

Supreme Court takes on FCC's taxing power: A game-changer for telecom?

Daily Journal
12.27.2024

In the *Daily Journal* article "Supreme Court takes on FCC's taxing power: A game-changer for telecom?" Sheppard Mullin partners Imad Matini and Paul Werner and associate Maria-Laura Coltre explore the potential implications of the U.S. Supreme Court's November 22 grant of certiorari review of the Fifth Circuit ruling in *Consumers' Research v. FCC*, which challenges the constitutionality of the FCC's Universal Service Fund (USF) funding mechanism to subsidize services to rural and low-income consumers, schools, libraries and rural healthcare providers. The Fifth Circuit deemed the USF's funding, which relies on mandatory contributions from telecommunications service providers, as an unconstitutional delegation of Congress' taxing authority. This contrasts with previous rulings by the Sixth and Eleventh Circuits that upheld the USF's constitutionality.

With the Supreme Court's recent shift in stance on agency powers, as seen in *Loper Bright Enterprises v. Raimondo*, there is potential for a ruling that could limit congressional delegations to agencies like the FCC. Such a decision could impact the USF's current structure, affecting telecommunications providers, consumers and rural services, while prompting Congress to reconsider how the USF is funded and administered.

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