NECA’s Weekly Federal Regulatory Summary

November 4, 2019 HIGHLIGHTS

- The FCC released the order on reconsideration on CAF testing procedures and performance measures, which was adopted at the October 25, 2019 Open Meeting. The order addressed several petitions for reconsideration and applications for review of the 2018 Performance Measures Order and provides flexibility for smaller carriers by making targeted modifications to the testing procedures.

- The FCC issued a tentative agenda for its November 19, 2019 Open Meeting. The FCC will consider seven items, including: a report and order, FNPRM, and order that would ensure that USF support is not used to purchase equipment or services from companies posing a national security threat to the integrity of communications networks or the communications supply chain; and an NPRM on updating its unbundling and resale rules.


- The Wireline Bureau issued an order granting petitions filed by Sunflower Enterprises and Lakeland Communications for waivers of certain Part 51 rules to allow them to merge existing study areas.

- The Wireline Bureau seeks comment on a petition for waiver filed by Farmers Mutual Telephone Company of Stanton, Iowa, of certain Part 51 rules to modify access rate bands and charges and 2011 base period revenue requirements. Comments are due November 12, 2019; replies are due November 22, 2019.


- The USDA announced it invested $3.8 million in high-speed broadband infrastructure that will create or improve rural e-connectivity for more than 1,250 rural households in Virginia.

- Craigville Telephone and Consolidated Telephone filed a complaint against T-Mobile and Inteliquent in Illinois district court, alleging, among other things, T-Mobile’s provision of false ring tones resulted in lost opportunities to seek intercarrier compensation and lost profits and revenue.

- Final briefs were filed with the D.C. Circuit Court in the case addressing the Irregulators, et al.’s petition for review of the FCC’s order extending the separations freeze. Briefs include: the Irregulators, et al. final reply brief; Irregulators et al. final initial brief; FCC final brief; and NECA and NTCA final amicus brief.

Other Key Upcoming Dates

- Nov. 22 - Comments due on the 15th Broadband Deployment Report NOI to assess the availability of advanced telecommunications capability to all Americans in a reasonable and timely fashion. Replies are due December 9, 2019.

- Dec. 5 - Comments due on the effectiveness of the FCC’s 2012 tribal engagement further guidance, steps to assist parties with their engagement efforts, and on pending petitions for reconsideration. Replies are due January 6, 2020.

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USF Reform

- The FCC released the order on reconsideration on CAF testing procedures and performance measures on October 31, 2019, which was adopted at the October 25, 2019 Open Meeting. The order addressed several petitions for reconsideration and applications for review of the 2018 Performance Measures Order and provides flexibility for smaller carriers by making targeted modifications to the testing procedures carriers must use to show their networks perform at the Commission's speed and latency standards.

- West Carolina Rural Telephone Cooperative, Pineland Telephone Cooperative, JSI, and Moss Adams met with advisors to Chairman Pai and Commissioner O'Rielly on October 23, 2019, to discuss WCTel's support for Pineland's petition for reconsideration of the December 2018 report and order on A-CAM II support. They provided new data refining initial estimates on the budget impact and further refinement of how glide path companies would be handled were the petition to be granted, as well as how grant of the petition would benefit rural customers across the country. They said if the petition is granted, thousands of additional locations will be able to receive 25/3 Mbps broadband.

- Frontier Communications, on behalf of itself and its wholly owned subsidiary Navajo Communications, filed a petition for waiver on October 31, 2019, of its obligation under the CAF Phase II model-based support program to provide at least 10/1 service by year-end 2019 to 80% of its covered locations in Utah, New Mexico and Arizona, and any associated withholding of support corresponding to a shortfall in meeting that deadline. Frontier asserted it has not been permitted to build on the Navajo Nation for the past year and there is no indication it will be allowed to resume construction and provide qualifying service to the remaining locations in the Navajo Nation in time to meet its year-end 2019 obligations.

- GVNW and Siskiyou Telephone spoke with Chairman Pai's rural broadband advisor and the chiefs of staff to Commissioners O'Rielly and Rosenworcel on October 30, 2019, to provide an update on Siskiyou’s build-out obligations, and the impacts that its remote and rural territory in northern California has on the overall cost equation. Siskiyou also expressed its appreciation for the current level of universal service support funding that enables Siskiyou to deploy infrastructure.

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ICC

- The Wireline Competition Bureau issued an order on October 28, 2019, granting petitions filed by Sunflower Enterprises and Lakeland Communications for waivers of certain Part 51 intercarrier compensation rules to allow them to merge existing study areas. The Bureau said grant of the Sunflower petition will become effective upon the date of the merger of Lakeside Telephone and Sledge Telephone (wholly-owned subsidiaries of Sunflower), and grant of the Lakeland petition will be effective upon the date of the merger of Luck study area code and Milltown study area code.

- The Wireline Competition Bureau issued a public notice on October 30, 2019, seeking comment on a petition for waiver filed by Farmers Mutual Telephone Company of Stanton, Iowa, of sections 51.917(b)(1), and 51.917(b)(7), to modify access rate bands and charges and 2011 base period revenue requirements. Comments are due November 12, 2019; replies are due November 22, 2019.

- Replies are due November 4, 2019, on TrioTel Communications petition seeking a waiver of sections 51.917(b)(1) and 51.917(b)(7) to recalculate for merged study areas the 2011 Interstate Switched Access Revenue Requirement and 2011 RoR Carrier Base Period Revenue necessary to determine CAF-ICC support. public notice

- AT&T and the Local Exchange Carriers of Michigan and/or Prime Circuits (LEC- MI) filed their joint statement of stipulated facts, disputed facts, and key legal issues, and discovery and scheduling on October 30, 2019, in the case addressing AT&T’s formal complaint alleging LEC-MI improperly billed AT&T at least $1,054,897 in end office access charges on aggregated 8YY traffic that AT&T paid.
Broadband

- The USDA announced on November 4, 2019, it invested $3.8 million in high-speed broadband infrastructure that will create or improve rural e-connectivity for more than 1,250 rural households in Virginia. The funding is through the USDA's ReConnect Pilot Program and Mecklenburg Electric Cooperative will use this funding to deploy a FTTH broadband network capable of simultaneous transmission rates of 100 Mbps or greater. The funded service areas also includes two volunteer fire departments, and four educational facilities.

- Microsoft met with Chairman Pai's advisor on October 28, 2019, to discuss the report and order and second FNPRM that established a new Digital Opportunity Data Collection. Microsoft discussed its development of a Machine Learning Model that it says can assist the FCC, industry and other stakeholders in detecting areas without sufficient broadband availability. Microsoft also met with staff from the Wireline Competition Bureau, Office of Economics and Analytics, and Consumer and Governmental Affairs Bureau on October 29, 2019, to discuss the DODC report and order and second FNPRM. Microsoft said it discussed issues that were presented at its September 20, 2019 meeting with FCC staff. It also discussed its airband initiative, including its petition for rulemaking, which proposes improvements to the FCC’s television white spaces technical rules.

- CenturyLink filed a letter on October 30, 2019, to assert that any municipal or cooperative utility that wins RDOF support (or partners with such an entity) should be required to commit to provide access to their poles consistent with the Commission’s pole attachment rules. It claimed its experience comports with the findings in a report NCTA filed in July 2019, that pole attachment rates its cable members pay to municipal and cooperative electric utilities are more than double the rates they pay investor-owned utilities, and this disparity in rates is attributable to the fact that rates charged by municipal and cooperative electric companies are not subject to regulation pursuant to section 224.

- The Wireless Telecommunications Bureau issued a public notice on November 1, 2019, announcing the launch of a webpage that provides information about the rural tribal window that the FCC established in July 2019, and will provide federally recognized Tribal entities with an opportunity to apply for unassigned 2.5 GHz spectrum in what was formerly designated as the Educational Broadband Service. The FCC said the website provides access to a mapping tool that can be used by Tribal entities to help them assess whether and to what extent there is unassigned 2.5 GHz spectrum available over their eligible Tribal lands. The mapping tool provides a high-level view of spectrum availability and allows users to link to the Universal Licensing System to confirm the exact amount of eligible spectrum available. The Bureau also said the FCC is planning to host a workshop, tentatively scheduled for mid-December, to provide additional information.

- Zayo Group met with legal advisors to Chairman Pai and Commissioner Carr, and Wireline Competition Bureau staff on October 30, 2019, to discuss wireless broadband deployment. Zayo asserted many local and state governments condition Zayo's access to public rights of way for the purpose of deploying wireline facilities on the payment of above-cost and discriminatory access fees as well as on compliance with ambiguous in-kind contribution requirements. It asserted the FCC should clarify that the 2018 declaratory ruling applies equally to wireline facilities and small wireless facilities.

- Comments were filed on October 29, 2019, on WIA’s petitions for rulemaking and declaratory ruling regarding section 6409(a) of the Spectrum Act of 2012, and CTIA’s petition for declaratory ruling regarding section 6409 and the rules implementing section 224 of the Communications Act. AT&T supported the petitions and said local government approvals for the deployment of cell sites continue to be a hurdle and localities are misinterpreting many aspects of the FCC’s rules implementing section 6409(a). Verizon supported the petitions and said the FCC should confirm that a light pole is a pole and that utilities cannot make blanket denials of access to poles or portions of poles. Verizon also said regarding section 6409, further relief is needed to prevent localities from eroding section 6409’s mandatory approval language and to help ensure section 6409 provides the maximum public interest benefits by speeding wireless broadband deployment. WISPA supported the petitions and asserted its
members continue to face regulatory hurdles when they submit applications for eligible facilities requests under section 6409(a). WISPA said despite the good intentions of some communities, there continues to be uncertainty and inconsistent application of section 6409(a) and the FCC’s rules. NATOA, U.S. Conference of Mayors, and the National Association of Counties asserted the proposals in the petitions are contrary to the statutes the rules implement, would significantly intrude on local land use processes and pose serious public safety risks. CCA supported the petitions and said some jurisdictions continue to ignore the mandates of section 6409, or wield the FCC’s rules in a manner that delays deployment. American Tower asserted the requested clarifications, in combination with ongoing FCC initiatives designed to remove barriers to infrastructure deployment, promise to ease burdens associated with broadband deployment. Reply comments are due November 13, 2019. all comments available, public notice, order

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Universal Service

- USAC filed the Federal Universal Service Support Mechanisms Fund Size Projections for the first quarter of 2020 on November 1, 2019. USAC indicated the total high-cost support mechanism funding requirements are projected to be $1.186 billion. (Appendices are available on USAC’s website).

- The Wireline Competition Bureau released an order on October 30, 2019, granting, on its own motion, a limited, one-time waiver to certain Lifeline subscribers who received incorrect information about the deadline for recertifying their eligibility for the Lifeline program. The Bureau said in letters sent by USAC, certain subscribers were informed they had 90 days in which to recertify their eligibility for the Lifeline program, rather than the 60-days provided for under the Lifeline program rules. The Bureau said to prevent the impacted Lifeline subscribers from the hardship of de-enrollment as a result of their reliance on the incorrect deadline in the USAC letters, it waived the 60-day recertification deadline and allowed the impacted Lifeline subscribers to recertify by the deadline provided in their recertification letters.

- The Wireline Competition Bureau released a public notice on October 31, 2019, granting, denying, and dismissing various petitions related to actions taken by USAC on E-Rate and rural health care. Petitions for reconsideration or applications for review of these decisions must be filed within 30 days of the public notice.

- TracFone Wireless filed a letter on October 30, 2019, on CTIA, et al.’s petition that asked the FCC to pause the December 1, 2019 implementation of an increase in the Lifeline minimum required broadband data usage allowance and the phasedown in Lifeline support for voice services. TracFone urged the FCC to partially grant the petition and enforce a monthly broadband data allowance of 3 GB beginning December 1 in lieu of the 8.75 GB dictated by the formula under section 54.408(b)(2)(ii)(D). It also asked the FCC to expedite the State of the Lifeline Marketplace Report, as required by the Commission’s 2016 Lifeline order by one year and to freeze the December 2019 standards until the report can be evaluated.

- The National Lifeline Association and Q Link Wireless filed a letter on October 31, 2019, to urge the FCC to grant CTIA, et al.’s petition that asked the FCC to pause the December 1, 2019 implementation of an increase in the Lifeline minimum required broadband data usage allowance and the phasedown in Lifeline support for voice services.

- i-wireless met with Wireline Competition Bureau staff on October 23, 2019, to discuss points summarized in its July 2013 letter regarding development and implementation of the National Lifeline Accountability database. It also asked the Commission to correct exhibit B of the June 2012 order granting i-wireless ETC status in Florida, to reflect it had applied for ETC designation in the BellSouth service area as well as the rest of Florida.

- BEK Communications filed a letter on October 30, 2019, to notify the FCC it is availing itself of forbearance relief granted by the 2016 order from the obligation to offer Lifeline-supported broadband internet access service. BEK said it is electing forbearance relief for those census blocks in their study
areas not funded under A-CAM II, and said it does not receive high-cost support for those unfunded census blocks and is not subject to broadband public interest obligations.

- Comments were filed on October 31, 2019, on improving the FCC Form 470 (E-Rate) drop-down menu. CenturyLink suggested having applicants specify whether they are seeking Internet access or WAN connectivity, and removing the requirement of specifying circuit quantity for circuit-based services on the form. The State E-rate Coordinators Alliance supported the four criteria proposed by the FCC to revise the form, and suggested the FCC use consistent terms and phrases that are used in E-Rate orders and rules. EducationSuperHighway suggested eliminating the Internet Access/ISP Service Only option, and replacing it with Internet Service (with or without transport) and eliminating the three subcategories for basic maintenance of internal connections and managed internal broadband services. Replies are due November 15, 2019.

- Hood Canal Communications and CenturyLink filed a petition on October 28, 2019, seeking a study area waiver to reflect the service offered by HCC east of the town of Union, Washington. They said this area was originally within CenturyLink's Washington study area and request that the territory be removed from CenturyLink's study area and recognized as part of HCC's study area.

- Mohawk Networks filed a letter on October 18, 2019, asking to withdraw its pending application for New York State's CAF Phase II support. Mohawk said due to inadequate proposed project budget assumptions it notified the Empire State Development Broadband Project office it would not be fulfilling the deployment obligations associated with the NY Broadband Phase 3 grant and the FCC NY CAF buildout obligations.

- Sens. Brian Schatz (D-Hawaii), Roger Wicker (R-Miss.), Ben Cardin (D-Md.), John Thune (R-S.D.), Mark Warner (D-Va.) and Cindy Hyde-Smith (R-Miss.) introduced a bill on October 30, 2019, entitled the Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2019. The bill would: provide the Secretary of Health and Human Services with the authority to waive telehealth restrictions when necessary; remove geographic and originating site restrictions for services like mental health and emergency medical care; allow rural health clinics and other community-based health care centers to provide telehealth services; and require a study to explore more ways to expand telehealth services.

Call Completion

- Craigville Telephone and Consolidated Telephone filed a complaint against T-Mobile and Inteliquent (as well as unnamed defendants) on November 1, 2019, in Illinois district court. The complaint alleged T-Mobile's provision of false ring tones injured the plaintiffs' businesses in many ways, including lost opportunities to seek intercarrier compensation for calls the scheme blocked from connecting to the plaintiffs' switches, lost profits and revenue, reputational harm caused by plaintiffs' customers' false impression that their local rural carrier was responsible for call completion failures, loss of good will with customers, and lost time value of labor hours associated with investigating and responding to customer complaints, among other things. Complainants asserted T-Mobile conceded its misconduct in an April 2018 consent decree with the FCC, which included payment of a $40 million penalty to the U.S. Treasury, but that the decree did nothing to compensate any of the consumers that were victims of T-Mobile's ring tone scheme.

Misc.

- The FCC released the following items that were adopted at its October 25, 2019 Open Meeting: the order on reconsideration on CAF testing procedures and performance measures, addressing several petitions for reconsideration and applications for review of the 2018 Performance Measures Order and provides flexibility for smaller carriers by making targeted modifications to the testing procedures carriers must use to show their networks perform at the Commission's speed and latency standards; the declaratory ruling that clarified section 6(f)(1) of the New and Emerging Technologies 911
Improvement Act of 2008 and ensured regulatory parity in 911 fees between VoIP services and traditional telecommunications services; the report and order that amended the FCC’s tariffing rules to better align them with the reality of easy electronic access to tariff filings; and the order and sixth FNPRM that streamlines rules and procedures to expedite the successful completion of the 800 MHz band reconfiguration initiative.

- The FCC issued a tentative agenda on October 29, 2019, for its November 19, 2019 Open Meeting. The FCC will consider a report and order, FNPRM, and order that would ensure that USF support is not used to purchase equipment or services from companies posing a national security threat to the integrity of communications networks or the communications supply chain, proposes additional actions to address national security threats to USF-funded networks, and collects information to help assess the extent to which equipment from covered companies already exists in such networks. The FCC will also consider a fifth report and order and FNPRM that would adopt a vertical, or zaxis, location accuracy metric in connection with wireless E911 calls and propose additional measures to improve E911 location accuracy; an NPRM on updating its suspension and debarment rules to make them consistent with OMB guidelines, in order to better prevent bad actors from participating in USF programs, TRS programs, and the National Deaf-Blind Equipment Distribution Program; an NPRM on updating its unbundling and resale rules to reflect the marketplace realities of intermodal voice and broadband competition and to encourage both ILECs and CLECs to invest in next-generation networks; an NPRM on whether to authorize AM stations to transition to an all-digital signal on a voluntary basis; an NPRM on whether the duplicative programming rule applicable to commonly owned radio stations in the same market should be modified or eliminated given the current broadcasting marketplace; and a report and order that would expand the TRS fund contribution base for covering the costs of providing IP Captioned Telephone Service to include intrastate telecommunications revenue.

- Chairman Pai wrote a blog post on October 28, 2019, on items the FCC will consider at its November 19, 2019 Open Meeting. Pai said the FCC will consider, among other things, an order (fact sheet) that would prohibit the use of USF dollars to purchase equipment or services from any company that poses a national security threat and would propose a process to remove and replace such equipment from USF-funded communications networks.

- The Wireline Competition Bureau issued a public notice on October 29, 2019, to announce the opening of docket no. 19-308, entitled Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services. The FCC will consider an NPRM in this docket at its November 19, 2019 Open Meeting.

- Final briefs were filed with the D.C. Circuit Court on October 31, 2019, in the case addressing the Irregulators, et al.’s petition for review of the FCC’s order extending the separations freeze. Briefs include: the Irregulators, et al. final reply brief; Irregulators et al. final initial brief; FCC final brief; and NECA and NTCA final amicus brief.

- Commissioner Rosenworcel testified before the Senate Committee on Homeland Security and Governmental Affairs on October 31, 2019, to discuss 5G and supply chain issues. She said if the United States wants to lead in 5G, it must secure the 5G supply chain, build networks that can withstand connection to equipment vulnerabilities around the world, and have a smarter spectrum policy.

- Commissioner Starks spoke at the 5G Rural Engagement Initiative on October 30, 2019, to discuss national security and supply chain issues. He discussed measures the government and FCC have taken, including the signing of an executive order barring the purchase or use of equipment produced by an entity controlled by a foreign adversary. He also said the FCC has proposed a ban on using the funds its universal access programs provide to purchase equipment from suppliers considered a security risk, which it will vote on at its November 19 open meeting.

- Huawei filed a written ex parte on October 31, 2019, on supply chain issues. Huawei responded to a citation in the draft report and order to a 2019 report by Finite State on the security of Huawei’s products and services. Huawei asserted the report evaluated old versions of its products and identified issues that were fixed in updated versions of the products. Huawei filed another ex parte that it says
addresses concerns raised by the Commission regarding obligations that Chinese laws purportedly impose on Chinese companies.

- No comments were filed on Southwest Arkansas Telephone Cooperative’s request that the FCC to allow it include in its rate base the interstate portion of prepaid accumulated post-retirement benefits recorded in Account 1410, Other Noncurrent Assets, beginning with the date the prepayments were made. public notice

- No replies were filed on a section 214 application filed by the estate of Jack Lee Barton, through its co-executors, and the non-exempt marital income trust U/W Jack Lee Barton and Lintel, requesting consent to transfer control of Hart Telephone and Hart Communications. public notice

Upcoming Filing Dates

- Nov. 6 - Comments due on the NPRM proposing procedural changes that would streamline certain FCC administrative hearings. Replies are due November 21, 2019. FR

- Nov. 12 - Comments due on a petition for waiver filed by Farmers Mutual Telephone Company of Stanton, Iowa, of sections 51.917(b)(1), and 51.917(b)(7), to modify access rate bands and charges and 2011 base period revenue requirements. Replies are due November 22, 2019. public notice

- Nov. 13 - Replies due on WIA’s petitions for rulemaking and declaratory ruling regarding section 6409(a) of the Spectrum Act of 2012, and CTIA’s petition for declaratory ruling regarding section 6409 and the rules implementing section 224 of the Communications Act. public notice, order

- Nov. 14 - PRA comments due on a new information collection associated with the 833 code toll-free number auction. The FCC seeks comment on the letters of authorization in order to verify the relationship between the responsible organization and the potential subscriber, and on collecting data on secondary market transactions. notice

- Nov. 15 - Replies due on improving the FCC form 470 drop-down menu. Form 470 is used by E-Rate program applicants use to solicit bids from service providers for E-Rate eligible services. public notice

- Nov. 18 - Comments due on the establishment of a computer matching program the FCC and USAC will conduct with agencies from the States of South Carolina, Virginia, and Washington to verify the eligibility of applicants to and subscribers of the Lifeline program. notice

- Nov. 21 - Replies due on the NPRM proposing procedural changes that would streamline certain FCC administrative hearings. FR

- Nov. 22 - Replies due on a petition for waiver filed by Farmers Mutual Telephone Company of Stanton, Iowa, of sections 51.917(b)(1), and 51.917(b)(7), to modify access rate bands and charges and 2011 base period revenue requirements. public notice

- Nov. 22 - Comments due on the 15th Broadband Deployment Report Notice of Inquiry that initiates the next annual assessment of the availability of advanced telecommunications capability to all Americans in a reasonable and timely fashion. Replies are due December 9, 2019.

- Nov. 22 - Comments due on the FNPRM on proposals to amend the FCC’s schedule of regulatory fees for FY 2020. Reply comments are due December 23, 2019. FR

- Dec. 5 - Comments due on the effectiveness of the FCC’s 2012 tribal engagement further guidance, steps the FCC can take to assist parties with their engagement efforts, and refreshing the record on pending petitions for reconsideration that were filed on the tribal engagement obligation reporting. Replies are due January 6, 2020. public notice
• Dec. 9 - Replies due on the 15th Broadband Deployment Report Notice of Inquiry that initiates the next annual assessment of the availability of advanced telecommunications capability to all Americans in a reasonable and timely fashion.

• Dec. 16 - PRA comments due on a revision of a currently approved information collection associated with the urban rates survey. notice

• Dec. 16 - PRA comments due on an extension of a currently approved information collection associated with section 69.123, density pricing zone plans. notice

• Dec. 23 - Replies due on the FNPRM on proposals to amend the FCC’s schedule of regulatory fees for FY 2020. FR

• Dec 24 - PRA comments due on an extension of a currently approved information collection associated with FCC Form 833, application to participate in a toll-free number auction. FR

• Dec. 24 - PRA comments due on an extension of a currently approved information collection associated with numbering resource optimization- phase 3. FR

• Jan. 6 - Replies due on the effectiveness of the FCC’s 2012 tribal engagement further guidance, steps the FCC can take to assist parties with their engagement efforts, and refreshing the record on pending petitions for reconsideration that were filed on the tribal engagement obligation reporting. public notice