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Regulatory Review

The Miller Isar, Inc. Regulatory Review is a monthly report designed to provide clients with information regarding regulatory and policy matters that may impact their business operations. The Regulatory Review is provided for informational purposes only and does not constitute legal opinion or counsel.

FEDERAL REGULATORY NEWS



BROADBAND DATA SERVICES DEREGULATED IN COMPETITIVE AREAS – NPRM RELEASED

On April 20, 2017, the Commission adopted an order eliminating *ex ante* regulation of packet-based business data services (BDS) transport services, and time division multiplex (TDM) services in counties that have been found “competitive,” following a transition period. Under the order, a county will be considered “competitive” if “50 percent of the buildings in a county are within a half-mile of a location served by the competitive provider or 75 percent of the census blocks in a county have a cable provider present.” Incumbent local exchange carriers (ILECs) will be subject to permissive BDS detariffing for 36 months, and then subject to mandatory detariffing. Service prices are to be frozen for six months following the effective date of the order. In counties that do not meet the competitive test, ILECs may offer volume and terms discounts, as well as contract tariffs under the Commission's previous rules. In her dissenting statement, Commissioner Clyburn said, “... what this Order does is open the door to immediate price hikes for small business broadband service in rural areas and hundreds of communities across the country” adding “I am not the only one expressing concern about this Order. Members of Congress, industry, the Small Business Administration Office of Advocacy, and even the European Union have substantial concerns about the direction and impact of this item. But, when the goal is deregulation at all costs, I am not surprised that those calls fall upon deaf ears.” (Docket Nos. 13-5, 05-25, 16-143 and Rulemaking RM-10593) [Press Release](#), [Chairman Pai Statement](#), [Commissioner O’Rielly Statement](#), [Commissioner Clyburn Dissenting Statement](#).

On April 21, 2017, the Commission released a [Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment](#) adopted during the Commission’s April 20, 2017 Open Meeting, seeking comment on removing regulatory barriers to infrastructure investment proposed changes to speed the transition from copper networks and legacy services to next-generation networks and services, and reforming Commission regulations that increase costs and slow broadband deployment. Comments are due 30 days following publication in the *Federal Register*; reply comments will be due 60 days following publication. (FCC No. 17-37. WC Docket No. 17-84) [Statement of Commissioner Pai](#), [Statement of Commissioner Clyburn](#), [Statement of Commissioner O’Rielly](#).

COMMISSION WIRELESS BROADBAND DEPLOYMENT NPRM -NOI RELEASED

On April 21, 2017 the Commission released a [Notice of Proposed Rulemaking and Notice of Inquiry](#), adopted during the Commission’s April 20, 2017 Open Meeting to address regulatory impediments to wireless network infrastructure investment and deployment. Comments are due 30 days after *Federal Register* publication; replies are due 60 days after publication. (FCC 17-38, WT Docket No. 17-79) [Statement of Commissioner Pai](#), [Statement of Commissioner Clyburn](#), [Statement of Commissioner O’Rielly](#)

CENTURYLINK PETITIONS FOR LIMITED STAY OF TANDEM TRANSPORT-SWITCHING RATE TRANSITION

On April 12, 2017, CenturyLink filed a [Petition for Limited Stay](#) of the six and seven-year intercarrier compensation terminating access rate reductions for tandem switching and transport charges ordered in the 2011 *USF/ICC Transformation Order*. CenturyLink argues that significant industry debate has arisen regarding what subset of tandem switching and transport rates are subject to the sixth and seven year reductions to “bill and keep” recovery. The incumbent also maintains that there is disagreement regarding how the Bureau’s guidance for price cap and rate of return incumbent local exchange carriers apply to the competitive local exchange carrier (CLEC) rate parity rule in a variety of potential call scenarios where a CLEC might own the tandem. CenturyLink argued if this stage of the ICC transition is not suspended, there will likely be a great deal of confusion as carriers take a variety of different approaches to the section 51.907(g) requirements in the year six annual tariff filing process that begins June 16, 2017, and irreversible competitive harm in years six, seven and beyond. On April 24, 2017, the Commission’s Wireline Competition Bureau [requested comment](#) on CenturyLink, Inc.’s petition. Comments are due May 4 in WC docket 10-90. Replies are due May 11.

VOICE TELEPHONE AND INTERNET ACCESS REPORTS RELEASED

On April 21, 2017, the Wireline Competition Bureau issued its [Voice Telephone Services Report](#) summarizing information collected on telephone services as of June 30, 2016. According to the Report, in June 2016, there were 62 million end user switched access lines in service, 60 million interconnected VoIP subscriptions and 338 million mobile subscriptions in the United States. Interconnected VoIP subscriptions increased at a compound annual growth rate of 10 percent, mobile voice subscriptions increased at a compound annual growth rate of three percent and retail switched access lines declined at 11 percent per year over a three-year period.

The Commission also released its [Internet Access Service Report](#) containing data on internet access connections as of June 30, 2016. The Report reflects a total of 369 million fixed and mobile Internet connections, representing an eight percent increase between June 2015 and June 2016. The most significant growth comes from mobile Internet access subscribership, which grew ten percent year-over-year to 265 million connections as of June 2016. Nearly 40 percent of the fixed Internet access connections had downstream speeds of between 25 Mbps and 100 Mbps. The Report was prepared from data collected via FCC Form 477.

IN CONGRESS

BROADBAND PRIVACY RULE REINSTATEMENT BILL INTRODUCED IN SENATE

On April 6, 2017, Senators Edward J. Markey (D, MA), Richard Blumenthal (D, CT), Elizabeth Warren (D, MA), Bernard Sanders (I, VT), Jeffrey A. Merkley (D, OR), Martin Heinrich (D, NM), Tom Udall (D, NM), Patrick Leahy (D, VT), Tammy Baldwin (D, WI), Chris Van Hollen (D, MD) and Al Franken (D, MN.) introduced [legislation](#), to reinstate the Commission’s rules that require Internet service providers to obtain consent before sharing their subscribers’ sensitive information and adopt reasonable data security protections. Under the bill, the Commission would have 180 days from enactment, to “promulgate regulations to protect the privacy of customers” of Broadband Internet access services. [Press release](#)

IN THE COURTS

COMMISSION LIFELINE ORDER REMANDED

On April 19, 2017, the U.S. Court of Appeals for the District of Columbia circuit [granted](#), the Commission’s [motion](#) to remand the Lifeline Reform [Order](#) back to the Commission. [NARUC and 12 states](#) had petitioned the Court for review of the Order. The Commission, on its motion, sought a remand of its order, stating that



it was commencing a proceeding to eliminate the federal Lifeline broadband provider designation process at issue in the appeals. The Commission stated that that state governments, and not the Commission, have primary responsibility for designating carriers that can participate in the Lifeline program.

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ARIZONA – “Competitively Neutral” Regulation Bill Enacted

Governor Doug Ducey (R) has signed SB 1217, a bill that would require all telecommunications service regulation to be competitively neutral into law. The new law establishes that “just and reasonable rates for retail telecommunications services that have been classified as competitive by the commission do not need to be based on the rate of return evaluation traditionally used in establishing rates for noncompetitive telecommunications services.” Additionally, competitive retail telecommunications services may be introduced or amended with 40 days’ notice to subscribers and the Commission. The 40 day notice period includes changes to maximum rates, as well as service terms and conditions. If the Commission suspends a proposed retail service amendment, the suspension may not exceed 30 days after the end of the 40 day notice period. A requirement that the Commission use a ‘rate of return evaluation traditionally used in establishing rates for noncompetitive telecommunications markets,’ and other factors the Commission “deems more appropriate for a long-distance competitive market” has been removed under the new law.

CALIFORNIA – 805 Area Code Relief to be Approved Under Proposed Order

A proposed California Public Utilities Commission order would approve a North American Numbering Plan Administrator (NANPA) application seeking area code relief in the 805 numbering plan area under a thirteen month implementation schedule. A new “820” area code would be implemented using an overlay approach. In approving the overlay, the Commission would reject a NANPA recommendation that a public education program (PEP) was unnecessary. NANPA’s application noted that more than 30 area code overlays have been successfully implemented in 21 states other than California within the past ten years without the use of a funded PEP, and that the industry’s individual and joint customer education efforts were sufficient in educating customers about the dialing changes and the new overlay area codes. CTIA supported NANPA’s recommendation to allow the industry to develop consumer education materials and methods. Under the Commission’s proposed order, the Commission stated that it was not convinced by the industry statement included in the application that the industry is capable of achieving the goals ... without a PEP.” According to the proposed order, the Commission reviewed CTIA’s comments and was “not persuaded by their 'supplementary information' or arguments. CTIA claims the education plans implemented in over 30 area code overlays outside of California were successful because no customers complained, however, that is not the benchmark adopted by this Commission and we refuse here to adopt a complaint-based standard for a public education function.” The Commission concluded that it “has a broader responsibility to all the people in California that cannot be met without a PEP.” The PEP is to include materials that explain the type of area code change being implemented new dialing procedures, the region covered by the overlay, and explain that the cost and quality of telephone service will not be adversely affected by the change. PEP funds for tasks jointly assigned to all the service providers will come from those service providers holding thousand-blocks of telephone numbers in the 805 area code as of the effective date of this decision, according to the draft order. A new area code is to be added to the 805 area code by December 2017. Customers may begin using this new dialing procedure to and from telephone numbers with the 805 area code in November 2017, and continue to do so through May 2018 when the new dialing procedure begins. New 820 area code telephone numbers will be issued to customers beginning one month after the start of the mandatory dialing period. The area served by the 805 area code includes parts of Monterey and Kern counties and most of San Luis Obispo, Santa Barbara, and Ventura counties. Adoption of the proposed decision is scheduled for May 25. (Docket 16-11-008)

COLORADO – Proposed Rules Would Authorize Voluntary Certificates and Registration Letters

The Colorado Public Utilities Commission has issued a proposed decision that would adopt amended rules governing Commission jurisdiction, basic local exchange tariffing requirements, and voluntary operating authorities in lieu of certificates of public convenience and necessity (CPCNs) or letters of registration (LORs). The proposed decisions would conclude a 2016 rulemaking proceeding to address Commission authority to issue operating authorities following enactment of telecommunications deregulation statutes in 2014. The statutes, among other things, had removed the Commission’s obligation to issue CPCNs or LORs for deregulated services, except basic emergency services. ExteNet Systems, Inc. a provider of deregulated services in the Colorado had challenged the Commission’s initial refusal to grant a CPCN or LOR, stating that it had been “commercially damaged.” ExteNet argued that, without some form of commission issued operating authorities, smaller providers and new entrants would be “irreparably disadvantaged” in obtaining interconnection agreements and access to rights-of-way, among other things, and “diminish Colorado’s competitive telecommunications marketplace, a key goal of the 2014 Telecom Reform Legislation.” In a June 2016 notice of proposed rulemaking, the Commission considered voiding all CPCNs, or equivalent authorities, held by providers for services no longer regulated. The Commission sought comment, finding that the statutes had not specified the legal status of previously issued CPCNs or LORs for newly deregulated services. Under the proposed rules, deregulated companies, or companies that provide services that do

not fall under commission regulation, may obtain CPCNs or LORs. A voluntary application for operating authority would be allowed, enabling companies to obtain rights of way, pole attachment agreements, interconnection agreements, and access to numbering resources, actions that require operating authorities. The proposed rules would also delete requirements that telecommunications carriers file tariffs, certain reports, and registrations, and remove the Commission's authority over services that are no longer regulated by the commission, including basic local exchange service provided by rural telecommunications providers. If no exceptions to the draft decision are filed within 20 days from the April 14 ruling, the decision will become final. ([Docket 16R-0453T](#))

MINNESOTA – CenturyLink Deregulation Petition Approved

A CenturyLink petition for deregulation under new state law has been partially approved by the Minnesota Public Utilities Commission. CenturyLink petitioned the Commission to be relieved from regulation in 109 of its 115 exchanges in Minnesota, maintaining that it served less than half of the households in those exchanges and that unaffiliated competitors offer service to at least sixty percent of the households in the exchanges. For 32 of the 109 exchanges, CenturyLink maintained that the existence of wireless providers satisfied the statutory criteria for deregulation requiring the existence of a qualifying competitive service provider. In the remaining 77 exchanges, CenturyLink based its analysis on the availability of cable or other wireline broadband providers. The Department of Commerce challenged whether CenturyLink had met the statutory criteria for the percent of households served in each exchange in thirteen exchanges. The classification offers CenturyLink greater pricing flexibility to raise rates for telephone service for competitive exchanges. In granting CenturyLink's petition, the Commission granted competitive classification in all but five exchanges. The Commission also rejected a state attorney general's office recommendation that CenturyLink provide notice to customers immediately of the company's change in regulation, in addition to when the company actually decides to raise rates. Commissioners determined that the additional notice would confuse customers. CenturyLink will continue to be required to meet service quality requirements and notify customers when making substantive changes to service terms, conditions, and rates, although will be allowed to increase rates by increments of \$2 per month up to \$25 per month through December 31, 2022. Minnesota law was amended in 2016 to authorize the Commission to determine an incumbent qualified for pricing flexibility in exchanges found to be subject to competition. (Dockets P-421/AM-16-496, P-421/AM-16-547)

NEBRASKA – Online Telephone Number Directory Order Revised

The Public Service Commission is partially revising a ruling that had allowed CenturyLink and Dex Media, Inc., to make telephone number directories available to customers in a digital format instead of a printed format. Under the Commission's original decision, CenturyLink and directory publisher Dex Media, were required to notify subscribers of the availability of paper directories via bill insert on an annual basis. Dex Media was also required to continue paper printing directories until it obtained a waiver from the commission or petitioned the commission to change the rule prior to any decision to stop printing directories. CenturyLink and Dex Media challenged the customer notice requirement, which they maintained would be cost-prohibitive. The companies requested that the notice be included as a bill message, and sought reconsideration of the obligation to formally request Commission authority before terminating paper directory distributions. The companies argued that they needed the flexibility to determine when printed directories could be discontinued without obtaining additional Commission approval. The Commission granted the Companies' request to notify subscribers via a billing message but required that notices be "prominent and conspicuous." The Companies request to discontinue paper publications without Commission authority was denied. "The commission requests Dex Media to provide it with a request for approval. We further request Dex Media to provide us with reasonably advanced notice of its filing so that in the event that the request is granted, consumers have at least six months advance notice prior to the discontinuance." (Application C-4858/DR-0007)

COMPLIANCE REPORTING MAY

The following report listing has been compiled from past reporting requirements and is provided exclusively for informational purposes. Reporting requirements are subject to change and should be verified by filers.

FEDERAL REPORTS DUE IN MAY

FCC Form 499-Q Telecommunications Reporting Worksheet and *de minimis* notification due May 1.

ALL REPORTS DUE IN MAY

| Due | Jurisdiction | Report | Due | Jurisdiction | Report |
|------------|---------------------|--|------------|---------------------|--|
| May | Alaska | Access Minutes Report | May 10 | Georgia | Local Service Indicators Data Requests |
| May | Alaska | Carrier and Area Specific Bulk Billed Report | May 10 | New York | Service Quality Performance |
| May | Missouri | Relay Missouri Statement | May 10 | Oregon | Oregon Universal Service Contribution Worksheet |
| May | Rhode Island | Telecommunication Education Access Fund | May 15 | Alabama | Revised Survey of Competitive Local Exchange Carriers |
| May | Rhode Island | Telecommunications Relay Service Report | May 15 | Florida | Florida Telecommunications Relay, Inc. (FTRI) Monthly Surcharge Collection Report |
| May 1 | California | Affiliate Transaction Report | May 15 | Georgia | Georgia Telecommunications Relay Service (TRS) Monthly Surcharge Collection Report |
| May 1 | Federal | 499Q <i>de minimis</i> determination notice (ad hoc as may apply) | May 15 | Kansas | Kansas Universal Service Fund 2004/2005 Wireless and Wireline Carrier Remittance Worksheet |
| May 1 | Federal | FCC Form 499-Q Telecommunications Reporting Worksheet (Quarterly) | May 15 | Kentucky | Commonwealth of Kentucky Telecommunications Relay Service Fund Telecommunications Devices for the Deaf Distribution Fund |
| May 1 | Federal | Geographic Rate Averaging and Rate Integration Certification | May 15 | Kentucky | Commonwealth of Kentucky Universal Service Fund |
| May 1 | Idaho | ID Universal Service Fund Form | May 15 | Maine | Maine Telecommunications Education Access Fund |
| May 1 | Indiana | Indiana Utility Regulatory Commission Telecommunications Public Utility Fee Report | May 15 | Maine | Maine Universal Service Fund |
| May 1 | Kansas | Interexchange Carrier/Competitive Local Exchange Carrier/And Operator Service Providers Annual Report to the Kansas Corporation Commission | May 15 | Missouri | Quarterly Quality of Service Report |
| May 1 | Minnesota | Alternative Operator Service Annual Report | May 15 | Nebraska | Nebraska USF & E911 Remittance Worksheet |
| May 1 | Minnesota | Telecommunications Carrier Annual Report | May 15 | Nevada | Annual Report |
| May 1 | North Dakota | North Dakota Telecommunications Gross Receipt Tax | May 15 | North Carolina | North Carolina Access Line Report - Rule 17-2(K) |
| May 1 | Ohio | Competitive Telecommunications Service Providers Annual Report | May 15 | North Carolina | Public Utility Regulatory Fee Report |
| May 1 | Oklahoma | Annual Report of Competitive Telecommunications Carriers | May 15 | North Carolina | Questions for Competing Carriers Report |
| May 1 | Oklahoma | Local Service Provider Annual Report | May 15 | Oklahoma | State of Oklahoma Universal Service Fund Carrier Remittance Worksheet |
| May 1 | Washington | Telecommunications Companies Annual Report | May 15 | Oklahoma | Utility Assessment Fee |
| May 10 | Alaska | Alaska Telecommunications Relay Services Fund - Remittance of Surcharges Collected | May 15 | Pennsylvania | Pennsylvania Universal Service Fund, FY2004 Carrier Remittance Monthly Worksheet |
| May 10 | Arkansas | State of Arkansas Universal Service Fund | May 15 | Puerto Rico | Puerto Rico Universal Service Fund July 2004 - December 2004 Carrier Remittance Worksheet |
| May 10 | California | Combined California PUC Telephone Surcharge Transmittal | May 15 | Rhode Island | E911 |
| May 10 | California | Employee Compensation, Dues, and Subscriptions | May 15 | South Carolina | The Public Service Commission of South Carolina SC Dual Party Relay System Invoice |

| Due | Jurisdiction | Report | Due | Jurisdiction | Report |
|--------|---------------|--|--------|--------------|--|
| May 15 | Texas | CTP (Certified Telecommunications Provider) Quarterly Reporting pursuant to HB 1777 | May 20 | Washington | Telecommunications Relay Service, Washington Telecommunications Assistance Program, and E911 |
| May 15 | Utah | Hearing and/or Speech Impaired Relay Report | May 21 | New York | TAF Adjustment Input Form |
| May 15 | Vermont | Vermont Universal Service Fund Carrier Remittance Worksheet | May 21 | New York | Targeted Accessibility Fund Monthly Online Reporting Form |
| May 15 | Virginia | Telecommunications Relay Service Monthly Report | May 21 | Oregon | Residential Services Protection Fund Surcharge Remittance Form |
| May 20 | Alaska | State of Alaska Universal Service Fund Monthly Carrier Remittance Worksheet | May 22 | Arkansas | Arkansas Intrastate Carrier Common Line Pool Report |
| May 20 | Arizona | Arizona Universal Service Fund Carrier Remittance Worksheet | May 25 | Minnesota | Minnesota Annual 911/TAM/TAP Fees Report Form |
| May 20 | Colorado | CO Telecommunications Relay Service Surcharge | May 25 | Texas | Texas Universal Service Fund Worksheet |
| May 20 | Idaho | Idaho Telecommunications Service Assistance Plan (ITSAP) | May 30 | Mississippi | Mississippi Dual Party Fund Statement of Revenues |
| May 20 | New York | Simplified Telecommunications Annual Report | May 30 | Nebraska | State of Nebraska Dual Party Relay Surcharge Form |
| May 20 | New Hampshire | Telecommunications Relay Service Remittance | May 30 | Tennessee | Wireline Activity Tennessee-CCN Authority |
| May 20 | Pennsylvania | Remittance Form for Monthly Telecommunications Relay Service (TRS) Surcharge Collections | May 30 | Vermont | Monthly Disconnect Report |
| May 20 | Utah | Utah Universal Service Fund Surcharge Remittance Statement | May 30 | Vermont | Vermont Service Quality Performance Index Report |
| | | | May 30 | Virginia | Service Quality Report |
| | | | May 30 | Wyoming | Telecommunication Companies Revenue & Assessment Report (Wyoming Universal Service Fund) |
| | | | May 31 | Federal | FCC Form 395 - Common Carrier Annual Employment Report and Discrimination Complaint Report |

MILLER ISAR, INC. DAILY NEWS

Miller Isar, Inc. offers a daily news service on regulatory and industry issues and separately, on VoIP developments. For subscription information, contact Andrew Isar at 253.851.6700 or aisar@millerisar.com.

The following articles are reprinted with the expressed consent of the author and CCMI. The author and CCMI have authorized reprinting of these and future articles by Mr. Regitsky as a regular *Regulatory Review* feature.



[FCC Order Will Detariff Most ILEC Special Access Services](#) By Andrew Regitsky, Apr 7, 2017 10:00:00 AM In one of its most deregulatory decisions ever, the FCC has released a draft Report and Order (Order) to be voted on at its April 20, 2017 meeting that would largely detariff and eliminate pricing rules for most ILEC special access services. Price cap regulation would continue for ILEC DS1 and DS3 channel terminations only in counties that the Commission deems as non-competitive. Ethernet and ILEC packet services would continue to be provided under contracts. The Order is a major victory for ILECs and cable companies and a major loss for IILEC competitors. [Read more »](#)

[CLECs: Thumbs Down to FCC Deregulation of ILEC Special Access](#) By Andrew Regitsky, Apr 14, 2017 10:00:00 AM CLECs wasted little time in attacking the FCC's draft Report and Order (Order) that the FCC will vote on and approve on April 20, 2017. The Order will deregulate and eliminate pricing rules for most ILEC special access services. In a series of ex parte filings and visits to the Commission this week, CLECs made it clear that they don't accept the market test that would be used to classify markets into competitive or non-competitive buckets, believing that too many DS1 and DS3 customers will be left at the mercy of ILEC monopoly pricing. [Read more »](#)

[The End of Net Neutrality: Catastrophe or Godsend?](#) By Andrew Regitsky, Apr 21, 2017 10:00:00 AM While perusing the latest FCC filings and news stories trying to decide what to write about this week, I couldn't help but notice that so many are already characterizing the Commission's upcoming review of the 2015 Open Internet Order (widely known as the Net Neutrality Order) in apocalyptic terms. [Read more »](#)

[Pai Launches New Effort to Kill Title II Internet Regulation](#) By Andrew Regitsky, Apr 28, 2017 10:00:00 AM FCC Chairman Ajit Pai this week began his long expected effort to repeal and replace the FCC's 2015 Open Internet Order which classified broadband Internet access service (BIAS) as a Title II telecommunications service and required all Internet traffic to be treated equally. According to Pai, the Commission will vote on a Notice of Proposed Rulemaking (NPRM) at its May 18, 2017 meeting and will begin accepting industry comments on July 17, 2017. An order could be issued late this year. The goals of the NPRM are to reclassify BIAS as a Title I information service and develop rules to regulate the Internet going forward with a "light touch." [Read more »](#)

LIGHT READING FROM CORPORATE COUNSEL DAILY UPDATE

[What Labor Lawyers Are Saying About Wave of Millennial Unionization](#) Recent union gains in the digital media sector have attorneys asking an urgent question: Will this motivate millennials... [READ MORE »](#)

[7th Circuit's Title VII Ruling Means Employers Must Adapt Anti-Bias Measures](#) In the wake of Tuesday's ruling from the U.S. Court of Appeals for the Seventh Circuit that Title VII of the Civil Rights... [READ MORE »](#)