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December 17, 2018

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: Monthly Broadband Policy Update – December 2018

Capitol Hill

The House and Senate have both passed the 2018 Farm Bill. Final votes were encouragingly bipartisan, passing the House 369-47 and the Senate 87-13. President Trump is expected to sign the bill into law. The bill includes several significant broadband provisions including authorizing increased USDA broadband funding: \$50 million annually for Community Connect Grants (up from \$30 million); \$10 million annually for middle-mile infrastructure grants and loans; and \$10 million annually for the Innovative Broadband Advancement Program (formally the “Rural Gigabit Network Pilot Program”) through 2023. It also reportedly increased funding for distance learning and telemedicine from \$75 million annually to \$82 million annually and relaxed the USDA’s definition of “rural.” Finally, the Farm Bill increases the definition of the minimum acceptable broadband speed for rural areas to 25/3 Mbps (up from 4/1 Mbps).

The SHLB Broadband for Anchor Institutions Legislative Working Group (BAILWG) continues its work drafting legislative language that will support funding for broadband to (and through) anchor institutions with focus on Goal #4 from the [National Broadband Plan](#): Gigabit service to all anchors by 2020. Our own Chip Byers was recently tapped by SHLB to co-chair the group. The goal is to propose specific language to the incoming Congress in January and to find support and a bill sponsor.

NTIA

Mapping. NTIA [announced](#) in November that it “intends to collect broadband availability data at a more granular level than that available via the FCC Form 477 process” from two types of entities:

- (1) Owners and operators of broadband networks; and
- (2) industry associations, data aggregators, and researchers that study or analyze broadband availability. Respondents may include private companies, non-profits, cooperatives, educational institutions, tribal governments, and local, regional, or state governments.

This information collection includes the use of both wireline and wireless technologies to deliver broadband services.

Comments on whether this proposed information collection complies with the Paperwork Reduction Act are due December 24.

Workshops/Newsletter/Webinars. A Nevada Broadband Workshop will take place on January 11, 2019, in Carson City, Nevada. “The Workshop will provide information on topics including local broadband planning, funding, and engagement with service providers. Speakers and attendees from Nevada, federal agencies, and across the country will come together to explore ways to facilitate the expansion of broadband capacity, access, and utilization.” More details and registration information are [here](#).

The NTIA monthly webinar for January (Wednesday, January 16) is entitled “[Measuring the Digital Divide: Review of Recent Surveys and Data](#).” You can register [here](#). There is no webinar scheduled for December. The archive for previous webinars is available [here](#).

The BroadbandUSA Newsletter for December is available [here](#). Among other things the December newsletter mentions a webinar (past, unfortunately) on rural health put on by the NIST Global City Teams Challenge Smart Agriculture and Rural SuperCluster. More information is available from Jean Rice at NTIA (jrice@ntia.doc.gov). Note that the NIST Global City Teams [2019 Exposition](#) addressing the “Smart and Secure Cities and Communities Challenge” is here in Washington, DC, February 20-22, 2019. There is no registration fee required to attend, but [registration is required](#). Previous Broadband USA newsletters and other news are available [here](#).

USDA – Rural Utilities Service

ReConnect Program

On December 13, USDA formally launched the \$600 million broadband pilot program authorized earlier this year in the 2018 Omnibus spending bill. Re-christened the “ReConnect Program,” it will make \$200 million available each for grants, combined grants and loans, and loans only. Non-profit entities and state agencies, subdivisions or “instrumentalities” (among others) are eligible to apply. The maximum grant size will be \$25 million and will have a 25% match requirement (which funds must be expended first). Certain “pre-application” expenses may be eligible up to 5% of the award total. The required buildout period will be five years and grant awardees must commit to provide service for the useful life of the funded facilities.

To protect against overbuilds, USDA has excluded certain areas from eligibility, but eligible areas will ultimately be determined by USDA after proposed projects have been submitted, mapped,

posted through a public notice, and service providers given a 30-day opportunity to respond if they serve locations that are proposed to be served (this is discussed further below). Grant applications are due April 29; loan/grants applications are due May 29; loan-only applications will have a 2% interest rate and will be distributed on a rolling, first-come, first-serve basis with an application deadline of June 29.

[As described by USDA:](#)

Projects funded through this initiative must serve communities with fewer than 20,000 people with no broadband service or where service is slower than 10 megabits per second (mbps) download and 1 mbps upload.

Approved projects must create access speeds of at least 25 mbps download and 3 mbps upload. Priority will be awarded for projects that propose to deliver higher-capacity connections to rural homes, businesses and farms. USDA seeks to stretch these funds as far as possible by leveraging existing networks and systems without overbuilding existing services greater than 10/1 mbps.

Evaluation criteria include connecting agricultural production and marketing, e-Commerce, health care and education facilities.

FCC “high cost” Connect America Fund (CAF) recipients are only eligible for loans, but in areas that receive CAF support – to address overbuilding concerns – only the CAF recipient will be eligible for funding. In addition, pure grants are available only in areas where 100% of the households are unserved by 10/1 broadband, whereas loan and loan/grants are available in areas where 90% of the households are unserved.

Detailed application scoring criteria are located [here](#) and include nine separate categories with a total maximum available points of 150. Generally, one point is awarded for each anchor institution served up to a maximum for each category, specifically including farms, businesses, “educational facilities,” “healthcare centers,” and “critical community centers.” Additional point categories include how rural the area is, the speed/quality of the service, serving tribal lands, and whether the state has a broadband plan, allows utilities to provide broadband, and has committed to expedite rights-of-way environmental permitting. Notably, up to 20 points are available for projects that commit to build a network supporting 100 Mbps symmetrical connection speeds.

As mentioned above, determining eligible areas is essentially a two-step process. First, *ineligible* areas have already been identified on the USDA mapping tool (see below). Then, after applications are filed, USDA will map them and post each on the USDA website, after which existing service providers have 30 calendar days to file maps showing where they are already

serving specific locations. USDA will consider this information (and any additional information) to determine whether an area is eligible for funding.

The USDA mapping tool is accessible [here](#). Ineligible areas reflected on the map (you may need to zoom in) include: CAF II Auction 903 winners, non-rural areas (any city, town, or incorporated area that has a population of greater than 20,000 inhabitants or an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants), pending RUS borrower applications, protected broadband borrower service areas (any entity that has received a Telecommunications Infrastructure loan, Farm Bill Broadband loan or Broadband Initiatives Program (BIP) loan any time after the beginning of Fiscal Year 2000 – also includes Community Connect Grant projects still under construction).

Detailed rules and application requirements are formally set forth in [this Federal Register notice](#).

Federal Communications Commission

As soon as the Alaskan Senators lifted their hold on Commissioner Carr's re-nomination (see RHC item below), Senator Manchin (D-WV) placed his own hold on Carr. Senator Manchin is upset about Phase 2 of the CAF Mobility Fund (MF-II) reverse auction process. The FCC in early December paused MF-II and launched an investigation into whether one or more major carriers violated the agency's rules by submitting incorrect coverage maps for use in the MF-II challenge process. There is little clarity about how this investigation and suspension of the challenge process will affect the timing of the \$4.53 billion in high-cost support that is ultimately at stake in the MF-II reverse auction process. West Virginia stands to benefit greatly from MF-II. Because the pending Democratic FCC nominee is paired with Carr's, Geoffrey Starks' nomination remains stalled.

December Monthly Meeting

The FCC adopted six items at its December 12, 2018 open meeting, including a [report and order](#) that offers additional funding to certain rural carriers in exchange for deploying broadband at increased speeds (25/3, up from 10/1). The FCC also adopted a [second report and order](#) to create a database to enable callers to verify whether a telephone number has been disconnected before calling that number, thereby helping to protect consumers with reassigned numbers from receiving unwanted robocalls; a [declaratory ruling](#) that classifies SMS and MMS wireless messaging as information services to help prevent consumers from receiving spam robotexts; a [report and order](#) adopting rule changes for the upper 37, 39 and 47 GHz bands; an [NPRM](#) regarding certain broadcast ownership rules; and a [report](#) consolidating several previously

separate Commission reports into a single report on the state of the broader communications market in the United States. *Summary courtesy [NECA Washington Watch](#).*

BDAC Reauthorization

The FCC on December 11 [announced its intent to re-charter the Broadband Deployment Advisory Committee](#) (BDAC) for another two-year period and is seeking nominations. The FCC noted:

Issues to be considered by the BDAC will include, but are not limited to, measures to prepare for, respond to, and recover from disasters that impact broadband networks; new ways of encouraging deployment of high-speed broadband infrastructure and services to low-income communities; and other ways to accelerate deployment of broadband infrastructure to all Americans and to close the digital divide

Nominations for membership to the BDAC are due January 10, 2019.

E-rate

Do Product Demonstrations Violate Competitive Bidding Requirements? Having vendors come in and demonstrate products has long-been a permissible and important part of the E-rate procurement process for schools and libraries. The general rule has been that such demonstrations should not occur during the 28-day bid evaluation period, however even those were permissible if an RFP requires a demonstration and all vendors are given the opportunity to present.

Recently, however, USAC changed its website to explain that product demonstrations may constitute prohibited gifts.¹ Notwithstanding, in recent training events, USAC staff have said that product demonstrations may still be permissible *in some cases*. SHLB has joined with other E-rate stakeholders on [a letter to the FCC's Wireline Bureau](#) seeking clarification and pointing out (among other things) that such demonstrations are important to ensuring the applicants can determine the most cost-effective services that will meet their educational needs.

MAXIMUS Transition. As you may know, USAC has always relied partly on 3rd-party vendors to process E-rate applications. Since the start of the program in 1998, that vendor has been Solix, based in Whippany, NJ. While USAC has recompeted this work over the years, the incumbent Solix has always been the winner. This year a new 3rd-party vendor, [MAXIMUS Federal Services, Inc.](#), a federal contractor based in Reston, VA, won the procurement. According to USAC, while

¹ See <https://www.usac.org/sl/applicants/step01/gift-rules.aspx> (last visited Dec. 16, 2018) ("Applicants may not accept gifts with a retail value greater than \$20, which include but are not limited to gifts for attending seminars; marketing calls; loans of products, including those characterized as on-site product demonstrations; services or equipment; or trainings.").

price was the primary factor, past performance with a similar size contract within the past three years was significant. The changeover to MAXIMUS is scheduled to occur on January 1, 2019. USAC is requesting patience from stakeholders while this transition occurs. Many program stakeholders are concerned about potential program disruptions.

Amortization Requirement for Non-Recurring Costs. Carriers have always been allowed to recover from the E-rate program a portion of the costs to construct carrier-owned network facilities necessary to deliver eligible services to eligible schools and libraries.² In the E-rate program these non-recurring capital charges are referred to as “special construction.”³ Before FY 2015, the FCC required E-rate payments for such non-recurring special construction costs to be spread (“amortized”) evenly over at least a three-year period.⁴ In 2014, the Second E-rate Modernization Order suspended this amortization requirement for a limited time, beginning for FY 2015 and continuing through FY 2018.⁵ With FY 2018 upon us, SHLB is working with other groups to convince this FCC to extend this rule beyond FY 2018. SHLB’s October 30 *ex parte* notice on this issue is available [here](#). John Windhausen is scheduled to meet about the issue this week with one of Chairman Pai’s legal advisors.

Rural Health Care Program

Last month we reported that Rural Health Care (RHC) program applicants seeking single-year funding requests would be fully funded in funding year (FY) 2018 (for services delivered July 1, 2018 through June 30, 2019), but that it remained unclear whether multi-year funding requests and those seeking large non-recurring costs would also be fully funded. Later we learned that

² See *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Order*, CC Docket Nos. 96-45, 97-21, 14 FCC Rcd 13734, 13749, ¶¶ 29, 39-40 (*Tennessee Order*) (1999) (holding that capital investment costs for service provider-owned hub sites and caching servers necessary to deliver Internet access services to eligible schools and libraries were eligible for E-rate support).

³ See *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189, n.21 (2014) (*Second Modernization Order*) (“In the E-rate program, special construction (or installation) charges for category one broadband services include costs for design and engineering, project management, digging trenches, and laying fiber. . . . ‘[S]pecial construction’ for purposes of the E-rate program does not have the same meaning as it does in the tariffing context and should not be read to expand the term as used in other tariff situations.”)

⁴ *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 18598 (2000) (*Brooklyn Order*).

⁵ See *Second Modernization Order*, ¶¶ 17-21.

these other applications would likely be fully funded in FY 2018, with the caveat that multi-year requests might have only the first one or two out of three years funded. Since then we have confirmed that USAC has in fact been issuing single-year funding commitments for funding year 2018. We continue to closely watch the multi-year funding commitment situation.

On December 4, the FCC released a [public notice](#) seeking further comment on the issues of urban and rural rates in the Telecommunications Program. Comments on urban and rural rates were filed last spring as part of the RHC Notice of Proposed Rulemaking but there have been considerable developments since then – among other things, USAC and the FCC providing “heightened scrutiny” to all urban and rural rates for FY 2017, and the [FCC unilaterally and retroactively setting 2017 rural rates for at least one Alaskan carrier](#). These further comments are due January 7, 2019, with replies due January 21. Chairman Pai has signaled a desire to complete the RHC rulemaking in the first half of 2019.

Lastly, this public notice is part of the apparent resolution between Chairman Pai and the Alaskan Senators whom, upset with Pai’s handling of the Rural Health Care program in Alaska, had placed a hold on Commissioner Carr’s re-nomination to a full five-year term. Chairman Pai on November 30 [sent a letter to the Senators](#) committing to these actions.

Educational Broadband Service (EBS)

Representatives from [Michigan state higher-educational institutions](#) recently met with the FCC to discuss EBS, providing an excellent presentation on Northern Michigan University’s experience with EBS and identifying areas in lower Michigan that could benefit from new EBS licenses.

Back in November, representatives from [Education Departments in Nebraska and Virginia, and SHLB](#) met with FCC staff to discuss EBS. Nebraska officials discussed their readiness to deploy a statewide wireless network using their existing network of fiber and towers to address the homework gap, and Virginia expressed similar interest. SHLB reiterated its opposition to auctions and support for granting EBS licenses to local entities, in partnership with states or other parties who have the expertise to deploy such a network. According to John Windhausen, FCC staff seemed interested in these ideas but hinted it was going to be an uphill battle to prevent auctions. They encouraged members to file as much information in the record as possible.

Background. The [EBS NPRM](#) is considering major reforms to increase EBS spectrum utilization ([Transforming the 2.5 Ghz Band, WT Docket 18-120](#)). The FCC has said there is fallow EBS spectrum across about half of the U.S., mainly in rural areas. The NPRM proposes, among other things, methods to rationalize geographic service areas and asks whether existing EBS licensees

should be allowed to transfer their spectrum to commercial entities (rather than simply lease that spectrum as they do now). Comments and replies have now been filed.

Microsoft White Space Rural Broadband Initiative

In July 2017 Microsoft announced a \$10 billion TV White Spaces initiative (now called the “Microsoft Airband 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. *Microsoft recently announced that it has active deployments in 17 states and has increased its commitment to reaching three million rural residents in five years.* [Microsoft’s most recent](#) white paper includes information about white spaces projects underway in Ohio, New York, Maine, Virginia, Maryland, Michigan and Wisconsin.

The Connect Americans Now coalition (which presented at the SHLB annual conference this year) now has 44 organizations and corporations as members and is supporting these efforts. [Its most recent ex parte](#) from early November is here.

Net Neutrality

Net Neutrality will be on the federal legislative agenda as Democrats take control of the House in January. On October 4, Representative Ro Khanna (D-CA) released [10 principles for an “Internet Bill of Rights.”](#) (Rep. Khanna’s congressional district covers Silicon Valley.) The principles address data privacy and net neutrality including: access and use of the internet without internet service providers blocking, throttling, engaging in paid prioritization, or otherwise unfairly favoring content, applications, services or devices; access to and knowledge of all collection and uses of personal data by companies; and access to multiple viable, affordable internet platforms, services and providers with clear and transparent pricing.

Federal Courts

- [Mozilla Corporation, et al. v. FCC](#) (DC Circuit Court of Appeals challenge to the 2017 Restoring Internet Freedom Order) – Final briefs have been filed and oral arguments are scheduled for February 1, 2019. [Here is a link to the Amicus Brief](#) filed last August by the American Council on Education and 19 other education and library associations in support of those challenging the FCC repeal.
- [Eastern District of California](#). On October 3, 2018, SB 822, the California Internet Consumer Protection and Net Neutrality Act of 2018 was [challenged in federal district court in California by the Department of Justice \(DOJ\)](#) and several industry groups ([in a](#)

[separate suit](#)). DOJ sought a preliminary injunction but on October 26 the court agreed to a request by all parties to stay the case after California agreed not to enforce the law pending outcome at the DC Circuit decision on the FCC's "Restoring Internet Freedom" order.

- Vermont District Court. On October 18, 2018, the same industry groups – American Cable Association (ACA), CTIA - The Wireless Association (CTIA), NCTA - The Internet & Television Association (NCTA), and USTelecom [challenged Vermont's net neutrality law and executive order](#) in federal district court there.

States

The National Conference of State Legislators (NCSL) features an up-to-date summary of state net neutrality actions by state [here](#).