

ACA Connects' 2021 Legal, Regulatory, and Legislative Achievements

In 2021, ACA Connects was again very active in advocating for laws, rules, and policies that benefit our Members, and we were successful in achieving our goals in a variety of legislative, regulatory and judicial proceedings. Below are ACA Connects' biggest wins for our Members in Washington (and beyond) in 2021.

Broadband Infrastructure Law

As the Biden Administration and Members of Congress began discussing spending up to \$100B to close the broadband deployment and adoption gaps, ACA Connects deployed a multipronged campaign involving research, lobbying and public affairs to help ensure that spending on infrastructure would provide opportunities for ACA Connects Members and limit their risks of harm. The campaign's centerpiece was a report that ACA Connects produced with the business consulting firm Cartesian that analyzed the availability and adoption gaps in the broadband market. We used this report to help policymakers understand the scope of the digital divides and how to spend the sizeable, yet limited, resources they had in ways that would provide the greatest benefit without disrupting a market that was driving significant investment and innovation.

In the end, the broadband provisions in the Infrastructure Investment and Jobs Act, signed by President Biden on November 15, 2021, reflect our efforts in important respects. First, by allocating lower amounts for deployment programs and higher amounts for adoption, the law addresses more precisely the actual needs of consumers and lessens the chance of market harm. Second, existing providers will have opportunities to access deployment funding from the \$42.5B Broadband Equity, Access, and Deployment (BEAD) Program and the \$1B Enabling Middle Mile Broadband Infrastructure Program. Moreover, the BEAD Program must use definitions of "unserved" and "underserved" areas and establish a challenge process that greatly limits opportunities to use funds to overbuild areas that already have sufficient broadband service. Third, the law contains more than \$14B to replace the Emergency Broadband Benefit (EBB) Program with the Affordable Connectivity Program (ACP), allowing eligible households to participate in the support program for many years longer than would be possible under the EBB Program.

In the end, the new law provides opportunities for ACA Connects Members to receive funding to close the digital divides in and around their communities and limits their risks of harm. ACA Connects will remain active to ensure that the BEAD Program is implemented properly by NTIA and the States and Territories and the ACP by the FCC.

Emergency Broadband Benefit Program

In the December 2020 appropriations act, Congress directed the FCC to establish the EBB program, a \$3.2B broadband subsidy program for households struggling financially during COVID-19. Congress made participation voluntary for all broadband providers, but required that non-Eligible Telecommunications Carrier ("ETC") providers – a category that includes many ACA Connects Members – get FCC approval to participate. Also, the law required participating providers to use existing Lifeline systems, including the National Lifeline Accountability Database and National Verifier, which were unfamiliar to many ACA Connects Members. To address these concerns and minimize barriers to entry for smaller providers, ACA Connects urged the FCC in implementing the EBB program to create a streamlined FCC approval process for non-ETCs, ensure there were training sessions and other resources to help non-ETCs and smaller providers participate effectively from day one, and avoid giving ETCs a head start in providing the benefit. The FCC's February 2021 order adopting rules for the program

includes these and other ACA Connects' proposals. Our success helped lay the groundwork for more than 300 ACA Connects Members to participate in the EBB program, including many non-ETCs lacking prior experience with government subsidy programs.

Emergency Connectivity Fund

As part of the March 2021 stimulus legislation, Congress enacted the Emergency Connectivity Fund, which directs the FCC to provide eligible schools and libraries with over \$7B in funding for broadband connectivity and devices for students and library patrons at home and other off-campus locations during COVID-19. To maximize opportunities for our Members to provide broadband connectivity through this program, ACA Connects urged the Commission to restrict the ability of schools and libraries to use funding for connectivity to build new networks, which might overbuild providers that are capable of providing connectivity. Additionally, we advocated that funding should first be spent prospectively to address the immediate and near-term needs of students and library patrons – and not to reimburse schools and libraries for prior expenditures since the beginning of the emergency for connectivity and devices. In May 2021, the FCC adopted rules for the program that incorporate these and other ACA Connects' proposals.

STIR/SHAKEN Deadline for Small Voice Providers

ACA Connects' advocacy in 2020 contributed to the FCC's adoption that year of a two-year deadline extension, until June 30, 2023, for small voice service providers (those with 100,000 voice lines or fewer) to implement the STIR/SHAKEN call authentication framework in their IP networks. In 2021, the FCC issued a Further Notice of Proposed Rulemaking that proposed curtailing that deadline extension by one year for the "subset" of small voice providers that are responsible for originating a disproportionate share of illegal robocalls. The key question in the proceeding was how to define this "subset" of providers. By consulting with Members, ACA Connects found that several of the FCC's proposed criteria could have inadvertently swept in ACA Connects Members based on their provision of legitimate voice services, e.g., to schools or hospitals. We proposed as an alternative that the FCC maintain the two-year extension for "facilities-based" providers, i.e., those providers that deliver at least some voice traffic over their own facilities. In December 2021, the FCC issued an Order adopting our proposed approach, and the Commission credited ACA Connects for supplying the definition of "non-facilities-based" providers subject to the earlier deadline. As a result, ACA Connects' small voice provider Members will retain their existing 2023 deadline to implement STIR/SHAKEN.

New York's Rate Regulation of Broadband Service Law

In April 2021, the State of New York enacted a law requiring broadband providers in the State to offer, to certain low-income customers, broadband service at 25 megabits-per-second (Mbps) for no more than \$15-per-month. The statute defines "low-income customers" so broadly as to encompass one-third of New York households and requires providers to offer the \$15-per-month service tier even if their costs of providing service are several times higher. Recognizing the harm this legislation would cause to ACA Connects Members and their customers in the New York, and the risk that other states might enact similar legislation, ACA Connects, along with other trade associations, sued New York in federal district court. The Plaintiffs argued that the statute conflicts with the federal Communications Act by imposing common-carrier obligations (regulated rates) on broadband providers that the FCC has chosen to exempt from such regulation under Title I of the Communications Act. The district court agreed with Plaintiffs and issued a preliminary injunction barring New York from enforcing the statute. The State has appealed. The district court ruling—if affirmed on appeal—not only protects ACA Connects members in New York from this ill-conceived legislation, but signals to other states that similar laws are unlikely to withstand judicial scrutiny.

Pole Replacements

In mid-2020, NCTA filed a petition asking the FCC to clarify that in unserved areas it is unjust and unreasonable for investor-owned utilities (IOUs) to shift all pole replacement costs to new attachers. ACA Connects filed comments in response to the petition agreeing with NCTA's overall approach, but urging the FCC to adopt it for both served and unserved areas. In addition, we proposed that if the FCC decided to not rule on NCTA's petition, it should at least find that IOUs are "direct beneficiaries" of pole replacements and, therefore, they should incur costs for replacing poles that reflect the extent to which they benefit. In a January 2021 declaratory ruling, the FCC ruled that IOUs in both served and unserved areas "may not require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made." This ruling should tamp down on some of the most egregious practices of IOUs encountered by ACA Connects Members when attaching to poles that require replacement. We continue to seek further clarification from the FCC on the responsibilities of IOUs to share in the costs of replacing their poles.

Digital Opportunity Data Collection (Broadband Mapping)

Since 2020, the FCC has been implementing the Broadband DATA Act, which requires the FCC to identify all broadband serviceable locations by geocode and mandates that wireline broadband providers submit more precise data regarding the availability of their broadband service. The new law, in seeking to ensure the accuracy of the data providers submit, also requires the FCC to implement a process where the public and other stakeholders can challenge a provider's data and submit crowdsourced information. Reflecting the interests of small and mid-sized providers, ACA Connects urged the FCC to ensure the requirements for filing location data and responding to challenges are not burdensome. In January 2021, the FCC adopted many of ACA Connects' proposals, such as requiring challengers to submit complete and precise information about the nature of their challenge and certify the information as "true and correct." The FCC also agreed with ACA Connects' proposal that the FCC take enforcement action against any provider that willfully, knowingly, or "recklessly" submits inaccurate or incomplete broadband data.

FCC Regulatory Fees

Cable and DBS providers both pay a regulatory fee to support the work of the FCC's Media Bureau. While DBS providers previously paid a lower amount, in 2021, in response to ACA Connects' continuing advocacy, the FCC brought the cable and DBS fees to parity. In addition, likewise in response to ACA Connects' continuing advocacy, the FCC combined cable and DBS providers into the same fee payor category. Doing so helps ensure that cable and DBS provider regulatory fees will remain at parity in future years.