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To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: Monthly Broadband Policy Update – October and early November 2017

Infrastructure Legislation

Reports are that the Trump Administration's infrastructure plan will surface soon – possibly in December. Senate Commerce Committee Chair Thune (R-SD) stated recently that any White House plan is unlikely to be taken up until next year. On November 1, John Windhausen from SHLB attended an open meeting at the White House addressing plan details. Although officials confirmed that dedicated broadband funding will be included, they seemed to be leaning toward state-based distribution, possibly block grants. This could leave many of the details – such as how much of the total infrastructure funding would be devoted to broadband – to each state. Also mentioned was the possibility of matching the \$200 billion in promised direct federal spending (over 10 years) with state contributions of as much as \$800 billion. Of course, any Administration plan will be simply a starting point for Congress.

An Administration rural task force established in April this year to focus on ways to improve the lives of rural Americans recently delivered its report to the White House. The Interagency Task Force on Agriculture and Rural Prosperity is chaired by the secretary of Agriculture and includes the heads of agencies across the federal government along with assistants to the president for domestic and economic policy. NTIA Chief of Staff Glenn Reynolds recently spoke publicly about the Task Force's report noting "In virtually all of the working areas that were being focused upon [such as job creation, competitiveness, education, health care, and agriculture], the one common theme was the critical need for broadband in rural areas" It is unclear when and if the Task Force's report will be released publicly.

NTIA Update

On November 7, President Trump's nominee to lead NTIA, David Redl was finally confirmed by the Senate. Senator Cruz (R-TX) lifted his hold on Redl on October 23; Sen. Schatz (D-HI) then had placed a brief hold on Redl due to concerns about whatever deal the Trump Administration

reached with Sen. Cruz on the IANA transition. Most recently Redl was chief Republican counsel on the House communications and technology subcommittee.

Upcoming NTIA events:

- Wednesday, November 15, 2017, webinar: *Electric Co-ops Bringing Fiber to Rural America*. Registration [here](#).
- The archive for previous webinars is available [here](#).

NTIA's November Broadband newsletter is available [here](#).

State Universal Service Funding

In early November the Nebraska Public Service Commission became the second state this year to adopt a reformed universal service funding (USF) mechanism that assesses connections to the network rather than revenues. The Nebraska model assesses intrastate wireline, wireless and VoIP connections, but not stand-alone broadband Internet access connections (where, because they are considered interstate, the FCC has sole jurisdiction). Nebraska's new USF contribution mechanism is expected to be implemented by the end of 2018.

These moves are being driven by the sharp decline in intrastate telecommunications revenues which is eroding the contribution base for states that rely such revenues for their universal service programs. Utah also shifted to a connections-based mechanism this year, with those changes taking effect January 1, 2018. Alaska and New Mexico are considering similar changes.

Federal Communications Commission

Section 706 Inquiry

Comments have been submitted on the [Notice of Inquiry](#) (NOI) on "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." This is the proceeding in which the Commission previously defined fixed broadband as 25 Mbps download and 3 Mbps upload ("25/3") for purposes of determining availability. Although proposing to keep this definition in place, the Commission seeks comment on "other potential benchmarks" for fixed broadband. SHLB's very good comments in this proceeding are available [here](#). Among other things, SHLB noted:

The NOI also seeks comment on incorporating measures of latency and consistency of service, as well as data allowances and other service limitations, into its evaluation of broadband deployment. [W]hile measuring speed is a good starting point, the transmission quality is as important as transmission speed. The SHLB Coalition

supports the idea of incorporating benchmarks around latency, data consistency, and other quality of service metrics.

Another issue in this proceeding is whether the Commission will find that Americans need access to both wireline and wireless advanced telecommunications capability, rather than one or the other. Democrats at the FCC and on Capitol Hill have expressed concern the Commission will find that 10 Mbps is an acceptable threshold for determining the availability of advanced telecommunications capability – a finding that might support a conclusion that certain fixed wireless solutions meet that standard.

Broadband Deployment Advisory Committee (BDAC)

On November 8 Chairman Pai responded to a recent letter from BDAC chair Elizabeth Bowles agreeing to schedule a two-day BDAC meeting in January 2018 – probably January 23 and 24 – to finalize BDAC recommendations. Preliminary reports from each working group (WG) were presented at the November 9 BDAC meeting here in DC where Commissioners Clyburn and O’Rielly both spoke. O’Rielly’s comments suggested local authorities were extracting unreasonable fees from network providers, while Clyburn emphasized that broadband affordability can be as much a barrier as availability (in reference to recent proposed changes to the Lifeline Program). An archived video of that meeting should be available [here](#) soon. Local governments continue to argue for greater role in BDAC deliberations reflecting concerns that BDAC recommendations will suggest greater federal preemption of local rules.

You will recall the [BDAC](#) has four WGs: ([Competitive Access to Broadband Infrastructure; Removing State and Local Regulatory Barriers](#) (Mark Johnson member); [Model Code for Municipalities; and Model Code for States](#)).

E-rate

Comments Submitted on Category 2 Budgets and Approval of FY 2018 Eligible Services List

Comments and reply comments have been submitted concerning the sufficiency of current Category Two (C2) budgets. The current 5-year budget levels – \$150 per student for schools and \$2.30 or \$5.00 per square foot for libraries (depending on their location) – are for a five-year test period only. The Wireline Competition Bureau (Bureau) must issue a sufficiency report before the filing window opens for funding year 2019 (July 1, 2019 thru June 30, 2020) and the request for comments was for participants to provide data for that report. Links to the initial comments are available [here](#); links to reply comments are available [here](#). More details are available in the Bureau’s Public Notice [here](#).

As reported last month, the Bureau in October approved minor changes to the funding year 2018 Eligible Services List (ESL). The changes clarify that equipment that has both Category One (C1) and C2 functionality can be funded as C1 (and therefore not subject to C2 budgets) *if the equipment is “necessary to make the [C1] broadband service functional.”* The Bureau declined to provide specific examples as guidance, or to direct USAC to do so. The Bureau also clarified that wiring between two different schools located in a single building should be treated as C2 inside wiring. The Bureau Order which contains the new ESL as Appendix B is available [here](#).

USAC Annual E-rate Training

USAC kicked off its annual applicant training road show on October 10 here in Washington. The remaining training event is November 14, 2017, in Portland, OR. The full set of training materials is available on the USAC website [here](#). On November 13, 2017, USAC is offering a webinar addressing E-rate Support for Hurricane Relief. Register [here](#).

Rural Health Care Program

SHLB and 37 other RHC stakeholder entities have sent a letter to both Senate and House leadership explaining the importance of greater RHC funding and requesting bi-partisan support for the FCC to increase the RHC program funding cap. In addition, the two major Alaskan carriers recently proposed reforms for the RHC Telecommunications Program. This is significant because a substantial amount of total RHC funding flows to Alaska through the Telecommunications Program and any serious effort at reform will require addressing the needs of Alaskan health care providers. [Disclosure: I represent one of these Alaskan carriers, General Communication, Inc., in certain matters involving the RHC.] Recent meetings with FCC staff suggest that the Commission may be actively working on RHC reforms of some kind.

USAC announced on October 24 that funding requests in the first filing window exceeded available funding and that no further filing windows would occur for the 2017 funding year (July 1, 2017 through June 30, 2018). Once USAC finalizes funding decisions for all applications submitted in the window, USAC will divide available funding by approved funding to determine the pro-rata share available for all applications. Based on how long this took in FY 2016, we expect USAC will complete this process by early December. FY 2017 funding demand is higher than last year which means the pro-rata reduction could be greater than last year’s 7.5%. (We don’t know for sure that the reduction will be greater because it will be spread over all applicants this year, rather than just the second filing window applicants only as it was in FY 2016).

FCC Connect2Health Task Force

In August and September the Connect2Health Task Force conducted a series of separate “listening sessions” with health care providers, consumers, service providers, and policymakers. Recordings of these sessions are available [here](#).

Educational Broadband Service (EBS)

The Wireless Communication Association (WCA) in September filed an [ex parte](#) notice in the [EBS docket](#) attaching a [nationwide map](#) overlaying where EBS spectrum has not been licensed against Form 477 reported fixed broadband availability. In early November, Liberty Community Unit School District (CUSD) #2 (in rural western Illinois) filed a letter with the FCC explaining in part:

Many rural communities . . . in Illinois, do not have universal access to fast and reliable broadband services. This limitation affects Liberty CUSD #2’s educational mission. While the school itself has access to a high-capacity fiber-based Internet connection, the majority of our student households have limited or no access at all. . . . While there is no complete solution to this problem, a very effective and low-cost step is for the FCC to issue new [EBS] licenses in currently unlicensed areas.

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.

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 and reply comments from higher education and research library associations are available [here](#) and [here](#), while separate Association of Research Libraries reply comments are available [here](#). Higher education and research library commenters recently met with FCC representatives – an [ex parte](#)

describing that meeting is available [here](#). We expect Chairman Pai to release a draft order before Thanksgiving, in advance of a vote at the Commission's December open meeting.

Rumors are that the proposed order will completely reverse current net neutrality rules – rather than re-establish a variation of current rules under a different legal framework. Current rules are based upon classifying consumer broadband Internet access service (BIAS) as a common carrier service regulated under Title II of the Telecommunications Act. Instead, the Chairman may move to reclassify BIAS as a non-regulated service and implement a transparency-only net neutrality framework that simply requires Internet service providers to disclose their network management practices. This would be consistent with what appears to be the emerging consensus among Republicans that the Federal Trade Commission, rather than the FCC, should be primarily responsible for net neutrality (and privacy) enforcement. If the FCC takes this approach, the focus will shift to the courts, where opponents will seek to stay implementation of the order, and to Congress which all parties recognize is the only entity that can definitively resolve this long-running issue.

Microsoft White Space Rural Broadband Initiative

We noted in July that Microsoft announced a \$10 billion TV White Spaces initiative aimed at bringing broadband to two million rural residents over the next five years. Microsoft contends that a blended use of different technologies to include TV White Spaces is the most cost-effective way to bring robust broadband to 20 million rural residents. A Microsoft [whitepaper](#) describing the initiative is available [here](#), with additional information from Microsoft available [here](#). [Disclosure: Attorneys in our firm are representing Microsoft at the FCC seeking Connect America and spectrum policies that will support the initiative.]

In recent comments in the Connect America Phase II Auction proceeding, Microsoft explained that it will have 12 projects up and running in 12 states in the next 12 months. "Microsoft's goal is not to enter the telecommunications business itself or even to profit directly from these projects. Rather, Microsoft will invest in the upfront capital projects needed to expand broadband coverage, seek a revenue share from operators to recoup its investment, and then use these revenue proceeds to invest in additional projects to expand coverage further. As part of this effort, Microsoft will also license intellectual property for free and provide technical training." Microsoft also noted that it has TV White Spaces pilot projects underway now in rural areas of Virginia, Georgia, Maine, Kansas, and Michigan.