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VIA ELECTRONIC MAIL

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – through April 24, 2020**

### **Capitol Hill**

Various COVID-19 relief packages have dominated Capitol Hill since the last policy update. While Democrats have raised the possibility of a \$2 trillion infrastructure/stimulus package (with a major broadband component) as a COVID-19 response, whether this will occur is in doubt. [Senate Republicans are voicing concerns](#) about the amount of debt the country is incurring and, for now, are only willing to consider legislation narrowly targeted to the COVID-19 emergency. Here is a list of major COVID-19 relief packages so far (only Phase Three included significant broadband-related funding):

- **Phase One** (The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, [H.R. 6074](#)), focused on public health measures and contained [\\$8.3 billion](#) in emergency funding designed to treat and prevent the spread of COVID-19. Signed into law on March 6.
- **Phase Two** (The Families First Coronavirus Response Act (FFCRA), [H.R. 6201](#)) provided [expanded sick-leave and other worker benefits](#). Signed into law March 18.
- **Phase Three** (The Coronavirus Aid, Relief, and Economic Security Act, or "CARES Act," [H.R. 748](#)) provided over [\\$2 trillion](#) to aid schools, hospitals, laid-off workers, state & local governments, and businesses. Signed into law March 27. The CARES Act included \$25 million for USDA's telemedicine and distance learning program; \$100 million for USDA's ReConnect program for rural broadband deployment; and \$200 million for the FCC to support telehealth and telemedicine services (which the FCC used to create the "[COVID-19 Telehealth Program](#)"). These are each addressed further below.
- **Phase Four** (or Phase Three supplemental) which passed the Senate on April 23 provides [\\$483 billion](#) that will replenish the small-business lending program and increase funding for hospitals and states.

As the inevitable “**Phase Four/Five**” package takes shape, issues include possible financial bailouts for the states. It is hoped Phase Five will incorporate two separate bills that would appropriate money directly to E-rate and Rural Health Care (RHC) beneficiaries to address the homework gap and increase access to healthcare, respectively. The [Healthcare Broadband Expansion During COVID-19 Act](#), sponsored by Eshoo (D-CA) and Young (R-AK), would allocate \$2 billion for emergency funding through the RHC program; [H.R. 6563](#), sponsored by Meng (D-NY), would allocate \$2 billion to fund Wi-Fi hotspots, modems, routers, and connected devices, through the E-rate program. The funding in both bills is targeted only for the period during which the COVID-19 pandemic emergency is in effect. (FCC Chairman Pai reportedly opposes using E-rate to address the “homework gap”, arguing the E-rate authorizing statute does not support funding off-campus connectivity; but supports Congress providing the FCC with funding outside of the constraints of E-rate.)

### **National Telecommunications and Information Administration (NTIA)**

The NTIA monthly webinar was held April 15, 2020: [Rural Broadband: Three Service Providers Discuss Business Models and Solutions](#). Regions covered included Northern plains, rural Virginia, and Tennessee and northern Alabama and Mississippi. Information from past webinars is available in the [webinar archive](#). The [BroadbandUSA Newsletter for April](#) includes notable state news from Georgia, North Dakota, Missouri, Ohio, Maine, and Vermont (among others). The [March newsletter](#) includes notable state news from Colorado, Illinois, Missouri, New Mexico, North Carolina, Ohio, and Wisconsin (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. Initially, the NBAM 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](#).<sup>1</sup> It appears this new funding will fund [applications](#) already submitted during the filing window that closed April 15. If you are interested in proposed ReConnect projects, the public notice filings (for overbuild challenge purposes), are [here](#).

The [Distance Learning & Telemedicine Grant Program](#) received an [additional \\$25 million](#) in funding in the CARES Act and so has opened a second application window for that funding which closes July 13, 2020. The 2020 application date for RUS [Community Connect Grants](#) has not been announced. Although not USDA/RUS, the Health Resources and Services Administration (HRSA), recently announced a [Telehealth Network Grant Program](#) with \$8.7 million available and awards up to \$300K. This application deadline has been extended to June 15, 2020.

### **Precision Agriculture**

The FCC's [Precision Agriculture Connectivity Advisory Task Force](#) met virtually on March 25, 2019; that 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 Commission has been very active outside of the open meeting agendas responding to the COVID-19 pandemic. These emergency actions included waiving various rules and extending deadlines in the universal services programs, as well as launching on April 2, 2020, the [\\$200 million COVID-19 Telehealth Program](#) authorized by the CARES Act and the long-awaited [\\$100 million Connected Care Pilot Program](#) (both programs are addressed in the same order).

The COVID-19 Telehealth Program is already underway, accepting applications on a rolling basis, and [approving them at a rapid clip](#). It is as close to a grant program as you will ever see from the FCC, funding 100% of the cost of an array of equipment and services provided they are linked in some way to responding to the COVID-19 pandemic emergency. The funding is available for eligible equipment and services purchased between March 13 and September 30, 2020 (assuming the funding is available). If you are interested in applying for this money, carefully

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<sup>1</sup> "USDA will use the \$100 million provided for the ReConnect Program in the CARES Act to invest in qualified 100 percent grant projects that did not receive funding in the program's first round of ReConnect Program investments. Round one applicants who did not receive funding because there was broadband access in the proposed service area may submit an application during the second round to receive this priority as long as their proposed service area meets the requirements of the ReConnect Round 2 Funding Opportunity Announcement." It is unclear whether this "Round 2 Funding Opportunity Announcements" is available yet.

review the information at the links above and proceed as quickly as you can. We will have more next month on both the COVID-19 and Connected Care programs.

The Commission's [March 31, 2020 open meeting](#) established new rules on robocalls, proposed rules on detariffing telephone access charges, and addressed various broadcast TV items. The Commission at the [April 23 open meeting](#) established rules for [unlicensed use of the 6 GHz Band](#) – which should help improve and increase Wi-Fi functionality – and proposed rules for a [\\$9 billion 5G for Rural America Fund](#), among other things. For May, the Commission will consider rules to reorganize the 900 MHz band which is currently used mostly by utilities and industries for private-two-way radio, to create a 6 MHz broadband segment for commercial use ([draft order](#)).

## **Spectrum**

In this new section of the monthly broadband policy update, we will maintain brief summaries of selected FCC spectrum proceedings that are active and that impact the public availability of broadband. If there is a specific proceeding that interests you, please let me know. (TV Whitespaces will be added soon.)

Here is quick-and-dirty explanation (courtesy of [Jeremy Horowitz at venturebeat.com](#)) of the utility of different bands in the 5G era – which is driving these spectrum reorganizations:

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, [DOD and other interests strongly opposed](#) this move. Turning again to [Mr. Horowitz at VentureBeat](#):

The L-band includes all frequencies from 1.0GHz to 2.0GHz, the upper (1.7GHz+) portion of which has been used for cellular phone service for years, while the middle (1.5GHz to 1.7GHz) has been reserved largely for GPS, GLONASS, and Galileo location satellite transmissions. . . . Ligado holds 40MHz of spectrum spread across multiple 1.5GHz and 1.6GHz channels, the former coming close to GPS satellite frequencies but not overlapping them.

Opening more of the mid-L-band for cellular service would enable existing and new cell towers to quickly add data bandwidth, better yet on frequencies that can travel extremely far. The L-band channels could be used for both downloading and uploading data or dedicated just to uploading, a weakness in current 4G and 5G cellular systems. Anything calling for greater wireless upload speeds, such as sharing live videos from 5G drones or phones, could benefit, as could internet of things applications where upload speed isn't as critical as the number of concurrent connections.

### 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. These temporary spectrum access grants will 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 this auction, however, 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” opens February 3, 2020, and closes August 3, 2020.* 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 at its February 2020 open meeting 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](#), and all the new spectrum is slated to be in use by September 2025. Incentive payments to the incumbents to reorganize their spectrum holdings could exceed \$9 billion. Though this amount is being criticized, incumbents have claimed their compensation should be higher. The next big question is whether any parties will seek reconsideration or challenge the FCC action in court –

potentially causing delay to the entire proceeding. Most agree that any delay will be detrimental to the country's "race to 5G."

### 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](#).

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 28, 2020 open meeting. An excellent general non-legal web resource for CBRS usage [is available here](#).

### 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 Department of Transportation and some auto safety interests have expressed opposition to the FCC plan.

### [6 GHz Band](#)

We will dive into 6 GHz a little more next month, but in the meantime, 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.

### **E-rate & Rural Health Care COVID-19 Waivers**

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**

#### **Category 2 Budgets**

On December 3, the FCC issued its long-awaited [order making Category 2 \(Cat2\) budgets permanent](#). To transition, the FCC extended the five-year Cat2 test period by one year, with the new Cat2 rules starting in 2021. The Cat2 rules for funding year 2020 [are effective January 20, 2020](#); the new Cat2 rules for funding year 2021 and beyond will be effective upon Office Management and Budget approval. On December 19, the Wireline Bureau [published further details](#) about how to calculate Cat2 budgeted funding for the 2020 transition year. On January 21, the State E-Rate Coordinators Alliance (SECA) [sought limited reconsideration of the Cat2](#)



[Order](#) related to the cost-allocation rules applicable to services shared with currently ineligible Non-Instructional Facilities (NIFs). Another reconsideration petition was also filed [concerning the plight of schools with only part time students](#). [Reply comments](#) were filed April 20, 2020.

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

At stake is whether the FCC should open a rulemaking to consider changes to program rules governing new fiber construction. Links to the original filings are below while dueling filings by interested parties continue; most recently [Totelcom on March 10, 2020](#), in favor of the Texas Carriers and responding to [SHLB's January letter to Chairman Pai](#).

*Background:* 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. [Comments were filed](#) on July 1 with [replies filed](#) on July 16. [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.

#### Webinar on Community Anchor Institution Connectivity

On April 15, 2020, the Western Governors' Association sponsored a virtual panel discussion on Community Anchor Institution Connectivity, moderated by John Windhausen from SHLB. The event and links to slide decks are archived [here](#).

#### **Rural Health Care**

##### 2019 Funding Demand

On [March 13, 2020, the Commission announced](#) it would carry-forward unused funds from prior years and fully fund FY 2019 funding requests, despite total requests exceeding available funds and multi-year and upfront requests exceeding the \$150 million "subcap." As noted last month, [USAC reported](#) 2019 funding requests totaled \$719.48 million, far above the \$594 million available.

#### **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. On February 19, 2020, the FCC [released a public notice](#) seeking public comment on the three remanded issues. *Comments were due March 30, 2020; replies are due April 29.* The FCC refused to extend the reply comment deadline due to COVID-19

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 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 2019 [here](#) (updated December 21, 2019). *Note this list does not identify current laws, only current efforts to pass new laws.* We are looking for a better and more up-to-date compilation of state net neutrality efforts but haven't yet found one. If there is a particular state you would like us to follow, let me know.