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MEMORANDUM TO CLIENTS

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Enforcement Bureau Cracks Down on Properties Allowing Pirate Radio

On December 18, the Federal Communications Commission's ("FCC" or the "Commission") Enforcement Bureau released three Notices of Illegal Pirate Radio Broadcasting to multiple New York City-based property managers for housing an unlicensed radio broadcasting operation. In conjunction with the notices, the FCC issued an Order – without the typical notice and comment procedures – implementing the Preventing Illegal Radio Abuse Through Enforcement Act ("PIRATE Act") and specifying the new elements of this enforcement regime.

Under the "PIRATE Act", the FCC is able to levy fines of $10,000 a day, up to $2,000,000 total (much higher than previously allowed) on landlords and property managers who ignore or help facilitate pirate radio efforts. Additionally, the FCC will no longer go through the trouble of first issuing a "Notice of Unlicensed Operation," which is like the police calling a criminal to say they will be there in a couple of hours to investigate a possible crime. Now the FCC will assume a violation and propose the penalty out of the gate. In these cases, however, the FCC is giving the property managers 10 days to respond to the notice with evidence of the station's removal. One last note for these third parties: don't think you can play the "sovereign citizen" card to get out of liability; pirate broadcasters have tried something like that before and it doesn't work.

FCC Takes Step Forward to Establishment of Rip and Replace Program

by Don Evans
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The FCC took a significant step forward last month in concretizing its program for extirpating equipment from the country's communications networks that poses a threat to national security. The Commission's Order in large part implements the objectives of the *Secure and Trusted Networks Act of 2019* (the "Secure Networks Act") and fills in some of the blanks left by the statute. There are a few notable quirks, however.

Background on the Rip and Replace Program

In general, the Secure Networks Act and the FCC's rules are intended to remove from America's communications networks equipment that has been determined to constitute a threat to the security of communications. The Secure Networks Act prohibits the use of Universal Service Fund ("USF") support to purchase "covered" communications equipment or services. It also directs the FCC to establish a reimbursement program for costs incurred by Eligible Telecommunications Carriers ("ETCs") – carriers determined to be eligible to receive USF support – to remove and replace covered equipment and services. The determinations regarding the equipment covered by this ban are made by a group of federal security agencies

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including the FBI, the Department of Defense, and the National Intelligence Director. These initial determinations, to no one's surprise, included Chinese manufacturers Huawei, ZTE, and a handful of other Chinese companies. The roster of suspect ("covered") equipment can change over time as new threats are detected. The federal government is already removing this equipment from its own networks, but there is still a large amount of equipment being used in privately owned telecom networks. The problem affects smaller carriers disproportionally since smaller carriers were enticed by the low prices and attractive financing offered by the Chinese companies.

The FCC had initiated its own process, but the program moved forward at a tortured pace, especially since (i) there was no specific statutory mandate for such a program and (ii) the FCC's proposal was targeted only at ETCs that had received USF funds to build out and operate their networks. This tack would have left plenty of large and small networks without funding assistance for the expensive replacement program. The Commission did take specific steps within its authority to rescind and block the authorization of suspect Chinese companies that had been granted or were seeking the right to offer communications services in the U.S. themselves. The Secure Networks Act was enacted by Congress in the spring of 2020 to provide the authority the FCC needed and set the general rules for implementing the program.

The Congressional/FCC "Rip and Replace" program as now formulated requires ETCs that have received USF support to remove covered equipment from their networks and allows, but does not require, non-ETCs to remove and replace this equipment from their networks. In both cases, the carriers are to be reimbursed out of funds appropriated by Congress for this purpose. Initially, Congress thought that about $900 million would be adequate for his purpose, but as the record developed, the number has crept closer to $2 billion. The program is limited to "smaller" carriers; those with fewer than 2 million subscribers. This threshold also had crept up during the process, which was originally targeted at much smaller carriers. This explains the much higher tab. As of this writing, Congress has not appropriated *any* money for this program, but fingers are crossed that in the flurry of lame-duck legislating, this loose end will get tied.

The program will require eligible entities to submit an application to the FCC setting forth their plan for getting rid of the covered equipment, destroying it, and replacing it with safe equipment. The FCC will review the application and determine how much money will be allotted to each carrier for this purpose, giving carriers the comfort of knowing they will be reimbursed, even though the funds will not be paid until the work of ripping, destroying, and replacing goes forward. The FCC will create a catalog designating equipment that will be eligible for replacement in order to simplify the process. This should streamline the application filing and review process, but experience counsels that the process may become bogged down in the details, as may be inevitable when conscientious administrators are giving away up to $2 billion of public money.

Funding the "Rip and Replace" Program

Because the FCC does not know how much funding Congress will appropriate, it cannot be sure that there will be enough money to go around. To cover this scenario, the FCC has established several priority categories. In the first category are ETCs, with sub prioritizations first for core network expenses and then non-core radio access network expenses. Next come non-ETCs that provided cost information that the Commission used in developing its overall cost estimates, again with core expenses prioritized over non-core. All other applicants are relegated to the final priority group. It is important to note that only providers with 2 million or fewer customers are eligible for reimbursement under the FCC's program. This tiered allocation scheme is somewhat controversial since Congress consciously did *not* prioritize ETCs in its reimbursement plan even though the FCC had proposed such a plan prior to Congressional action. The theory appears to be that ETCs are more dependent on subsi-

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dies than other carriers, but some argued that they are less dependent than non-ETCs since ETC equipment had been subsidized in the first place. This prioritization scheme may be a non-issue if the full $2 billion is appropriated, but it will make a big difference if there is less funding to go around.

The rules permit those seeking reimbursement to upgrade their equipment from older generation equipment to equipment that is 4G-compatible and capable of being upgraded to 5G. This measure sensibly permits applicants to installer newer generation equipment rather than installing older equipment that would soon have to be replaced at additional cost.

Inside This Issue

The Commission will permit applicants to be reimbursed for removing and destroying covered equipment even if they don't replace it.

The program is now at last on the verge of taking off. It awaits only the appropriation of funds to make the magic happen.

Selected New Developments in Broadband – January

by Jeff Mitchell
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Capitol Hill

Although President Trump criticized the final $900 *billion* COVID-relief legislative package (containing both COVID-relief and an omnibus spending bill that averted a government shutdown) for providing too little financial relief to Americans and too much wasteful spending, on December 27 he signed the package into law.

Regarding the $7 billion broadband spending component of the COVID-relief package, the conservative Free State Foundation had this summary:

> The relief package also includes $3.2 billion to keep Americans connected during the COVID-19 pandemic. Eligible households will receive a monthly emergency broadband benefit in the form of a $50 discount on high-speed Internet access service. Eligibility generally is limited to low-income households and those who have endured lay-offs or furloughs.
>
> [T]he FCC has sixty days to adopt rules implementing the program, which will continue for six months after the Secretary of Health and Human Services has declared an end to the public health emergency. The Commission will reimburse participating ISPs directly for the amount of the monthly discount and up to $100 for a connected device (tablet, laptop, or desktop computer) that they provide. A provider need not be designated as an Eligible Telecommunications Carrier in order to participate.

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In addition, the legislation tasks NTIA with disbursing a total of $1.3 billion for broadband grant programs, $1 billion targeting Tribal lands and $300 million for unserved (including rural) areas. Recipients of Tribal Broadband Connectivity Grants may use those funds to deploy fixed broadband infrastructure in unserved areas or, during the pandemic, for subsidized broadband service, distance learning, or telehealth programs.

The remaining $300 million will be made available in the form of Broadband Infrastructure Deployment Grants, which will target unserved areas for network infrastructure construction and prioritize, among other things, projects that target smaller communities (that is, counties, cities, or towns with less than 50,000 inhabitants).

NTIA also will become home to a new Office of Minority Broadband Initiatives that will perform a number of responsibilities, most significantly the administration of a $285 million pilot program focusing primarily on the broadband needs of Historically Black Colleges and Universities (HBCUs) and their surrounding communities.

National Telecommunications and Information Administration (NTIA)

NTIA has launched a Digital Inclusion webpage that provides a clearinghouse of information about federal and state digital inclusion resources. There is no NTIA webinar scheduled for December. The November webinar addressed How Broadband Enhances Local Economies while October addressed Digital Inclusion and K-12 Education: The Impact of COVID-19 on Students and Educators; archived webinars are here. The next webinar will be February 17, 2021: *Data as the Foundation for Broadband Planning* (registration link).

The December BroadbandUSA Newsletter links to a November 2020 PEW article providing an overview of states' efforts to tap CARES Act funding for broadband, with links to resources to track those efforts. There are also links to broadband articles from Texas, Illinois, Mississippi, Wisconsin, Michigan (mapping northern Michigan's broadband desert), and Ohio (challenges bringing broadband to its southern Appalachian counties), among others. (Somewhat related, U.S. DOE has launched a portal to track state usage of the $31 billion CARES Act Education Stabilization Fund.)

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).

USDA – Rural Utilities Service (RUS)

The most recent RUS Community Connect Grant program application window is now closed. Grant awards require a 15% non-federal match and can range from $100,000 up to $3 million and can be used for the "construction, acquisition, or leasing of facilities, including spectrum, land or buildings used to deploy service at the [a minimum of 25 Mbps down/3 Mbps up] to all residential and business customers located within the Proposed Funded Service Area . . . ." Applicants must provide free broadband service for two years to "Essential Community Facilities" in the funded ser-

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vice area.

Proposed ReConnect projects can be viewed here (must create free log-in to access); 2019 awardees are identified here; 2020 awardees are here; proposed and funded projects are depicted on an interactive map here. The Distance Learning & Telemedicine Grant Program is currently closed.

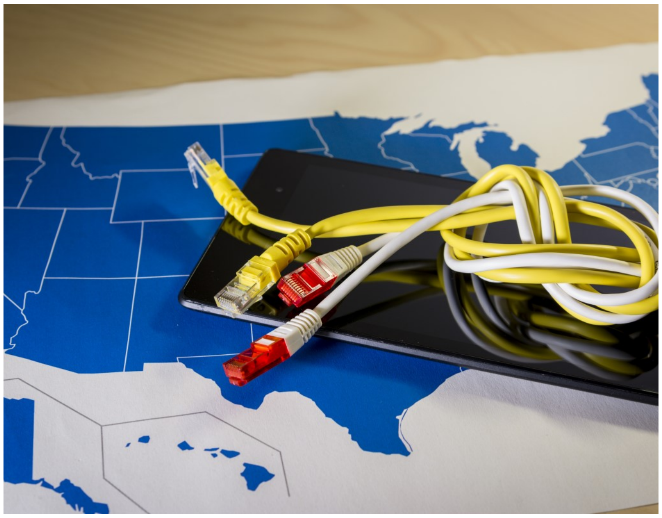
Precision Agriculture

The FCC's Office of Economics and Analytics on December 15, 2020, released a working paper on the impact of broadband availability on agriculture:

> The working paper analyzes the impact of increased broadband availability in rural areas on the productivity of U.S. farms, drawing on both FCC data on broadband availability by census tract and U.S. Department of Agriculture (USDA) data on agricultural productivity by county, for key row crops like corn, cotton, hay, and soybeans. The working paper finds statistically significant effects of increased broadband service, both in terms of lower costs (fertilizer, fuel, seed, etc.) and higher production (yield). To cite one striking result, the analysis finds that a 1% increase in the number of 25 Mbps/3 Mbps or better broadband connections per 1,000 households is associated with a 3.6% increase in corn yields, as measured in bushels per acre.

The FCC's recently-approved $9 billion 5G Rural Fund will include a $1 billion set-aside for agricultural use in Phase 2. Farms are already using private LTE networks with CBRS spectrum, including greenhouse monitoring in Missouri and supporting drone-mounted cameras to make real-time decisions on herbicide applications in North Dakota. In the "miscellaneous" rural category, note the American Connection Project, which identifies existing open Wi-Fi networks in rural areas.

NTIA's September webinar on precision agriculture is available here. The most recent meeting of the FCC's Precision Agriculture Connectivity Advisory Task Force was October 28 and can be viewed here. Background and links to prior meetings are available here. The April 2019 USDA report on rural broadband infrastructure and next-generation precision agriculture is available here. As the precision agriculture market explodes, Purdue University announced in August 2020 that it was collaborating with the National Science Foundation-funded Engineering Research Center to develop the Internet of Things for Precision Agriculture.



Federal Communications Commission (FCC)

The Senate confirmed Republican FCC Commissioner nominee Nathan A. Simington to the FCC on December 8, 2020, replacing Commissioner Michael O'Rielly. Although Simington was initially not favored to win confirmation, Senate Republicans apparently wanted to ensure that a Biden FCC begins deadlocked with a 2-2 tie (Brendan Carr, Simington, Jessica Rosenworcel, and Geoffrey Starks).

The only broadband item from the December 10, 2020, FCC open meeting concerned adopting standards supporting broadcast Internet. The meeting also addressed several national security items concerning Chinese firms; the agenda and meeting details are available here. The agenda is now available for Chairman Pai's last open meeting on January 13, 2021.

Universal Service/Digital Equity

The current universal service construct, which is over 25 years old, is straining to address the equitable distribution of limited broadband resources; partly reflected in a universal service fund contribution factor

Now Available: NETA Webinar Series

Over the last few weeks, attorneys Bob Winteringham, Dan Kirkpatrick, and Frank Montero have presented a series of compliance webinars for the National Education Telecommunications Association as a part of their course entitled "Navigating Common Compliance Matter," which covered important compliance topics for broadcast stations.

Those webinar topics include:

- Corporation for Public Broadcasting compliance
- Navigating the Online Public File
- Equal Employment Opportunity compliance
- Underwriting Rules
- How to Design a Compliance Program

These are extremely helpful educational videos for any public media organization. You can enroll for the free course and watch the webinars here.

Davina Sashkin Elected Co-Managing Member of Fletcher, Heald & Hildreth

We are pleased to announce that Davina Sashkin has been elected to serve as as Co-Managing Member of the Firm effective January 1. 2021. Ms. Sashkin joins current Co-Managing Members Matthew H. McCormick and Dan A. Kirkpatrick in overseeing the Firm's strategic vision and day-to-day operations. She will continue to serve in her role as Chair of the Firm's Marketing Committee.

Since the joining the firm in 2008, Ms. Sashkin has counseled a wide array of clients on broadcast and telecommunications regulations and compliance matters, and is known for her ability to handle complex commercial transactions among FCC-regulated businesses. In addition to her client work, Ms. Sashkin is actively engaged in pro bono work, including serving as pro bono counsel for incarcerated individuals fighting for just and reasonable phone rates, and most recently, was instrumental in blocking the merger of two inmate calling services giants in 2019.

Ms. Sashkin is a frequent author and contributor of *CommLawBlog* and her writings have garnered national attention, earning her a *LexBlog Excellence Award*. She is also an active member of the Federal Communications Bar Association, having served on numerous committees and as an FCBA Foundation Trustee.

"I am honored to join the management team and proud to build on the Firm's solid foundation of nearly 100 years of broadcast and telecommunications experience," said Ms. Sashkin. "I am excited to help lead FHH into the future."

Ms. Sashkin holds a J.D. from the Catholic University of America Columbus School of Law, an M.A. from Georgetown University's Communication, Culture & Technology program, and a B.A. from George Washington University.

Upcoming FCC Broadcast and Telecom Deadlines for January – March

Broadcast Deadlines:

January 30, 2021
Children's Television Programming Reports – Each commercial TV and Class A television station must electronically file its annual Children's Television Programming Report, on FCC Form 2100 Schedule H, to report on programming aired by the station and other efforts in 2020 that were specifically designed to serve the educational and informational needs of children.

Commercial Compliance Certifications – Each commercial TV and Class A television station must post to its Online Public Inspection File (OPIF) a certification (or certifications) of compliance during 2020 with the statutory limits on commercial time during children's programming. The certification(s) should cover both the primary programming stream and all subchannels aired by the station.

February 1, 2021
Radio License Renewal Applications Due – Applications for renewal of license for radio stations located in Kansas, Nebraska, and Oklahoma must be filed in the Licensing and Management System (LMS). These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity ("EEO") Program Report, also filed in LMS, regardless of the number of full-time employees. Under the new public notice rules, radio stations filing renewal applications must begin broadcasts of their post-filing announcements concerning their license renewal applications between the date the application is accepted for filing and five business days thereafter and must continue for a period of four weeks. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF.

Television License Renewal Applications Due – Applications for renewal of license for television stations located in Arkansas, Louisiana, and Mississippi must be filed in LMS. These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees. Under the new public notice rules, radio stations filing renewal applications must begin broadcasts of their post-filing announcements concerning their license renewal applications between the date the application is accepted for filing and five business days thereafter and must continue for a period of four weeks. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days.

EEO Public File Reports – All radio and television station employment units with five or more full-time employees and located in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma must place EEO Public File Reports in their OPIFs. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

Telecom Deadlines:

January 15, 2021
Hearing Aid Compatibility Certification (FCC Form 855) – Digital mobile service providers (primarily cell phone providers, including MVNOs and resellers, and certain mobile interconnected and non-interconnected Voice over Internet Protocol (VoIP) services) must certify annually whether they comply with the Commission's wireless hearing aid compatibility requirements. The FCC streamlined the filing requirement for digital

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mobile service providers in 2019. However, digital mobile service providers still use the same electronic filing portal that device manufacturers use to file their annual Form 655 relating to hearing aid compatibility. Device manufacturers are still required to file Form 655.

January 31, 2021 (Due February 1, 2021 because January 31 falls on a Sunday)
Lifeline Recertification (FCC Form 555) – All eligible telecommunications carriers must re-certify all subscribers every 12 months, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for annual re-certification of subscribers' Lifeline eligibility. In 2018, the FCC changed Form 555 to make the filing due for all carriers on January 31 each year, rather than on a rolling 12-month basis for each carrier. Carriers should file the form using Universal Service Administration Company's (USAC) E-file system.

February 1, 2021
Numbering Resource Utilization Forecast (NRUF) (FCC Form 502) – Twice a year, service providers with numbers from the North American Numbering Plan Administrator (NANPA), a Pooling Administrator, or another telecommunications carrier must file a numbering resource utilization forecast. Subscriber toll-free numbers are not included in the report. Interconnected VoIP providers are subject to the reporting requirement along with other service providers who receive NANPA numbers, such as wireless carriers, paging companies, incumbent local exchange carriers (ILECs), and competitive local exchange carriers (CLECs). The next biennial reporting deadline is February 1, 2021.

Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) – FCC rules require telecommunications carriers and interconnected VoIP providers to file quarterly revenue statements reporting historical revenue for the prior quarter and projecting revenue for the next quarter. The projected revenue is used to calculate contributions to the Universal Service Fund (USF) for high cost, rural, insular and tribal areas as well as to support telecommunications services for schools, libraries, and rural health care providers. USF assessments are billed monthly.

February 14, 2021 (Due Feb. 16, 2021 due to President's Day Holiday)
Quarterly Percentage of Interstate Usage (PIU) Reporting and Certification – Prepaid calling card providers (PCCPs) must report the percentage of interstate use factors and associated call volumes to carriers that provide them with transport services. Additionally, PCCPs must file traffic information and a certification signed by a company officer stating that the provider is in compliance with the FCC's PIU and USF reporting requirements.

March 1, 2021
FCC Form 477 – This form is filed online biannually on March 1 and September 1. The Commission collects a variety of information about broadband deployment and wireless and wired telephone service on Form 477. Broadly speaking, the following providers must fill Form 477: 1) facilities-based providers of broadband connections to end users, 2) providers of wired or fixed wireless local exchange telephone service, 3) providers of interconnected Voice over Internet Protocol (VoIP) service; and 4) facilities-based providers of mobile telephony (mobile voice) services. If you have any questions about whether your company must file Form 477 or what information your company is required to submit in the filing, you should contact your telecommunications counsel.