

Supreme Court to review 5th Circuit ruling that upends Universal Service Fund

The US Supreme Court will hear appeals of a 5th Circuit ruling that called Universal Service fees on phone bills an illegal tax.

The US Court of Appeals for the 5th Circuit ruled in July that the Federal Communications Commission's Universal Service Fund is unconstitutional and that the fees on phone bills are a "misbegotten tax." The FCC and several non-government groups challenged the ruling, and the Supreme Court agreed to take up the case on Friday.

The Universal Service Fund is an \$8 billion-a-year system that subsidizes the expansion of telecom networks with grants to Internet service providers and makes access more affordable through programs such as Lifeline discounts. The FCC program has faced several court challenges filed by Consumers' Research, a nonprofit that fights "woke corporations," and a mobile virtual network operator called Cause Based Commerce.

The conservative 5th Circuit's ruling conflicted with decisions by the 5th and 11th Circuit appeals courts, which both rejected claims that the Universal Service Fund is unconstitutional. In a 9–7 ruling, the 5th Circuit objected to the FCC's decision to let the Universal Service Fund be administered by a private organization called the Universal Service Administrative Company (USAC). The 5th Circuit said the FCC "subdelegated the taxing power to a private corporation," and that "the *combination* of Congress's sweeping delegation to FCC and FCC's unauthorized subdelegation to USAC

violates the Legislative Vesting Clause in Article I, § 1.”

FCC Chairwoman Jessica Rosenworcel said on Friday, “I am pleased that the Supreme Court will review the 5th Circuit’s misguided decision. For decades, there has been broad, bipartisan support for the Universal Service Fund and the FCC programs that help communications reach the most rural and least-connected households in the United States, as well as hospitals, schools, and libraries nationwide. I am hopeful that the Supreme Court will overturn the decision that put this vital system at risk.”

FCC challenge

The FCC and Department of Justice submitted a petition for Supreme Court review, saying the court should decide “whether the combination of Congress’s conferral of authority on the Commission and the Commission’s delegation of administrative responsibilities to the Administrator violates the nondelegation doctrine.”

The US petition said the USAC “performs administrative tasks on the FCC’s behalf” but “exercises no independent regulatory power.” The FCC calculates a contribution factor that determines what phone companies will have to pay, and the USAC “calculates each carrier’s contribution by applying the factor to that carrier’s ‘contribution base’ (generally, the carrier’s interstate and international telecommunications revenues),” the petition said.

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