

Communications Daily

Hopes Grow for Broadband Infrastructure Legislation in Split Congress, Despite Hurdles

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Telecom interests view the shift to split partisan control next Congress as improving prospects for compromise on a broadband title in a likely revisit of an infrastructure package. President Donald Trump and House Minority Leader Nancy Pelosi, D-Calif., said after the Democrats gained control of the House in last week's elections that they believe a deal is possible on infrastructure (see 1811070054). Democrats as of Tuesday won 228 House seats to the Republicans' 199, with eight races undecided. The GOP held a 51-47 Senate edge, with two races undecided.

Industry stakeholders are beginning to work through strategies for encouraging Congress to adopt broadband-inclusive language in an infrastructure package once next session convenes in January. Those we spoke with acknowledged hurdles that existed earlier this year will remain if a split Congress revisits legislation next year. Before the election, administration officials were exploring ways to resurrect infrastructure legislation next Congress, after their February proposal failed to progress on Capitol Hill.

Infrastructure legislation is “the perfect issue for a divided Congress to actually take up and get a consensus,” said NTCA CEO Shirley Bloomfield. “It would have been an issue well suited for more action in this Congress” but has a stronger chance with a Democratic House and Republican Senate. An October Senate Commerce Committee hearing on rural broadband showed “strong bipartisan agreement” there's big need for broadband funding in a final legislative package, said Internet Innovation Alliance honorary Chairman and ex-House Communications Subcommittee Chairman Rick Boucher, D-Va.

A split Congress “is probably the best scenario” for passing infrastructure legislation that includes broadband funding, largely because House Democratic leaders made clear it's a priority, said Schools, Health & Libraries Broadband Coalition Executive Director John Windhausen. “That indicates that the House is likely to move forward” on funding-centric legislation. The majority-GOP Senate is “likely to be a little more fiscally cautious, but they're not likely to say 'no' to funding” if Trump strikes a deal with House Democrats, Windhausen said.

Timeline

Trump and lawmakers will likely need to tackle infrastructure legislation next year to have a reasonable

chance of passing that Congress, Bloomfield and others said. Several lobbyists said the Trump administration's decision to delay introducing its infrastructure legislative proposal until February was a fatal blow to its chances this session (see 1802120001). Given dynamics of a 2020 presidential campaign, infrastructure may be a viable legislative priority next year only, though it's likely that process will begin in earnest next year, said Hogan Lovells' Ivan Zapien.

Timing of an infrastructure push will depend on “the tone House Democrats want when they kick off the Congress,” Zapien said. “If the Democrats are heavy-handed about investigating the administration, that will make it difficult” to advance consensus legislation. “I don't think there is a lot of energy [in the House Democratic caucus] towards becoming a majority that is focused exclusively on investigating Trump,” but first signals will come when the caucus elects leadership at month's end, Zapien said.

It “would be best if Congress moves on this in the first six months” of 2019, when there's likely to “still be some goodwill” and before a litany of expected Democratic House investigations of administration activities “make it a lot more difficult for the parties to get along,” Windhausen said. “If they start off with immigration” or another controversial issue, as this Congress, “they're going to end up right back in the same sort of stalemate,” Bloomfield said. Infrastructure “is an issue that sets the stage for bipartisanship,” and making it a priority would “set the stage for the right start” to the 116th Congress.

Funding Questions

The House Democratic majority puts the focus on whether and how to provide dedicated broadband funding in infrastructure legislation, meaning there will once again be debate and disagreements about how to pay, said American Action Forum Director-Technology and Innovation Policy Will Rinehart and others. “This puts the funding issue front and center,” Rinehart said. A “meaningful” broadband title “has to include dedicated funding,” but “the exact way that comes about remains to be seen,” Boucher said.

Funding is the “trillion dollar question” for the infrastructure legislative debate, Zapien said. “It would have been more difficult to answer that if the Republicans had kept control of the House by even a slim margin,” but now, “there's a better chance of putting something together.” The wild card remains how this administration could modify the infrastructure funding proposal to get Democratic support, Zapien said. The White House's February proposal largely relied on state block grants and federal matching funds, but officials are likely to be more receptive now to Democrats' calls for direct, dedicated funding, lobbyists said.

“I don't think there is a preloaded political outlook” for the next Congress that would mean “you can dismiss certain funding mechanisms,” Zapien said. “All options are on the table” given the dynamics of the newly Democratic House, GOP Senate and election-conscious White House. Trump may be more receptive to something like a gas tax increase “that previously would have been a challenge” if it means he looks bipartisan heading into the presidential contest, Zapien said.

Bloomfield and others will watch how both chambers calculate the economic value of broadband projects in contrast to other forms of infrastructure. "I'm hopeful that they will take a long view that investing in broadband has a multiplier effect" that will involve "a bit more of a long game," Bloomfield said. SHLB believes legislators should consider broadband funding as more than a "one-shot investment," Windhausen said.

How the Hill views the inherent value of any particular broadband project will likely turn on the scoring rubric lawmakers agree to use, along with how they choose to define what constitutes an unserved or underserved community, a broadband lobbyist said. Free Press "will be watching" to ensure Congress doesn't use broadband funding to "hand money to existing ISPs" in a community at the expense of providing consumers additional options, said Policy Director Matt Wood. The group will encourage lawmakers to "explore other options," including funding municipal broadband networks.

There will be interest in how Congress chooses to structure additional broadband funding, Windhausen and others said. SHLB is likely to urge Congress to set up a federal-state partnership fund matching program akin to what the FCC employed with the USF E-rate program, Windhausen said. "If you have some sort of federal-state partnership, that's likely to be fiscally prudent but also involve more players in the marketplace that are likely to make these networks sustainable." Bloomfield favors "quicker infusions" of additional funding via existing USF programs "as opposed to coming up with a new, edgy program." Others said they are likely to favor funneling money through one or more agencies -- the FCC, NTIA or Rural Utilities Service.