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To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: Monthly Broadband Policy Update – Covering May (and early June) 2017

Broadband Infrastructure Investment

The [Trump administration has released additional details for its proposed infrastructure agenda](#).   The plan calls for $1 trillion in investments over a decade, $200 million of which would be actual spending. The other $800 million is to be achieved through incentives for private investment such as regulatory streamlining and tax breaks. Highlights include:

- Reducing permitting time through the creation of two councils — one that will help project managers navigate project bureaucracy and another that will help streamline the federal review process;

- Workforce training that will aim to create one million apprentices in two years;

- $25 billion for rural infrastructure;

- $15 billion for "transformative" projects;

- $100 billion for local infrastructure needs.

While direct broadband investments are expected to be part of the Trump plan, broadband is not specifically mentioned in the plan launch webpage (link above).

Meanwhile, Democrats from the House Energy & Commerce Committee released their proposed infrastructure spending bill in May (the "[LIFT America Act](#)") which contained a $40 billion broadband spending component. Also, Senator Capito's (R-WV) proposed "[Gigabit Opportunity Act](#)" seeks to spur broadband deployment through federal tax breaks in certain opportunity areas to be designated by governors (similar to Chairman Pai's previously highlighted Gigabit Opportunity Zone proposal).

On May 22, John Windhausen from SHLB had [an op-ed piece in The Hill newspaper](#) addressing broadband investment. This followed SHLB's May 10th letter to President Trump (with over 30 co-signatories) addressing infrastructure spending (available [here](#)).   The SHLB letter highlighted the importance of anchor institutions to achieving goals for broadband deployment and job

creation, the vital need for rural broadband investment, the benefits of an open application process, and the importance of network open access requirements.

Last but not least, on May 26th, Mark Johnson accompanied a small group led by John Windhausen to discuss broadband infrastructure with a staffer at the White House. Based on this meeting, the White House wants a further mapping effort to help identify unserved areas (generally defined as areas that cannot obtain service comparable to that in urban areas). There will be direct broadband funding although no determination has been made as to which agency will distribute the funding. Notably, money will be for CAPEX only (no support for operations), and no money provided to offset the costs of local permitting.

NTIA Update

On May 17th, President Trump nominated David J. Redl to lead NTIA. Mr. Redl has been Chief Republican Counsel on the House Communications and Technology Subcommittee. A nomination hearing was held on June 8th. It is unclear when a confirmation vote may occur, although there is speculation that Mr. Redl's confirmation vote may get combined with that of Jessica Rosenworcel (whose re-nomination as FCC Commissioner is widely expected).

On June 6th, NTIA released a [membership list](#) for the Broadband Interagency Working Group (BIWG). Individuals on the list may be contacted regarding the status of items on the most recent [progress report](#) (released in January 2017).

Upcoming NTIA webinar events include the following:

- June 21, 2017 – [Exploring Business Model Options for Broadband Deployment](#)

A webinar recording is available for the May 17th event on "Next Generation Technology Deployment" [here](#).

As of this writing, NTIA's June Broadband newsletter has not been posted – but it will be available [here](#) (under "Broadband News" in the lower left).

FCC Broadband Deployment Advisory Committee (BDAC)

The FCC BDAC began its formal work in April. Membership in four of the Working Groups (WGs) has been announced: [Competitive Access to Broadband Infrastructure, Removing State and Local Regulatory Barriers,](#) [Model Code for Municipalities, and Model Code for States.](#) Membership in the Streamlining Federal Siting WG remains TBD. (Mark Johnson was appointed

to the Removing State and Local Regulatory Barriers WG.)   Below is the BDAC timeline which was announced in April:

- July 20 (tentative): Mid-term BDAC meeting
  - WGs present and discuss progress to date.
  - Full committee discusses and provides input on each WG presentation.
- July-Oct/Nov: WGs continue to develop and finalize their recommendations.
- Oct/Nov (Date TBD): End-of-year BDAC meeting
  - WGs present recommendations to the full BDAC.
  - Full BDAC deliberates and votes on final recommendations

Presentations from the first BDAC meeting are available here (hat tip NECA): overview of BDAC; wireline infrastructure; wireless infrastructure. General information about the Committee is available at http://www.fcc.gov/broadband-deployment-advisory-committee.

The Commission in April sought comments on infrastructure investment barriers including Pole Attachments. The press release with a short summary can be found here – comments are due June 15 with replies due July 17, 2017. The Federal Register version of the notice can be found here.

Net Neutrality/Title II

As expected, on May 18th the Commission approved on a 2-1 party line vote a Notice of Proposed Rulemaking (NPRM) to repeal Title II regulation of broadband internet access services ("Restoring Internet Freedom").   The NPRM along with public statements are available here. Comments are due July 17, 2017, with replies due August 16, 2017. This is a fairly tight window and likely reflects the Chairman's desire to move on this quickly.

According to the Commission's Press Release, the NPRM proposes the following changes:

- Reverse the FCC's 2015 decision to impose Title II utility-style regulation on Internet service providers (ISPs) and return to the "light touch" framework under Title I of the Communications Act;

- Return to the Commission's original classification of mobile broadband Internet access service as a private mobile service;

- Eliminate the catch-all Internet general conduct standard created by the Title II Order;

- Seeks comment on whether the Commission should keep, modify, or eliminate the bright-line net neutrality rules established in 2015 (no blocking, no throttling, no paid prioritization, enhanced transparency).

Notwithstanding withering opposition which is expected from some quarters, it is widely expected that Chairman Pai will move forward with this proposed repeal of the Title II classification of broadband Internet access. Less clear is whether the Commission will establish sound (*i.e.*, enforceable) legal footing for certain of the "bright line" net neutrality rules. Even less clear is whether Congress will finally resolve this issue in order to avoid net neutrality rules changing again in the future depending on which party controls the FCC.

There is general industry and bi-partisan consensus on no blocking, no throttling, and transparency. Industry opposes restrictions on paid prioritization and the "general conduct standard" which takes a "we'll know it when we see it" approach to future prohibited conduct.

As noted last month, the DC Circuit on May 1st denied an *en banc* request for the rehearing of its decision upholding the 2015 Open Internet Order. Dueling statements issued by several judges in this matter are worth reviewing if you want to get a flavor of the legal issues in play. Denial of the rehearing request clears the way for an appeal to the Supreme Court which, if accepted, could be heard as early as spring 2018.   In addition, the 9th Circuit on May 10th granted a request for an *en banc* review of a prior decision that had reduced the FTC's authority to regulate non-common carrier services provided by companies that are common carriers. The case was Federal Trade Commission v. AT&T and involved a deceptive advertising case against AT&T for throttling mobile customers with "unlimited" data plans. Ars Technica has a useful overview of that original case here. The ultimate outcome of this case will have large implications for privacy regulation.

E-rate

Special Construction Funding: In addition to ongoing delays from USAC reviewing and approving applications for special construction funds, USAC in April began posing formal questions to many applicants that appeared inconsistent with prior guidance given by USAC and the FCC, particularly with respect to allocating costs associated with fiber strands not funded by E-rate. These developments were described in an April 27 letter from SHLB to the FCC urging the FCC to maintain consistency with the prior administration on this issues – at least with respect to existing applications for funding (FY 2016 and 2017).

On May 31, SHLB held a workshop at its annual meeting in Washington, D.C. attended by USAC and FCC staff to discuss E-rate fiber deployments. Unfortunately, statements from FCC staff at the workshop were inconclusive and thus did little to reduce uncertainty. Essentially, FCC representatives indicated that cost allocation decisions would be driven by E-rate rules – while at the same time conceding that, unlike the RHC Healthcare Connect Fund, E-rate lacks specifically codified rules on this issue. This lack of clarity from the FCC creates a dilemma for E-rate applicants that need this special construction funding for new fiber deployments. Essentially, such projects now face a risk that USAC or the FCC will require a cost allocation that imposes a greater out-of-pocket share of non-recurring costs on E-rate applicants. Given the non-recurring costs involved, such a change could easily make a project that was economically viable for a school district, no longer feasible.

E-rate Waiver Applications to Serve Residential Customers

There is no news to report on the two pending petitions requesting approval to provide students with off-campus (*i.e*., residential) access to E-rate funded connectivity in the evenings to help address the homework gap in their communities. The two requests were by Boulder Valley School District (Colorado) (BVSD), and by Microsoft with two southern Virginia school districts, respectively.

Educational Broadband Service (EBS)

There continues to be modest activity in the EBS docket (background below). As noted last month, in early May, the Fort Belknap Indian Community Council (NE Montana) filed a letter supporting the 2014 compromise plan and calling for the FCC to resume issuance of EBS licenses. Similar letters from several school districts were posted in late May:

- Pampa ISD, Gray Co. (Northern) Texas
- Clarksville Public Schools, Johnson Co., Arkansas

Finally, in late May, the Wireless Communications Association International (WCA) met with the Wireless Telecommunications Bureau at the FCC calling for action.

EBS Background: Many school systems across the country hold spectrum licenses for EBS. Historically, this spectrum had been used for "wireless cable TV" but was later reconfigured for wireless broadband. School systems that hold such licenses in many cases lease spectrum to commercial providers in exchange for last-mile broadband Internet access and a revenue stream. Industry – Sprint in particular – uses the spectrum (in the 2.5 GHz range) to provide services. Unfortunately, the Commission stopped accepting new applications for EBS licenses in

the mid-1990s. Apparently, where the FCC has issued licenses more recently, it did so on the condition that excess capacity spectrum *could not* be leased to commercial entities.

According to a [recent letter to the Chairman filed by the WCA](#), approximately 4,000 mostly rural counties across the U.S. have at least one EBS channel available across the entire county. WCA is seeking issuance of a rulemaking that would implement a compromise reached in 2014 between industry and educational interests to make existing unused EBS spectrum available to educators with leasing once again to be allowed to commercial providers. Sprint has been recently active in the docket seeking the same.

Rural Health Care Program

USAC's new VP of the Rural Health Care Division, Karen Lee, and the FCC's Radhika Karmarkar were part of a panel/workshop at the annual SHLB Conference in DC, moderated by former VP of Rural Health Care, Bill England (now with HRSA Office for the Advancement of Telehealth). Although the discussion was well-received, there was no breaking news to report from either USAC or the FCC during those discussions. Yours truly moderated another RHC panel/workshop focused on the view from program participants – this panel included Walt Magnussen from Texas A&M, which is providing technical support for a large RHC-funded fiber project in the Brazos Valley region of Texas.

On June 8th, the Commission formally modified its rules to add Skilled Nursing Facilities (SNFs) to the list of entities eligible to participate. This was done without notice and comment but was expected and appropriate given that the action was dictated by clear direction from Congress when it passed the law adding SNFs.

Finally, June 30th is the deadline for filing FY 2017 funding requests. The next issue will be how long it takes for USAC to process funding requests in order for it to be able to determine total fund demand and whether pro-rata funding reductions will occur for FY 2017.

FCC Connect2Health Task Force

The FCC's Connect2Health Task Force on June 8th [announced updates](#) to its "Mapping Broadband Health in America" platform, reflecting "the latest complete annual fixed broadband dataset from the Commission and updated health data from the Robert Wood Johnson Foundation's County Health Rankings." The updated data is available at www.fcc.gov/health/maps. The maps overlay this health data with Commission data showing the availability of consumer wireline broadband. (These maps do not reflect wireless broadband availability or the availability of high speed broadband to anchor institutions.)

Comments and replies have been filed in response to the Connect2Health Task Force's Public Notice seeking general comments about a host of issues related to the "adoption and accessibility of broadband-enabled health care solutions, especially in rural and other unserved areas of the country." Although this Public Notice was meant for information gathering only and did not propose any rule changes, many, if not most, of the commenters focused on the Rural Health Care program including issues around the $400 million funding cap. Multiple commenters also addressed spectrum/5G issues. Following is a fairly complete list of commenters ("reply" where indicated means reply comments filed; "*"means only reply comments filed). Each of these are linked to the comments themselves:

Health Care Providers
Geisinger Health System (reply)
Kalispell Regional Healthcare[1]
New England Health Consortium
Parkview Health and Franciscan Alliance
Seward [AK] Community Health Center
National Rural Health Association
The Fond du Lac Band of Lake Superior Chippewa*

Service Providers
Alaska Communications
Comcast
Hughes Network Systems[2] (reply)
TracFone Wireless
Telequality Communications
TerreStar Corporation
Competitive Carriers Association
CTIA
NTCA[3]
Wireless Infrastructure Association*
Quintillion Networks*
Satellite Industry Association*

Insurers and others
UnitedHealth Group
Kaiser Permanente
WellCare[4]
iSelectMD/Center for the Advancement of mHealth

Other Associations
ACT | The App Association's Connected Health Initiative[5]
SHLB Coalition
American Society for Healthcare Engineering of the American Hospital Association
American Telemedicine Association
National Congress of American Indians and National Indian Health Board
Consumer Technology Association
National Public Safety Telecommunications Council[6]
Home Care Technology Association of America[7]
National Federation of the Blind
Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing Communication Service for the Deaf*
Health IT Now*

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[1] Attaching 2015 letter from Sen. Daines re making internal wireless connectivity available in RHC program.
[2] Attaching Hughes white paper generally addressing challenges and benefits of satellite.
[3] Attaching NTCA white paper "Anticipating Economic Returns of Rural Telehealth"
[4] "[O]ne of the largest health care companies dedicated solely to serving public program beneficiaries."
[5] Attaching ACT Connected Health Initiative evidence base of telehealth and remote patient monitoring studies.

[6] Attaching white papers from National Association of State EMS Officials (NASEMSO), NTPSC ,and EMS Communications Working Group ("FirstNet and Public Safety Broadband Data: Implications for Rural EMS Organizations") and NTPSC ("EMS Telemedicine Report: Prehospital Use of Video Technologies").
[7] Resubmitting their 2010 comments in the RHC Docket 02-60.

HIMSS/PCH Alliance*

Everyone On*

Equipment Providers

GE Healthcare

Qualcomm

Nokia[8] (reply)

Baxter International Inc.*

State Groups

Idaho Primary Care Association

The Media School/Indiana University

National Organization of State Offices of Rural Health

North Carolina Broadband Infrastructure Office

Wisconsin Public Service Commission

The Oklahoma Primary Care Association*

If anyone is interested in obtaining a summary of these comments, please let me know.

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[8] Attaching Nokia Health Division white paper addressing how Nokia connected devices affecting health care landscape; also attaching co-authored report by UN Broadband Commission on Sustainable Development and its Working Group on Digital Health which includes surveys from 21 countries.