



## MEMORANDUM

**To: North Metro Telecommunications Commission**  
**From: Mike Bradley, Michael Athay, and Tou Xiong**  
**Re: August 2021 Legal Report**  
**Date: August 4, 2021**

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### **Mike Bradley Selected to Super Lawyers**

Mike Bradley was recently selected as a top-rated communications lawyer in Minnesota by [Super Lawyers](#). 2021 is the third consecutive year Mike has received this distinction. Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The rigorous selection process includes independent research, peer nominations and peer evaluations.

### **Tou Xiong Joins Bradley Law**

Bradley Law, LLC is pleased to announce that [Tou Xiong](#) has joined our law office. Prior to joining Bradley Law, LLC, Mr. Xiong was a non-profit executive director in Minneapolis. He brings vast experience in local and state government as a former city elected official and a current member of the Minnesota state legislature. He will be working with Mike Bradley, Michael Athay on municipal telecommunications matters.

### **Cable Franchising Appeal – Sixth Circuit Denies Petitions for Rehearing**

On July 12, 2021, our firm filed a Petition for Panel Rehearing to the original panel that decided [City of Eugene v. FCC \(6<sup>th</sup> Cir. 2021\)](#) on May 26, 2021. We argued that the Court made an error of law and fact in describing noncash franchise requirements as “exactions” and therefore franchise fees. Two other municipal groups filed petitions for rehearing. All three petitions were denied summarily on August 3, 2021. The parties to the appeal may now petition the United States Supreme Court for a writ of certiorari. That decision will be made in the next couple of weeks.

### **First Circuit Upholds Maine Cable Law**

On August 3, 2021, the First Circuit of the United States Court of Appeals affirmed the United States District Court of Maine in upholding a 2019 Maine cable law. *See NCTA v. FCC* (1<sup>st</sup> Cir. 2021). The law required that all cable operators provide Public, Educational and Governmental (“PEG”) channels on the basic service tier near local broadcast channels, that PEG channels be carried in high definition (“HD”), that cable operators provide electronic programming guide information for PEG channels; and that every cable operator comply with new line

extension requirements. This decision will impact cable franchise laws and agreements across the country.

## **Senate Infrastructure Bill Text Addresses Broadband Availability and Digital Inclusion**

The text of the “Infrastructure Investment and Jobs Act” was released by the Senate over the weekend, with much that is intended to address broadband availability and digital inclusion. The text draft as of August 2 is available [here](#). The bill was created by a bipartisan working group of senators. The Senate began debating it over the weekend and may vote on it as early as the end of this week. The proposed spending totals nearly \$1 trillion, with \$65 billion set aside specifically for broadband and digital inclusion.

Funding allocations in the bill that are relevant to broadband availability and digital inclusion include:

Digital Equity Act: \$2.75 billion (over 5 years)

- \$60 million for state planning grants
- \$1.44 billion for state implementation grants
- \$1.25 billion (\$250 million a year for 5 years) for competitive grant program.

Broadband Grants for States, DC, Puerto Rico & Territories: \$42.5 billion

- The National Telecommunications and Information Administration (NTIA) will manage this new program. Broadband deployment funds will be issued as block grants to states with NTIA defining the rules.
- States can use grant funds for digital equity, as well as broadband deployment, including deploying affordable networks in low-income, multi-family buildings, and promoting broadband adoption
- Deployment grant recipients (ISPs) must offer a ‘low-cost’/affordable plan for consumers.

Emergency Broadband Benefit Program: \$14.2 billion

- The EBB Program is extended and amended, including changing the name to the “Affordable Connectivity Program,” to pave the way for a permanent program
- All internet service plans are required to be eligible for the Affordable Connectivity Program
- The program benefit is reduced to \$30/month
- Eligibility for the program is increased from 135% of poverty line to 200% of the poverty line.

Tribal Connectivity Program: \$2 billion

- Extends the Tribal Connectivity Program created by Congress in the Consolidated Appropriations Act, 2021.

Middle Mile Connectivity: \$1 billion

- The bill creates a grant program at NTIA for expanding middle mile access to help connect unserved anchor institutions and make last-mile buildout to unserved households easier and cheaper.

#### Digital Discrimination

- The bill directs the FCC to adopt rules addressing “digital discrimination” (redlining) within two years.

### **Klobuchar, Grassley Introduce Legislation To Expand Access To Rural Broadband**

Sens. Chuck Grassley (R-Iowa) and Amy Klobuchar (D-Minn.) introduced the [\*Assisting Broadband Connectivity Act\*](#) in the Senate on July 13, 2021. The bipartisan bill is intended to streamline the funding process and remove barriers for broadband connectivity in hard-to-serve rural areas. The Act will make changes to the rural broadband programs at the U.S. Department of Agriculture (USDA) to prevent areas being automatically ineligible for federal funding because the project previously received state funding. Also, states will be able to use federal funds, such as COVID aid, for broadband, fulfilling their requirement in most applications to match federal dollars. The result will be more coordination and funding availability for broadband projects. “This legislation will help bridge the digital divide by ensuring states are able to access the funding they need to provide broadband service in rural and low-income communities.” Klobuchar said.

### **FCC Authorizes First \$311M in Rural Digital Opportunity Fund Auction Funding**

The FCC announced on July 26 that it is ready to authorize over \$311 million in winning bid broadband funding to 36 states from its Rural Digital Opportunity Fund (RDOF) Auction. The auction allocated \$9.2 billion for rural broadband buildouts over the next 10 years. Full Story: [Next TV/Multichannel News](#)

### **U.S. Supreme Court Rejects Local Government Appeal of FCC’s 2018 Small Cell Declaratory Ruling**

On June 28, 2021, the U.S. Supreme Court denied the [Petition for Writ of Certiorari](#) filed by local governments seeking review of the 9<sup>th</sup> Circuit’s decision upholding portions of the FCC’s 2018 [Declaratory Ruling](#) related to small wireless facilities deployed in the rights of way. Local governments and their advocacy associations, including NATOA, will continue press for relief at the FCC level, where Acting Chairwoman Rosenworcel has expressed lack of support for the FCC Ruling.

### **Updated Treasury FAQs on ARPA Funds**

The week of July 19, the Treasury Department issued more revisions to the FAQs on use of Coronavirus State and Local Fiscal Recovery Funds authorized in the American recovery Plan Act (ARPA), found at <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>. The updated guidance clarifies that the “businesses” that can be connected to broadband using these ARPA

Funds “broadly includes” non-residential broadband users, including, among others, schools, libraries and public safety organizations. The relevant FAQ, which restates the basic rule for using the funds for “underserved” businesses and households, reads:

6.16. May Funds be used to build or upgrade broadband connections to schools or libraries?

As outlined in the IFR [Interim Final Rule], recipients may use Fiscal Recovery Funds to invest in broadband infrastructure that, wherever it is practicable to do so, is designed to deliver service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. Treasury interprets “businesses” in this context broadly to include non-residential users of broadband, including private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

By way of background, the Treasury Department released its [Interim Final Rule](#) on May 13, 2021, conditioning use of the ARPA funds for broadband infrastructure, but providing “flexibility” for state/local decisionmakers and allowing use of funds for broadband and digital inclusion projects. Treasury has since released a series of FAQs, at the link above, that provide more clarity on broadband uses of ARPA funds.

### **Regulators Deny Centurylink's Bid To Change Landline Rules**

The Minnesota Public Utilities Commission unanimously rejected CenturyLink’s petition to ease rules on landline service repairs, saying those customers should not suffer because most people have switched to broadband. The decision was issued July 22. CenturyLink is Minnesota’s largest landline telephone provider. It had petitioned the Commission to eliminate two 1983 regulations covering customer service response times. CenturyLink claimed the current rules were getting in the way of broadband deployment, but the Commission questioned its premise that implementing broadband was inconsistent with its service obligations to landline customers. The Minnesota Attorney General’s Office and Department of Commerce both recommended against the change.

### **FAIR Act Could Lead To Expanding USF Contributors To Include Big Tech**

The Funding Affordable Internet with Reliable (FAIR) Contributions Act would direct the FCC to study expanding the base of contributors to the Universal Service Fund (USF). The effect could be to expand the contribution pool to include providers of internet based services such as Netflix, Google, and other “big tech” companies. The FAIR Act would direct the FCC Direct the FCC to issue a Notice of Inquiry seeking public comment on the feasibility of collecting USF contributions from such internet-based service providers, and issue a final report within 180 days. The FCC would be required to consider, among other things, possible sources of revenue, such as digital advertising and user fees; the impact for Tribal, low-income, and elderly consumers; and the changes to current law necessary to implement this system. Sponsors are Sens. Roger Wicker, R-Miss., Shelley Moore Capito, R-W.V., and Todd Young, R-Ind. Full story: <https://www.telecompetitor.com/fair-act-would-task-fcc-with-studying-if-netflix-google-others-should-pay-into-usf/>.

## **Bills in U.S. House and Senate Bills Would Mandate Broadband Studies**

The National Broadband Plan for the Future Act of 2021 ([S. 279](#); [H.R. 870](#)), introduced by Sen. Markey (MA) and Rep. Eschoo (CA), requires the FCC to update the National Broadband Plan. The Measuring the Economic Impact of Broadband Act of 2021 ([S. 326](#)), introduced by Sen. Klobuchar (MN), would require the Secretary of Commerce to conduct an assessment and analysis of the effects of broadband deployment and adoption on the economy of the United States.