

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 March 6, 2020**

Capitol Hill

[House Democrats in January](#) announced a \$760 billion infrastructure spending plan that includes \$86 billion for broadband deployment and digital equity. While the actual legislation is still being crafted, the plan outline is available [here](#). There are too many broadband bills not involving direct infrastructure investment to track at the moment, but one highlight is the appropriation of \$1 billion to fund “ripping and replacing” Huawei and ZTE equipment that President Trump is poised to sign into law (“The Secure and Trusted Communications Networks Act”). Legislative discussions about earmarking revenues from the upcoming Federal Communications C-Band auction (late next year) for broadband are ongoing. (Bonus link: How a Bill Becomes a Law (not Schoolhouse Rock): [Politico’s Essential Guide to Legislation](#).)

Broadband Reports and Research

Broadband and the States

On February 27, 2020, Pew Charitable Trusts released a study on “How States Are Expanding Broadband Access.” While surveying state programs nationwide, the study looks closely at examples in the following nine states: California, Colorado, Maine, Minnesota, North Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. The report is available [here](#).

Unrelated to the Pew study, Government Technology Magazine recently surveyed governor state-of-the-state addresses to examine their broadband priorities. That article is available [here](#).

Homework Gap

Although not strictly speaking an E-rate item (yet), some of you may have heard about the study out of Michigan State University’s Quello Center concerning the so-called Homework Gap. The recently released study shows a correlation between high school student performance and levels

of home broadband access and was largely able to isolate that correlation from socio-economic factors ([available here](#)). We understand that Merit Network played a key role facilitating the study. (The Benton Institute for Broadband & Society's summary of the report is available [here](#).)

First Annual Joint Federal Report on Rural Broadband Programs

Pursuant to the 2018 Farm Bill, the United States Department of Agriculture (USDA), Federal Communications Commission (FCC), and the National Telecommunications and Information Administration (NTIA) are required to submit a joint annual report providing an overview of how they are working together to deploy broadband to rural areas. The first report, which is [available here](#), provides summary status reports for all broadband programs administered by each agency.

National Telecommunications and Information Administration (NTIA)

Doug Kinkpoh is now acting head of NTIA, having taken over from Diane Rinaldo (also acting) who left in December. The NTIA March webinar features a one-year update on the Trump Administration's [American Broadband Initiative](#) and will be held on Wednesday, March 19, 2020. Information from past webinars is available in the [webinar archive](#). The [BroadbandUSA Newsletter for February](#) includes notable state news from Colorado, Illinois, Kansas, Missouri, Nebraska, New Mexico, Ohio, and North Carolina (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](#) 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](#). Similar to last year, as much as \$200 million in grant-only funding will be available. Application forms and other resources are [here](#). *The application window for all three categories of 2020 ReConnect funding opened January 31, 2020, and closes March 16, 2020.*

Recent ReConnect funding announcements include multi-million dollar projects in [Virginia, Texas, Eastern Nevada, South Carolina, Georgia, Utah, Illinois, and Tennessee](#). A map showing all proposed and approved ReConnect projects in 2019 is available [here](#).

Note that significant criticism for how ReConnect determines eligible areas – including relying on flawed carrier data (via FCC Form 477) – has been raised by the Oregon delegation. Their letter to Secretary of Agriculture Perdue is available [here](#) (hat tip, Steve Corbato from Link Oregon).

The 2020 application date for RUS [Community Connect Grants](#) has not been announced; the 2020 [Distance Learning & Telemedicine Grants](#) application deadline was recently announced as April 10, 2020. 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. The application deadline is April 13, 2020.

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 [next meeting](#) has been scheduled for March 25, 2019, starting at 9:30 am at the FCC here in DC. (The April 2019 USDA report on rural broadband infrastructure and next generation precision agriculture is available [here](#).)

Federal Communications Commission

The Commission's [February 28, 2020 open meeting](#) included a [public notice](#) seeking comment on Rural Digital Opportunity Fund (RDOF) pre-and post-auction application and competitive bidding procedures (Phase I). The FCC also adopted (among other things): a further TV white space [NPRM](#) proposing changes to the white space device rules in the TV bands to improve broadband coverage in rural and underserved areas; a [report and order and proposed order of modification](#) addressing procedures for reallocation of the so-called C-band (3.7 to 4.2 GHz), and a public notice ([draft](#)) seeking comment on C-band auction procedures; a [public notice](#) on procedures for the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band for next-generation wireless services; and a public notice ([draft](#)) establishing application and bidding procedures for auction of priority access licenses (PALs) in the Citizens Broadband Radio Service (CBRS) in the 3550-3650 MHz band. Final items are linked where available – more details regarding each of the spectrum items are below.

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. Initial comments were due February 13; replies are due March 16. SHLB's initial comments, filed jointly with the State E-rate Coordinators Alliance, are available [here](#). Initial comments were also filed by two groups of industry trade associations: [INCOMPAS, NTCA, ACA Connects](#) (competitive carriers, rural carriers, and small cable providers), and [CTIA and USTelecom](#) (large wireless and wireline carriers).

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. Note that more on TV Whitespace will be included next month.

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>.

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. 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](#). 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) (3.55-3.65 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 is scheduled to begin June, 25, 2020. 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.

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](#). Oppositions to these petitions [must be filed by March 14](#), with replies to oppositions due March 24, 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 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. SHLB [in January filed a letter to Chairman Pai](#) further responding 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.

Webinar on Community Anchor Institution Connectivity

On March 17, 2020, the Western Governors’ Association will sponsor a panel discussion on Community Anchor Institution Connectivity. The panel will be moderated by John Windhausen from SHLB – details and a registration link are [here](#).

Rural Health Care Program

2019 Funding Demand

On February 14, 2020, [USAC reported](#) RHC funding demand information for 2019 and the news was both good and bad. The bad news was that demand again exceeded the cap. Overall, program funding requests totaled \$719.48 million, well in excess of the \$594 million available. In addition, in the Healthcare Connect Fund (HCF), multiyear and upfront funding requests were far in excess of the \$150 million per year “sub-cap”:

	Current Demand (as of December 2019)
Multi-Year Requests Total	\$155.77 million
Upfront Requests	\$54.06 million
Total	\$209.83 million

The good news was that, in addition to the \$83.22 million in unused funding USAC identified last summer, it identified another \$162.67 million in unused funding. This unused funding is available should the FCC authorize USAC to commit funding in excess of program caps. We understand that FCC staff has stated that the Commission intends to use this unused funding to fully fund FY 2019 funding requests in excess of the caps, in both the overall program and the HCF.

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 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 are due March 30, 2020; replies are due April 29.*

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](#) (last updated October 1, 2019). *Note this list does not identify current laws, only current efforts to pass new laws.*