



1300 NORTH 17th STREET, 11th FLOOR  
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400  
FAX: (703) 812-0486  
www.fhhlaw.com  
www.commlawblog.com

JEFFREY A. MITCHELL  
703-812-0450  
MITCHELL@FHHLAW.COM

VIA ELECTRONIC MAIL

To: Jen Leasure, The Quilt

From: Jeff Mitchell

Re: **Monthly Broadband Policy Update – through January 31, 2020**

### **Capitol Hill**

[House Democrats on January 29](#) released a new \$760 billion infrastructure spending plan that included \$86 billion for broadband deployment and digital equity. The House Energy and Commerce Communications & Technology Subcommittee [held a hearing the same day](#) addressing this new push (video at the link). Although clearly timed to help Democrats' election messaging, there is a real possibility that President Trump could publicly support the effort thereby putting pressure on the Republican-controlled Senate to produce bi-partisan legislation this year. We will be following this closely. (Note our discussion of C-Band developments has moved to the new Spectrum section below.)

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

NTIA is sponsoring an all-day [Smart Agriculture & Rural Supercluster Workshop](#) in Phoenix, AZ, on February 19, 2020 ([registration](#); [agenda](#)). Co-sponsored by NTIA, the National Institute of Science and Technology (NIST), and NTCA—The Rural Broadband Association (NTCA), speakers will include NTIA's Jean Rice and Dennis Buckmaster from Purdue University. The February webinar is [The Role of States in Expanding Broadband Access](#) and will also be held on Wednesday, February 19, 2020. Information from past webinars is available in the [webinar archive](#). The [BroadbandUSA Newsletter for January](#) includes notable state news from California, Missouri, Ohio, and Oregon (among others). The newsletter also 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 official funding announcement is [available here](#). Application forms and other resources are [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.)

Below are some of the changes to the program from last year:

- Definitions have been added for healthcare and educational facilities and the name for critical community facilities has been changed to essential community facilities.
- For 100 percent grants, 90 percent of the proposed funded service area cannot have sufficient access to broadband, as opposed to 100 percent under round one.
- The requirement for two years of unqualified, comparative, audited financial statements has been changed to unqualified, comparative, audited financial statements for the previous year from the date the application has been submitted.
- The requirement that applicants must submit certifications from the appropriate state or tribal broadband office has been changed to a voluntary request.
- Pre-application expenses that were incurred for round one, but benefit an application for round two, may be funded up to the 5 percent of the total award in round 2.
- Under certain conditions a subsidiary can use the unqualified, comparative, audited statements to meet certain eligibility requirements.
- The scoring criteria for farms has been changed. Applicants will receive 1 point for every 10 farms served up to a maximum of 20 points. Farms will be counted using 2017 Census of Agriculture data.
- Tribal leaders can submit documentation supporting scoring points for the number of healthcare, educational and essential community facilities.

- The time period incumbent service providers will be able to challenge if sufficient service is present in an applicant's proposed funded service area increased from 30 days to 45 days

ReConnect training workshops are again underway around the country, with [upcoming events](#) in Seattle, Denver and Atlanta. Recent ReConnect funding announcements include multi-million dollar projects in [Arkansas, West Virginia, Virginia, North Dakota, Minnesota and Iowa](#). A map showing all proposed and approved ReConnect projects in 2019 is available [here](#). Application dates for RUS Community Connect Grants and Distance Learning & Telemedicine Grants for 2020 have not been announced.

### **Precision Agriculture**

The FCC's [Precision Agriculture Connectivity Advisory Task Force](#) met for the first time on December 9; the meeting can be viewed [here](#). 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 [January 30, 2020 open meeting](#) included a [Report and Order](#) that will establish rules for the \$20.4 billion Rural Digital Opportunity Fund (RDOF) which will distribute high-cost universal service support through reverse auctions to bring high-speed broadband to unserved areas. Other items include hearing aid-compatible headset rules, Video Relay Services (for the disabled), modernizing broadcast TV notice delivery requirements, and an enforcement action.

### **Suspension and Debarment**

The FCC in December 2019 adopted a notice of proposed rulemaking (NPRM) [to expand the agency's suspension and debarment rules](#). Although the FCC has suspension and debarment rules that already apply to E-rate and the other universal service programs, the proposed rules would apply to all FCC programs and would give the FCC more discretion to suspend or debar program participants prior to completing a formal fact-finding investigation. Suspended and debarred entities could then be placed on a federal government-wide exclusion list, potentially affecting their ability to receive funding from other federal programs. Comments are due

February 13 with replies due March 16. SHLB will likely file comments in part opposing the proposed rule changes.

## **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.

### **2.5 GHz Rural Tribal Priority Window (formerly EBS)**

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>.

[SHLB \(along with the Utah Education and Telehealth Network and other groups\)](#) filed petitions for reconsideration of the EBS decision. Two industry groups – the [Wireless Communications Association International](#), and the [Wireless Internet Service Providers Association](#) (WISPA) – recently filed oppositions to these petitions. SHLB et al.’s response to the oppositions is [here](#). While no one expects this FCC to change course on EBS, there is hope the commercial auction can be delayed and that the next FCC will be more sympathetic to educational interests and consider giving schools the same access to the spectrum that tribal entities are being given.

### **C-Band (3.7-4.2 GHz)**

C-Band is mid-band spectrum important for 5G deployment which makes it quite valuable. Broadcast satellite operations are the current licensed users of the spectrum. FCC Chairman Pai [in November 2019 announced](#) he wants to reorganize C-Band spectrum by putting existing operators into a 200 MHz band, creating a 20 MHz buffer, and then auctioning the remaining 280 MHz band through a public auction. We have been reporting on the successful pressure on the FCC from Senator Kennedy (R-LA) to handle C-Band with a public auction rather than having existing licensees run a private auction. The public auction will take longer, but will ensure the substantial expected auction proceeds – \$40 billion by some estimates – will go to the treasury (or to such uses as Congress may require through new legislation). Former Chairman Wheeler

recently criticized Chairman Pai for wasting valuable time considering a private auction and that this FCC is dropping the ball on 5G. Chairman Pai's C-Band proposal is expected to be taken up at the February 28 FCC meeting.

### 3.1-3.55 GHz

The Commission recently 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 (DOD) 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 as much as 100 MHz spectrum for commercial 5G. Comments on these items will be due once they are published in the Federal Register. It remains to be seen how cooperative DOD will be in this effort.

### Citizens Broadband Radio Service (CBRS) (3.5 GHz)

The FCC's CBRS auction of priority access licenses (PALs) is scheduled to begin in June. You may recall this spectrum is being used for naval radar and so away from the coasts much of the spectrum is fallow. 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). Commissioner O'Rielly recently complained the DOD is "backsliding," adding additional facilities it says need interference protection. DOD also recently released an estimate of costs it will incur to share the spectrum of over \$98 million.

### 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.

## **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](#).

#### Amortization of Up-Front Capital Costs

On January 27 the FCC [released an order](#) making permanent a suspension of the rule requiring carriers to amortize their up-front costs for capital expenditures associated with E-rate eligible services. The order will be effective 30 days after Federal Register publication. 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>1</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>2</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

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<sup>1</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>2</sup> See *Second Modernization Order*, ¶¶ 17-21.

allegation that only 17 of the 47 original consortium participants remain. SHLB [recently filed a letter to Chairman Pai](#) responding generally to the Texas carriers.

*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.

### **Rural Health Care Program**

#### **2019 Funding Demand**

USAC's processing of 2019 funding decisions (for the period beginning July 1, 2019) appears to be behind the pace set last year. In addition, concern is high that demand again exceeds available funding, at least for the \$150 million allocated to the Healthcare Connect Fund for multi-year and infrastructure costs. The [RHC Reform Order issued in August](#) created a new prioritization mechanism for when funding demand exceeds the funding cap, but those rules are not in effect for this funding year. The FCC recently [released useful guidance for the different effective dates](#) for the many new rules enacted in the *RHC Reform Order*.

#### **RHC Reform Order**

On November 12, 2019, several parties including SHLB, each 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. No oppositions to any of the petitions were filed; comments supporting the petitions can be viewed [here](#). Notwithstanding strong support for some of these petitions and no opposition, we do not expect the FCC to make significant further changes to the RHC program at this time.

## 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.

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.*