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August 15, 2017

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: Monthly Broadband Policy Update – Covering July (and early August) 2017

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### **Broadband Infrastructure Investment**

Trump continues to tout his proposed \$1 trillion dollar infrastructure program as recently as August 10 (“we’re working on that very hard already”). Unfortunately, there continues to be no new developments to report on specific infrastructure funding legislation.

### **FCC Leadership**

Democrat Jessica Rosenworcel and Republican Brendan Carr have been confirmed by the Senate and, on August 11, were sworn in as Commissioners. That means the Commission is now at full strength (3 Republicans and 2 Democrats). Rosenworcel was confirmed to a full five-year term, while Carr, at the insistence of Senate Democrats, was confirmed to fill the remainder of Tom Wheeler’s term which expires June 30, 2018. This means Carr’s confirmation to a subsequent five-year term will be paired with the Democrat nominee that replaces Commissioner Clyburn. (Commissioner Clyburn’s term expired June 30, 2017, but she can continue to serve until the current session of Congress concludes, or until she steps down.) Chairman Pai still needs confirmation to a further term as his term has also expired.

### **Telecom Legislation Passed by Senate**

At the same time the Senate voted through the FCC confirmations, it passed a number of significant pieces of Telecom Legislation, which now go to the House for consideration. These include:

- Developing Innovation and Growing the Internet of Things (DIGIT) Act which would mandate a federal interagency report on eliminating regulatory and other government barriers inhibiting development of the Internet of things (IoT).
- Kari’s Law Act, which would require that multi-line telephone systems such as those found in hotels to connect 911 calls even if the user omits a dialing code (such as “9”) otherwise required to get an outside line. (The law is named after Kari Dunn, who was

tragically stabbed to death by her estranged husband in 2013 in a Texas motel room as her daughter attempted to call for help but couldn't reach 911 because she didn't dial "9" first.)

- Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless (MOBILE NOW) Act includes both spectrum allocation and infrastructure siting provisions and is widely expected to spur 5G deployment.
- The Spoofing Prevention Act. (According to the FCC: "'Spoofing' occurs when a caller deliberately falsifies the information transmitted to your caller ID display to disguise their identity. Spoofing is often used as part of an attempt to trick someone into giving away valuable personal information so it can be used in fraudulent activity or sold illegally.")
- The Improving Rural Call Quality and Reliability Act
- The Federal Communications Commission Consolidated Reporting Act of 2017

### **NTIA Update**

President Trump's nominee to lead NTIA, David J. Redl, has not yet been confirmed. Although a confirmation hearing was held on Mr. Redl, it is widely reported the nomination is being held up by Sen. Cruz (R-TX) as a result of answers Redl provided in written testimony related to the IANA<sup>1</sup> transition. (Sen. Cruz has been a very vocal critic of allowing Department of Commerce oversight of IANA to lapse and transition to a global organization.)

There are no NTIA events scheduled for August. An in-person broadband Technical Assistance workshop has been scheduled for September 19, 2017, in Charleston, West Virginia. Space will be limited – more information, including a link to register is available [here](#). NTIA's August Broadband newsletter was posted August 2 and 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. The first meeting was April 21. The second July 20 meeting with accompanying presentations can be viewed [here](#).

Below is the BDAC timeline which was announced in April:

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<sup>1</sup> Internet Corporation for Assigned Names and Numbers.

- 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

As noted last month, 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](#). Reply comments in the barriers to infrastructure investment proceeding have been filed; a list of commenters (with hot links) is available [here](#).

### **E-rate**

USAC held its annual service provider training on July 27 in Dallas, Texas. The full set of materials has been posted on the USAC website [here](#). Although it breaks no news, one of the presentation specifically address [special construction and fiber deployment](#). The annual E-rate fall training schedule for applicants has yet to be announced.

With Commissioner Rosenworcel back on the Commission, E-rate program participants will have another sympathetic ear to voice concerns regarding subtle but significant changes to how the program is being administered under Chairman Pai.

### **Rural Health Care Program**

The FCC has taken no further actions on the Rural Health Care program since last month’s report. A number of notable appeals and waiver requests related to the funding year 2016 cap reductions continue to be filed, however. DRS Global Enterprise Solutions, an Alaskan carrier, has filed a [petition for reconsideration](#) of the RHC cap reductions arguing, among other things, that the FCC failed to consider using RHC reserve funding, that USAC has reported was available, to avoid cap reductions this year (as SHLB had requested in its [November 2016 letter](#)). In addition, a group of tribal health providers in Alaska simultaneously filed [appeals](#) of the Telecom Program 2016 cap reductions, arguing they are prohibited because the governing statute indicates the urban-rural discount “shall” be provided by the FCC.

SHLB expects to initiate further advocacy toward getting the RHC cap increased, possibly when USAC announces 2017 cap reductions which is expected this fall. As we have discussed previously, getting Republicans on the FCC oversight committees in both the House and Senate to support a cap increase will be critical in getting Chairman Pai to act.

### **FCC Connect2Health Task Force**

In late July the Connect2Health Task Force announced it was reopening and extending to September 29 the deadline for commenting on its recent public notice ([FCC Seeks Comment and Data on Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies](#)). In addition, the Task Force announced a series of “listening sessions” based on the following tentative schedule:

- **Week of Aug. 7: Health Care Provider Forum:** *e.g.*, Health system administrators and CIOs, clinicians and other health care providers (including allied health professionals); community health officials and clinicians; small medical practices; public safety and EMS professionals; and researchers ([archived session and more info here](#)).
- **Week of Sept. 11: Rural and Consumer Issues Forum:** *e.g.*, Associations and advocacy groups representing rural interests, Tribal lands, people with disabilities, veterans, and older Americans
- **Week of Sept. 18: Technology and Broadband Services Forum:** *e.g.*, Telecommunications carriers, broadband services providers, manufacturers, innovators, and entrepreneurs
- **Week of Sept. 25: Policymakers Forum:** *e.g.*, Federal policymakers; state and local health officials (or their representatives) and other policymakers; associations representing state, county, and city health officials and policymakers; state and local officials involved in developing technology and broadband policies and strategies.

If you are interested in participating or listening to these sessions, please contact the Task Force as soon as possible by sending an e-mail to [connect2health@fcc.gov](mailto:connect2health@fcc.gov), and inserting “Virtual Listening Session” in the subject line.

### **Educational Broadband Service (EBS)**

Two *ex parte* notices were filed in the [EBS docket in July](#) (background below).

**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. On August 8, 2017, the court denied the request for a stay to the FCC's BDS order, handing the FCC a huge win.

### **Net Neutrality/Title II**

The Commission's Notice of Proposed Rulemaking (NPRM) to reverse Title II regulation of broadband internet access services ("Restoring Internet Freedom") is available [here](#). Initial comments were due July 17, 2017. A selected listed of initial comments is available [here](#) (with hot links). Initial comments of higher education associations and some libraries are [here](#), while separate library association commenters are [here](#). *The Commission has extended the deadline for reply comments to August 30, 2017.*

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 enforceable "bright line" net neutrality rules at least against blocking and throttling – 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.