REGULATORY VIEW

Volume 29 Issue 12 — December 2014

FCC Modifies RLEC USF Rules

As anticipated, the FCC released an Order adopting several proposals from the NPRM released earlier this year in conjunction with its Omnibus Order (see *TCA Regulatory View*, June 2014). Changes impacting RLECs include: 1) changing the method for capping HCLS, 2) adopting a process, evidentiary standard and a timeline for implementing the 100% overlap rule, and 3) increasing the required broadband speed to 10/1 Mbps.

The FCC changed the HCLS cap from a per-line to a percentage method, which will reduce support proportionally among all RLECs. This will be accomplished by freezing the NACPL as of July 1, 2015 and instead applying the necessary percentage to comply with the indexed HCLS cap to all recipients. The FCC believes this is the "more equitable distribution" of HCLS while maintaining the cap and will prevent RLECs from "falling off the cliff" under the current method. The FCC declined to adopt NTCA's proposed compromise of a 50/50 per-line/percentage method, stating that it did not fully address the "cliff effect" – as 11 RLECs are projected to lose all HCLS.

The FCC adopted a process for determining whether an unsubsidized competitor provides service across 100% of an RLEC service area – and announced it will be implemented in 2015. The FCC indicates that the WCB will review study area boundaries, Form 477 data and the National Broadband

(Continued on page 2)

Inside this Issue:

Your TCA Regulatory Consultants

- Kevin Kelly
- Stacey Brigham
- Daniel Meszler
- Curt Huttsell

(Continued from page 1)

Map to identify overlaps. The Rural Associations had filed a petition proposing that the burden of proof be assigned to the competitive carriers rather than the RLECs. The FCC did not address this request – claiming that the identified study areas will be published every two years and impacted RLECs will be provided an opportunity for dispute. The FCC indicates that all high-cost support will not be immediately eliminated for such RLEC study areas, but will phase down over three years.

Finally, the FCC has increased the minimum broadband speed standard to 10/1 Mbps, from 4/1 Mbps. In exchange for increasing the required data speed, price cap LECs will receive CAF II support for six years, instead of 5 years – with the build out requirements extended an additional year as well. However, CAF II model support will not be provided to areas already able to meet the 4/1 Mbps standard – these areas will not be eligible for support until the Phase II competitive bidding process. RLECs unable to meet the new 10/1 standard will still only be required to do so upon reasonable request. According to the FCC, this only requires RLECs to “cost effectively” extend the network to locations based on the anticipated customer revenues plus all other revenues generated by that line including state and federal funding.

***TCA View**: As expected, the FCC has chosen to apply the “haircut” approach to cap HCLS. While the FCC did acknowledge TCA’s concerns that that this approach unfairly punishes companies that have diligently upgraded facilities to exceed the broadband standards, it stated that there is no support to such claims and asserted the waiver process is available to correct this problem.*

TCA Contact: Daniel Meszler

USAC Changes Lifeline Form 555 Again

Once again, USAC has made changes to the Lifeline Recertification Reporting Form (Form 555). While the requested information is essentially unchanged, USAC’s appears to be trying to simplify reporting. Among the changes, USAC has included a check box to indicate whether the ETC has any affiliated ETCs – instead of requiring the names even if there are no affiliated ETCs to be reported. USAC has also provided a single location to report the Number of Subscribers who de-enrolled prior to the ETCs’ recertification attempt. Left unchanged was the due date, which remains January 31, 2015.

Finally, the FCC has changed the Docket for filing Form 555. Historically, the Form 555 was required to be filed in FCC Docket No. 11-42, however, **beginning this year, the FCC will require Form 555 to be filed in FCC Docket No. 14-171.**

***TCA View:** TCA stands ready to assist our clients with completing their FCC Form 555. TCA also reminds everyone that this Form must be filed in 3 places by the due date: 1) USAC, 2) FCC, and 3) your State Commission or Tribal Authority as appropriate.*

TCA Contact: Stacey Brigham

Navigating the New TCA Regulatory View

We’ve made some updates to the layout, but don’t worry, all of the content you need and enjoy is still here!

* Links are now imbedded right into the articles. Just look for the blue text to know where to click.
* Click on article names in the Table of Contents to jump to that article.
* Click on “Continued on page” text to go to the continuation of the article.
* The “Return to the Table of Contents” link is at the bottom of most pages.
* For any questions on the *Regulatory View* or any regulatory matters, contact the TCA Regulatory Team.

Return to
Table of Contents

IntraMTA Lawsuits Consolidated

The U.S. Judicial Panel on Multi-District Litigation (MDL Panel) recently consolidated 28 lawsuits filed by Sprint and Verizon against CenturyLink (CTL) in 21 different federal courts seeking refunds of allegedly improper billing of access charges on intraMTA wireless traffic. The consolidated lawsuits all contend that CTL should not have billed access charges on intraMTA wireless traffic routed over interexchange trunks. Although this consolidation is limited to lawsuits filed against CTL, the MDL Panel noted that Sprint and Verizon have also filed identical lawsuits against 180 other LECs in approximately 75 federal courts across the country. The MDL Panel's Order follows closely upon the Joint Petition to the FCC of numerous rural and mid-size LECs requesting a declaratory ruling that intraMTA traffic delivered over Feature Group D access trunks is subject to access charges. (See *TCA Regulatory View*, November 2014) The FCC has issued a Public Notice calling for comments on the Joint Petition by February 9, 2015.

The MDL Panel found that the 28 lawsuits involving CTL involve common questions of fact and that consolidation will serve the convenience of the parties and witnesses and promote the just and efficient conduct of litigation. The MDL Panel also acknowledged that the remaining lawsuits, which do not involve CTL, are potential "tag-along" actions and consolidating those lawsuits will also be considered.

TCA View: *The language of the MDL Panel's Order strongly indicates that the RLEC lawsuits will be consolidated with the 28 involving CTL. TCA will file comments with the FCC in support of the Joint Petition and will keep clients informed of the progress of the Sprint and Verizon lawsuits in the federal courts.*

TCA Contact: Curt Huttsell

2011 USF/ICC Order May Have Weakened RLECs

Co-authors of a recently released White Paper conclude that RLECs continue to be operationally and financially weaker, which they suggest may be attributed to the impacts of the FCC's USF/ICC Transformation Order. The authors of the paper are former FCC Commissioner Harold Furchtgott-Roth and Kathleen Wallman, a former Presidential advisor on economic policy and FCC staffer. Furchtgott-Roth and Wallman collaborated on a paper released last year on the possible effects of the USF/ICC Transformation Order on RLECs. Both white papers were underwritten by the Rural Broadband Alliance (RBA)

Using publicly available NECA data for over 700 RLECs, the white paper studies certain measurements between 2007 and 2012, including: 1) loops, 2) gross telecommunications plant in service, 3) gross plant in service per loop, 4) net value of plant and equipment, 5) net value of plant and equipment per loop, and 6) net financial assets.

The white paper demonstrates that in addition to significant loop decline, RLECs have generally experienced a dramatic decrease in annual growth rate of gross plant in service per loop after 2010. Another finding is that net financial assets grew between 2007-2009, then declined slightly in 2010 and more dramatically afterwards "reaching a negative $206,000 in 2012", which the authors contend, "[I]s a negative indicator of telecommunications companies wherewithal to invest in their networks." While the white paper does not test the causes of these declines, the conclusion states, "[T]he results are consistent with an adverse event in 2011, such as the 2011 Report and Order."

TCA View: *Nothing in this paper is earthshattering news to RLECs who have long contended that the USF/ICC Transformation Order was damaging to their operations.*

TCA Contact: Stacey Brigham

Return to
Table of Contents

FCC Announces Preliminary RBE Winners

The FCC released the list of 40 provisionally selected awardees for the $100M in CAF allocated to the Rural Broadband Experiments (RBEs). The winning bidders were required to submit additional information, including the most recent three years of audited financial statements, a description of the technology and system design that would be used to deliver voice and broadband service and an engineer certified network diagram by December 19, or face disqualification (see TCA Regulatory View, July 2014). Apparently, the FCC anticipates more defaults, as immediately prior to the deadline the FCC announced that non-winning bidders can remain in consideration for a RBE by simply filing the same information required from the winning bidders by January 6, 2015. Six provisional winners have already defaulted for not meeting the December 19 deadline, freeing up $650,000 for consideration to other bidders.

The FCC's preliminary list of provisionally selected bidders includes the details of project bids such as the state, the total amount of support requested and the number of census blocks covered by these projects. The breakdown of winners includes 14 WISPs, 7 RLEC affiliates, 2 cable providers - one of which defaulted already, and 4 electric companies – one of which has also defaulted. This includes 19 companies in Category 1 that must deliver 100 Mbps to all locations in the specified census block, 12 companies in Category 2 that must deliver 10 Mbps and 9 that must deliver 10 Mbps in the FCC's designated "extremely costly" census blocks. The provisional winners cover 26,867 census blocks and 25 states and Puerto Rico.

Three of the provisional awardees were disqualified for not meeting the initial requirements (and were replaced) before the FCC announced the winners – including ViaSat, who had filed a waiver from the 100 m/s latency standard. Additionally, provisional awardees have filed 15 waivers seeking relief from the requirement to provide audited financial statements, including one from Rural Broadband Services – which has only been operational for 6 months. Additionally, Agile Network Builders filed for a waiver of the engineer certification claiming a "lack of a properly educated and experienced Professional Engineer in rural fixed wireless topology." The waiver requests account for more than half of the RBE budget that could possibly be freed up for other bidders that remain in the running.

TCA View: *Apparently, the FCC plans to use all of $100 million allocated to the RBEs and will now allow companies that have already submitted bids to remain in consideration in the case of a default by the current provisional winners. It will be interesting to see how many more of the provisional winners will be able remain qualified - especially WISPs ability to attain a professional engineer certification for providing a data speed of 100/25.*

TCA Contact: Daniel Meszler

Save The Date for TCA Conferences in 2015

TCA Management Conference

May 26-29, 2015
Colorado Springs, CO

TCA Financial Conference

October 7-9, 2015
Colorado Springs, CO

Return to
Table of Contents

Wireless Issues Update

Data Roaming

The FCC has granted T-Mobile's request for a Declaratory Ruling to clarify data roaming negotiation rules, specifically, to provide guidance on the assessment of "commercially reasonable terms and conditions." In 2011, the FCC adopted rules requiring all providers to offer data roaming at commercially reasonable terms and conditions, which would be determined based on the "the totality of the circumstances in each case," and provided 16 potential factors that would be considered, including "other special or extenuating circumstances." T-Mobile argues that some "must have" roaming partners have exploited the ambiguity of these rules to deny data roaming requests or substantially delay the negotiations. T-Mobile further asserts that the data roaming marketplace is broken, and the FCC should establish benchmarks for determining whether terms and conditions (including pricing) are reasonable. Nineteen commenters including, the Rural Wireless Association, NTCA, and the Competitive Carriers Association and state commissions from Washington and Minnesota supported this request while AT&T, Verizon and CellularOne opposed it.

Accordingly, the FCC adopted the following benchmarks: retail rates, international roaming rates, MVNO/resale rates, and roaming rates charged by other providers. These benchmarks may be considered along with any other relevant facts on a case-by-case basis to determine the reasonableness of offered roaming rates from a potential host provider.

The FCC has also clarified that when it indicated signed agreements are presumed reasonable, this presumption is relevant only to the terms and conditions of that agreement and the parties that signed it. The presumption does not extend to any other agreements, future agreements, or extensions/renewals of the existing agreement.

Finally, the FCC has clarified that the inclusion of the "extent and nature of providers' build-out" as a factor for consideration in negotiations was not intended to allow a host provider to deny roaming or charge unreasonable rates in a particular area because the requesting provider had not built out in that area. The FCC states that any other interpretation would be contrary to the intent of the Data Roaming Order as a whole, as the rules are intended to provide coverage to customers where a provider's network does not cover.

Incentive Auction

The FCC is seeking comments on its proposed bidding procedures for the 600MHz TV White Spaces Incentive Auction, expected to take place in early 2016. The FCC states, due to the complexity of the process, it intends to accept applications for participation in the fall of 2015 and it will provide notice of application, upfront payment and other due dates several months in advance. The Auction will have two parts: 1) a reverse auction for broadcasters to determine the amount of spectrum they will be willing to surrender and the price they will accept, and 2) a forward auction for wireless providers to bid on the amount of spectrum they wish to purchase in a given Partial Economic Area (PEA). The proposed bidding procedures address the integration of these two parts as well as detailed rules for each part.

Of particular interest, the FCC proposes to set an average price per MHz-pop of $1.25 for spectrum offered in the largest 40 PEAs by population and a spectrum clearing target of 84MHz, which would be considered along with cost coverage to meet its Final Stage Rule (similar to a reserve price in previous auctions). Based on the success of Auction 97 ($44 billion to date), it appears that none of the proceeds will be required to fund FirstNet. Accordingly, costs that must be covered will be limited to payments to Broadcasters in the reverse auction, the cost of relocating them (estimated to be $1.75 billion), and FCC Administrative expenses.

TCA View: *The Data Roaming Declaratory Ruling is "check in the win column" for most rural wireless providers who have been largely frustrated by efforts to obtain reasonable data roaming rates from AT&T and Verizon. In some cases, rural providers have received offers that exceed the retail service offerings of these providers in a particular market. This ruling provides the requesting carrier a more solid basis for contending that the offered rates are unreasonable*

The Incentive Auction will be by far the most complex auction undertaken by the FCC. Although many elements of the forward auction will be familiar to participants in previous auctions, the FCC is taking steps to simplify its process and reduce unnecessary complications, which will certainly change the process significantly. TCA will continue to monitor this proceeding and will inform clients of the final procedures when they are adopted.

TCA Contact: Stacey Brigham

Return to
Table of Contents

News from the States

The **Colorado** Public Utilities Commission (CoPUC) has approved a petition from CenturyLink (CTL) asking that it be relieved of POLR obligations in 56 of its wire centers that lost state high cost funding due to "effective competition." Under legislation enacted this year, areas of the state determined by the CoPUC to be "effectively competitive" are not entitled to receive state high-cost support. The CoPUC agreed with CTL's argument it would be unjust and inconsistent with that legislation to eliminate high-cost support while at the same time continuing to enforce POLR obligations. However, the CoPUC ordered CTL to notify its customers of the POLR relinquishment despite CTL's objections that such notification would be misleading, confusing and counterproductive.

The **Iowa** Utilities Board (IUB) is urging customers to review service agreements with their LECs to ensure the terms are favorable, or whether they should switch providers. Legislation passed earlier this year eliminated LEC's local tariffs, effective January 1, 2015. Instead, LECs have created service agreements, similar to wireless providers, outlining the terms and conditions of their service.

The **Kansas** Corporation Commission (KCC) has approved a revenue bond request from the town of Chanute to expand its fiber network to offer broadband service to residents. Chanute claims that the fiber network will be used for advanced metering as well as offering residents gigabit broadband service for $40 per month. The incumbent price cap LEC acknowledged that it would not construct fiber facilities in Chanute but had previously been granted intervention in the proceeding to purportedly "protect the interests of its customers." The KCC staff supported the fiber project on the grounds of increasing competition.

The state of **Kentucky** announced it has retained a private capital firm to create a statewide fiber "backbone" to address the "dismal" broadband speeds currently available to its residents and businesses. The fiber project is expected to cost between $250 million and $350 million and will be funded primarily with private capital, in addition to approximately $50 million from the state and federal government. The first phase will connect and extend existing fiber owned by communications companies to make open access middle mile fiber available throughout the state and is expected to be complete within two years. When completed the fiber backbone will be cover 3,000 miles and connect all 120 counties in the state.

Nebraska has released a state broadband plan to promote broadband availability and utilization over the next five years. The plan was developed as a product of the NTIA's State Broadband Mapping initiative, which also provided funds for states to develop strategic plans for broadband deployment. While the Plan lauds the state's current broadband metrics (99.5% of the residents have download speeds of 10Mbps and 82% of households subscribe to broadband) it establishes a goal to increase these to 90% access to 25Mbps and more than 90% of households subscribing to broadband. The plan would achieve this goal by following ten recommendations: 1) encourage investment in telecommunications infrastructure; 2) enhance the capacity of local communities to address broadband development; 3) encourage the development of a skilled IT workforce; 4) support innovation and entrepreneurship; 5) support the use of broadband technologies in businesses and agriculture; 6) support libraries as community anchor institutions; 7) support the use of broadband in education and health care; 8) support the use of broadband by government and public safety entities; 9) support efforts to attract new residents and retain youth; and 10) increase digital literacy.

The **New Mexico** Public Regulation Commission (NMPRC) has reduced the $25 million state high cost fund by $9.6 million, capped the fund surcharge and set new affordability benchmark rates for the fund. The NMPRC decision concluded a rulemaking launched two years ago to implement legislation amending the Rural Telecommunications Act. The rule changes are effective July 1, 2015 - and reduce the fund by updating recipient access minutes (from 2004) to 2012 levels, increasing the residential affordability benchmark rate to the FCC urban rate floor, and capping the contribution rate (currently 3.62%) at 3%. Additionally, the NMPRC decided it was "premature" to shift $5 million from the high cost fund to establish a new broadband fund.

Return to
Table of Contents

Important Deadlines and Due Dates

January 8, FCC Form 497, Low Income Monthly Report: All ETCs that request reimbursement for participating in the low-income program must submit to USAC their Lifeline and Link-Up Worksheet. This form must be electronically submitted by the eighth day of each month to receive support in that month. If the form is late or not electronically filed, support will be received the following month.

January 16, FCC Form 655, Hearing Aid Compatibility (HAC) Report: Wireless providers, including resellers must electronically file reports showing that they are in compliance with HAC rules during the previous calendar year. The FCC requires that; 1) 50% of all handsets offered must be compatible with hearing aids, 2) HAC handsets must be offered at varying levels of functionality, 3) all packaging includes labels clearly displaying the handset's rating and an explanation of the rating system, 4) all multi-modal handsets operating in untested bands must include disclosures, 5) company websites include a list of all HAC models offered with ratings and an explanation of the rating system.

January 30, Broadband Stimulus Agency Reports: all ARRA Broadband Stimulus awardees must provide financial and penetration information to RUS and/or NTIA for the previous quarter. These reports are due no later than 30 days after the end of each quarter.

January 31, FCC Form 555, Annual Lifeline Recertifications: ETCs must report on their efforts to recertify Lifeline customers from the previous year that were reported on the February FCC Form 497 of the current year, affirming that they are still eligible to receive Lifeline discounts. These certifications must be completed by December 31 and will be reported to USAC by January 31.

February 1, FCC Form 502, Number Utilization and Forecast Report: Any wireless or wireline carrier that has been assigned an NXX code (10,000 numbers) or one or more 1000 number blocks; and any wireless or wireline carrier that has received from the NANPA or from another carrier on or more 1000 number blocks must file Form 502.

February 1, FCC Form 499-Q, Telecommunications Reporting Worksheet: All telecommunications carriers that expect to contribute more than $10,000 to USF support mechanisms must file this quarterly form. The form contains revenue information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions.

February 8, FCC Form 497, Low Income Monthly Report: See January 8 description.

March 1, CPNI Certification: Telecommunications carriers must have an officer, as an agent of the carrier, sign and file a compliance certification. The certification must state: 1) that the officer has "personal knowledge" that the company has operating procedures adequate to ensure compliance with the rules; 2) must provide a statement explaining how its operating procedures ensure that is or is not in compliance; 3) must include an explanation of actions taken against data brokers; and 4) provide a summary of all customer complaints received in the past year concerning unauthorized release of CPNI.

March 1, Form 477, Local Telephone Competition and Broadband Reporting: The FCC requires a single nationwide filing (not state by state). Wired, terrestrial fixed wireless and satellite broadband services providers will report per Census Tract the maximum speeds sold (not speed tier) as well as the number of subscribers for each advertised speed. In addition, mobile wireless broadband providers must report coverage areas by technology, minimum advertised upload and download speeds and spectrum band. Mobile providers must also provide a list of census tracts where service advertised and available to actual and potential customers and must report voice coverage areas by technology and spectrum. Providers of VoIP service are also required to report number of subscribers per census tract.

March 1, Copyright Statement of Account Form for Cable Companies: This form, plus royalty payment for the second half of the previous calendar year. The form covers the period of July 1 to December 31 and is to be mailed directly by cable TV operators to the Library of Congress' Copyright Office.

Return to
Table of Contents

January 2015

Look for TCA Consultants at the following meetings

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1 **TCA Offices Closed**	2	3
4 Wireless Symposium Las Vegas, NV	5	6	7 2015 International CES Las Vegas, NV	8	9	10
11	12 CIGRR Kissimmee, FL	13 NTCA AMAC Committee Arlington, VA	14	15 WSTA Broadband Forum Stevens Point, WI	16	17
18	19	20	21	22	23	24
25	26 TCA Board of Directors Seminar Colorado Springs, CO	27	28	29 PRIMO Winter Conference Wichita, KS	30	31

Contact Us

Give us a call for more information about our services and products

TCA
526 Chapel Hills Dr,. #100
Colorado Springs, CO 80920
(719) 266-4334
regconsultants@tcatel.com
Visit us on the web at www.tcatel.com

Return to Table of Contents