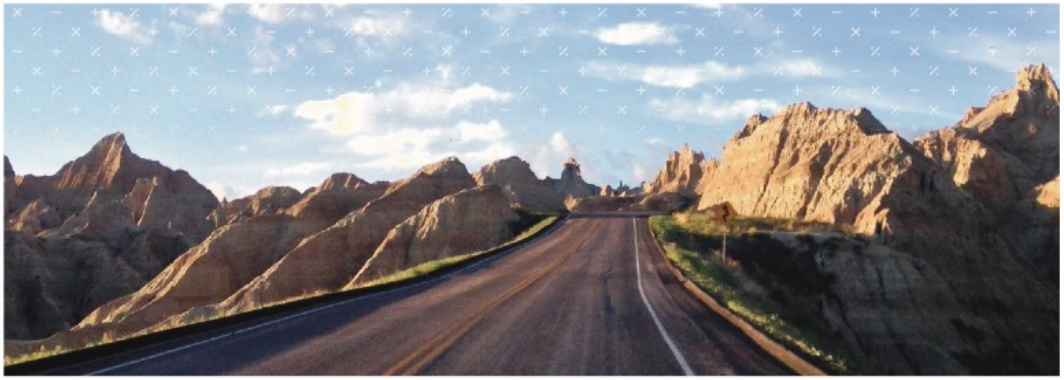
FCC REPORT

A Summary of Federal Orders, Court Rulings, and Reporting Requirements

IN THIS ISSUE



FCC Authorizes A-CAM II Support for 171 Rate-of-Return Carriers

On August 22nd, the FCC's Wireline Competition Bureau released a Public Notice authorizing 171 rate-of-return carriers that elected 184 offers of Alternative Connect America Model (A-CAM) II support to receive that model-based support. Collectively, these companies are committing to provide at least 25/3 Mbps broadband service to more than 360,000 locations, including more than 37,000 locations on Tribal lands. The A-CAM II support authorized totals $491.4 million per year.

Along with the Public Notice, the Wireline Bureau released a report listing the carriers authorized to receive A-CAM II support. The report shows each carrier's authorized annual support amount, the associated deployment obligations, and the census blocks eligible for model-based support.

USAC has been authorized to obligate and disburse the annual support amounts over a 10-year term, from January 1, 2019 to December 31, 2028, for each carrier that accepted the A-CAM II support offer. USAC is also directed to disburse the appropriate transition payments to 35 "glide path" carriers for whom the A-CAM II support amount is less than the legacy support they received in 2018. USAC has indicated they will be processing A-CAM II support with August support paid in September. Disbursements for August paid in September will include A-CAM II support for January through July 2019, netted with legacy high cost support already received for that period. (Details of the netting methodology are not yet available.)

All carriers authorized to receive model-based support are subject to defined deployment obligations that must be met over the 10-year period, with annual reporting of their progress. A-CAM II support recipients are required to report new broadband deployment for 2019 by March 1, 2020. In addition, any locations in eligible census blocks that already have broadband meeting the minimum standards may be reported to satisfy the carrier's deployment obligations. A-CAM II recipients will have until March 1, 2021 to report locations where qualifying broadband was deployed prior to 2019.

A-CAM II support recipients must exit the NECA Common Line pool, although they may continue to use NECA to tariff their Common Line and Consumer Broadband-Only Loop (CBOL) charges.

A-CAM II support recipients that have not already done so are also eligible to move their business data services (BDS) offerings to incentive regulation in 2020. NECA pool carriers authorized for A-CAM II support that elect to move their BDS offerings to incentive regulation must notify NECA by March 1, 2020 of their intent to remove their BDS offerings from the NECA traffic sensitive tariff and pool. In addition, all A-CAM II support recipients that elect to move their BDS offerings to incentive regulation must notify the Wireline Competition Bureau of their election by May 1, 2020, and file revised tariffs reflecting their election of incentive regulation for their BDS offerings to be effective July 1, 2020.

FCC Regulatory Fees for FY 2019 Due September 24th

On August 27th, the FCC released a Report and Order that adopts a schedule to collect regulatory fees for fiscal year (FY) 2019. Appendix C of the Report and Order provides a list of annual regulatory fees by category. The Commission also publishes industry-specific guidance in "What You Owe" Fact Sheets for each category on its Regulatory Fees web page.

In a Public Notice released August 28th, the FCC announced that its Fee Filer system is open for payment of FY 2019 regulatory fees. While the FY 2019 regulatory fees will not officially become effective until the Report and Order is published in the Federal Register, payments may be submitted any time before the due date of FY 2019 regulatory fees. *Regulatory fee payments must be received no later than 11:59 pm EDT on September 24, 2019*.

Payment methods and procedures for FY 2019 regulatory fees were published in a Public Notice released September 5th. Using the online Fee Filer system is mandatory. The Commission will not accept checks, money orders or cashier's checks.

Regulatees whose total FY 2019 annual regulatory fee liability, including all categories of fees for which payment is due, is $1,000 or less are exempt from payment of FY 2019 regulatory fees. The *de minimis* threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year filings), and it is not a permanent exemption. Rather, each regulatee needs to reevaluate their total fee liability each fiscal year to determine whether they meet the *de minimis* exemption. Regulatees are responsible for calculating their own total fee obligation to determine whether they qualify for the *de minimis* exemption. The FCC reserves the right to request documentation that supports a *de minimis* exemption claim.

Entities that are exempt under Section 501 of the Internal Revenue Code may also be exempt from payment of the regulatory fees. Any entity claiming exempt status must submit, or have on file with the FCC, a valid IRS Determination Letter documenting its nonprofit status. If you have questions regarding whether your company is exempt, you can call the Commission's Financial Operations Help Desk at 877-480-3201 (Option 6), or 202-418-1995.

FCC Releases Tariff Review Plan for Rate-of-Return Carriers That Elected Incentive Regulation for BDS Offerings

On September 6th, the FCC posted on its website a tariff review plan (TRP) for use by rate-of-return carriers that have elected incentive regulation for their business data services (BDS) offerings. Rate-of-return carriers that have elected incentive regulation for BDS offerings must file tariff review plans reflecting any exogenous cost adjustment for Telecommunications Relay Service (TRS), North American Numbering Plan Administration (NANPA), and regulatory fees in rates to be effective October 1, 2019. The exogenous cost adjustment for TRS must be grossed up to spread the entire adjustment over the remaining months in the tariff year.

The TRP posted on the FCC's website was prepared by NECA for rate-of-return carriers for which NECA files BDS rates. The TRP is designed to ensure that carriers make exogenous cost and rate adjustments in accordance with the Commission's price cap rules for filings other than the annual filing. This TRP or its equivalent should be used by carriers that file their own BDS rates.

FCC to Consider Rules that Eliminate Incentives to Engage in Access Arbitrage Schemes

The FCC has released a draft Report and Order that, if approved, will adopt rules aimed at eliminating financial incentives to engage in access stimulation arbitrage schemes. Commissioners will consider the draft Order at the FCC's September 26th open meeting.

According to the draft Order, some rural local exchange carriers have been taking advantage of high access rates for terminating calls to engage in access stimulation arbitrage schemes. Specifically, to artificially increase their access charge revenues, these LECs stimulate terminating call volumes through revenue sharing arrangements with providers of "free" high-volume calling services, such as conference calling and chat lines. This generates extraordinary numbers of inbound calls, resulting in excessive access charges that interexchange carriers (IXCs) are forced to pay.

In response to Commission action in the 2011 *USF/ICC Transformation Order*, arbitragers have adjusted their access stimulation schemes to take advantage of access charges that have not yet transitioned, or are not set to transition, to bill-and-keep. These schemes are structured to ensure that IXCs pay high terminating tandem switching and tandem switched transport charges to access-stimulating LECs and to the intermediate access providers (including centralized equal access providers) chosen by those access-stimulating LECs.

To eliminate the use of the ICC system to subsidize "free" high-volume calling services, the draft Order requires access-stimulating LECs to bear financial responsibility for all (interstate and intrastate) tariffed tandem switching and transport charges for terminating traffic to its own end office(s) or functional equivalent, whether terminated directly or indirectly. Shifting the financial responsibility from the IXC to the access-stimulating LEC for delivery of traffic to its end office, or functional equivalent, is intended to eliminate the incentives that access-stimulating LECs have to switch and route traffic inefficiently, including by using intermediate providers to do the same.

The draft Order also redefines "access stimulation" to include situations in which the access-stimulating LEC does not have a revenue sharing agreement with a third party high-volume calling service provider. Under the FCC's current test for access stimulation, the involved LEC must (1) have a revenue sharing agreement, and (2) meet one of two traffic triggers: the LEC must either have an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month or have had more than a 100 percent growth in interstate originating and/or terminating switched access minutes-of-use in a month compared to the same month in the preceding year. The draft Order leaves this current test in place and adds a second alternate test which requires no revenue sharing agreement and an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.

If adopted, the rule requiring access-stimulating LECs to assume financial responsibility for all terminating tandem switching and transport for any traffic between the LEC's terminating end office or equivalent and the associated access tandem switch would become effective 30 days after publication of the Order in the Federal Register. Access-stimulating LECs and affected intermediate access providers would be given an additional 45 days from the effective date of the rule to come into compliance.

In addition, the draft Order requires LECs engaged in access stimulation to provide notice to the FCC and to any affected IXCs and intermediate providers of their status as access stimulators and of their acceptance of financial responsibility for all applicable tariffed terminating tandem switching and transport charges. This rule requires approval from the Office of Management and Budget (OMB) and would become effective 45 days following that approval..

FCC Delays Initiation of the CAF Phase II Auction Eligible Locations Adjustment Process

On August 19th, the FCC's Wireline Competition Bureau released a Public Notice announcing that it is delaying initiation of the CAF Phase II post-auction process to adjust the deployment obligations and support of authorized auction winners when the total number of actual locations in eligible areas is less than the number of funded locations. CAF Phase II auction winners were originally required to submit evidence of the total number of locations in the eligible areas in the state by August 28, 2019 (one year following the release of the Phase II auction closing public notice). However, the FCC also directed the Wireline Bureau to release a public notice or order detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence, which the Bureau has yet to do.

In September 2018, the Wireline Bureau released a public notice seeking comment on proposals for resolving location discrepancies in eligible census blocks within winning bid areas. Then in June 2019, the Bureau sought comment on approaches to resolve similar discrepancies for rate-of-return carriers receiving A-CAM support, specifically asking whether the processes proposed for CAF Phase II auction winners should be used. Since the Wireline Bureau has yet to take action in these proceedings, it is delaying the filing deadline for CAF Phase II auction winners until further notice. In a future order, the Bureau will adopt specific procedures and requirements for this eligible location adjustment process and announce a new filing deadline that provides participants adequate time to compile and file evidence.

Comments on Rural Digital Opportunity Fund NPRM Due September 20th

On August 21st, the FCC's Notice of Proposed Rulemaking seeking comment on establishing the Rural Digital Opportunity Fund was published in the Federal Register. (See the August issue of the FCC Report for a detailed article.) Comments are due by September 20th; reply comments by October 21st.

The Rural Digital Opportunity Fund would target high-cost support in price cap areas that lack access to 25/3 Mbps broadband service. The FCC proposes to assign funding in two phases using a reverse auction. Phase I would target wholly unserved census blocks based on current Form 477 data. Phase II would target unserved locations in partially unserved census blocks based on a new, more granular Digital Opportunity Data Collection, along with areas not won in Phase I.

Comments on Digital Opportunity Data Collection Second FNPRM Due September 23rd

On August 6th, the FCC released a Report and Order and Second Further Notice of Proposed Rulemaking that initiates the "Digital Opportunity Data Collection," a new data collection that will gather geospatial data on broadband service availability. (See the August issue of the FCC Report for a detailed article.) On August 22nd, the Second FNPRM was published in the Federal Register. Comments are due by September 23rd; reply comments by October 7th.

Under the Digital Opportunity Data Collection, all fixed broadband providers will be required to submit granular maps of the areas where they have broadband-capable networks and make service available. In the Second FNPRM, the FCC seeks comment on ways to develop location-specific data that could be used in conjunction with the polygon-based data in the new collection to precisely identify the homes and small businesses that have and do not have access to broadband services.

Nominations for Six USAC Board Member Positions Due October 28th

The Wireline Competition Bureau has released a Public Notice seeking nominations for six positions on the USAC Board of Directors for a three-year term. All nominations must be filed with the FCC by October 28th.

Nominations are sought for the following positions:

- Representative for libraries that are eligible to receive E-Rate discounts (position currently held by Robert Bocher, Consultant, Wisconsin Dept. of Public Instruction)
- Representative for cable operators (position currently held by Beth Choroser, Vice President of Regulatory Affairs, Comcast Corporation)
- Representative for schools that are eligible to receive E-Rate discounts (position currently held by Dr. Daniel A. Domenech, Executive Director, American Association School Administrators)

- Representative for mobile wireless providers (position currently held by Matt Gerst, Director for Regulatory Affairs, CTIA)
- Representative for state consumer advocates (position currently held by Cynthia Kinser, formerly Deputy Attorney General, Office of the Tennessee Attorney General)
- Representative for incumbent local exchange carriers (Bell Operating Companies) (position currently held by Joel Lubin, Consultant, AT&T)

If members of the relevant industry or non-industry group fail to reach consensus on a candidate to serve on the Board, or fail to submit a nomination for the particular Board member seat, the Chairman of the FCC will select an individual from that industry or non-industry group to serve on the Board.

Nominations may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. Each nomination must be captioned: "In the Matter of: Nomination for Universal Service Administrative Company Board of Directors, CC Docket Nos. 97-21 and 96-45."

FCC Reporting Requirements

Sep 12

MOSS ADAMS REGULATORY WEBCAST

8:30 am PT - 9:30 am MT - 10:30 am CT – 11:30 am ET

As part of Moss Adams' monthly regulatory compliance webcast series, we will discuss upcoming FCC, NECA, and USAC regulatory compliance reports that are due. Moss Adams will provide an overview of monthly reporting requirements followed by an opportunity for questions and answers. In addition, Moss Adams staff will discuss key FCC issues that have an immediate business impact.

Sep 18

FCC Form 507: CAF-BLS Line Count Report (Voluntary)

Legacy rate-of-return ILECs not affiliated with a price cap company receiving CAF BLS are required to file FCC Form 507 with USAC no later than March 31 of each year. The data collected on this form is used by USAC to calculate the amount of support that each reporting carrier is eligible to receive. The annual filing is to contain line count data as of December 31 of the preceding calendar year. Line count data is not required on a quarterly basis, but a carrier may submit line count data voluntarily.

Oct 8

Lifeline Claims Reporting

Service providers that file certified reimbursement claims through USAC's E-File system by the eighth day of the month can receive payment for the claim at the end of the same month. Service providers that do not file by the eighth day of the month will receive payment the following month. All service providers are required to use the Lifeline Claims System (LCS) online reimbursement process. Service providers can access the LCS online through the National Lifeline Accountability Database (NLAD). Detailed instructions are available by clicking on the "Instructions" link in the upper-right corner of the LCS interface.