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*VIA ELECTRONIC MAIL*

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – through December 30, 2019**

### **Capitol Hill**

Last-minute spending bills reportedly contain significant future funding for existing rural broadband programs such as the United States Department of Agriculture’s ReConnect program. The House and Senate have also passed versions of the Broadband Deployment Accuracy and Technology (DATA) Act. The Senate bill (S. 1822) is [here](#). These bills would establish a process for mapping that will collect more granular data, allow for state, local, tribal, and consumer input, and allow for a challenge process and enforcement mechanisms for knowingly or recklessly submitting faulty data.

In the meantime, there is bipartisan support for legislation possibly in January earmarking some amount of upcoming C-Band auction proceeds – which are expected to be in the tens of billions – for rural broadband funding. Rep. Greg Walden (R-OR), the top Republican on the House Energy & Commerce Committee has called for this, aligning him with Rep. Mike Doyle (D-PA), chairman of the Telecommunications Subcommittee. On the Senate side, certain Republicans want a portion of C-Band auction proceeds to go to rural broadband, with the balance going to the Treasury and some to compensate current licensees in an effort to avoid litigation that could delay the final outcome. While general bi-partisan support suggests C-Band auction proceeds could eventually be made available to fund rural broadband, significant disagreement about the details remains. In the absence of legislation, the FCC will have limited authority for how to use this substantial amount of funding. If you are interested in more detail, here is a [recent informative blog post](#) discussing the issues.

### **NTIA**

There is no NTIA webinar for December. The January webinar is [The Benefits of Smart Building Technology](#) and will be held on Wednesday, January 15, 2020. Information from past webinars is available in the [webinar archive](#). The [BroadbandUSA Newsletter for December](#) includes

notable state news from Arkansas, Missouri, Utah, and Ohio (among others). The newsletter now includes a monthly roundup of links to Public Safety/FirstNet news.

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

### **ReConnect Program**

On December 12, the USDA announced that \$550 million would be available in 2020 for a further round of ReConnect Program applications. Once again, the program will be split between grant only, 50/50 grant/loan, and loan only, with up to \$200 million available in each category. The program will see a number of adjustments which we will explore next month. Among other things, grant only applications will be accepted in areas that are 90% unserved by 10/1 broadband (rather than last year’s requirement that 100% be unserved). The official funding announcement is [available here](#). On December 30, 2019, USDA will hold a webinar providing an overview of the 2020 funding opportunity – [registration here](#).

*The application window for all three categories of 2020 ReConnect funding opens January 31, 2020, and closes March 16, 2020. (Last year, each category had a separate window.)*

Recent ReConnect funding announcements include multi-million dollar projects in [West Virginia, South Dakota, North and South Carolina, Alabama, Illinois, Kansas, and Oregon](#). A map showing all proposed and approved ReConnect projects in 2019 is available [here](#). USDA also recently [announced \\$42.5 million in Distance Learning and Telemedicine Program \(not ReConnect\) funding awards across many states](#). Application dates for RUS Community Connect Grants and Distance Learning & Telemedicine Grants have not been announced yet.

### **Precision Agriculture**

The first meeting of the FCC’s advisory Task Force on precision agriculture met December 9. The Task Force chair is Teddy Berkel from Land O’Lakes; vice chair is Catherine Moyer from Pioneer Communications. Dr. Michael Adelaine from South Dakota State University is chair of the mapping working group and Dr. Sreekala Bajwa from Montana State University is the vice chair. Leaders of the other working groups are available [here](#). (Working groups are (1) Mapping and Analyzing Connectivity on Agricultural Lands; (2) Examining Current and Future Connectivity Demand for Precision Agriculture; (3) Encouraging Adoption of Precision Agriculture and Availability of High-Quality Jobs on Connected Farms; (4) Accelerating Broadband Deployment on Unserved Agricultural Lands.) [USDA’s recent report](#) on rural broadband infrastructure focused on next generation precision agriculture.

### **Federal Communications Commission**

The Commission’s next meeting will be January 30, 2020; the agenda is not yet available. The Commission’s December 12 meeting agenda and video of the meeting is available [here](#). Among other things, the Commission approved a notice of proposed rulemaking (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 Commission also approved an NPRM for [Facilitating Shared Use in the 3.1-3.55 GHz Band](#). The 3.1-3.55 GHz band is currently used by the Department of Defense for fixed and mobile radar as well as secondary non-federal amateur and experimental users. The Commission’s goal is to relocate non-federal users to clear spectrum for commercial 5G. Comments on these items will be due once they are published in the Federal Register. The Commission also approved an NPRM to establish a [national 988 number for suicide prevention and mental health crisis hotline](#) among other items.

Chairman Pai recently [appointed six USAC Board members](#) including Amber Gregory from the Arkansas State Library, representing libraries participating in E-rate.

### **Annual Broadband Deployment Notice of Inquiry**

On October 23, [the Commission issued its annual statutorily required inquiry](#) into “whether advanced telecommunications [*i.e.*, broadband] capability is being deployed to all Americans in a reasonable and timely fashion.” See [Section 706\(b\) of the Telecommunications Act of 1996](#). At stake is how the Commission defines success with respect to broadband deployment. Both Democratic Commissioners (Rosenworcel and Starks) dissented, arguing the Commission

continues to use a flawed methodology based on flawed Form 477 data. [Initial comments were filed November 22, 2019](#); [replies were filed December 9](#).<sup>1</sup> The major carrier associations have each commented that 25 Mbps down/3 Mbps up (25/3) continues to be the appropriate benchmark goal for fixed service.

#### USF Spending Cap NPRM and USF Contributions

On December 12, the FCC [announced](#) that the first quarter 2020 Universal Service Fund (USF) contribution factor would be 21.1%, down from 25%. Whether the contribution factor settles around 20% or trends higher will affect pressure to reform of the contribution methodology. Instead of packaging contribution reform together with a cap on overall USF expenditures ([as recently recommended](#) by the state members of the Federal-State Joint-Board on Universal Service<sup>2</sup>), this Commission chose to pursue the cap separately. See [USF spending cap Noticed of Proposed Rulemaking \(NPRM\)](#). Initial comments [were filed July 29](#) and [replies August 26](#). (SHLB's comments are [here](#); Utah Education and Telehealth Network (UETN) comments are [here](#).)

#### 2.5 GHz Rural Tribal Priority Window

As many of you are aware, 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. However, prior to that commercial auction, tribal entities in rural areas have a limited opportunity to apply for licenses to available 2.5 GHz spectrum in their areas. *The dates of this “rural tribal priority window” were recently announced: opening Monday, February 3, 2020; closing Monday, 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 upcoming training events here in DC and in other

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<sup>1</sup> All links to unofficial compilations of comments in this memorandum are courtesy [NECA Washington Watch](#).

<sup>2</sup> The [Federal-State Joint Board on Universal Service](#) was established in 1996 to make recommendations regarding the universal service provisions of the Telecommunications Act of 1996. It is comprised of both FCC Commissioners and State Utility Commissioners.

parts of the country. The general FCC website with links to these resources is here: <https://www.fcc.gov/25-ghz-rural-tribal-window>.

There is a workshop here in Washington, D.C., January 14, 2020. [Details and an agenda for the Rural Tribal Workshop were just announced](#). If you are interested in attending, email the FCC at [RuralTribalWindow@fcc.gov](mailto:RuralTribalWindow@fcc.gov).

Any federally recognized Tribe or Alaska Native Village may apply for spectrum, including consortia that are controlled or majority owned by eligible entities. Licensed areas can be designated by the applicant, so long as the area is rural Tribal land where the tribal entity has a local presence. “Rural” means a Census Bureau defined area that does not include an urbanized area with a population of greater than 50,000.

Up to three channels of spectrum in the 2.5 GHz band are available: one 49.5 megahertz channel, one 50.5 megahertz channel, and one 17.5 megahertz channel. Tribal applicants may apply for any or all of these three channels, depending on availability. If a licensee is already present in these areas in one or more of these channels, the tribal entity may obtain “overlay” rights so that if the existing licensee relinquishes the spectrum, it automatically will revert to the tribe.

Eligible entities automatically qualify for a license for available spectrum, however, to hold the license they will have to meet a buildout requirements and will not be able to sell or transfer their license – however spectrum leasing will be allowed and the service provided by the lessee can count towards the buildout requirement.

## **E-rate**

### Category 2 Budgets

On December 3, the FCC finally issued its long-awaited [order making Category 2 \(Cat2\) budgets permanent](#). The new Cat2 rules for funding year 2020 [will be effective January 20, 2020](#); the new Cat2 rules for funding year 2021 and beyond will be effective upon Office Management and Budget approval. The way the Commission handled the transition was to extend the five-year test period by one year, and to start the new Cat2 rules in 2021. On December 19, the Wireline Bureau [published further details](#) about how to calculate Cat2 budgeted funding for the 2020 transition year.

### Amortization of Up-Front Capital Costs

An FCC order addressing amortization is reportedly on circulation at the FCC. This was an item we were following last year that fell off the radar. Here is the background: 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. In the E-rate program these non-recurring capital charges are referred to as “special construction.”<sup>3</sup> 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. 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.<sup>4</sup>

### 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 fiber construction. Links to the main filings are below while dueling filings by interested parties continue; most recently, [Valley TeleCom has replied at length](#) (with exhibits) to the [Cochise County \(AZ\) school superintendent](#) (who had previously responded to [an accusatory letter from Commission O’Rielly](#)). Valley TeleCom explains among other things why it declined to bid on the almost \$30 million regional WAN proposal and raises many concerns, including an allegation that only 17 of the 47 original consortium participants remain. If you are following this issue closely, this is an important filing.

*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. Among other things, commenters opposing the petition question whether the objecting carriers made good faith efforts to participate in the bid process, and expressed concern incumbents were, effectively, trying to establish bid preferences.

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<sup>3</sup> 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.”)

<sup>4</sup> See *Second Modernization Order*, ¶¶ 17-21.

### Improving USAC's E-rate Form 470 Drop-Down Menu

The FCC's Wireline Bureau is [seeking comment on improving USAC's Form 470 drop-down selections](#) in USAC's web-based application portal. Stakeholders have long asserted that ambiguous or confusing instructions on how to make these selections lead to unwarranted funding denials by USAC. [Comments were filed October 31, 2019; replies November 15](#). At the same time, [the FCC has issued guidance for USAC](#) not to deny funding applications solely based on failure to select the correct drop-down option where the applicant has otherwise complied with competitive bidding rules. SECA's reply comments are [here](#).

Lastly, the Wireline Bureau on December 9, 2019, released the E-rate eligible services list for 2020 ([Appendix A of the Order](#)). The Bureau provided clarifications only, declining to add further eligible services to the list.

### Rural Health Care Program

#### 2019 Funding Demand

USAC has not yet published gross funding demand information (*i.e.*, the gross amount of funding requested), even though it is required to do so. This leads to speculation that demand again exceeds available funding. And while the *RHC Reform Order* creates new mechanics for when funding demand exceeds the funding cap (see item below), those rules are not in effect until next funding year (2020). USAC not releasing this information fits the pattern of prior years where USAC held back gross demand information while using the time to cull applications and perhaps bring demand below the cap. At the SHLB conference this year, a USAC panelist indicated that the delay this year is for reasons similar to last year when the \$150 million Healthcare Connect Fund (HCF) sub-cap was exceeded. Potentially available program-wide funding this year is \$677 million ([\\$594 million plus \\$83 million in rolled-over funding unused in prior years](#)).

#### RHC Reform Order

On December 10, 2019, the Commission released a Public Notice detailing the various effective dates for the many new rules enacted in the recent [Report and Order in the Rural Health Care program](#). On November 12, a number of parties, including SHLB, filed petitions for reconsideration or clarification of the recent [The SHLB petition](#) focused on the Commission's failure to consider major impacts the new prioritization system will have on consortia in the HCF, and problems with how "rural rates" are to be determined in the RHC Telecom Program. Other parties filing petitions included the [North Carolina Telehealth Network Association \(NCTNA\) and Southern Ohio Health Care Network \(SOHCN\)](#) (filing jointly), [US Telecom](#), the [Governor of Alaska](#),

and [Alaska Communications](#). (On October 21, GCI (the other major carrier in Alaska) also filed a petition for review in the DC Circuit Court of Appeals.) The NCTNA and SOHCN petition focused on the Commission's failure to consider raising the funding caps for the RHC program, especially after having strengthened rules that protect the program from potential waste, fraud and abuse. A comment window for these petitions for reconsideration [has been established](#): *Oppositions to the petitions are due by January 3, 2020; replies to oppositions are due on January 13, 2020.*

### **Net Neutrality**

[On October 1, 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 decision in [Mozilla vs. FCC](#) was not a complete win for the FCC however, as the Court reversed the FCC on blanket state preemption and remanded several issues including jurisdictional questions over pole attachment regulation and funding broadband through the Lifeline Program. After requesting additional time from the Court, on December 13, 2019, Mozilla and other parties sought rehearing *en banc* at the DC Circuit – links to all of the petitions for rehearing are [available here](#). 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.

Notably, on December 10, the FCC issued a number of citations, orders, and admonishments to a variety of companies for failing to disclose network management practices, performance, and commercial terms for their Broadband Internet Access Services (BIAS) offerings (as required by the FCC's Transparency Rule.) Failure to comply within 30 days could result in fines or forfeitures.

### **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.
- [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 October 1, 2019). *Note this list does not identify current laws, only current efforts to pass new laws.*

In addition, [Washington State is actively enforcing its net neutrality rules against Internet providers in that state. Oregon has a law similar to Vermont’s that prohibits state procurements from ISPs that violate net neutrality principles. Executive orders on net neutrality exist in other jurisdictions.](#)