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VIA ELECTRONIC MAIL

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – June 21, 2019**

Capitol Hill

We continue to expect that House Democrats will pass their “[Leading Infrastructure for Tomorrow’s America Act](#)” (LIFT America Act) infrastructure proposal, however a deal with President Trump to support the bill is on hold for the moment. The House bill, which remains in Committee, includes \$45 billion in broadband funding – \$30 billion in reverse auction funds to be administered by the FCC, \$10 billion in reverse auction funds to be administered by the states, and \$5 billion in federal loans and loan guarantees to be administered by NTIA. The FCC auctions would not require recipients to be Eligible Telecommunications Carriers (ETCs) in order to receive funds.

SHLB featured a webinar on June 19 that provides overview and commentary of pending broadband legislation. It can be watched by anyone for free [here](#). Here are links to some of these bills:

- The [Broadband Deployment Accuracy and Technological Availability](#) (Data) Act (Sens. Wicker (R-MS) and Peters (D-MI)) would require the FCC to issue rules to collect more “granular” broadband coverage data.
- The [Broadband Interagency Coordination Act](#) (Sens. Wicker (R-MS) and Klobuchar (D-MN)) would require NTIA, FCC, and USDA to coordinate broadband funding through a standardized set of broadband coverage data – but would give FCC primary responsibility for that data.
- [The ACCESS BROADBAND Act](#) would establish an Office of Internet Connectivity and Growth within NTIA and place NTIA in a formal advisory role regarding coordination of all federal broadband spending.

- The [Internet Exchange Act](#) (Sens. Blackburn (R-TN) and Baldwin (D-WI)) would provide for NTIA-administered matching grants for internet exchange (IX) facilities in certain core-based statistical areas and would permit USF E-rate and Rural Health Care (RHC) program recipients to use their funding to contract with an ISP to connect to an IX facility or pay the costs of maintaining a point of presence at a facility.
- The [Rural Broadband Network Advancement Act](#) (Reps. Mullin (R-OK) and Peterson (D-MN)) would establish a new FCC program outside of the existing universal service mechanisms to collect network user fees from edge providers based on the data transported over the last mile of networks to be invested by rural broadband providers to help build, maintain and operate robust broadband networks in high-cost rural areas.

NTIA

NTIA has released [a searchable database](#) featuring 50 federal broadband funding opportunities across a dozen federal agencies. The June 19 NTIA broadband webinar discussing [Building Smart Cities and Communities at the Regional Level](#) is available in the archive [here](#). The BroadbandUSA Newsletter for June is available [here](#). Linked are notable state news items from Arizona, Arkansas, Maine, North Carolina, Oregon, and Texas (among others); also, an item about southern states increasingly turning to [rural electric coops](#) to address the rural broadband gap.

As noted last month, NTIA Administrator David Redl has resigned. Deputy Administrator Diane Rinaldo will be interim Administrator with no replacement nominee likely before the 2020 election cycle.

USDA – Rural Utilities Service

ReConnect Program

With the deadline for ReConnect grants now passed, that status of proposed projects can be viewed on an interactive map available [here](#). Among many, southeastern Missouri and northcentral Oregon feature several large projects by electric co-ops with current status indicated as “under review.” The agricultural trade press [reports](#) that grant applications exceeded the \$200 million available by \$322 million!

Precision Agriculture

In April, USDA issued a [report on rural broadband infrastructure focused on next generation precision agriculture](#). Meanwhile, the [FCC has announced](#) formation of a federal advisory committee on precision agriculture. Nominations are due to PrecisionAgTF@fcc.gov by July 17.

Federal Communications Commission

The tentative agenda for the Commission's next meeting on July 10 can be found [here](#). Two items we have been following will be voted on: Educational Broadband Services (EBS), and the \$100 million Connected Care pilot program. Those are discussed below. The T-Mobile/Sprint merger approval will likely be considered as well.

USF Contributions

On June 13, [the FCC announced](#) that the expected third quarter universal service fund (USF) contribution factor would rise to 24.4% -- the largest quarterly factor in the history of the program. The spike appears to be driven by the shrinking base of interstate and international telecommunications revenue rather than growing programs. While some are reacting by calling for contributions reform, it is unclear what impact the spike in the factor will have politically or on other universal service proceedings.

USF Spending Cap NPRM

The [USF spending cap Noticed of Proposed Rulemaking \(NPRM\)](#) was released May 31 after being approved on a party-line vote (both Democratic Commissioners opposing) earlier in the month. The proposed cap would apply to all four programs in the aggregate, in addition to program-specific caps or budgets that currently exist. The overall cap if established would be set above current overall disbursement levels. Democrats criticized the proposal as failing to account for statutory obligations to address universal service, with Rosenworcel arguing it will pit USF recipient groups against each other in a "Hunger Games" scenario. SHLB and many others strongly oppose a cap and have questioned, among other things, why USF contributions reform is not also being considered.

The NPRM also seeks comment on whether to allow the E-rate and Rural Health Care (RHC) programs to access unused funding from the other program (with each program still having priority over its funds) ([see paras. 23-25](#)). By proposing to allow the currently oversubscribed RHC program to tap unused E-rate funding, this part of the FCC proposal may prove attractive to

health care providers. Comments are due July 15, 2019; reply comments are due August 12, 2019.

\$100 Million Connected Care Pilot Program

The FCC has [released a draft NPRM](#) seeking comment on how to implement a three-year \$100 million universal service pilot program that would fund broadband costs associated with providing “connected care” to low income Americans and veterans. Connected care is generally the remote patient monitoring and telehealth services needed to provide care for chronic health conditions to patients in their homes. This item is expected to be approved. We will dig further into this next month.

2019 Broadband Deployment Report and Mapping

The annual [Broadband Deployment Report for 2019](#) is out, triggering perennial criticism about the accuracy of the underlying data and whether the FCC is meeting its statutory obligations to ensure “advanced telecommunications” aka broadband is being deployed on a reasonable and timely basis. Relatedly, USTelecom and major industry groups reported on their efforts to establish new mapping protocols. If you are interested in where broadband mapping may be headed, you should review their recent filing [here](#).

Rural Digital Opportunity Fund

No new details regarding the \$20.4 billion “[Rural Digital Opportunity Fund](#)” (RDOF) have emerged since it was announced by Chairman Pai in April. The new fund will apparently repurpose a portion of existing High Cost program universal service funding (*i.e.*, the Connect America and Mobility Funds) over a ten-year period in order to connect up to 4 million rural homes and businesses to high-speed internet. With no new proposed expenditures, RDOF could simply be a re-brand the existing High Cost programs. A draft NPRM on the RDOF is expected to emerge later this year.

E-rate

“Overbuilding”

The [FCC is seeking comment](#) on [a petition for rulemaking in the E-rate program](#) filed by several small Texas telcos that claim E-rate rules are supporting improper overbuilding of their

networks.¹ Among other things, they propose the following language be added to the rules: “Category One services shall not include special construction costs for the construction of fiber where it has been demonstrated that fiber already exists, unless the existing fiber owner is unwilling to negotiate in good faith to lease that fiber at reasonable market-based prices.” See Petition at 4. [Comments are due July 1 with replies due July 16.](#)

“Menu Drop-Down” Issue Still with Us

On May 30, the State E-rate Coordinators Alliance (SECA) [filed a letter with the FCC](#) warning that continuing confusion about the proper relationship between USAC’s drop-down menu options for competitive bidding and service selections is putting funding decisions for hundreds of applicants at risk. SECA seeks relief for potentially affected applicants and resolution of the issue once and for all.

Category 2 Budgets

An NPRM that proposes to make Category 2 budgets a permanent feature of the E-rate program is reported to be circulating for a vote. This was an expected development after the Wireline Bureau issued its report earlier this year finding that the Category 2 budget approach was working well. You will recall that the 2014 E-rate Modernization Order adopted a five-year interim approach for the budget approach – with that five-year period over this year. The NPRM also requests comments on further ways to improve E-rate administrative burdens.

Rural Health Care Program

The FCC announced on June 10 that it [was directing USAC to carry forward \\$83 million in unused support](#) from prior years and make that available for FY 2019 (July 1, 2019 through June 30, 2020). This means there will be \$677 million (\$594 million plus \$83 million) available for FY 2019. By

¹ Here is how they describe the problem:

The Texas Carriers [petitioners] are particularly concerned about region-based consortia groups in Texas that have issued [RFPs], through the E-Rate program, for the construction of Wide Area Networks (“WANs”) to provide broadband services to each school within the region, even though many of those schools are already served by fiber. Because the regions include hundreds of schools and cover thousands of square miles, only select, large service providers have been able to respond to the RFPs. Smaller providers that are already serving individual schools within the region, via their USF-supported fiber networks, were unable to respond to the RFPs due to the sheer size of the requested WANs. Accordingly, only a few providers actually responded to the RFPs and the providers that responded did not necessarily propose the most cost-effective solutions. In at least three cases, the selected provider for these RFPs sought special construction costs, totaling over \$100 million dollars, to lay fiber to schools that already have fiber connections which were at least partially subsidized by USF.

comparison, [2018 funding demand was \\$648 million](#) before the FCC effectively canceled \$166 million in multi-year funding in order to stay below the \$150 million subcap that governs upfront costs and multi-year funding in the Healthcare Connect Fund (this was [reported](#) and discussed in last month's memorandum).

The FCC is being urged by many stakeholders to complete the open rulemaking in the RHC program this summer so that reforms may be implemented in time for the 2020 funding year (which starts July 1, 2020). There are only two open meetings left this summer: July 10 and August 1 and the tentative agenda for July 10 shows no RHC item. So all eyes are on July 11 (three weeks before the August 1 meeting) to see whether an RHC draft item gets released.

Lastly, a transcontinental fiber provider called [Quintillion has called for competitive bidding reforms in both the E-rate and Rural Health Care programs](#), seeking 90-day competitive bidding periods and heightened scrutiny of rates in cases where there is only a single bid in response to a request for services that results in a multi-year contract.

Educational Broadband Service (EBS)

Notwithstanding intense advocacy by SHLB and educational interests, [the draft EBS order](#) which was just released will not keep the "E" in EBS. Instead it proposes the reallocated the 2.5 GHz band for auction, arguing the spectrum is needed for rural 5G deployment and that too much of the spectrum is laying fallow. The draft order questions the premises of the study released by SHLB showing economic benefits of giving priority to educational uses. The order will apparently not disturb the rights of existing EBS licensees.

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 – with 4,000 new EBS licenses potentially available. The NPRM proposes, among other things, methods to rationalize geographic service areas and asks whether unlicensed EBS spectrum could be auctioned, and whether existing EBS licensees should be allowed to transfer their spectrum to commercial entities (rather than simply lease that spectrum as they do now).

Net Neutrality

Federal legislative efforts to address net neutrality appear to have reached a stalemate. The House passed the "[Save the Internet Act](#)" legislation in April which would restore the FCC's 2015 net neutrality rules including classifying broadband as a regulated telecommunications service

under Title II of the Communications Act. Subsequent efforts to create a bi-partisan House-Senate working group are likely dead due to lack of support from House Democrat leaders who believe the House's Save the Internet Act would pass the Senate if allowed to come up for a vote. Senate Majority Leader McConnell (R-KY) has refused to allow such a vote, stating the House bill was dead on arrival. Even if the Senate passed the House bill, President Trump would likely veto; however, the Democrats nevertheless want Senate Republicans to have to vote up or down on their bill.

In the meantime, The Internet Society's Net Neutrality Experts' Roundtable has released a [process report](#) addressing its attempts to convene and facilitate a workable consensus. Among other things, the report indicated: "Any legislation should make clear that no party, including edge providers, shall be permitted to intentionally block or throttle consumer access to any lawful content based on the [broadband internet access service (BIAS)] provider used by the consumer, subject to reasonable network management, nor should any party be permitted to block or throttle access to any lawful content that harms competition in the transmission of BIAS. . . ." No consensus was reached on the appropriate federal agency to enforce net neutrality rules.

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 occurred in early February. [Here is a link to the Amicus Brief](#) filed in August 2018 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 and in January 2019 [sought summary](#)

[judgment](#). The [parties in March 2019 agreed to stay further proceedings](#) pending a decision in the DC Circuit case (above).

States

A number of recent state net neutrality efforts have stumbled including in Montana, Connecticut, and New Hampshire. Colorado is the largest state to advance a bill which is now waiting for the Governor's signature. The Maine legislature also recently passed a bill. The National Conference of State Legislators (NCSL) features an up-to-date summary of state net neutrality efforts by state for 2019 [here](#) (updated May 6, 2019). Note there has been no update since last month's memorandum.