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FCC TO ADOPT USF ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING AT DECEMBER 12TH OPEN MEETING

SUMMARY OF DRAFT ORDER AND FURTHER NOTICE

Pursuant to its new practice, the Federal Communications Commission (FCC) has released a *draft* of the Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM) that it will consider and undoubtedly adopt at its December 12th open meeting. No significant changes are expected to the draft R&O and FNPRM prior to their adoption.

The draft R&O basically raises the definition of broadband from 10/1 Mbps to 25/3 Mbps.

- It extends a new model offer to current A-CAM carriers as well as to legacy carriers (but not Alaska Plan carriers).
- It increases the USF budget for rate-of-return carriers, addresses the current impact of the BCM (Budget Control Mechanism) and ameliorates its future impact by setting a minimum threshold for support for each carrier.
- It replaces the current 100% overlap process with auctions for areas with less than 100% overlap. Further details will be hashed out in the FNPRM. The FNPRM also explores the impact of conversion of lines to broadband-only and how to deter gaming while encouraging the transition to broadband networks.

Report and Order (R&O)

1. New model offer for A-CAM carriers – There will be a new offer of support of up to $200 per location to all current A-CAM carriers. The offer is accompanied by increased obligations -- 25/3 Mbps service requirement to 50% of fully funded locations for low density carriers, 65% of fully funded locations for medium density carriers, and 85% of fully funded locations for high density carriers. The new offer will be for a 10-year term, beginning 1/1/2019.
2. New model offer (A-CAM II) for legacy carriers -- This new model offer of up to $200 per location for 10 years will be available to all existing legacy carriers, including those previously excluded because they had deployed 10/1 Mbps service to more than 90% of eligible locations. The new model offer will include a Tribal Broadband Factor which sets a high-cost funding benchmark of $39.38 on Tribal Lands and raises the funding cap for Tribal lands to $213.12 per location. The new offer will include census blocks where the carrier or its affiliates have deployed fiber-to-the-premises or cable. It will exclude census blocks served by an unsubsidized competitor when the competitor offers voice and 25/3 Mbps or faster broadband service. In addition to the deployment requirements previously required of A-CAM recipients, carriers accepting the new model offer will have to deploy 25/3 Mbps service to a number of locations equal to the their eligible fully funded locations. The R&O adopts the same three-tiered transition process for glide-path carriers as was used for existing ACAM recipients.

3. Rate-of-return USF budget -- The R&O adopts a new budget for legacy carriers based on 2018 uncapped claims -- approximately $1.42 billion -- increased annually by inflation. The FCC will refund all support reductions due to the budget control mechanism from July 1, 2018 through December 31, 2018. Also, there will be no reductions to legacy support from January 1, 2019 through June 30, 2019. USAC may provide back payments in lump sum or over a period of one-year depending upon available funds. The budget is established for legacy providers separate and apart from the other programs (A-CAM and Alaska Plan). The budget will increase in July 2019 by 7%. Once it is determined which carriers are accepting the new model offer, if, because of the number of glide-path carriers accepting model support, the legacy budget increases by more than 7%, legacy carriers will benefit from that entire increase in the budget going into effect in July 2020. This will be a one-time increase.
4. Minimum threshold of support -- USAC will compare the capped amount for each carrier with the CAF BLS five-year forecast adopted in the R&O. If the cap for any individual study area falls below the CAF BLS forecast for that study area in that year, USAC will raise the cap for that study area to the amount of the CAF BLS forecast. Thus, carriers are assured of receiving at least the amount of support that will be identified in the forecast. The per-line reduction component of the budget control mechanism is eliminated.
5. Minimum speed obligation for legacy carriers -- The R&O revises the minimum speed obligation for legacy carriers to 25/3 Mbps, up from 10/1 Mbps. Carriers will be provided their revised CAF BLS deployment obligations at the time the Commission expects to make the new model offers so that carriers can properly evaluate their options. The deployment term will run from the effective date of this R&O until December 31, 2023.
6. Rate-of-Return (legacy) carrier deployment obligations -- In the 2016 Rate-of-Return Reform Order, the FCC did not set deployment obligations for carriers that had deployed broadband of 10/1 Mbps to 80% or more of their study areas. Now, all legacy carriers will be subject to deployment obligations. Legacy carriers with less than 20% deployment of 25/3 Mbps broadband service in their entire study area will be required to use 35% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Legacy carriers with more than 20% or greater but less than 40% deployment of 25/3 Mbps broadband service in their entire study areas, will be required to use 25% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Legacy carriers with 40% or greater deployment of 25/3 Mbps broadband service in their entire study areas, will be required to use 20% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Once a carrier has deployed broadband service of 25/3 Mbps to all locations within the study area, it has satisfied its deployment obligation. Because all legacy carriers will have defined deployment obligations, all will be required to report their locations deployed in the HUBB portal.
7. The capital investment allowance is eliminated.
8. Reduction of monthly per-line limit on universal service support -- The monthly per-line limit on support is reduced from $250 to $225, effective July 1, 2019, and then to $200, effective July 1, 2021.
9. Revising the 100% overlap process -- Support in legacy study areas identified by FCC Form 477 data as entirely or almost entirely overlapped with voice and 25/3 Mbps broadband by an unsubsidized competitor or group of competitors will be awarded through a competitive bidding process. The R&O eliminates the current 100% overlap rule and process. Specifics will be developed pursuant to the FNPRM attached to the R&O.
10. Miscellaneous -- The R&O changes the date for mandatory line count filings for CAF BLS to March 31 of each year but continues to require line counts as of December 31 (i.e.,

reduces the lag until filing to 3 months). Carriers that do not receive CAF BLS (i.e., carriers that have elected A-CAM or Alaska Plan support) will now also have to file line counts annually on FCC Form 507. The R&O also updates lease accounting standards. The FCC considered but did not change the operation of the High-Cost Loop Support (HCLS) cap and the rural growth factor. It also did not change the operating expense (OPEX) limitation.

Further Notice of Proposed Rulemaking (FNPRM)

The FNPRM seeks to develop specifics for auctioning areas with a high degree of overlap as well as addressing how to deal with the impact of conversion of lines to broadband-only and how to deter gaming while encouraging the transition to broadband networks.

1. Auctions for overlapped areas – the new rules will replace the current biennial 100% overlap process. The FCC is looking to reduce the level of overlap to a level between 95% and 99%. The FNPRM proposes bids in technology neutral service tiers with varying speed and usage allowances similar to those used in the CAF Phase II auction but eliminating speeds below 25/3 Mbps. Winning bidders would be required to serve all locations within each census block group with deployment milestones. Any incumbent that does not participate in the auction shall have its support reduced, regardless of whether other carriers apply or bid. The FNPRM asks what should happen to the legacy rate-of-return support mechanisms for an incumbent LEC when it, but no other carrier, bids in the incumbent's area. It also asks whether, if the incumbent LEC is the sole applicant to bid in its service area, and no other carriers apply to bid, the incumbent should continue to receive support pursuant to the legacy rate-of-return support mechanisms. It also asks if the incumbent LEC does not win at auction, what, if any, transitional support should be provided to the incumbent, and how should the Commission best ensure customers who are currently served by the incumbent do not lose access to voice service or existing broadband service prior to the deployment of service to those locations by the winning bidder.
2. Conversion of lines to broadband-only -- The FNPRM seeks comment on how to encourage the transition to broadband networks while preventing carriers from using the transition as a way to artificially inflate their support amounts. It asks whether the Commission should adopt limits on the number of converted lines for which a carrier may seek broadband-only support.

Next Steps

GVNW will continue to review the draft Order and will be providing carriers with additional information regarding their specific options. Please contact your GVNW Consultant or Steve Gatto (830.895.7226), sgatto@gvnw.com with any additional questions you may have about the new regulatory framework expected to be adopted in the rate-of-return USF Order.