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VIA ELECTRONIC MAIL

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – through June 23, 2020**

Capitol Hill

Separate from the recent COVID legislation, support for a general infrastructure package that would include a significant broadband component is growing. [The Trump Administration is again floating a \\$1 trillion infrastructure package](#), leading to a race with House to release their package first. The House Democrats won the race on June 22 with [the release](#) of their \$1.5 trillion [Moving Forward Act](#) – which includes \$100 billion targeted for broadband. Significantly, Senate and House Republicans have joined the push for broadband infrastructure and other broadband investments, announcing their [“framework” for digital equity and closing the broadband gap](#) on June 18. The Republican broadband plan includes elements addressing the homework gap, low income access, rural health care, and infrastructure deployment. The U.S. Chamber of Commerce [on June 23 also called for immediate broadband investment](#), announcing a set of principles to guide Congress. *While by no means certain*, the pieces are in place for a bill to pass before the election.

Notably, the House bill includes elements from [Heroes Act](#) pertaining to E-rate (based on the \$2 billion House [Emergency Educational Connections Act of 2020](#)) and Lifeline. It is possible the House bill will be amended to include Rural Health Care program reforms, similar to the [Healthcare Broadband Expansion During COVID-19 Act](#) that was highlighted earlier this month.

Other bills noted earlier this month that remain in-play include:

- **Supporting Connectivity for Higher Education Students in Need Act** ([Senate version](#)). This act would appropriate \$1 billion to establish a Emergency Higher Education Connectivity fund at the National Telecommunications Information Administration (NTIA) to directly help students in need pay for at-home internet connections and equipment such as

routers, modems, Wi-Fi hotspots, laptops, tablets, and internet-enabled devices to students.

- **Remote Learning During COVID-19 Act** (developed by E-rate advocacy groups who recently asked Congress to introduce the bill). This act would appropriate \$5.25 billion for the E-rate program to support home broadband service, broadband network equipment, end-user devices (such as laptops or tablets), and cybersecurity; explicitly allows schools and libraries to extend their existing E-rate-funded networks to serve the surrounding community (including for backhaul). The Schools, Health & Libraries Broadband (SHLB) Coalition has a detailed summary of the bill [here](#).
- **Endless Frontiers Act** ([full text](#); [summary](#)). \$100 billion (with a “B”) proposed for the National Science Foundation. From the [press release](#): “Bipartisan, Bicameral Endless Frontier Act Proposes Expansion of National Science Foundation, \$100 Billion For Strategically Advancing Science and Tech R&D, and \$10 Billion For Establishment of Regional Technology Hubs Across the Country to Launch New Companies, Revive American Manufacturing, and Create New Jobs to Jumpstart Local Communities.” More [here](#).

National Telecommunications and Information Administration (NTIA)

NTIA was in the news last month as the vehicle by which the Trump Administration intends to kick-off an FCC inquiry into [Section 230\(c\) of the Communications Decency Act](#). On May 28, 2020, [President Trump directed](#) NTIA in the next 60-days to submit a petition for rulemaking asking the FCC to propose regulations to clarify the precise scope of Section 230. Both Democrats and Republicans have had growing criticism of Section 230, but for different reasons. (Wikipedia has a good [historical overview of Section 230](#).)

The next NTIA monthly webinar will be held July 15 and will address: [Cyberinfrastructure: Moving Beyond Broadband at HBCUs and TCUs](#). The June webinar addressed [Utilizing Federal Data to Measure the Digital Divide](#). Information from past webinars is available in the [webinar archive](#). The [June broadband newsletter](#) links to state broadband news items from Alabama, Illinois, Maine, Minnesota, and South Carolina, among others.

NTIA hosts [a searchable database](#) featuring 50 federal broadband funding opportunities across a dozen federal agencies. The NTIA [Broadband USA main page](#) features a state-by-state summary of state broadband programs (scroll down to the map and click on a state). NTIA recently released the pilot results of its [National Broadband Availability Map \(NBAM\)](#) which was authorized by Congress in 2018. The NBAM currently covers eight states: California, Utah, Minnesota, Tennessee, North Carolina, West Virginia, Massachusetts, and Maine. The NBAM incorporates FCC Form 477 data along with broadband data from third-party sources including other federal

agencies. Because the NBAM includes both public and proprietary data, coverage details are available only to state and federal “partners” and not the general public.

USDA – Rural Utilities Service

Grant Programs

The official funding announcement for the next tranche of ReConnect Program funding (\$550 million) is [available here](#). Although the ReConnect application window closed April 15, the CARES Act allocated an [additional \\$100 million for ReConnect grant funding](#). *Proposed* ReConnect projects can be viewed [here](#); awardees are identified [here](#); proposed and funded projects are depicted on an interactive map [here](#). The [Distance Learning & Telemedicine Grant Program](#) received an [additional \\$25 million](#) in funding in the CARES Act and has opened a second application window which closes July 13, 2020. The RUS [Community Connect Grant](#) program is currently inactive.

Precision Agriculture

The FCC's [Precision Agriculture Connectivity Advisory Task Force](#) is next scheduled to meet virtually on July 22, 2020 – [meeting materials will be posted here](#). The March 25, 2020 meeting can be viewed [here](#). (The April 2019 USDA report on rural broadband infrastructure and next generation precision agriculture is available [here](#).)

Federal Communications Commission

The agenda for the FCC's July 16, 2020 open meeting will be [posted here](#) soon. On June 24, 2020, at 10:00 am ET, the Senate Committee on Commerce, Science, and Transportation, will conduct an FCC oversight hearing. [Witness statements and a recording of the hearing are available here](#).

White Spaces

The unused spectrum between TV station channels or in places where channels are vacant are called "white spaces." This vacant broadcast spectrum represents a resource for mobile broadband, particularly in rural areas. [In March 2020](#) the FCC proposed updated rules to facilitate increased innovation in the white spaces area. [Comments are currently being filed](#) in this rulemaking. SHLB signed on to the [Broadband Connects America Coalition comments](#). Microsoft has been a leader in this area – their comments [are here](#).

Spectrum

In this section of the monthly broadband policy update, we are maintaining short summaries of selected FCC spectrum proceedings that are active and which are expected to impact the public availability of broadband. If there is a specific proceeding that interests you, please let me know.

Here is a short overview of the importance of the different bands in the 5G era (courtesy of [Jeremy Horowitz at venturebeat.com](#)):

The . . . low band tier covers a lot of space, slowly, while the . . . mid band covers less space at faster speeds, and the . . . high band covers the least space at super-fast speeds. . . . One low band (600-700MHz) tower can cover hundreds of square miles with 5G service that ranges in speed from 30 to 250 megabits per second (Mbps). A mid band (2.5/3.5GHz) tower covers a several-mile radius with 5G that currently ranges from 100 to 900Mbps. Lastly, a high band (millimeter wave/24-39GHz) tower covers a one-mile or lower radius while delivering roughly 1-3Gbps speeds. Each of these tiers will improve in performance over time.

L-Band (1.0GHz to 2.0GHz)

The [FCC on April 20](#) unanimously, and with [broad bi-partisan support](#), approved a controversial and long-pending request by Ligado Networks (f.k.a LightSquared) to utilize a portion of the L-band spectrum that it owns. Because Ligado's spectrum is close to spectrum reserved for GPS, the Department of Defense (DOD), Department of Transportation (DOT), and other interests strongly oppose this move. On May 22, NTIA (on behalf of DOD and DOT) formally challenged the FCC's decision through a [petition for reconsideration](#) and a petition for stay.

2.5 GHz Rural Tribal Priority Window (formerly EBS)

In response to the COVID-19 pandemic, the FCC has granted temporary (60-day) emergency access to 2.5 GHz spectrum for requesting tribal groups including the [Pueblo Zuni tribe in New Mexico](#) and [Navajo Nation in Arizona, New Mexico and Utah](#). Because of the unique [impact of COVID-19 in tribal areas](#), more such requests may be forthcoming. With the June 2, 2020, [waiver for Harlan County, Kentucky](#), at least one poor Appalachian community is also benefitting from temporary emergency use of the spectrum. These temporary spectrum access grants do not affect the availability of spectrum for the 2.5 GHz rural tribal priority window (see below).

The FCC last summer decided to auction remaining unlicensed [Educational Broadband Spectrum \(EBS\) \(2.5 GHz band\) to commercial users](#). This spectrum is suitable for mobile and fixed point-to-point wireless services. Prior to the auction, tribal entities in rural areas have a limited opportunity to apply for licenses for available 2.5 GHz spectrum in their areas. *This "rural tribal*

priority window” opened February 3, 2020, and closes August 3, 2020. The FCC has not responded [to calls to extend the tribal window deadline](#) due to COVID-19.

The FCC has made available a number of resources for the tribes including a mapping tool, information about the application process, and access to training materials. The general FCC website with links to these resources is here: <https://www.fcc.gov/25-ghz-rural-tribal-window>.

C-Band (3.7-4.2 GHz)

Broadcast satellite operations are the current licensed users of the mid-band C-Band spectrum. The FCC in February 2020 voted (along party lines) to approve two orders to reorganize and reclaim 280 MHz of the band for flexible-use and to facilitate public auctions of the newly available bands. The public auction is slated to commence [December 8, 2020](#), with the new spectrum slated to be in use by September 2025. Incentive payments to the incumbents – which will come from auction proceeds – exceed \$9 billion. On June 1, 2020, [Chairman Pai announced](#) that five of the major satellite operators had agreed on an [accelerated timeline](#) to vacate the first chunk of the airwaves they currently hold by December 2021. Smaller operators on May 1 filed legal challenges to the FCC C-Band order and [have sought a stay](#).

3.1-3.55 GHz

The Commission recently approved an NPRM for [Facilitating Shared Use in the 3.1-3.55 GHz Band](#) (link fixed). The 3.1-3.55 GHz band is currently used by the Department of Defense (DOD) for fixed and mobile radar as well as secondary non-federal amateur and experimental users. The U.S. is arguably handicapped in the 5G race in no small part due to the large government (DOD) holdings of mid-band spectrum. Commission’s goal is to relocate non-federal users to clear as much as 100 MHz spectrum for commercial 5G. The comment period closed March 23, 2020 – comments can be [browsed here](#). This proceeding is at an initial stage and it remains to be seen how cooperative DOD will be in this effort.

[Citizens Broadband Radio Service \(CBRS\) \(3.55-3.65 GHz\)](#)

This spectrum is being used for naval radar and so away from the coasts much of the spectrum is unused. In recently deciding to reorganize the spectrum, the Commission allowed licensed use (through PALs), and General Authorized Access (GAA), which allows unlicensed access to available channels managed by a frequency coordinator called a Spectrum Access System (SAS). More information about SAS functionality – which is critical to all future spectrum sharing applications – is available [here](#) and [here](#). An excellent general non-legal web resource for CBRS

usage [is available here](#). There is growing interest in CBRS among [both K-12 and higher education](#) on CBRS' ability to provision private wide area wireless networks for education.

The FCC's CBRS auction of PALs will go forward this summer but [has been delayed by one month to July 23, 2020](#) – due to COVID-19. Each PAL will consist of a 10-year renewable license for a 10 MHz unpaired channel. [According to the FCC](#) this auction “will offer the greatest number of spectrum licenses ever made available for bidding in a single auction and is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things, and other advanced spectrum-based services for the benefit of the public.” The Commission [public notice](#) establishing the CBRS PALs auction procedures was approved at the February 2020 open meeting.

5.9 GHz Band

The Commission recently approved an NPRM for [Promoting Innovation in the 5.9 GHz Band](#) which would reorganize spectrum previously reserved for Dedicated Short Range Communications in order to support development of next generation “Cellular Vehicle to Everything” (C-V2X) technology as well as increase unlicensed utilization (*e.g.*, more Wi-Fi channels). The FCC proposes to make the lower 45 MHz of the 5850-5925 MHz band available for unlicensed use and allocate the upper 20 MHz for C-V2X. The DOT and [auto safety interests oppose](#) the FCC plan – while [WiFi interests support](#) it.

6 GHz Band

Here is an overview from C-NET highlighting industry estimates that allowing unlicensed use of 6 GHz spectrum will lead to supercharged Wi-Fi and [create billions in value for the economy](#). [Some claim](#) this is the most important decision the FCC has made on unlicensed spectrum use in 25 years. [Qualcomm recently released](#) its plans for new products later this year that will take advantage of the spectrum.

COVID-19: New Telehealth Program and E-rate & Rural Health Waivers

Congress appropriated \$200 million in funding to the FCC as part of the CARES Act, to help health care providers provide connected care services to patients at their homes or mobile locations in response to the COVID-19 pandemic. Although still accepting applications, [the COVID-19](#)

[Telehealth Program](#) is likely oversubscribed at this point. The FCC has now committed over \$100 million of that funding; the lists of awardees are available here ([Excel](#); [PDF](#)).

The Commission on March 18, 2020, [waived the gift rules for both the E-rate and RHC programs](#) through September 30, 2020. The scope of this waiver is broad, permitting (§ 7):

service providers to offer [free of charge], and eligible RHC and E-Rate entities to solicit and accept, improved capacity, Wi-Fi hotspots, networking gear, or other things of value to assist health care providers, schools, and libraries as well as doctors and patients, teachers, students, school administrators, and librarians and patrons during the coronavirus outbreak. These gifts could include but are not limited to free upgrades to connections, connected devices, equipment, and other services for RHC program participants who provide care via telemedicine and free broadband connections, devices, or other services that support remote learning for students and teachers who will be taking classes at and providing instruction from home as a result of COVID-19.

The Commission in both [E-rate](#) and [RHC](#) extended programmatic deadlines for filing funding applications, appeals, invoicing, service delivery and information requests, as well as waived certain rules regarding contract extensions. *If you intend to take advantage of any of these extensions of waivers, please consult these orders carefully.*

E-rate

Park Hill

The [Park Hill decision](#), released in late April 2020, is the first major FCC decision (by the Wireline Competition Bureau) addressing the contours of the rules governing self-constructed networks. The FCC in Park Hill overturned a USAC decision that had rescinded previously awarded funding from 2016 and denied funding for FY 2017. Park Hill is a school district in Kansas City, Missouri, that partnered with the city to build its own self-constructed network. Of course, before moving forward, Park City had established that this self-provisioning partnership was significantly less costly than service-based alternatives. As part of a long-term cost-sharing agreement, the city received fiber strands in exchange for in-kind contributions including conduit and maintenance. Significantly, Park Hill was able to demonstrate that this arrangement saved substantial sums of E-rate funding:¹

Pursuant to the agreement, Kansas City would provide Park Hill access to [the city's] conduit, assume 'locate responsibilities' to mark and locate the conduit system lines

¹ See *Request for Review and/or Waiver of a Decision of the Universal Service Administrator by Park Hill School District Kansas City, Missouri; Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, DA 20-455, ¶ 7 (WCB 2020).

and facilities for Park Hill’s network, and provide all permits and rights of way access required for the construction of Park Hill’s network in exchange for Park Hill’s installation of 72 strands of fiber and a 12-strand fiber buffer tube throughout certain portions of the network for [the city’s] use. Park Hill estimated that its partnership with [the city] would result in total savings of up to \$430,000, and given Park Hill’s 50% discount rate under the E-Rate program, would result in cost savings to the program of approximately \$215,00.

USAC objected to this arrangement. In reversing USAC, the Bureau clarified that “an E-Rate eligible entity may . . . share the services and equipment used to construct and/or operate a self-provisioned network supported by E-Rate funding with an ineligible third-party entity so long as the ineligible third-party entity pays its fair share of the costs, *i.e.*, its *pro-rata* portion of the undiscounted costs of the network.”² The Bureau also clarified that “our rules do not require E-Rate applicants to exclusively own and use [their] entire self-provisioned network.”³ This is an important and in some ways surprising outcome given how this FCC previously appeared to regard the previous FCC’s construction/special construction policies (see next item).

Rural Health Care

USAC delays processing funding applications for 2019 are in the forefront, with many program participants still receiving 14-day information requests from USAC *for funding applications submitted over a year ago*. It is clear USAC is way behind the pace of processing applications in prior years and [some are calling for the FCC to act](#).

Net Neutrality

On October 1, 2020, [the DC Circuit upheld](#) in significant part the FCC’s 2017 repeal of net neutrality rules, as well as the so-called transparency rule which requires carriers to disclose changes in their terms of service. The Court reversed the FCC on blanket state preemption and remanded several issues including jurisdictional questions over pole attachment regulation, impacts on public safety, and funding broadband through the Lifeline Program. In February 2020 the FCC [sought](#) public comment on the three remanded issues ([comments here](#)).

On December 13, 2019, Mozilla and other parties had sought a rehearing *en banc* at the DC Circuit, however the Court denied these petitions on February 6, 2020. Parties on both sides have confirmed that the pending federal court cases in California and Vermont (see below) remain

² *Id.* at ¶ 12.

³ *Id.* at ¶ 15.

stayed until all judicial remedies are exhausted, including Supreme Court review if it eventually occurs.

Federal Courts:

- Mozilla Corporation, et al. v. FCC (DC Circuit Court of Appeals challenge to the 2017 Restoring Internet Freedom Order) – [decided October 2019](#); [petitions for rehearing](#) filed December 2019; petitions for rehearing denied on February 6, 2020.
- Eastern District of California. In October 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 had sought a preliminary injunction but the court agreed to a request by all parties to stay the case after California agreed not to enforce the law pending final resolution of *Mozilla v. FCC*.
- Vermont District Court. In October 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 final resolution of *Mozilla v. FCC*.

States

The National Conference of State Legislators (NCSL) features a summary of net neutrality efforts by state for 2020 [here](#). (updated March 27, 2020). *Note this list does not identify current laws, only current efforts to pass new laws.*