Telecom Regulatory Update: What We Learned in 2022 & Looking Ahead

Telecommunications

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1

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2

Agenda

- Introductions

- USAC Audits & Payment Quality Assurance (PQAs)

- Broadband Data Collection (BDC)

- Broadband Equity, Access, & Deployment (BEAD) Program

- ACAM Enhancement

- CAF BLS Plan

- Conclusion

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3

USAC Audits – BCAP

- Beneficiary & Contributor Audit Program (BCAP)
  - USAC audits are back & while there are some changes they are as difficult as previous audits
    - They continue to be
      - Randomly selected or targeted
      - Done by USAC staff, FCC OIG, or, more likely, third-party auditors
      - Able to go back up to 10 years, plus the 2 year lag
      - Expensive, time-consuming, & take a long time to complete

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4

USAC Audits – BCAP

- Beneficiary & Contributor Audit Program (BCAP)
  - Changes
    - So far, the companies we've assisted have not had on-site visits
      - Virtual tours instead
        - COE & CWF tours
      - They seem much more flexible on replacing asset samples retired in between the audit period & the current period

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5

USAC Audits – BCAP

- Beneficiary & Contributor Audit Program (BCAP)
  - Key takeaways
    - Asset testing
      - Record-keeping is critical
        - Any asset still on the books needs to be supported for the life of the asset plus 12 years
          - CPRs updated & match books, Work Order, Invoice, labor, benefits, & overheads
    - Depreciation Expense
      - Follow the rules exactly

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6

USAC Audits – BCAP

- Beneficiary & Contributor Audit Program (BCAP)
  - Key takeaways
    - Expenses
      - Support generally less of an issue
      - Excluded expenses are an area they focus on
        - Excluded everything you should have
          - Excluded expenses do not flow into settlements or USF
    - Still looking for year-end line counts
      - Often billing cycles result in lines reported not being 12/31 counts

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7

USAC Audits – BCAP

- Beneficiary & Contributor Audit Program (BCAP)
  - Key takeaways
    - P64 adjustments
      - Missing allocation
      - Support for basis missing or challenged
      - Disallowed methodologies
    - Affiliated transactions & leases reviewed also

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USAC Payment Quality Assurance (PQAs)

- Payment Quality Assurance (PQAs)
  - PQAs are the same as years past, except
    - Enhanced Procedures
      - Asset testing
        - Very similar to BCAPs
      - Expense testing
        - Also, very similar to BCAPs
          - Heavy focus on excluded expenses
    - If Enhanced Procedures added, it becomes much closer to a BCAP Audit rather than prior year's PQAs

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9

USAC ACAM Locations & Milestones Verification

- ACAM Locations & Milestones Verification
  - Lessons learned
    - Geo-coding
      - While address conversion is an allowed methodology, the inaccuracy frequently requires you to provide more accurate geo-coding based on another methodology
    - Proving speed & latency
      - Network map/diagram
    - "Lost" locations – torn down, burned down, etc.

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10

USAC ACAM Locations & Milestones Verification

- ACAM Locations & Milestones Verification
  - Lessons learned
    - Business & Residence at single postal address, you must have
      - Separate line or drop
      - Separate equipment
      - Separate billed services, & must be broadband services
      - USAC typically requests street view or geotagged photo

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11

Broadband Data Collection (BDC)

- BDC semi-annual filings due March 1 & September 1
- Form 477 semi-annual filings are still required with same due dates
  - At some point the FCC will set a date for discontinuing 477 filings
- All Broadband Service Providers are required to file BDC
  - For now, the BDC is optional for Voice-only Service Provider (no broadband) but will be required to file BDC after the FCC discontinues the 477 filings
- BDC filing portal has more robust data checks for verifying the accuracy of the data before filing can be certified
- BDC filing portal also allows you to download any data files that were uploaded

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12

Broadband Data Collection (BDC)

- BDC filing versus 477 filing
  - Similarities
    - Both BDC & 477 filings report same voice subscription data
    - Both BDC & 477 filings report similar broadband subscription data
      - BDC filing consolidates a few broadband tech codes
  - Differences
    - BDC filings report broadband availability data by Location IDs from the FCC Fabric data
    - 477 filings report broadband deployment data by Census Block codes

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13

Broadband Data Collection (BDC)

- Two Ongoing Challenge Processes
  - Bulk Fabric Data Challenge Process
    - To correct & update Locations in the Fabric Data
      - Missing locations
      - Remove locations that have no house or building
      - Errors in mailing address &/or geocoordinates
    - Started on September 12, 2022; & will continue indefinitely
    - Service Providers, Governments, & Other Entities can submit Bulk Fabric Data challenges
    - FCC will pause processing Fabric Data challenges two months prior to the next filing deadline

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14

Broadband Data Collection (BDC)

- Two Ongoing Challenge Processes (continued)
  - BDC Data Challenge Process
    - To challenge BDC availability data reported by Service Providers
    - Started after the initial release of the new National Broadband Map went live on November 18, 2022; & will continue indefinitely
    - Consumers, Governments, & Other Stakeholders can submit BDC data challenges
    - Companies will be notified if anyone submits a BDC availability data challenge against their company & need to respond to challenges by deadline set by the FCC

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15

Broadband Equity, Access, & Deployment (BEAD)

- Program to get all Americans online by funding partnerships between states or territories, communities, & stakeholders to build infrastructure where needed & increase adoption of high-speed Internet

- BEAD program was awarded $42.45B from the Federal Government & under the Department of Commerce
  - Pandemic made it evident rural areas also have need
    - Digital divide remains
      - FCC – 17.3% rural vs. 1.2% urban lack fixed terrestrial 25/3 Mbps access

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16

Broadband Equity, Access, & Deployment (BEAD)

- BEAD program favors "reliable broadband service"
  - Fiber optics, DSL, fixed wireless, &/or hybrid-fiber coaxial cable
  - Other technologies aren't eligible
  - Areas served by other technologies, whether 100/20 Mbps or 25/3 Mbps, do not count as served or underserved
- Projects must provide at least 100/20 Mbps
- Areas receiving support are not excluded unless program has a 100/20 Mbps deployment obligation
  - So, current A-CAM & CAF BLS areas are not excluded

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17

Broadband Equity, Access, & Deployment (BEAD)

- Matching Requirement
  - 25% match from non-federal contributions
    - Can be state or provided by subgrantee
  - Does not apply to high-cost areas, which will depend on states &/or mapping
    - 100% grant
  - For Legacy Cost Companies grant rules apply
    - Grant funds treated as aid to construction
      - Removed from Rate Base

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18

Broadband Equity, Access, & Deployment (BEAD)

- Minimum Allocation – $100M for each state, including D.C. & Puerto Rico, & $25M for all other four territories

- Recent announcement of timeline

Key Dates	Description
November 18, 2022	FCC releases draft National Broadband Map, a location-by-location view of high-speed Internet availability in America
November 18, 2022 through January 13, 2023	Best opportunity for eligible entities to submit challenges in time for the FCC to include corrections in the final version of the map that will be used to allocate Internet for All funding in the summer of 2023
By June 30, 2023	NTIA plans to announce BEAD allocations, using the most up-to-date version of the FCC maps as a guide

- FCC's BDC Maps will only be used to allocate funds to Eligible Entities

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19

Broadband Equity, Access, & Deployment (BEAD)

- Remaining Timeline

Program Sequencing	Key Dates
Initial Proposal (Eligible Entity)	180 days to submit after issuance of their Notice of Available Amounts
State Challenge Process (Eligible Entity)	Challenge: Begins after submission of Initial Proposal and before allocating BEAD Funds Final Classification: After resolving each challenge and at least 60 days before allocating grant funds for network deployment
20 Percent Funding Release (Eligible Entity)	To Eligible Entity, if Initial Proposal is successful
Final Proposal and Release of Remaining Funds (Eligible Entity)	No later than 12 months after Initial Proposal approval. Reviewed by NTIA, if successful remaining funds released

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20

Broadband Equity, Access, & Deployment (BEAD)

- Hurdles
  - Letter of Credit requirements & legal opinion on lines of credit
    - LOC upfront, followed up by irrevocable LOC for full cost of project
    - NTIA gets lien on assets for life of the assets
      - Impact ability to get other loans
  - Build America/Buy America
    - Costs are already up significantly
  - Cybersecurity plan
    - NTCA Cybershare Program?
  - Davis Bacon/Fair Labor Practices
    - Prevailing wages for grants over $5M

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21

Broadband Equity, Access, & Deployment (BEAD)

- Hurdles
  - Contractors must certify commitments to workforce development
  - Public notice of service & public awareness campaign
  - Each Eligible Entity will establish their own program, so if you are looking at multiple states there could be differences in each state
  - Digital Equity
  - Penalties for non-performance
  - Middle Class Affordable Plan

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22

Broadband Equity, Access, & Deployment (BEAD)

- Hurdles
  - Environmental & historical preservation studies
    - Climate Resilience
      - Account for current & future weather risks (20-year infrastructure)
      - State should ID areas of weather & climate risks
      - Bury fiber & limit placing electronics in the field
  - Taxability of grants
  - Less than 48 hours of outage per year
  - Expect completion of deployment within four years of grant date

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23

ACAM Enhancement

- ACAM Broadband Coalition proposal to establish an Enhanced A-CAM program that would target deployment of 100/20Mbps broadband service in rural areas served by carriers currently receiving the support (goes accordingly with the 100/20Mbps from the new BEAD program). The Coalition's proposal would extend A-CAM I & A-CAM II by
  - Requiring deployment of 100/20Mbps service to a percentage (95% or greater??) of locations in eligible census blocks, as determined by the FCC's upcoming Broadband Serviceable Location Fabric (with the remaining 5% to be 25/3Mbps)
  - Increasing monthly support for participating A-CAM carriers to the higher of 80% of a Company's model-estimated costs or $300 per location

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24

ACAM Enhancement

- ACAM Broadband Coalition proposal to establish an Enhanced A-CAM program that would target deployment of 100/20Mbps broadband service in rural areas served by carriers currently receiving the support (goes accordingly with the 100/20Mbps from the new BEAD program). The Coalition's proposal would extend A-CAM I & A-CAM II by
  - Adds 6 years of support for most A-CAM I & A-CAM II carriers (8 years of additional support in the case of A-CAM I carriers that did not accept Revised A-CAM I support in 2019)
  - Add census blocks that were ineligible for A-CAM I because they were FTTP-served by the incumbent or an affiliate, & census blocks that were excluded from A-CAM I because they were served by an unsubsidized competitor with at least 10/1Mbps service

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ACAM Enhancement

- The FCC is seeking comments from industry stakeholders on different questions, such as
  - Whether the proposed deployment obligations justify the proposed support increases
  - If the FCC should offer a lower level of support for those areas where the provider has already deployed fiber
  - Which carriers should be eligible for this offer (do they include CAF BLS carriers)
  - If carriers should be required to deploy at least 100/20Mbps to all eligible locations or only to all locations where deployment of this level of service is not cost-prohibitive
  - If the proposed timeframes should be adjusted

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26

ACAM Enhancement

- The ACAM carriers would like an offer to be made prior to the BEAD program offers rolling out
  - This will allow ACAM carriers the ability to determine which of the two programs is best for their unique circumstances
    - Financial impacts
    - Regulatory & other "strings"
      - Some strings appear to have the potential to be particularly burdensome with the BEAD program
        - Knowing if you can accept the ACAM Expansion would likely impact if a carrier wants to participate in BEAD inside their ILEC territory
        - Also, being on a guaranteed 100/20 support program would protect the carrier from BEAD being available inside their ILEC territory

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CAF BLS Plan

- Eliminate Budget Control Mechanism (BCM) for 5 years
- Increase deployment obligations from 25/3 Mbps to 100/20 Mbps
  - Major change is the deployment obligations increase to 100% of applicable locations
    - Over the same period as the ACAM Enhancement deployment obligations
  - This deployment obligation may make it difficult for some carriers to opt into the CAF BLS plan
    - Not enough increase in support to financially build 100/20 Mbps to 100% of locations
      - Extremely rural carriers with very large serving areas & low density

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CAF BLS Plan

- The deployment obligations may create haves & have nots:
  - Costs are going up materially to build out
  - Existing fully fiber to the home carriers
    - Likely very easy to increase to 100/20 Mbps
  - Partially fiber to the home carriers
    - Will depend what areas left to deploy versus what recovery is available
  - Companies with a significant amount of copper still in their networks
    - 100/20 Mbps might prove too expensive for just a waiver of the BCM for five years
  - Maybe the ACAM Enhancement will help with this problem

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29

Thank you!

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30