

Jeffrey A. Mitchell
8300 Greensboro Dr.
Suite 1200
Tysons, VA 22102

NOT ADMITTED IN VA
jmittell@fcclaw.com
(703) 584-8685
WWW.FCCLAW.COM

LLGS | LUKAS
LAFURIA
GUTIERREZ
& SACHS LLP

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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

While the Trump infrastructure spending plan remains just that, a plan with no actual legislation, details continue to emerge. In a speech in Iowa in late June, Trump specifically supported spending on rural broadband, using precision agriculture as an example of why this was needed (see NTIA item below for further on broadband and agriculture). The Trump infrastructure plan calls for \$1 trillion in investments over a decade with \$200 billion of direct spending. The other \$800 billion would be achieved through incentives for private investment such as regulatory streamlining and tax breaks.

Still unclear is the amount of direct spending on broadband investments and whether such spending will be coordinated by the FCC, through the Connect America Fund, through the USDA's Rural Utilities Service, or through the NTIA (notwithstanding significant proposed NTIA budget cuts). FCC Commissioner O'Rielly continues to urge that any broadband infrastructure funding be funneled through the FCC's Connect America Fund – most recently at a June 20 Senate hearing on the FCC's 2018 proposed budget (a hearing that ended up focusing mostly on rural broadband).

With respect to broadband infrastructure generally, Chairman Pai has focused heavily on addressing local obstacles to deployment such as obtaining rights-of-way, pole attachments, etc. – with increasing focus on wireless and siting the small cells and towers needed to support rapid 5G deployment. The extent of the FCC's authority to preempt state, local and tribal governments with respect to these local rules will be something to watch, for example, by imposing "shot clocks" whereby failure to act on a permitting request by a date certain automatically grants that request. In comments filed in June in the FCC's accelerating wireless infrastructure deployment proceeding, state, local and tribal governments expressed their concern that the FCC will overstep in this area.

Interestingly, as the Wireless Internet Service Provider Association (WISPA) and others noted, Title II gives the FCC considerable authority to preempt local authority; however, if the

Commission reverses course and reclassifies Broadband Internet Access Services as a Title I information service rather than a Title II telecommunications service – and if fixed wireless broadband is considered not telecommunications – the FCC could considerably reduce its authority to preempt local authorities.

FCC Leadership

Democrat Jessica Rosenworcel will likely be returning to the FCC as Commissioner along with a new Republican nominee, Brendan Carr. Rosenworcel is highly respected on both sides of the aisle and will be resuming her place on the Commission which was interrupted last year when her term expired. (Although President Obama had re-nominated Rosenworcel, she never received a confirmation vote and so left the Commission at the end of the 2016 session of Congress.) Ms. Rosenworcel's re-nomination is for the term immediately succeeding her own expired term.

Carr is currently FCC General Counsel and was previously a senior legal advisor to current Chairman Pai. As a close Pai advisor, it is unlikely Carr's positions on key issues will diverge from those of Chairman Pai. Carr has been nominated for the remainder of former Chairman Tom Wheeler's term, which expires June 30, 2018, and for an additional five-year term commencing July 1, 2018.

Chairman Pai and Commissioner Clyburn's terms are also up. Chairman Pai has been re-nominated and a confirmation hearing for Pai, Carr, and Rosenworcel has now been set for July 19, 2017. Commissioner Clyburn – who has been on the Commission for seven years – will leave at some point this year, and is expected to run for her Father James Clyburn's South Carolina congressional seat.

NTIA Update

President Trump has 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. Regarding the proposed 25% cut in NTIA's budget, one industry group – the Telecommunications Industry Association – has raised concerns in testimony to Congress.

Upcoming NTIA events include the following:

- July 19, 2017 webinar: [How Broadband is Transforming Agriculture](#)

- August 21, 2017 – [Technical Assistance Workshop](#), Des Moines, IA. Pre-registration is required and space will be limited.

NTIA's July Broadband newsletter was posted July 5 and is available [here](#). The June Broadband newsletter is available [here](#).

FCC Broadband Deployment Advisory Committee (BDAC)

The work of the FCC's BDAC and four of its working groups ([Competitive Access to Broadband Infrastructure, Removing State and Local Regulatory Barriers](#) (Mark Johnson member), [Model Code for Municipalities, and Model Code for States](#)) is underway. Membership in the Streamlining Federal Siting WG remains TBD. The April 21 initial meeting with all of the presentations can be viewed [here](#).

Below is the BDAC timeline which was announced in April:

- July 20; 9:30 a.m. EDT: Mid-term BDAC meeting ([webcast available](#))
 - 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

Initial comments in the infrastructure investment barriers proceeding [have been filed](#) with replies due July 17, 2017. Deloitte has released (and filed in the docket) a study highlighting the need for "deep" fiber deployment in order to support 5G deployment, estimating a \$130-150 billion cost over the next 5-7 years. That report is available [here](#).

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 Homework Gap

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.

Microsoft is not waiting for the FCC to act however; [on July 11 it announced](#) a \$10 billion TV whitespaces initiative aimed at bringing broadband to two million rural residents over the next five years. In addition, [another southern Virginia school district is in the news](#). Brette Arbogast, director of technology for the Appomattox County School District reports they have addressed the homework gap by becoming an ISP, self-provisioning their own fiber, and then serving its students after 4pm through a partnership with local government that apparently provides Wi-Fi radios. The news article references a 2016 E-rate rule change but I am not sure what they are referring to.¹

Rural Health Care Program

On June 23 [the Commission issued a one-time waiver of its rules](#) to allow service providers serving HCPs in Alaska to forgive the 7.5% RHC funding haircut that occurred in FY 2016.

¹ According to Arbogast:

A recent amendment in FCC policy was a game changer. Until last year, E-Rate-funded networks could only serve the grounds of schools or libraries. In 2016 the FCC reformed the rules so that networks funded with E-Rate could reach off-campus to serve students during non-school hours. The district quickly capitalized on the change.

Alaskan HCPs were hit the hardest by the cap reductions. As the FCC explained: “the average effective increase in price paid by an HCP in the continental U.S. by virtue of the proration was approximately 11 percent, whereas in remote Alaska it was approximately 648 percent.”

Basically, all this waiver does is allow service providers (if they choose) to reduce their pricing without triggering any other issues with USAC or the FCC (like gifting or affecting E-rate lowest corresponding price inquiries).

On June 30, the Wireline Bureau extended the HCF invoicing deadline to October 17, 2017, for certain FY 2016 applicants (listed in the [appendix to the Order](#)). Normally, HCF applicants only have until 6 months after the end of their funding period to invoice. However, because of the delay in issuing funding commitments for FY 2016, that six month period had already expired – or would soon expire for some entities.

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

Educational Broadband Service (EBS)

There has been no activity in the EBS docket (background below) since the last report in June.

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.

Business Data Services

While the BDS item was passed by the Commission in April, court challenges are underway with a request for a judicial stay now pending in the Eighth Circuit Court of Appeals. In addition, Windstream and a number of other groups had sought FCC reconsideration of the BDS order. On July 10, 2017, the Wireline Competition Bureau denied this request.

Miscellaneous Broadband

On June 22, the FCC unanimously adopted an item that will open the door to U.S. deployment of a non-geostationary-satellite orbit (NGSO) fixed-satellite service (FSS) system in over 15 years – the first such system approved in over 15 years. The proposed deployment by WorldVu Satellites (d/b/a OneWeb) would involve a 720 satellite system to provide low-latency internet access in remote and hard to serve areas. Deployment in Alaska could start as early as 2019.

Net Neutrality/Title II

The Commission's Notice of Proposed Rulemaking (NPRM) to repeal Title II regulation of broadband internet access services ("Restoring Internet Freedom") is available [here](#). Comments are due July 17, 2017, with replies due August 16, 2017. [While some are calling for more time](#), it is unlikely the Commission will deviate from this fairly tight window.

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 – or whether it will rely on voluntary conduct standards for the industry. 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.