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*VIA ELECTRONIC MAIL*

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – July 31, 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 now seems unlikely. With prospects for a large broadband infrastructure bill thus fading for this year, Congress may instead seek to appropriate more funding for existing programs that support broadband, such as USDA’s ReConnect Program. This is reflected in the 2020 appropriations bill [recently passed by the House](#) which reportedly includes 680 million for rural broadband. (This bill also includes language that would prohibit the FCC from implementing the proposed cap on USF spending – see item below.) On the perennial question of where Congress can find the sums of money needed for a large broadband infrastructure spend, spectrum auctions often come up. [Recently groups have urged Congressional leaders](#) to ensure proceeds from expected C-Band spectrum auctions get used to support rural broadband deployment. Congressman Doyle (D-PA), Chairman of the House Communications Subcommittee, recently expressed support for this idea.

### **NTIA**

The July NTIA broadband webinar was on [FirstNet Deployment - Status of the Nationwide Public Safety Broadband Network](#) and is available in the [webinar archive](#). The BroadbandUSA Newsletter for July is available [here](#).

NTIA now hosts [a searchable database](#) featuring 50 federal broadband funding opportunities across a dozen federal agencies. The NTIA [Broadband USA main page](#) also now features a state-by-state summary of state broadband funding opportunities.

## **USDA – Rural Utilities Service**

### **ReConnect Program**

With the deadline for ReConnect grants now passed, status of proposed projects can be viewed on an interactive map available [here](#). [USDA says](#) it received \$522 million in grant-only requests for \$200 million available.

### **Precision Agriculture**

In April, USDA issued a [report on rural broadband infrastructure focused on next generation precision agriculture](#). Meanwhile, the [FCC announced](#) formation of a federal advisory committee on precision agriculture.

## **Federal Communications Commission**

The agenda for the Commission's meeting on August 1 can be found [here](#). On the agenda are the Rural Digital Opportunity Fund (RDOF) NPRM, a Digital Opportunity Data Collection item to improve Form 477 data for broadband mapping, and a Rural Health Care Program Report and Order (though many are hoping it will be pulled at the last minute). The RDOF and RHC items are discussed below.

### **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 \(NPRM\)](#) proposes an overall spending cap to all four universal service programs in the aggregate, in addition to any program-specific caps or budgets that currently exist. Commission 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. As a possible example of this, the NPRM asks 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](#)).

Initial comments were filed July 29, 2019 ([unofficial compilation of comments here](#), courtesy NECA Washington Watch); reply comments are due August 26, 2019. SHLB's comments are [here](#); Utah Education and Telehealth Network comments are [here](#). Educational groups in particular are opposed to the item as are rural carriers that depend on high cost support.

#### \$100 Million Connected Care Pilot Program

The Connected Care Pilot program continues to move forward at the FCC with [the recent release of the notice of proposed rulemaking](#) (NPRM). The proposed pilot would award an unspecified number of projects across the country funding to defray the broadband costs associated with providing “connected care” to low income Americans and veterans. Connected care is generally remote patient monitoring and telehealth services that provide care for chronic health conditions to patients in their homes. Connected care is increasingly being deployed to address diabetes management, opioid dependency, high-risk pregnancies, pediatric heart disease, mental health conditions, and cancer.

One of the more interesting questions in the Connected Care Pilot NPRM is whether the FCC can fund anything other than just the broadband component of the cost:

The Commission also seeks comment on whether there are packages or suites of services that health care providers use to provide connected care services (such as a turnkey solution that includes software, remote patient monitoring and remote monitoring devices, and patient broadband internet access) that are not currently funded under the existing [Rural Health Care universal service] support programs that could be funded through the Pilot program as information services. . . .

Whatever the pilot ends up supporting, in exchange for the funding, the FCC will seek data to “help the Commission understand whether and how [universal service] funds can be used to promote health care provider and consumer adoption and use of connected care services,” as well as data that might help improve health care delivery more generally. Assuming the NPRM leads to an order, which could happen as early as spring 2020, we expect a wide variety of health care systems to apply for funding, including academic medical centers. Initial comments on the NPRM are due August 29, 2019, with replies due September 30.

### Broadband Deployment and Mapping

The annual [Broadband Deployment Report for 2019](#) triggers 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](#). Filings in the mapping docket are available [here](#).

The [Institute for Local Self-Reliance](#) released a [report](#) in late June showing the progress electric coops are making deploying fiber. Highlights are:

- More than 140 co-ops across the country now offer residential gigabit Internet access to their members, reaching more than 300 communities.
- Co-ops connect 70.8 percent of North Dakota and 47.7 percent of South Dakota landmass to fiber, and residents enjoy some of the fastest Internet access speeds in the nation.
- Georgia and Mississippi have overturned state laws banning co-ops from offering Internet access, and other states, including Colorado, Maryland, North Carolina, and Texas, have implemented legislation that will further ease the way.

### Rural Digital Opportunity Fund

The Commission is scheduled at its meeting on August 1 to consider an NPRM for the proposed \$20.4 billion Rural Digital Opportunity Fund (RDOF). The new fund will allocate a portion of High Cost program universal service funding (*i.e.*, the Connect America Fund) over a ten-year period to provide a minimum of 25/3 Mbps broadband service to 4 million rural homes and businesses – with priority given to faster speeds. Phase I of the RDOF would allocate \$16 billion for “wholly unserved” census blocks through a multi-round auction. Phase II would allocate the balance to partially unserved census blocks and wholly unserved areas not awarded in Phase 1. The \$20.4 billion in RDOF funding is coming out of current High Cost support mechanisms such as unused or termed-out CAF funding and the never-deployed Remote Areas Fund – with the money targeted to eligible telecommunications carriers (ETCs). The RDOF draft NPRM is available [here](#).

## **E-rate**

### Texas Carriers' E-rate Rulemaking Petition on "Overbuilding"

On May 30 the [FCC sought comment](#) on [a petition for rulemaking in the E-rate program](#) filed by several small Texas telcos that claimed E-rate rules are supporting improper overbuilding of their networks.<sup>1</sup> [Comments were filed](#) on July 1 with [replies filed](#) on July 16 (links direct to an unofficial list maintained by NECA Washington Watch). [SHLB joined with the Consortium for School Networking \(CoSN\)](#), the Texas Association of School Administrators (TASA), the Texas Association of School Boards (TASB), the Texas Association of School Business Officials (TASBO), the Texas Computer Education Association (TCEA), and the Texas K-12 CTO Council in opposing the petition. Among other things, commenters opposing the petition questioned whether the objecting carriers had made good faith efforts to participate in the bid process, and whether this was about bid preferences for incumbents rather than an actual problem with the E-rate program rules.

### Category 2 Budgets

On July 17, the NPRM proposing to make Category 2 budgets a permanent feature of the E-rate program [was published in the Federal Register](#), setting up comment deadlines of August 16 and September 3. This NPRM was an expected after the Wireline Bureau issued its report earlier this year finding that the Category 2 budget approach was working well. The 2014 E-rate Modernization Order had adopted a five-year interim approach for the budget approach – with

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<sup>1</sup> 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.

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**

As we have been reporting, Chairman Pai had an informal deadline to complete [the December 2017 rulemaking to reform the Rural Health Care \(RHC\) program](#) by this summer. This timing makes it possible to implement program changes by the 2020 funding year (which starts July 1, 2020). Not surprisingly then, on July 11 the Commission released a draft RHC report and order that is now scheduled to be voted on at the August 1 meeting. That *draft* report and order can be viewed [here](#).

Although we expected significant changes to both components of the RHC – the legacy Telecommunications (Telecom) Program and the Healthcare Connect Fund (HCF) – once the details of those changes were revealed on July 11, many program stakeholders mobilized to ask the Commission to modify and/or delay them. [SHLB weighed into this](#) on July 22, seeking either further comments on the draft (on an expedited basis), or a delay by one month to allow stakeholders more time to review the draft and propose changes. Others are seeking a similar delay [including 11 senate offices who wrote the Chairman on July 31](#). We will likely not know the results of this effort until just before the Commission meeting on August 1 (if the Commission removes the item from the agenda).

While the draft would enact many changes to the both the HCF and Telecom Program, the most significant overall change is establishment of a prioritization system in the event program demand again exceeds the cap. The draft establishes eight priority tiers, four based on whether an area is urban or one of three classifications of rural, and then on whether that area is also classified as a Medically Underserved Area/Population (MUA/P) by the Health Resources and Services Administration (HRSA). Each priority tier will be fully funded in descending order until a tier is reached that cannot be fully funded. That tier will then be *pro-rated* based on remaining support with additional tiers receiving zero funding.<sup>2</sup>

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<sup>2</sup> Here is the illustrative table from the draft report and order:

Health Care Provider Site is Located in:	MUA/P	Not in MUA/P
Extremely Rural Tier	Priority 1	Priority 4
Rural Tier	Priority 2	Priority 5
Less Rural Tier	Priority 3	Priority 6
Urban Area [HCF consortia only]	Priority 7	Priority 8

In addition, in any year that the program exceeds the cap, the draft provides that HCF consortium applicants would have their maximum percentage of allowable *urban* sites reduced in 5% steps. For example, the current percentage of allowable urban is 50%. In the year following when the cap is hit, that percentage would go to 45%. That 5% step-down of urban would stop at 25%. The Commission draft also eliminates the current three-year period during which HCF consortia can come into compliance with their urban/rural percentage requirement.

With respect to the Telecom Program, the draft fundamentally changes how “rural” and equivalent “urban” rates are established. (Recall that funding in the Telecom Program is calculated based on the difference between those two rates.) Among other things, the Commission draft controversially delegates this “rate-making” responsibility to USAC (although FCC staff has disputed whether USAC will be creating rates or simply compiling and reporting them). Without getting into the complex details, safe to say that those who rely on the Telecom Program (*i.e.*, those that cannot afford needed services using the 65% subsidy available through the HCF), especially in Alaska, are alarmed about how this new Telecom Program rural rate methodology will impact them.

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

On a party-line vote at its July 10 meeting, the Commission voted 3-2 [to approve its EBS reform order](#), removing the educational use requirements for the spectrum and making unassigned spectrum available for commercial acquisition without priority to educational institutions. The order does give Tribal entities priority to obtain licenses before any commercial auction takes place and, as the next item makes clear, does not disturb existing EBS licensees. (That said, there is considerable debate about the eventual impact of this order on existing EBS licensees.)

On July 22 the Commission granted a waiver request to Northern Michigan University (NMU) that had sought to add new EBS licenses to expand new service. In granting the waiver, [the Commission noted](#): “NMU is unique among EBS licensees—while most EBS licensees have not built their own facilities and have leased their spectrum to commercial providers, NMU has built and operates its own LTE broadband network that covers a significant portion of the rugged, underserved territory in Michigan’s Upper Peninsula. The network is used extensively by NMU’s students and faculty, students of partner institutions, and other members of the community.” The NMU waiver order provides a great overview of the history of the network and discusses its ambitious plans for the future (at para. 14, footnotes omitted):

NMU envisions extending its EAN in areas of Michigan’s northern Lower Peninsula to support its own distance learning activities and to provide broadband access to other

K-12 school and community college students through the proposed service areas. NMU has successfully used cooperative agreements with local educational institutions throughout its Upper Peninsula license areas because using shared facilities is an efficient way of sustaining costly LTE technology and infrastructure. NMU reports that it is prepared to assume a new level of responsibility and accountability in wireless broadband construction and management, and it is now working with communities and educational entities in the northern Lower Peninsula to ensure that the network will be used to support the needs of local students and the communities in which they live. Construction of the network will be paid for by NMU, the State of Michigan, and charges to individual users. As it has done with previous network builds, NMU intends to develop this construction project in such a way that network services can be traded for space on existing city infrastructure such as building rooftops, water towers, and other community high-rise assets that are suitable for LTE antennas and transmitters.

### **Net Neutrality**

There are no updates on Net Neutrality this month. The following is a repeat of what we reported in June: 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 [which the governor signed](#) in late June. The National Conference of State Legislators (NCSL) features a summary of net neutrality efforts by state for 2019 [here](#) (not updated since May 6, 2019). (This item has been updated to reflect the signing of net neutrality legislation by the governor in Maine.)