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July 11, 2018

To: Jen Leasure, The Quilt

From: Jeff Mitchell

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

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### **Legislative Highlights**

The Senate on June 28 approved the 2018 Farm Bill (the “Agriculture and Nutrition Act of 2018”), which had previously been approved by the House. The measure includes continued authorization for the USDA Rural Utilities Service (RUS) telecom and broadband grant and loan programs. Among other things, the legislation requires RUS to confer with the FCC and NTIA on rural broadband. President Trump is expected to sign the bill.

On June 27, the Senate Commerce Committee approved the bi-partisan “Measuring the Economic Impact of Broadband Act of 2017” (MEIBA) (S. 645), while also approving the nomination of Geoffrey Starks to replace Commissioner Clyburn at the FCC. MEIBA would require the Commerce Department to conduct an analysis and assessment of the effects of broadband deployment on the economy. MEIBA is sponsored by Sens. Klobuchar (D-MN), Capito (R-WV), King (I-ME), Heitkamp (D-ND), Boozman (R-MO), and Sullivan (R-AK).

On June 18, the House Energy and Commerce subcommittee approved its Precision Agriculture Connectivity Act of 2018 (H.R. 4881), following Senate Commerce Committee approval of similar legislation in April. The House bill would create an FCC-appointed task force to bring together public and private stakeholders to evaluate current programs affecting broadband internet access on cropland and rangeland; identify and measure existing gaps in coverage; and develop policy recommendations to address that gap. The task force would also be responsible for developing specific steps the FCC, USDA and other federal agencies can take to address gaps in broadband coverage. The National Association of Regulatory Utility Commissioners (NARUC) on July 3 issued a draft resolution calling for such task force to include state utility commissioners. (The draft resolution must now be voted on by the NARUC board which meets July 18.)

(This task force is similar to the “Office of Rural Broadband” idea in other recently proposed legislation. See page one of the June 2018 memorandum).

### **NTIA Update**

The House Energy & Commerce Committee is considering a draft NTIA reauthorization bill, the first since 1992. The draft bill would fund NTIA at \$50.8 million until 2021 and would, among other things, direct NTIA to resume its work on broadband inventory mapping. Joanne Hovis (CTC Technology & Consulting) testified at the June 28 hearing on the bill, maintaining “not only that NTIA has a critically important role to fill in improving the broadband environment nationally, but also that it has unique expertise and experience within the federal government in order to do so.”

On June 13, NTIA head David Redl testified at a Senate Commerce Committee hearing addressing a variety of issues including broadband mapping. Mr. Redl noted NTIA is working with the FCC to see how NTIA’s work will fit into the FCC’s map – and noting the administration had asked for \$50 million to update the map but was appropriated only \$7.5 million. He also said NTIA is looking to see what data sets it can obtain from elsewhere in the federal government. Redl received questions about the IANA (Internet Assigned Numbers Authority) transition from Sen. Cruz (R-TX) and Sen. Schatz (D-HI) who each asked whether it was too late to reverse the transfer of ICANN responsibilities to the global Internet multi-stakeholder community. While Redl indicated he thought it probably was too late, he noted that a [Notice of Inquiry](#) (NOI) issued in early June sought public comment on that question (among other things). [Comments on that NOI are due July 17, 2018.](#)

The July BroadbandUSA Newsletter focuses on [Statewide Strategies for Rural Digital Inclusion](#) with a [webinar on the subject scheduled for July 18](#). Webinar registration is [here](#). Previous newsletters and other news is available [here](#). The archive for previous webinars is available [here](#).

### **USDA – Rural Utilities Service**

As noted above, the 2018 Farm Bill authorized additional funding for [Distance Learning and Telemedicine \(DLT\) Loans and Grants](#) and [Community Connect Grants](#). The application deadlines for both programs have passed for this year. Further details regarding the \$600 million DLT pilot program (authorized in the 2018 omnibus spending bill) are not yet available. John Windhausen reported in late June that a late summer/fall announcement on the DLT pilot program was expected – possibly with a request for comments. John noted that although the program would not be limited to incumbent telcos, the minimum speed for funding projects will be low, only 10/1.

### **Federal Communications Commission**

As noted above, Geoffrey Starks was approved by Senate Commerce Committee to fill the current vacant position on the Commission. Mr. Starks is currently a staffer at the FCC's Enforcement Bureau – additional background on Mr. Starks is provided in this [Politico article](#). Press reports suggest Mr. Starks will get a full Senate confirmation vote before the August recess.

[The next Commission meeting is July 12](#) and includes consideration of a Notice of Proposed Rulemaking (NPRM) "Expanding Flexible Use of the 3.7 to 4.2 GHz Band" (brief summary and NPRM [here](#)). The agenda and video from the most recent June 7 meeting is available [here](#).

### **Broadband Deployment Advisory Committee (BDAC)**

On July 6, the Commission announced [the next BDAC meeting](#) will be July 26 and 27. The BDAC will consider reports and recommendations from the [BDAC working group](#) focused on harmonizing inconsistencies between the model codes for state municipalities (adopted at the April 25 meeting). Presentations and the video feed from the April 25 meeting are available [here](#). BDAC meetings and meeting materials including working papers are available [here](#).

### **E-rate**

On June 29, 2018, the FCC's Wireline Competition Bureau placed [an E-rate item "on circulation"](#) to the Commission. At the time of this memorandum, no further information is available on this item. Items on circulation can be voted on at any time.

As previously reported, 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.

### **Rural Health Care Program**

On June 19 the FCC approved an annual cap increase for the annual Rural Health Care program. [The order was released June 25](#) and became effective June 29. Highlights include:

- Retroactively applies to funding year (FY) 2017 (thereby eliminating pro-rata funding reductions for FY 2017);
- Implements inflation adjustments going forward based on GDP-CPI (same as E-rate):
  - The 2017 RHC cap was retroactively increased to \$571 million;

- The 2018 RHC cap will be \$581 million.
- The \$150 million Healthcare Connect Fund (HCF) “cap-within-the-cap” remains unchanged for now.
- Implements a rollover mechanism for unused funding (identical to E-rate) which makes additional funding potentially available each year above the cap.

Notably, the order does not include any substantive reforms to the RHC program which were proposed in the December 2017 NPRM. We expect a further order implementing these reforms probably later this year.

As previously noted, this is a big victory and occurred after considerable efforts by SHLB and many others to draw attention to the impacts of the RHC funding shortfalls. These efforts culminated with a [bi-partisan letter from 31 senators](#) to Chairman Pai supporting a cap increase for the program.

Also of note: On July 2, FCC Commissioner Carr visited the University of Virginia (UVA) Health System’s telemedicine programs in Charlottesville, Virginia, viewing programs utilizing telemedicine for acute care and remote patient monitoring to address chronic disease management (diabetes, pediatric cardiology, and opioid dependency and treatment). In addition, on July 6, Senator Wicker (R-MI), chairman of the Communications Subcommittee, sent a letter to FCC Commissioner Carr asking the FCC to view the University of Mississippi Medical Center’s (UMMC) Center for Telehealth – with its partnership with local carrier C Spire – as national models “for telehealth expansion across” the U.S. UMMC’s well-regarded telemedicine programs were previously highlighted by former Commissioner Clyburn. Commissioner Carr’s appearance at UVA and an earlier visit to UMMC in February 2018 suggest he is now taking the lead at the Commission on Rural Health Care issues.

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

The FCC at its May meeting [unanimously approved an NPRM](#) to consider major reforms to increase EBS spectrum utilization. *Comments are due August 8 and replies due September 7* (after FCC partially approved a comment window extension request filed by SHLB and others).

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.

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). The item terminates the old EBS docket and creates a new docket, [Transforming the 2.5 Ghz Band, WT Docket 18-120](#).

Further background on the EBS proceeding is available from a coalition of non-EBS holding educational institutions called [Educators and Broadband Access Providers for Rural American Communities \("EBPARC"\)](#), founded by a group called SelectSpectrum. (There is apparently no cost to join.) The EBPARC [background summary includes a map](#) showing EBS white spaces, existing EBS licensees and their geographic service areas (GSAs), and the impact of the proposal to extend these existing GSA out to the county boundary in purple. EBPARC also has several recent [EBS webinars](#) that may be useful.

### **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](#) in early June met with the FCC and expressed skepticism about certain technical aspects of Microsoft's proposal.

### **FOSTA/SESTA**

FOSTA stands for the "Fight Online Sex Trafficking Act" which was passed by Congress and signed into law by President Trump in April 2018. FOSTA contained another law called the "Stop Enabling Sex Traffickers Act of 2017" (SESTA). While obviously worthy goals, FOSTA was criticized from the outset by parties such as the Electronic Frontier Foundations (EFF) that were worried about censorship and the unintended effects of the law. Among other things, FOSTA amended Section 230 of Communications Decency Act (47 U.S.C. § 230) which provided immunity for websites hosting third-party content. Under FOSTA, website operators now face 25 years in prison for violations.

FOSTA forced immediate changes at sites such as Craigslist and Reddit (among others), with Craigslist closing its personals and "Therapeutic Services" sections out of fear it could be liable

for violations. On June 28, [EFF filed suit](#) in DC Federal Court to stop FOSTA enforcement and ultimately have it declared unconstitutional. EFF's court brief can be found [here](#).

### **Net Neutrality**

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. The CRA resolution is stalled in the House, 46 votes short of a majority.

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.

### **Courts**

- [Mozilla Corporation v. FCC, et al.](#) (challenge to 2017 Restoring Internet Freedom Order) – Parties jointly submitted a proposed briefing schedule on June 20, 2018.
- [United States Telecom Ass'n., et al. v. FCC & USA](#) (challenge to 2015 Open Internet Order)<sup>1</sup> – Petitions for *certiorari* pending at the Supreme Court; FCC's response to *cert.* petitions is due August 15, 2018.

### **States**

After the California Senate approved its proposed net neutrality bill, it was apparently modified (gutted some say) by the Communications Committee. An agreement on an amended bill was reached July 6. Whether to require net neutrality at the interconnection point or ban zero rating (where wireless providers don't count certain types of content, such as music streaming, against customer data caps) have been points of contention. The California legislature has until August

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<sup>1</sup> For those of you following these issues closely, you may recognize D.C. Circuit Judge Brett Kavanaugh, President Trump's nominee to replace Justice Kennedy, as the author of the dissent in this case (*i.e.*, concluding the 2015 Open Internet Order should be reversed). If Judge Kavanaugh is confirmed and if the Supreme Court grants the petitions for *certiorari* and accepts this case, he would be forced to recuse himself. If the 2017 case ever makes it to the Supreme Court, however, he would not have to recuse from that.

31 to approve a bill. 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.

ISPs are expected to sue to stop these state laws from being enforced.