only allowed to have one option."

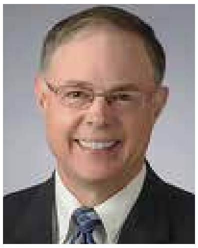
Calling for USF Reform Equity

The process to reform Universal Service Fund (USF) contributions has been a long journey. The USF is a system of subsidies, fees and funding designed to increase access to telecommunications for everyone who lives in the U.S. Dating back to 2014, the FCC asked the Federal-State Joint Board on Universal Service to look at how to make the USF more sustainable.

The Federal-State Joint Board on Universal Service was established in March 1996 to make recommendations to implement the universal service provisions of the Telecommunication Act of 1996. It's comprised of FCC commissioners, state utility commissioners and a consumer advocate representative.

Between 2014 and 2016, the state members worked collaboratively to create new recommendations. However, after former President Donald Trump named Ajit Pai chairman of the FCC, there was not a lot of engagement with the agency.

"Ultimately, the state members concluded and gave our recommendation to the FCC," said Chris Nelson, chairman of the South Dakota Public Utilities Commission. "We wanted to make it available to the public so folks would know the work we have done and what the state members felt would be a good way to move forward with contribution reform."


Chris Nelson

A HYBRID METHODOLOGY

The state representatives settled on a hybrid methodology in which residences would be assessed on a per-connection basis for consumers and businesses based on the board's research. This would apply to both residential internet and phone connection lines. The board estimated the connection fee would be about 60 cents. In its 2019 filing, the committee said a "connection-based mechanism will provide stability for the Commission, administrative efficiency for carriers, and transparency for consumers."

Further, the board said that the per-connection fee should be assessed separately for voice and broadband.

For businesses, the board recommended that revenues be assessed at the 6 percent range, which would be less than it is today. Specifically, the committee recommended that the FCC should determine contributing factors for the enterprise market based on an expanded revenues system that includes current and future-generation services, such as virtual private network (VPN) services, videoconferencing, web conferencing, unified communications and business wireless broadband access services.

A major goal was to create what Nelson said was a "balance between businesses and residences." "As part of our algorithm, we set it at 50/50," he said. "Businesses would contribute 50 percent and residences would contribute 50 percent, so this change in methodology would adversely impact neither side."

A crucial part of the board's evaluation is to assess broadband services. This evaluation comes as more people ditch their traditional landline voice services for mobile services or VoIP services, which can run as over-the-top applications on a broadband connection.

Though USF has been a tool to help fund rural broadband deployments, it would be challenging to lower the level of assessment because the original landline voice revenues are declining. "We had to look at something else to [reduce] that number," Nelson said. "Whether it be rolling out service to new locations in rural America or providing lifeline services, rural health care or [service] to schools and libraries, the money is being spent on broadband."

He added, "We felt comfortable saying that [the broadband] side of the equation ought to be putting some dollars into the fund itself."

SEARCHING FOR SUSTAINABILITY

Looking at the program makes sense to ensure wise use of taxpayer dollars and USF dollars. In 2019, the state members of the Joint Board advised the FCC to revise the existing contribution mechanism for federal Universal Service programs.

In its filing, the state members of the Joint Board said that the FCC has the authority and that it is in the public interest to expand the contribution base to include a broader class of services that touch the public communications network, including Broadband Internet Access Service (BIAS).

Nelson said that although there's a lot of money being made available in the Investment Infrastructure and Jobs Act (IIJA) that will help expand broadband services, the program will eventually end.

"Whether we finish the job of building out broadband remains to be seen," he said. "Until we know that, we think maintaining the viability of the Universal Service Fund is important, so that mechanism is in place to make sure companies that operate in high-cost areas remain viable in serving people."

In 2019, the state members of the Joint Board "wanted to finish the job we were given," Nelson said. "Without interaction with our federal colleagues, we could not finish the job the way it probably should have been finished."

Competitive Broadband Providers Call for Equal MDU Access

Service providers want equal access to multi-tenant environments (MTEs) – a market long dominated by incumbent providers that have established locked-in deals with developers.

It looks like things are moving toward change.

Change started with former FCC Chairman Ajit Pai, who introduced a notice of inquiry on MDU broadband in 2017, which turned into a notice of proposed rulemaking (NPRM) in 2019. In 2021, the Biden administration introduced an executive order on competition that asked the FCC to make MDU broadband an issue as it looked to expand competition across the country. More recently, FCC Chairwoman Rosenworcel has moved to consider this topic.

Christopher L. Shipley, the policy adviser at INCOMPAS, who moderated the Keys to the Condo: Unlocking Broadband Competition in MTEs panel, noted MDU competition has crossed both political party lines.

"We want to show how much of a bipartisan issue this is," he said. "Starting under the Pai administration and continuing under the Biden administration, [there's] a real interest in increasing competition in apartment buildings, condos and office buildings."

MTE ACCESS REALITIES

Though the FCC has rules that prohibit providers and property owners from creating anti-competitive economic and administrative barriers, incumbent telcos and large cable providers developed strategies to get around the rules.

Competitive providers such as Starry, which focuses on high-density markets including Boston, where MDUs are a dominant form of housing, know these realities.

Brian Regan

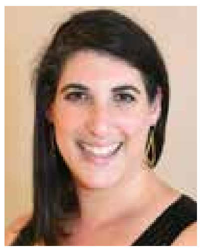
"We think of building owners and managers as partners," said Brian Regan, senior vice president of strategy and chief of staff for Starry. "In most circumstances, building owners and managers realize having broadband access in their building is a resident retention strategy, particularly for younger users focused on price and quality."

He added that the current structure for MDU broadband is broken.

"The reality is a huge structural problem has created this anti-competitive environment historically, even though the FCC has banned exclusive access agreements in apartment buildings," Regan said. "The incumbent telcos and large cable companies came up with strategies to create economic and administrative barriers to access MTEs and compete in MTEs to the detriment of the residents."

Two key struggles that have hampered Starry are the graduated revenue share between providers and building owners and exclusive wiring agreements.

However, Regan is hopeful that the recent FCC NPRM to drive competition in MDU broadband could help curb these issues. "When you combine all of these things, you have a package of horribly anti-competitive behaviors," he said. "We're happy that the FCC is going to take action."



Jenna Leventoff

Jenna Leventoff, senior policy counsel for Public Knowledge, agrees that the exclusivity agreement is a crucial problem because it incentivizes building owners and operators to shut out competitors. "These graduated revenue share agreements are problematic because they say we can't get the penetration we need if we let anyone else in, so the building owners/managers keep others out," Leventoff said. "These sale-leasebacks are also problematic because they serve to evade commission rules."

In these types of deals, ISPs craft agreements to sell back the wiring in the buildings to the building owners/managers and lease them back. "A loophole like that is problematic because it's a blatant way to evade the rules," Leventoff said.

She added that bulk billing arrangements also create issues. In such a scenario, the landlord buys internet, and the consumer pays the landlord for the service.

That means consumers might be paying for services they may or may not want. "The problem is if the landlord has that agreement, it has no incentive to let in another provider," Leventoff said. "If the landlord lets in another provider, the consumer would have to pay the building for the bulk internet provider and then pay for the service they want."

FCC'S MDU ACTION

The panel praised the FCC's move to adopt rules to unlock broadband competition for people living and working in apartments, public housing, office buildings and other multitenant buildings.

Starry's Regan is excited that the FCC's order is a "bipartisan issue." "Policymakers and consumers believe that you want competitors to compete on price and service quality and not use anti-competitive agreements to restrict competition," he said.

He added two areas that need further exploration. First, will the decision be backward-looking? "If the decision is on a prospective basis, it will only help when access agreements come up for renewal," Regan said.

Second, will the new order address exclusive marketing agreements, which can be in place for five to 10 years? "We appreciate that there will be increased transparency, but we'd like to see the commission do an outright ban on exclusive marketing," Regan said. "What this means is if exclusive marketing agreements are still in place, there will be a lot of activity around how to manipulate and extend exclusive access agreements."

Public Knowledge agrees those questions are essential, but they don't go far enough. "We're looking forward to having a full FCC with reinstated Title II protections in which the FCC can ban all agreements to be exclusive," Leventoff said. "The reality is that providers and landlords will keep finding ways to manipulate the rules."

The impact of exclusive MDU access agreements is not just a consumer issue. The Small Business Administration (SBA) encourages the commission to consider the impact on small businesses. "As we move forward, it will be important for the FCC to look at comments from small broadband providers and small business consumers and see what barriers exist," said Jamie Bellcore Saloom, the assistant chief counsel at the SBA Office of Advocacy.

New Federal Funding Is Key to Enabling Expansion

Service providers have an opportunity to pursue rural broadband opportunities, but federal funding is necessary to make these deployments a reality.

During the INCOMPAS Policy Summit panel Infrastructure Funding: Industry Viewpoint: Federal Broadband Funding Programs, broadband builders shared their perspectives on best practices, rules and requirements that federal and state agencies should consider in developing eligibility and other requirements for future funding programs.

The panelists differed in their perspectives, but they agreed funding helps establish a foothold in underserved markets.

E-RATE FACTOR

The E-Rate program has been a critical enabler for fiber providers. It provides discounts to assist schools and libraries in obtaining affordable services. Service providers such as Unite Private Networks (UPN) and Uniti have used E-Rate funding to establish network anchor tenants.


Matt Wiltanger

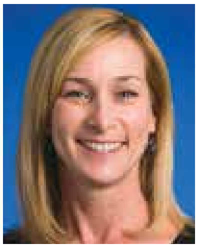
UPN, which built fiber in 21 states, sees E-Rate as an essential program. "E-Rate was transformative to us as a company," said Matt Wiltanger, general counsel at UPN. "We've done some CARES Act work, but E-Rate is the vast majority of our experience with government funding."

Likewise, Uniti, which has grown through acquisitions, including of PEG Bandwidth and Tower Cloud, has continued to expand its service presence in new communities by lighting fiber networks for schools and libraries.


Kelly McGriff

Kelly McGriff, vice president and deputy general counsel at Uniti Group, said that E-Rate has allowed the company to penetrate more markets. "E-Rate has helped Uniti get to some communities that we may have not otherwise been able to," he said, adding that the E-Rate money allowed Uniti to connect with businesses in communities where it's providing connectivity to schools. Once Uniti wins a school contract, "it's easy to sell to a two-man law firm or a hardware store, which can afford $400 a month for service."

Initially known as an operator of wireless towers, Crown Castle is expanding into new areas, such as enterprise services. Having built 80,000 route miles of fiber, the provider serves E-Rate customers in 500 markets. The provider is also keen to take advantage of IIJA funding.


Staci Pies

"With respect to E-Rate, we are a provider that relies on federal funding, but we're also looking at the IIJA program," said Staci Pies, vice president of public policy for Crown Castle. "We think there are new opportunities for Crown Castle, facilitating deployments for customers who will be grantees under IIJA."

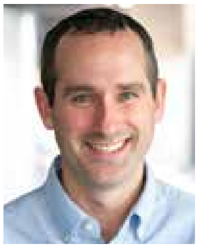
FUNDING IS NECESSARY

Federal funding has allowed C Spire and Tilson to grow their businesses in sparse rural markets. C Spire, which has its roots as a wireless operator, has used USF and other funds to expand its wireless and now fiber-to-the-home (FTTH) reach. After building fiber to its wireless towers, the provider decided to make an FTTH network in rural Mississippi.

Over the last six to seven years, C Spire built out the FTTH network with its capital, but it started leveraging CARES Act funding awarded to Mississippi. C Spire will complement its FTTH footprint by acquiring Troy Cable, which has converted most of its plants from hybrid fiber coax to fiber.

"We're going to go hard after this money on the table," said Chris Champion, vice president of government relations at C Spire. "We can't get to where we want to be without federal funding in many parts of rural Mississippi and Alabama.

Tilson, a provider of network deployment and consulting, has been at the forefront of several public projects. It was the co-developer of the North Carolina Department of Transportation and Pennsylvania Turnpike Commission's fiber network for an intelligent communications system. The company will help commercialize these networks to sell middle-mile wholesale services to other providers.


Josh Broder

Josh Broder, CEO of Tilson, has had experience dealing with federal broadband funds since the FCC issued the Broadband Technology Opportunities Program (BTOP) in 2009. "Tilson is a creature of the stimulus," he said. "When the last round of broadband investment happened in 2009, during the heady days of BTOP, [Tilson was] a small consulting company."

He added, "our customers float on a sea of federal, state and local support to get to places where business cases are not obvious."

As its customers pursue IIJA funding, Crown Castle seeks partnerships with local communities to build middle-mile networks. "We don't know what that would look like until NTIA comes out with its guidance, but middle-mile might be a sweet spot for Crown Castle, especially in areas where we see small-cell growth opportunity," Pies said.

Additionally, Pies said the company could help communities using IIJA funds to upgrade state and local government internal networks. One service it may offer is "to provide small-cell and fiber services to local governments as they upgrade their networks to serve customers," she said. "These opportunities that aren't distinct might be awarded through different programs that could be beneficial for Crown Castle and its customers." ❖

INDUSTRY PERSPECTIVES

"We need broadband maps done because the risk of overbuilding and not getting broadband service to unserved communities is also high."
– Brendan Carr, FCC Commissioner

"High-speed internet is not a luxury."
– Peggy Schaeffer, Executive Director, Connect Maine

"Broadband brings an interesting group of people together."
– Rep. Bob Latta (R-Ohio)

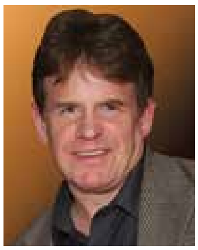
"To close the digital divide, we need to support communities as they upgrade and increase broadband capabilities."
– Rep. Lizzie Fletcher (D-Texas)

"We need to make sure that the FCC's rules encourage competition and don't close competitive entry where there may not be a case to enter right now, but where there may be in the future as a community's needs evolve."
– Jamie Belcore Saloom, Assistant Chief Counsel, Telecommunications, Internet and IP, Small Business Association Office of Advocacy

"What makes 5G unique is its potential to enable widely deployed public safety and medical applications." *– Nathan Simington, Commissioner, FCC*

"Every provider that participates in the Infrastructure Investment and Jobs Act (IIJA) has to provide a low-cost option, but what defines low-cost broadband is another controversial issue." *– Sen. Rob Portman (R-Ohio)*

"We have learned that community engagement is key to getting the states engaged with political subdivisions and tribes." *– Douglas Kinkoph, Associate Administrator, Office of Internet Connectivity and Growth, NTIA*



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