

What to Expect at the FCC's August 2017 Open Meeting

August 1, 2017

Below is Kelley Drye's preview of the items under consideration at the Federal Communication Commission's (FCC's or Commission's) upcoming monthly Open Meeting, to be held on August 3, 2017. Consistent with the trend since he took over the Commission, Chairman Ajit Pai continues to schedule a large number of items. Indeed, for the seventh month in a row, the Commission has six or more items on its agenda. This month, the agenda consists of eight items and has several items taking concrete steps to resolve proceedings or important questions presented to the Commission. The areas covered skew heavily toward broadband deployment, with a CAF Phase II item, a Mobility Fund item and several spectrum items. In addition, the Commission again has enforcement items on the agenda: one (unidentified) item on the regular agenda and a one-item consent agenda involving an additional (unidentified) enforcement action.

The most significant agenda items are summarized below. Note: these brief summaries are based on draft items, which may differ from the final items released following the Open Meeting. Please check with Kelley Drye after the meeting for more information on the items below.

Connect America Fund Phase II Auction

This Public Notice is the next step towards executing the upcoming Connect America Fund (CAF) Phase II reverse auction, scheduled to begin in 2018, where service providers will compete for up to \$1.98 billion in financial support in areas where the incumbent provider declined cost-model funding. It is part of the Commission's effort to revise aspects of the universal service fund high cost program to encourage the extension of voice and broadband communications services to rural and high cost areas of the country.

In 2016, the FCC adopted the *Phase II Auction Order*, which established the rules for the competitive bidding process including the application mechanism, bidder eligibility criteria, eligible areas, and post-auction obligations. More recently, in March 2017, the FCC adopted bidding weights for the different performance category tiers for Auction 903 (as previously discussed [here](#)). The Notice serves as follow-on to these items by resolving specific details of the Auction mechanics established in these earlier proceedings.

The Notice seeks comment on CAF Phase II auction, Auction 903, procedures for how an applicant can become qualified to participate in the auction, how bidders will submit bids, and how bids will be processed to determine winners and assign support amounts. The item proposes the following:

1. Use of census block groups as the minimum geographic area for bidding;
2. Requiring information for the short-form application stage that focuses on the applicant's operational and financial qualifications;
3. Requiring information for the long-form application stage that demonstrates the winning bidder

meets technical and financial qualifications;

4. Setting the reserve price at the total of the support amounts for each eligible census block in a particular census block group; and
5. Use of a multi-round descending clock auction process for bidding.

Mobility Fund Phase II Challenge Process

The Commission will consider an [Order on Reconsideration and Second Report and Order](#) establishing a process to challenge which areas will receive financial support in the upcoming Phase II of the Mobility Fund. The Mobility Fund offers financial support to service providers to preserve and extend mobile broadband and voice services in unserved and underserved areas. In February, the Commission issued an [order](#) providing up to \$4.53 billion over the next decade in Mobility Fund Phase II support to expand 4G LTE coverage. Specifically, the Commission stated that any portion of a census block not fully covered by unsubsidized 4G LTE coverage with a minimum download speed of 5 Mbps would be eligible for funding. The Commission initially indicated that it would determine the areas eligible for funding using carrier-submitted coverage data provided in their Form 477 submissions. However, in response to criticisms regarding the lack of standardization and reliability of Form 477 data, the item under consideration would adopt an industry-led proposal to authorize a one-time collection of more detailed 4G LTE coverage data from carriers. The Commission plans to use this carrier data to generate coverage maps showing the areas presumptively eligible and ineligible for Phase II Mobility Fund support.

The item under consideration would allow government entities and carriers to challenge the Commission's determination that an area is **ineligible** for Phase II Mobility Fund support within 60 days of the coverage map's release. By contrast, parties would **not** be permitted to challenge the Commission's determination that an area is **eligible** for Phase II Mobility Fund support. To challenge an ineligibility determination, a party must submit actual outdoor speed test data certified by a qualified engineer indicating that 4G LTE service with a minimum download speed of 5 Mbps is unavailable in an area deemed ineligible for funding. Challengers would submit data via a portal to be established on USAC's website. The USAC portal would conduct an "automatic validation" of the data submitted and inform the challenger if its submission failed to meet the Commission's standards. If the challenge passes validation, the carrier whose coverage data was challenged would have a 30-day window to respond with additional coverage data or information of its own. The Commission would resolve challenges on a "preponderance of the evidence" standard, meaning the challenger must show that is more likely than not that the challenged area does not have sufficient 4G LTE coverage and performance. The item under consideration also would dismiss requests to reconsider the Commission's 5 Mbps speed benchmark for Mobility Fund Phase II support, finding that nationwide carriers generally report minimum download speeds of 5 Mbps or more. The item similarly would dismiss requests to condition Mobility Fund Phase II support on making 4G LTE networks backwards compatible with GSM and CDMA, indicating such technologies are being phased out by the marketplace.

Form 477

The third item on the FCC's meeting agenda is an [FNPRM](#) which would seek comment on ways to improve the value of data collected on FCC Form 477 regarding the availability of mobile and fixed broadband and other communications services, and to identify and eliminate unnecessary or overly-burdensome filing requirements.

First, the FNPRM would request comment on questions related to mobile broadband deployment data. It notes that under the current collection requirements, “service providers are required to file, and certify the accuracy of, shapefiles representing those areas where, for a specified technology, ‘users should expect the minimum advertised upload and download speeds associated with that network technology.’” Minimum advertised or expected speeds currently are deemed confidential. To facilitate a meaningful comparison of the data submitted by numerous providers of mobile broadband service, the FNPRM seeks comment on proposals to (1) make minimum advertised or expected speeds publicly available; (2) change the file format in which the data must be submitted; (3) require the submission of “standardized propagation models for 4G LTE and later-generational technologies”; and (4) require submission of “on-the-ground data” which represents actual consumer experiences. It further seeks comment on potentially adopting different reporting requirements for 5G wireless technologies and satellite broadband service. Additionally, the FNPRM proposes to eliminate requirements to submit mobile broadband deployment data by spectrum band, to report coverage information for each technology in a provider’s network, and to submit service availability data by census tract. The FNPRM also seeks comment on revising mobile voice deployment and mobile broadband and voice subscription reporting requirements.

Second, the FNPRM would propose a number of revisions to reporting requirements for providers of fixed broadband service. In particular, it proposes to eliminate or simplify the reporting of “available contractual or guaranteed data throughput rates for business/enterprise/government services.” The FNPRM also seeks comment on a proposal to improve broadband “availability” data by collecting information from fixed broadband service providers that specifically identifies where new customers can readily obtain service within a “standard interval.” Additionally, it proposes to give fixed providers the option to report broadband deployment data at a more granular level than census blocks (e.g., geospatial data, address-level, street segments, etc...). The FNPRM further seeks comment on improving fixed broadband deployment reports from satellite broadband providers.

Finally, the FNPRM seeks comment on a number of other proposals, including (1) making public national-level fixed broadband subscriber counts and disaggregated subscriber data; and (2) shifting from a semi-annual collection of data to an annual collection.

Expanding Flexible Use in Mid-Band Spectrum Between 3.7 GHz and 24 GHz

The Commission will consider a draft [Notice of Inquiry](#) to examine the potential for expanded flexible use services, especially wireless broadband, in the frequency bands between 3.7 GHz and 24 GHz. The inquiry would develop a record on opportunities in the mid-range bands that are allocated for exclusive non-federal use and for shared federal and nonfederal use. The NOI specifically would seek comment on the 3.7-4.2, 5.925-6.425, and 6.425-7.125 GHz bands, but also invites commenters to identify other bands between 3.7 and 24 GHz that might be suitable as candidates for expanded flexible wireless broadband use. To the extent the Commission identifies during the inquiry candidate bands that include shared allocations for federal use, the draft NOI states that it will work with NTIA to evaluate the implications of any new or expanded non-federal use of those bands. An NOI is often a precursor to a full-blown rulemaking proceeding, so parties interested in potential expanded or changed uses in bands within the range may wish to monitor and possibly participate in this proceeding. The draft NOI indicates that comments and reply comments will be due 60 and 90 days after the Commission adopts the item, respectively.

Wireless License Renewal and Service Continuity Reform

The FCC will consider an item that seeks to harmonize its wireless license renewal process and

service continuity standards. The [Draft Order](#) would establish a three part process for renewing wireless licenses based on the Commission's model for the 700 MHz Commercial Services Band. It also sets forth proposed safe harbors that provide expedited renewal for licensees that meet their initial term construction requirement and continue operating at or above that level. Further, the Draft Order would harmonize discontinuance rules, addressing the ground rules when licenses are constructively surrendered to the Commission when they are not kept in continuous use. Moreover, in a related vein, the Draft Order would eliminate legacy "comparative renewal rules" and eliminate an existing construction requirement loophole in the rules by imposing a construction obligation on both parties of a transaction when portions of geographic licenses are assigned. The item also contains a Further Notice of Proposed Rulemaking which addresses matters such as the imposition of additional construction obligations on licenses during renewal terms, as well as penalties and re-licensing frameworks that would be associated with any new additional, incremental requirements.