

# BloostonLaw Telecom Update

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## National Lifeline Verifier Launched in Oregon and Texas, Effective November 18

On October 19, the FCC issued a *Public Notice* announcing the full launch of the National Lifeline Eligibility Verifier (National Verifier) in Oregon and Texas, effective November 18, 2020. Oregon and Texas have managed eligibility verification and duplicate checking for the federal Lifeline program in parallel with administering their own state low-income subsidy programs for many years. Additionally, pursuant to waivers granted under the 2012 Lifeline Order, Oregon and Texas do not participate in the National Lifeline Accountability Database (NLAD). **In light of those waivers and the systems Oregon and Texas already have in place, the National Verifier will leverage the states' existing processes (and automated database connections) so that Lifeline consumers in Oregon and Texas can continue to apply using a streamlined state application process for both federal and state benefits.**

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# Headlines

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## Comments on New Application Fee Schedule Due November 16

On October 15, the FCC's *Notice of Proposed Rulemaking* in WC Docket No. 20-270, in which comment is sought on new application fee rates, was published in the Federal Register. As a result, comments are due November 16, 2020; and reply comments due on or before November 30, 2020.

As we reported in a previous edition of the BloostonLaw Telecom Update, proposing significant changes to the FCC's existing fee schedule in both types of applications and other processes covered by the fee requirement and also in the amount of fees proposed. **As shown below, many filings will now be subject to fees that previously were not.** In addition to adjusting the cost of existing fees, new fees have been added, and existing fees have been removed, as the FCC deems appropriate. Some of the new cost-based fees proposed by the FCC include:

Application	Current Fee	Cost-based Fee
Domestic 214 Applications-Part 63 Transfers of Control	\$1,195	\$1,230
Domestic 214 Applications-Special Temporary Authority	n/a	\$675
Domestic 214 Applications-Part 63 Discontinuances (Non-Standard Review)	n/a	\$1,230
Domestic 214 Applications-Part 63 Discontinuances (Standard Streamlined Review)	n/a	\$335
Interconnected VoIP Numbering Authorization Applications-Part 51	n/a	\$1,330
Tariff Filing	\$960	\$930
Complex Tariff Filing (Large)	n/a	\$6,540
Complex Tariff Filing (Small)	n/a	\$3,270
Application for Special Permission for Waiver of Tariff Rules	\$960	\$375
Waivers, Part 61 and Part 69	\$960	Remove
Universal Service Short-Form Auction Application	n/a	\$1,030

Application	Current Fee	Cost-based Fee
Universal Service Long Form Auction Application	n/a	\$1,935
Accounting studies-Depreciation Update Study	\$40,465	Remove
Waiver of Accounting Rules	\$9,120	\$4,415
Section 208 Formal Complaint	\$235	\$540
Section 224 Pole Attachment Complaint	\$295	\$540

In addition to changing the actual fees, the FCC also proposes to streamline its schedule of application fees, consolidating the eight separate categories of fees currently in its rules down to five functional categories: Wireless Licensing Fees, Media Licensing Fees, Equipment Approval Fees, Domestic Service Fees, and International Service Fees; and to consolidate its approach to listing application fees, reducing the total number of application fees from 450 to 167.

Carriers interested in filing comments on the *NPRM* may contact the firm for more information.

BloostonLaw Contacts: [Ben Dickens](#), [Gerry Duffy](#), and [John Prendergast](#).

### **FCC Clarifies 214 Discontinuance Rule for TDM**

On October 20, the FCC issued a *Declaratory Ruling* clarifying the scope of the FCC’s section 214 technology transition discontinuance rules applicable to carriers that are discontinuing legacy Time Division Multiplexed (TDM) voice services. **Specifically, the FCC clarified that any carrier seeking to discontinue legacy voice service to a community or part of a community that is the last retail provider of such legacy TDM service to that community or part of the community is subject to the FCC’s technology transition discontinuance rules, including the requirements to receive streamlined treatment of its discontinuance application.**

The ruling comes as a result of an apparent controversy, in which the FCC states that “[s]ome competitive LECs take the view that the FCC’s technology transition discontinuance rules do not apply to them when they seek to no longer offer the TDM voice service to communities they serve, whereas other competitive LECs assume those rules do apply.” The confusion appears to have arisen out of an ambiguity surrounding what the word “replacement” means in the definition of “technology transition” in the rules. To resolve the controversy, the FCC clarified that whenever a planned discontinuance of a legacy TDM-based voice service will leave a community or part of a community without any further access to legacy TDM-based voice service—i.e., the discontinuing provider is the last retail provider of such service to the community or part of a community—that discontinuance necessarily results in “the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission” and is subject to our technology transition discontinuance rules, including the rules governing streamlined treatment.

BloostonLaw Contacts: [Ben Dickens](#), [Gerry Duffy](#), [Mary Sisak](#), and [Sal Taillefer](#).

## **Comments on 3.45-3.55 GHz Licensing and Operating Framework Due Nov. 20**

On October 21, the FCC's published in the Federal Register its *Further Notice of Proposed Rulemaking* seeking comments on an appropriate licensing and operating framework for the 100 megahertz of mid-band spectrum in the 3.45-3.55 GHz band it has proposed to make available for 5G deployment across the contiguous United States. Comments are due on November 20, 2020 and reply comments on December 7, 2020.

As we reported in a previous edition of the BloostonLaw Telecom Update, the FCC specifically seeks comment on a regime to coordinate non-federal and federal use and proposes a band plan, as well as technical, licensing, and competitive bidding rules for the band. However, rather than proposing a licensing framework that is similar to or consistent with the adjacent CBRS service (which spectrum was recently auctioned by county-sized license areas in 10-megahertz spectrum blocks, with opportunistic "license by rule" use permissible when and where licensees and federal operations are not using this spectrum), the FCC's draft proposal would align the 3.45-3.55 GHz band with rules for 3.7 GHz C-band spectrum, which is slated for auction in December and provides for exclusive licenses, higher power levels, and larger geographic license areas.

BloostonLaw Contacts: [John Prendergast](#) and [Cary Mitchell](#).

## **FCC Announces Initially Complete Applications for Auction 107; Upfront Payment Due Nov. 2**

On October 19, the FCC issued a *Public Notice* announcing the status of 74 short-form applications received for Auction 107. Auction 107, which is scheduled to begin December 8, 2020, will offer new flexible-use overlay licenses for spectrum in the 3.7–3.98 GHz band (3.7 GHz Service) throughout the contiguous United States, subject to clearing requirements. Upfront payments are due November 2.

Specifically, a little over half of the applications received by the FCC (38) were found to be complete upon initial review. Each of these applicants will become a qualified bidder upon receipt by the FCC of the required upfront payment by the November 2, 2020, deadline. The other half (36) will receive a letter identifying each deficiency in its application, and will have until November 2, 2020 to resubmit its application, having corrected any deficiencies.

A list of the complete applications can be [found here](#), and a list of the incomplete applications can be [found here](#).

BloostonLaw Contacts: [John Prendergast](#) and [Sal Taillefer](#).

## **Comment Sought on Application Limit for NCE FM New Stations in 2021 Filing Window**

On October 19, the FCC issued a *Public Notice* seeking comment on its proposal to establish a ten-application limit in the upcoming NCE FM filing window. Comment and reply comment deadlines have not yet been established.

In the wake of the FCC's recently-adopted changes to its rules and procedures for considering competing applications for new noncommercial educational (NCE) FM radio stations, the FCC is preparing for the opening of a filing window for FM reserved band (channels 201 – 220) applications for NCE FM new station applications in 2021 (specific dates forthcoming.) The FCC used a ten NCE FM new station application limit for its previous filing window in October 2007.

The specific wording of the proposed limit is:

An applicant may file no more than a total of ten applications in the 2021 NCE FM filing window. Furthermore, a party to an application filed in the 2021 NCE FM filing window may hold attributable interests in no more than a total of ten applications filed in the window. If it is determined that any party to an application has an attributable interest in more than ten applications, the Bureau will retain the ten applications that were filed first – based on the date of application receipt – and dismiss all other applications.

Parties interested in filing comments may contact the firm for more information.

BloostonLaw Contacts: [Gerry Duffy](#).

## ***Law and Regulation***

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### **Senate to Hear FCC Commissioner Nomination on November 10**

On October 15, the US Senate Committee on Commerce, Science, and Transportation, announced that it will convene a nominations hearing at 2:30 p.m. on Tuesday, November 10, 2020. The hearing will consider presidential nomination of Mr. Nathan Simington, of Virginia to be a Member of the FCC (among others).

As we reported in a previous edition of the BloostonLaw Telecom Update, President Trump nominated Mr. Simington to be a member of the FCC after withdrawing the nomination of Commissioner Michael O’Rielly to a second term. Mr. Simington is currently a Senior Advisor in the National Telecommunications and Information Administration (NTIA) specializing in network and telecommunications policy. There, he works on 5G security and secure supply chains, the American Broadband Initiative, and is NTIA’s representative to the Government Advisory Committee of the Internet Corporation for Assigned Names and Numbers. Prior to his appointment at NTIA, Mr. Simington was Senior Counsel to Brightstar Corporation.

According to a report in Reuters, Simington helped draft the President’s May executive order requiring the NTIA to petition the FCC to impose new regulations on social media moderation practices after Twitter Inc warned readers to fact-check his posts about unsubstantiated allegations of fraud in mail-in voting.

BloostonLaw Contacts: [Ben Dickens](#) and [Sal Taillefer](#).

### **Oppositions to E911 Location Accuracy Petitions for Reconsideration due November 3**

On October 19, the FCC published in the Federal Register the petitions for reconsideration filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) and by CTIA, both seeking reconsideration of the *Sixth Report and Order* in the Wireless E911 Location Accuracy Requirements proceeding (PS Docket No. 07-114). **Accordingly, oppositions are due November 3, and replies to oppositions are due November 13, 2020.**

As we reported in a previous edition of the BloostonLaw Telecom Update, APCO seeks reconsideration of the way in which the dispatchable location requirements were revised to take into account termination of the National Emergency Address Database (NEAD). Specifically, APCO is concerned that the use of “any database” for dispatchable location reference points instead of the now-defunct NEAD does not go far enough because it “permits carriers to demonstrate compliance with a raw number of reference points leveraged by a solution regardless of whether the solution can accurately estimate a dispatchable location or, more importantly, whether a carrier delivers dispatchable location information with 9-1-1 calls.”

CTIA asks the FCC to reconsider its rules and timelines implementing the Z-axis accuracy metric of  $\pm 3$  meters, for various reasons. First, CTIA argues that “changed circumstances related to COVID-19 that have prevented wireless providers from validating whether any technology will meet the vertical location accuracy requirements before April 2021, as required by the Commission’s rules.” Second, CTIA argues that the barometric-sensor based solutions required to meet the FCC’s rules will not be available on the market in time. Finally, CTIA asks the FCC to take this opportunity to reconsider its rejection of mobile operating system (OS)-based 9-1-1 vertical location solutions, which it argues “can deliver  $\pm 3$  meter vertical location information nationwide years earlier than the Sixth R&O’s framework and to tens of millions of more 9-1-1 calls than any other technology solution.”

BloostonLaw contacts: [John Prendergast](#) and [Cary Mitchell](#).

### **FCC Waives Rural Healthcare Rule on Upfront Payment Cap, Multi-Year Commitment for FY2020**

On October 19, the FCC issued an *Order* waiving, on its own motion, the cap on upfront payments and multi-year commitments for FY 2020 Rural Healthcare Program (RHC) requests to ensure such requests can be funded in full. According to the FCC, “The far-reaching effects of the pandemic lead us to conclude that funding all RHC Program requests in full will promote the public interest by enabling the widespread delivery of vital communications-based health care during the pandemic.”

The RHC Program consists of two component mechanisms: (1) the Telecommunications Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas; and (2) the Healthcare Connect Fund Program, which supports the delivery of broadband services by offering a discount on an array of advanced telecommunications and information services. Support available through the RHC Program is subject to an annual cap, which is adjusted each funding year for inflation. The funding cap for FY 2020 is \$604.76 million.

Over the summer the FCC announced that \$197.98 million in unused funds from prior funding years was available for use in future funding years, and the combination of the inflation-adjusted funding cap and carried-forward funding means that there is a total of \$802.74 million in available RHC Program funding for FY 2020. According to USAC, total RHC Program demand for FY 2020 is \$670.14 million, which includes \$648.24 million in gross demand for all program funding requests during the funding year’s single application filing window. Thus, the available RHC Program funding of \$802.74 million exceeds total demand by \$132.6 million for FY 2020. In light of this set of facts, the FCC concluded that the protections built into the cap are not required for FY 2020 because all eligible recurring services requested by health care providers can be fully funded given the current year’s surplus of funding over demand.

BloostonLaw Contacts: [Sal Taillefer](#).

## **FCC Issues Guidance on E-Rate Program Category Two Budgets**

On October 14, the FCC issued a *Public Notice* guidance related to the new district-wide budgets for category two services, effective beginning in funding year 2021. As we reported in a previous edition of the BloostonLaw Telecom Update, last year the FCC adopted new rules making permanent the category two budget approach, set fixed five-year budget cycles, and reset the budgets beginning in funding year 2021. Category two budgets are now calculated at the school district-level based on the total number of full-time students in a school district, rather than on a school-by-school basis.

Specifically, pursuant to the Category Two Report and Order, the FCC provided further guidance to E-Rate applicants regarding: (1) how to determine whether students at a charter school should be counted as part of the public school district or separately and (2) how to count part-time students that attend schools that are not a part of the school district (i.e., independent schools) with only part-time students. In addition, to the extent school buildings are either fully or partially closed due to the coronavirus (COVID-19) pandemic, the FCC provided guidance regarding how to count students that attend these schools for category two budget purposes, and remind applicants of the FCC's cost allocation rules for the use of shared equipment by non-instructional facilities.

A copy of the FCC's guidance can be found [here](#).

## **GAO Criticizes Trump Administration 5G Plan – “Additional Actions Needed”**

On October 7, the U.S Government Accountability Office issued a report in response to congressional requesters, who asked the GAO to “evaluate the federal government's efforts to mitigate challenges and national security risks related to 5G.” According to the report, room for improvement in the nation's 5G plans exist.

Specifically, the report examined the extent to which the Administration “has developed a national strategy on 5G that address [GAO's] six desirable characteristics of an effective national strategy.” Those six characteristics, which the GOA has previously identified, are: (i) purpose, scope, and methodology; (ii) problem definition and risk assessment; (iii) goals, subordinate objectives, activities, and performance measures; (iv) results, investments, and risk management; (v) organizational roles, responsibilities, and coordination; and (vi) integration and implementation. The GAO concluded that five of these characteristics are only partially addressed by the national 5G strategy and that one characteristic – results, investments, and risk management – is not addressed at all.

Other criticisms included:

- the strategy does not define key terms or include information on how it was developed.
- the strategy does not include a risk assessment or complete information on 5G risks and does not include information on the quality (constraints or deficiencies) of the data.
- the strategy does not identify or discuss the importance of establishing priorities, milestones, performance measures with measurable targets, or a process for monitoring and reporting on progress.

- the strategy also does not establish or provide information on an accountability and oversight framework or identify a process for coordination or conflict resolution.
- the 5G national strategy does not contain information regarding planned subordinate strategies, although federal agencies have issued subordinate strategies since the issuance of the 5G national strategy.

The GAO ultimately concluded that, “[u]ntil the administration ensures that the implementation plan includes all elements of the six desirable characteristics, the guidance the plan provides decision makers in allocating resources to address 5G risks and challenges will likely be limited.”

## ***Deadlines***

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**NOVEMBER 1: FCC FORM 499-Q, TELECOMMUNICATIONS REPORTING WORKSHEET.** All telecommunications common carriers that expect to contribute more than \$10,000 to federal Universal Service Fund (USF) support mechanisms must file this quarterly form. The FCC has modified this form in light of its decision to establish interim measures for USF contribution assessments. The form contains revenue information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions. It does not relate to the cost recovery mechanisms for the Telecommunications Relay Service (TRS) Fund, the North American Numbering Plan Administration (NANPA), and the shared costs of local number portability (LNP), which are covered in the annual Form 499-A that is due April 1.

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*This newsletter is not intended to provide legal advice. Those interested in more information should contact the firm.*

# *Calendar At-a-Glance*

## **October**

Oct. 26 – Oppositions to Petitions to Deny 2.5 GHz Tribal Spectrum License Applications are due.

Oct. 29 – Comments on Rural Call Completion Report and Request for Comment are due.

## **November**

**Nov. 1 – FCC Form 499-Q (Quarterly Telecommunications Reporting Worksheet) is due.**

Nov. 2 – Replies to Oppositions to Petitions to Deny 2.5 GHz Tribal Spectrum License Applications are due.

Nov. 2 – Auction 107 Upfront Payment is due.

Nov. 3 – Oppositions on E911 Petitions for Reconsideration are due.

Nov. 13 – Replies to oppositions on E911 Petitions for Reconsideration are due.

Nov. 16 – Comments are due on New Application Fee Schedule.

Nov. 17 – Reply comments are due on Priority Services NPRM.

Nov. 20 – Comments are due on 3.45-3.55 GHz Licensing and Operating Framework are due.

Nov. 30 – Reply comments are due on New Application Fee Schedule.

Nov. 30 – Lifeline Income Documentation, De-Enrollment/Reverification Requirement waivers expire.

## **December**

Dec. 7 – Reply comments are due on 3.45-3.55 GHz Licensing and Operating Framework are due.