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To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: Monthly Broadband Policy Update – May and early June 2018

Infrastructure Legislation

It is currently doubtful the Trump infrastructure spending plan (released in February 2018) or a congressional alternative will move forward before the midterm elections in November. Interest in a comprehensive infrastructure spending package that includes broadband could revive after the November midterms.

In the meantime, in late May Sens. Hoeven (R-ND) and Klobuchar (D-MN) introduced legislation (S 2959) that would establish an Office of Rural Broadband at the Federal Communications Commission (FCC). The new office would coordinate and streamline existing rural broadband programs at the U.S. Department of Agriculture (USDA), the National Telecommunications and Information Administration (NTIA), the Universal Service Administration Company (USAC) and other agencies to ensure they work efficiently together. The new office would also be responsible for tracking rural broadband adoption rates, coordinate efforts to remove deployment barriers, assess impacts on rural consumers and provide annual reports on progress. Similar legislation was recently introduced in the House by Reps. Cramer (R-ND) and Peterson (D-MN) (HR 5497).

NTIA Update

On May 30, NTIA announced it was seeking public comment on “Improving the Quality and Accuracy of Broadband Availability Data.” The public notice can be found [here](#); comments are due July 16, 2018. NTIA has published an interactive tool on the [BroadbandUSA webpage](#) for reporting statewide demographic (census) information related to broadband.

The most recent BroadbandUSA Newsletter is from [June](#) and focuses on broadband and precision agriculture. Previous newsletters and other news is available [here](#). Upcoming NTIA events include the following webinar:

- [Smart Agriculture: Increasing Productivity Through Technology](#), Wednesday, June 20, 2018. Register [here](#).

The archive for previous webinars is available [here](#).

USDA – Rural Utilities Service

The application deadline for this year's Distance Learning and Telemedicine (DLT) Loans and Grants was June 4, 2018. Basic information on the program and application process is available [here](#). The application deadline for [Community Connect Grants](#) was May 14, 2018. According to our meetings with USDA staff in April, each of those programs was allotted about \$30 million in 2018. Further details regarding the \$600 million DLT pilot program are not yet available. We expect details when they are announced to be linked [here](#) on the USDA RUS website.

Federal Communications Commission

With Commissioner Clyburn's departure, President Trump has accepted Sen. Schumer's recommendation and nominated Geoffrey Starks to fill the vacant position on the Commission, currently an FCC staffer, for the post. Mr. Starks is currently a staffer at the FCC's Enforcement Bureau – additional background on Mr. Starks is provided in this [Politico article](#). His Senate Commerce Committee nomination hearing has not yet been scheduled.

This FCC continues to be extremely active, churning out orders at an unprecedented pace. The most recent meeting (June 7) had a full agenda and included passage of an item "Next Steps to Open Spectrum Frontiers for 5G Connectivity" which "would continue efforts to make available millimeter wave spectrum, in bands at or above 24 GHz, for fifth-generation wireless, Internet of Things, and other advanced spectrum-based services." The agenda and video from the June 7 meeting is available [here](#). Their next open meeting is July 12.

Broadband Deployment Advisory Committee (BDAC)

On May 18, Chairman Pai appointed 15 members to a [new BDAC working group](#) focused on harmonizing inconsistencies between the model state code and the model municipality code.

The most recent BDAC meeting was April 25, 2018. Presentations and the video feed from that meeting are available [here](#). BDAC working group documents from the April meeting included:

- Competitive Access to Broadband Infrastructure
- Model Code for States (adopted)
- Model Code for States – Ballot Form Comments Summary
- Model Code for Municipalities (adopted)
- Ad Hoc Committee on Rates and Fees – Presentation

- Ad Hoc Committee on Rates and Fees – Survey of Rates and Fees

BDAC meetings and meeting materials are available [here](#).

E-rate

SHLB had an E-rate Fiber webinar on May 30. The webinar slides and a recording are available for SHLB members [here](#). SHLB also had a listening session with USAC on May 22, 2018, to discuss a range of issues with USAC staff. Notes from that meeting are available through SHLB.

There were no significant E-rate developments at the FCC or USAC this last month. However, in case you missed it last month, two recent developments included FCC actions related to EPC challenges and problems and confusion with USAC's review and approval of fiber and special construction: (1) granting a special construction deadline waiver to the Utah Education and Telehealth Network (UETN), and (2) providing written direction to USAC concerning the changes to the EPC input fields affecting requests for fiber special construction (also known as the "drop-down menu" issue).

In the case of the [UETN waiver](#), the issue concerned the requirement that E-rate funded fiber be lit before the end of the funding year. USAC had initially granted UETN a deadline waiver until June 30, 2018, due to USAC's failure to timely issue the funding commitment decision letter (FCDL). When USAC finally issued a funding denial in September 2017, UETN appealed. USAC reversed itself in December 2017, but this left insufficient time for UETN's vendor to complete the anticipated build by the June 30, 2018 deadline. This was because the build was through mountainous terrain and faced a short annual construction window due to severe weather conditions. USAC did not have authority to provide a further extension, so UETN sought a waiver from the FCC. The FCC granted the UETN request and established a new deadline of October 1, 2020, noting particularly the unique circumstances of the build.

On the drop-down menu issue, SHLB Coalition and others have been raising concerns at the FCC that USAC was poised to deny a significant number of FY 2018 fiber service funding requests because of apparent confusion on the part of applicants about which EPC drop-down menu item to select as part of their Form 470 application process. In August 2017 USAC had instructed applicants to no longer utilize several EPC menu options related to Internet access and transport services in cases where fiber services were being sought. Rumors were circulating that failure to follow USAC's EPC drop-down guidance would result in automatic funding denials – notwithstanding whether the Form 470 itself was clear enough for vendors to submit responsive and otherwise valid bids. Because USAC would not confirm that it would not issue automatic denials, SHLB and others sought written assurances from the Commission. On [May 1, 2018, FCC](#)

[Managing Director Mark Stephens and Wireline Competition Bureau Chief Kris Monteith in a letter to USAC](#) directed that, for FY 2018, USAC not issue denials based solely on the EPC menu selection, and that for FY 2019, USAC make clear in the EPC whether menu options are for fiber or non-fiber services.

Rural Health Care Program

Note the FY 2018 RHC filing window (which opened February 1, 2018) will close on June 30, 2018. More information is available [here](#).

Chairman Pai on June 6, [announced his support](#) for an increase in the annual Rural Health Care program funding cap from \$400 million to \$571 million. Although less than the doubling of funding requested by SHLB and others, this represents a substantial increase (essentially an inflation adjustment dating back to 1997 when the \$400 million cap was first established). The program cap would continue to receive inflation adjustments going forward. The Chairman's proposal is contained in a draft order currently circulating among the Commissioner offices and still must be voted on before it becomes effective. The draft order is not available for review and the proposal is not scheduled for an open meeting, however, the item could be voted on at any time.

Chairman Pai's announcement occurred after considerable efforts by SHLB and many others to draw attention to the impacts of the RHC funding shortfalls. These efforts resulted on May 14 with a [bi-partisan letter from 31 senators](#) to Chairman Pai supporting a cap increase for the program.

In other RHC news, USAC recently made available [guidance for the RHC Telecommunications Program](#) about how applicants can establish valid "urban" and "rural" rates for purposes of calculating program support. We are hearing that the methods for providing valid rates are so difficult to comply with that many current Telecom Program participants plan to migrate to the Healthcare Connect Fund. If true, such a migration could further reduce funding demand on the overall RHC program. However, USAC's new approach is likely creating great uncertainty in Alaska where the Telecom Program is a literal lifeline for many health care providers with very costly broadband connections.

Educational Broadband Service (EBS)

As noted last month, the FCC at its May meeting [unanimously approved an NPRM](#) to consider major reforms to increase EBS spectrum utilization. Chairman Pai explained:

Currently, a large portion of the 2.5 GHz band in approximately half of the United States lies fallow. And it's been that way for more than 20 years. This must change. We need to get this valuable spectrum into the hands of those who will provide service, including 5G, to Americans across the country, particularly in rural areas where the spectrum is currently mostly unused. So today, we take the first step toward putting that asset to work

Among other things, the NPRM proposes methods to rationalize geographic service areas and asks whether EBS licensees should be allowed to transfer their spectrum to commercial entities (rather than simply lease that spectrum as they do now). Comments will be due 30 days after publication of the NPRM in the Federal Register (which has not occurred yet). The item terminates the old EBS docket and creates a new docket, [Transforming the 2.5 Ghz Band, WT Docket 18-120](#).

Many school systems across the country currently 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.

Net Neutrality/Title II

The FCC's repeal of the 2015 Open Internet rules became fully effective Monday, June 11, 2018.

In Congress, Senate Democrats on May 16 successfully forced the Senate to vote on a Congressional Review Act (CRA) resolution formally disapproving of the FCC's December 2017 Restoring Internet Freedom order. The resolution passed 52-47 with Collins (R-ME), Murkowski (R-AK), and Kennedy (R-LA) joining with Democrats in supporting the measure. In the House, 218 signatures will be needed to force a CRA floor vote. While ultimate passage remains unlikely, the main purpose of the effort is to force Republicans to cast a net neutrality vote in an election year.

The Republicans have proposed net neutrality legislation in both houses, but with Democrats opposed to the Republican fix, legislative action is unlikely. The Republican proposed approach would codify prohibitions on blocking and throttling and would expressly authorize the FCC to provide universal service support for broadband Internet access services. On paid priority, however, their proposal would preempt the FCC from restricting such arrangements (among other things).

The Information Technology & Innovation Foundation (ITIF) recently sought to break this deadlock by offering a proposal that would include direct funding for broadband adoption and

digital-literacy programs within a legislative package with net neutrality. The ITIF proposal is otherwise similar to Republican proposals in that it would “avoid[] an overbroad flat ban on prioritization.”

DC Circuit

Initial briefs in the court challenge of the Restoring Internet Freedom order, Mozilla Corporation v. FCC, et al., are due June 20, 2018.

States

The California Senate passed its net neutrality bill, SB 822, on May 30, 2018. SB 822 goes beyond the rules the FCC established in 2015, with prohibitions on prioritization including specific bans on most types of zero rating. Zero rating is where wireless providers don’t count certain types of content, such as music streaming, against customer data caps. The Senate bill is expected to be taken up by the California House in mid-June. The California law, whether it comes in to effect or not, will be influential as the national debate over net neutrality continues.

Washington was the first state to pass a comprehensive net neutrality law earlier in the year; that law went into effect on June 11, 2018 (the same day the FCC’s repeal became effective). A [recent article](#) about the Washington state law in Ars Technica has some further background on that law and other states’ efforts. [Wikipedia has a summary of all state net neutrality efforts](#) though the page has not been updated since February.

Microsoft White Space Rural Broadband Initiative

In July 2017 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](#) (executive summary [here](#)), with additional information from Microsoft available [here](#). Microsoft’s [March 2018 ex parte](#) at the FCC contains a short report with a nice overview of the technology and their proposed approach. The [National Association of Broadcasters](#) recently met with the FCC and expressed skepticism about certain technical aspects of Microsoft’s proposal.