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No. 17-06

JUNE 27, 2017

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



3Q17 USF CONTRIBUTION FACTOR ADOPTED

On June 2, 2017, the Universal Service Administrative Company (USAC) released the [Federal Universal Service Support Mechanism Quarterly Contribution Base](#) for the third quarter 2017. The projected interstate and international end-user revenue base to be used in determining the contribution factor for third quarter 2017 universal service fund support mechanisms was calculated at \$13,110,461,173, down from \$13,615,143,917 in the previous quarter.

USAC also filed [revisions](#) to its [May 2, 2017](#) and [May 23, 2017](#) Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2017 filings on June 2, 2017. On May 31, 2017, USAC revised the demand projection for the Rural Health Care Support Mechanism causing a reduction from \$99.62 million to negative \$1.23 million, a difference of \$100.85 million. [Appendices available on USAC website.](#)

On June 13, 2017, the Commission's Managing Director [announced](#) that the proposed universal service contribution factor for the third quarter of 2017 will be 17.1 percent, down from the current 17.4 percent.

ROSENWORCEL NOMINATED AS COMMISSIONER

On June 13, 2017, President Trump [announced](#) that he would nominate former Commissioner Jessica Rosenworcel to serve again as a commissioner. Statements were issued by [Chairman Pai](#), [Commissioner Clyburn](#) and [Commissioner O'Rielly](#).

CURRENT BROADBAND DEPLOYMENT DATA RELEASED

On June 6, 2017, the Wireline Competition Bureau issued a [Public Notice](#), announcing release of updated data regarding fixed broadband deployment as of June 30, 2016. The data is derived from information reported through FCC Form 477. Data may be downloaded by census blocks where providers report offering fixed broadband services to at least part of the block. Data tables also indicate the technology used and the maximum advertised download and upload speeds for both consumer and business services. The data are available in a CSV (comma separated value) format for both the entire United States and individual states (DA 17-552) (Docket No. 11-10).

RURAL CALL COMPLETION RELEASED

On June 22, 2017, the Commission released a [report](#) analyzing the first two years of data collection under the Commission's 2013 rural call completion order. According to the report, the aggregate call answer rate in rural areas was 64.3 percent, slightly lower than the 68.8 percent rate in non-rural areas. The report notes that the difference in covered providers' median call answer rates in rural and non-rural areas was approximately two percent. A significant variation in performance among covered providers was identified, suggesting that rural call completion may be more a function of individual provider performance than a systemic problem. The aggregate call answer rate in rural areas did not increase over the course of the reporting period. This finding suggests that the requirement to report data, in and of itself, has not caused providers in the aggregate to improve their performance in rural areas during the reporting period. The report stated that “based on our examination of the data and our experience with the data collection, we recommend that the Commission seek comment on eliminating the recording, retention, and reporting rules and replacing them with new rules for covered providers that could more directly address rural call completion problems. While the Commission could endeavor to address the data quality issues identified in this Report, it nonetheless is not clear that the benefits of any such modifications would outweigh the costs. Moreover, the necessary modifications could impose substantial burdens on covered providers and would, at best, permit the Commission to identify areas with potential rural call completion problems weeks or months after such problems occur.”

WIRESERVICE COMPETITION BUREAU ANNOUNCES UPDATED LIFELINE BROADBAND MINIMUM SERVICE STANDARDS

On June 26, 2017, the Commission's Wireline Competition Bureau [announced](#) updated standard levels for speed and usage allowances for Lifeline-supported services required under the [2016 Lifeline Modernization Order](#) for fixed broadband services. The Lifeline minimum service standard for fixed broadband speed will be 15 Mbps downstream and 2 Mbps upstream, calculated from FCC Form 477 data. An exception is available when the Lifeline provider does not offer any generally available residential fixed broadband packages that meet the minimum service standard at a subscriber's residence. The Lifeline provider may then receive Lifeline support for the highest performing generally available residential fixed broadband service residential offering of at least 4 Mbps downstream and 1 Mbps upstream. The Lifeline minimum service standard for fixed broadband data usage will be 250 GB per month. The Lifeline minimum service standard for mobile broadband data usage will increase to 1 GB per month. The Lifeline minimum service standard for mobile broadband speed remains 3G mobile technology. The Lifeline minimum service standard for mobile voice service will increase to 750 minutes per month. The standards become effective December 1, 2017. The Bureau also announced that the indexed budget for federal universal service support for the Lifeline program for the calendar year beginning January 1, 2018 will be \$2,279,250,000. (Docket No 11-42)

IN THE COURTS

COMMISSION MOVES FOR BDS ORDER DISMISSAL

On May 31, 2017, the Commission filed a [Motion](#) with the U.S. Court of Appeals for the D.C. Circuit Court, to request that the Court dismiss a Sprint and Windstream. [Petition for Review](#) of the Commission's Business Data Services [Order](#). According to the Commission, the Petition was filed prematurely because it had been filed prior to publication of notice of the Order and Commission rules in the *Federal Register*. The Commission stated that once notice of its rulemaking order is published in the *Federal Register*, the Companies will be free to petition for review in a timely manner, within the 60-day window prescribed by law.



COMMISSION NOTIFIES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION OF BDS ORDER REVIEW PETITIONS

On June 15, 2017, the Commission filed a [Notice](#) with the United States Judicial Panel on Multidistrict Litigation notifying the Panel that three petitions for review of the BDS [Report and Order](#) had been filed in three different courts of appeals. Petitions were filed by [CenturyLink](#), [Citizens Telecommunications of Minnesota](#) and [the Ad Hoc Telecom Users Committee, et al.](#) The Panel issued a [Consolidation Order](#), announcing the U.S. Court of Appeals for the Eighth Circuit was randomly chosen as the circuit in which the case will be heard.

EIGHTH CIRCUIT FINDS THAT TELECOMMUNICATIONS ACT DOES NOT PREEMPT BOARD AUTHORITY REGULATE FIXED LD VOIP CALLS

The U.S. Court of Appeals for the Eight Circuit has ruled that the 1996 Telecommunications Act does not preempt the Iowa Utility Board's authority to regulate non-nomadic (fixed), intrastate long-distance Voice over Internet Protocol (VoIP) calls. In 2009, Sprint, in conjunction with MCC Telephony of Iowa determined that its non-nomadic VoIP service was not subject to access charges as the service constituted an information service, and ceased paying Windstream for call termination. Windstream threatened to block Sprint VoIP calls until Sprint filed a complaint with the Board. Sprint and Windstream entered into an agreement and Sprint withdrew its complaint. The Board, however, ruled on the complaint finding that access fees applied to Sprint's VoIP call termination. Sprint appealed to district court arguing that VoIP was an information service and that the Board's decision was contrary to federal law. The Company asked for an injunction prohibiting the Board from enforcing its order. The court granted the Board's and Windstream's motions for summary judgment, and Sprint appealed. On appeal, Sprint maintained that the district court erred when it declined to classify the VoIP calls as information services or telecommunications services. Sprint also argued that Section 251(b)(5) of the Act does not permit parties to rely on tariffs for compensation and it imposes a duty on local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Sprint concluded that, because Windstream is a local exchange carrier that terminated calls on Sprint's behalf, Section 251(b)(5) required it to enter into a reciprocal compensation arrangement with Sprint. The court ruled that Section 251(g) provides for continued enforcement of exchange access and interconnection requirements, including receipt of compensation, that were in place prior to the Act's passage, and that those pre-Act restrictions and obligations apply until FCC regulations specifically supersede them. The application of Section 251(b)(5) is precluded until the FCC issues regulations to the contrary. The court concluded that Section 251(g) preserved state authority to regulate that intrastate traffic, and federal law did not preempt the Iowa Utility Board's authority to regulate Sprint's non-nomadic intrastate long-distance VoIP calls. The district court's judgement was affirmed. ("Sprint Communications Company, L.P. v. Windstream Iowa Communications, Inc.," Case 16-1417)

STATE REGULATORY NEWS



ALABAMA – New Law Directs Wireless Carriers to Provide Location Information to Law Enforcement

Governor Robert J. Bentley (R) has signed the Kelsey Smith Act (HB 5) into law. The new law directs wireless carriers to provide location information to law enforcement upon request in emergencies involving a risk of death or serious bodily harm, even if the location is outside of the State of Alabama. An on duty law enforcement officer may request a user's call location information from a wireless carrier, and the carrier must provide location information as soon as practicable. Requests must be made in writing and signed by the requesting officer. If made orally, the request must be documented as soon as possible. Under the law, a "wireless communications service provider may establish protocols by which the carrier voluntarily discloses call location information." Carriers and their employees are immune from civil liability under the new law if acting in a reasonable manner.

COLORADO – Commission Rules To Allow Issuance of Voluntary Certificates and Registrations

The Public Utilities Commission has adopted rules that establish Commission jurisdiction, basic local exchange tariffing requirements, and issuance of voluntary operating authorities in lieu of certificates of public convenience and necessity (CPCNs) or letters of registration (LORs). The rules 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, 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 new 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 is now allowed, enabling companies to obtain rights of way, pole attachment agreements, interconnection agreements, and access to numbering resources, actions that require operating authorities. The rules will also remove 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. ([Docket 16R-0453T](#))

ILLINOIS – IP Transition Bill Pending Enactment

On June 27, 2017, [SB 1381](#), a bill pertaining to Internet Protocol-based networks and service transitions was sent to the General Assembly Executive Committee in anticipation of being signed into law. The bill, also known as the “2017 High-speed Internet Investment and Telecommunications Modernization Act for Job Creation and Public Safety,” establishes that a carrier classified as a "large electing provider" may cease to offer and provide a telecommunications service to an identifiable class or group of customers, other than voice telecommunications service to residential customers, after 60 days' notice to the Illinois Commerce Commission and affected customers. According to the bill, a "large electing provider" is defined as a telecom carrier that provided at least 700,000 access lines to end users as of 2016. The Illinois Citizens Utility Board (CUB) urged the governor to veto this legislation, claiming that “AT&T is doing a disservice to its most vulnerable customers who need traditional landlines for a reliable connection to emergency services like 911. Secondly, this bill does nothing to require AT&T to improve its network. In fact, it strips Illinois of key authority to push AT&T to make other telecom-related improvements-like faster broadband. This bill allows AT&T and the federal government to dictate our telecom future, and that's bad news for all Illinois consumers, from people who need landlines to smartphone users.”

NEBRASKA – USF SURCHARGE REMAINS UNCHANGED

The Nebraska Public Service Commission has announced that the Nebraska Telecommunications Universal Service Fund is to remain at 6.95% effective July 1, 2017, through June 30, 2018. The current surcharge of 6.95% has been effective for two years. Yet according to the Commission, universal service fund remittances have declined by 12.6 percent in 2016 and will continue to decrease by about 14.2% in 2017. (Application NUSF-4)

WEST VIRGINIA – E911 Surcharges Increase July 1

The West Virginia Public Service Commission has ordered that the enhanced 911 surcharge be increased to \$3.34 per access line, effective July 1. This is a \$0.34 increase per line over the previous year. According to Commission staff data, the number of access lines has been trending downward each year since 2011, requiring an increase in rates to maintain current funding levels. State statute requires the commission to audit the fee every biennially and “if the weighted average of the enhanced 911 fees exceeds the \$3 per month wireless E-911 fee, the wireless E-911 fee must be increased to the weighted average of the enhanced 911 fees but never increased more than 25% of the wireless E-911 fee at the beginning of the respecification year.”

COMPLIANCE REPORTING JULY

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 JULY

International Traffic Data due July 31

STATE REPORTS DUE IN JULY

Due Date	Jurisdiction	Report Name
July	Alaska	Access Minutes Report
July	Alaska	Carrier and Area Specific Bulk Billed Report
July	Missouri	Relay Missouri Statement
July	Rhode Island	Telecommunication Education Access Fund

Due Date	Jurisdiction	Report Name	Due Date	Jurisdiction	Report Name
July	Rhode Island	Telecommunications Relay Service Report	July 15	Oklahoma	State of Oklahoma Universal Service Fund Carrier Remittance Worksheet
July 1	Idaho	ID Universal Service Fund Form	July 15	Pennsylvania	Pennsylvania Universal Service Fund, FY2004 Carrier Remittance Monthly Worksheet
July 1	Nevada	Annual Revenue & Assessment Report	July 15	Pennsylvania	Slamming Cramming Complaint Form
July 1	Rhode Island	Revenue Reporting Form (and Changes in Statement of Business Operations)	July 15	Puerto Rico	Puerto Rico Universal Service Fund July 2004 - December 2004 Carrier Remittance Worksheet
July 1	Rhode Island	Telecommunications Provider Annual Invoice	July 15	Rhode Island	E911
July 5	Oklahoma	Oklahoma Universal Service Fund Annual OKUSF Assessment True-up	July 15	South Carolina	The Public Service Commission of South Carolina SC Dual Party Relay System Invoice
July 10	Alaska	Alaska Telecommunications Relay Services Fund - Remittance of Surcharges Collected	July 15	Utah	Legislative Information Report
July 10	Arkansas	State of Arkansas Universal Service Fund	July 15	Vermont	Vermont Universal Service Fund Carrier Remittance Worksheet
July 10	California	Combined California PUC Telephone Surcharge Transmittal	July 15	Virginia	Telecommunications Relay Service Monthly Report
July 10	California	Employee Compensation, Dues, and Subscriptions	July 20	Alaska	State of Alaska Universal Service Fund Monthly Carrier Remittance Worksheet
July 10	Georgia	Local Service Indicators Data Requests	July 20	Arizona	Arizona Universal Service Fund Carrier Remittance Worksheet
July 10	New York	Service Quality Performance	July 20	Colorado	CO Telecommunications Relay Service Surcharge
July 15	Alabama	Revised Survey of Competitive Local Exchange Carriers	July 20	Idaho	Idaho Telecommunications Service Assistance Plan (ITSAP)
July 15	Alaska	Annual Filings by Non-Pooling Companies ("Section 705 Report")	July 20	New Hampshire	Telecommunications Relay Service Remittance
July 15	California	Quarterly Fee Statement for CPUC Utilities Reimbursement Account	July 20	North Carolina	Service Quality Objectives Report
July 15	Florida	Competitive Local Exchange Carrier (CLEC) Data Request	July 20	Pennsylvania	Remittance Form for Monthly Telecommunications Relay Service (TRS) Surcharge Collections
July 15	Florida	Florida Telecommunications Relay, Inc. (FTRI) Monthly Surcharge Collection Report	July 20	Utah	Utah Universal Service Fund Surcharge Remittal Statement
July 15	Georgia	Georgia Telecommunications Relay Service (TRS) Monthly Surcharge Collection Report	July 20	Washington	Telecommunications Relay Service, Washington Telecommunications Assistance Program, and E911
July 15	Georgia	Revised Universal Access Fund Quarterly Deposit Report	July 21	New York	TAF Adjustment Input Form
July 15	Kansas	Kansas Universal Service Fund 2004/2005 Wireless and Wireline Carrier Remittance Worksheet	July 21	New York	Targeted Accessibility Fund Monthly Online Reporting Form
July 15	Kentucky	Commonwealth of Kentucky Telecommunications Relay Service Fund Telecommunications Devices for the Deaf Distribution Fund	July 21	Oregon	Residential Services Protection Fund Surcharge Remittance Form
July 15	Kentucky	Commonwealth of Kentucky Universal Service Fund	July 22	Arkansas	Arkansas Intrastate Carrier Common Line Pool Report
July 15	Maryland	Gross Operating Revenues Derived from MD Intrastate Operations	July 25	Minnesota	Minnesota Annual 911/TAM/TAP Fees Report Form
July 15	Nebraska	Nebraska USF & E911 Remittance Worksheet	July 25	Texas	Texas Universal Service Fund Worksheet
July 15	Nevada	Nevada Universal Service Fund Carrier Remittance Worksheet	July 30	Alaska	Regulatory Cost Charge Quarterly Return
July 15	North Carolina	North Carolina Access Line Report - Rule 17-2(K)	July 30	Colorado	Low Income Telephone Assistance Program
July 15	North Carolina	Questions for Competing Carriers Report	July 30	Connecticut	Quality of Service, Semi-Annual Report
			July 30	Georgia	Quarterly Report of Georgia Operations (no formal name)

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
July 30	Illinois	Section 757, Exhibit A ILEC Quarterly Report to Commission
July 30	Mississippi	Mississippi Dual Party Fund Statement of Revenues
July 30	Nebraska	State of Nebraska Dual Party Relay Surcharge Form
July 30	Nevada	TDD Surcharge for Assistance to Persons With Impaired Speech or Hearing Report Form
July 30	Puerto Rico	Income Statement of Telecommunications Companies
July 30	Puerto Rico	Informe de Revendedores de Servicio (Reseller List)
July 30	South Carolina	SCPSC CLEC Quarterly Service Quality Report
July 30	Tennessee	Wireline Activity Tennessee-CCN Authority
July 30	Vermont	Monthly Disconnect Report
July 30	Vermont	Vermont Service Quality Performance Index Report
July 30	Virginia	Semi-Annual Economic Reporting Requirements for CLECs
July 30	Virginia	Service Quality Report
July 30	Wyoming	Telecommunication Companies Revenue & Assessment Report (Wyoming Universal Service Fund)
July 31	Hawaii	Public Utility Fee Bill
July 31	Hawaii	State of Hawaii PUC Telecommunications Relay Service Worksheet
July 31	Oregon	Oregon Telephone Assistance Program Reimbursement Form
July 31	Virginia	Geographic Areas Served in Virginia

LIGHT READING FROM CORPORATE COUNSEL DAILY UPDATE

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.



[The FCC Must Complete Toll-free 8YY Access Reform](#) By Andrew Regitsky, Jun 2, 2017 10:00:00 AM We turn our attention away from net neutrality for just a moment this week to discuss an issue that has been simmering since 2011 when the FCC began its terminating access transition to bill-and-keep, leaving the fate of originating access charges for another day. Unfortunately, in its zeal to reform the broken inter-carrier compensation system back then, the Commission reintroduced the originating/terminating access split for toll-free 8YY traffic. This access charge gap persists six years

later, and has allowed traffic pumping arbitrage schemes to flourish. It needs be quickly addressed. [Read more »](#)

[FCC Freezes Universal Service Fund National Rate Floor](#) By Andrew Regitsky, Jun 9, 2017 10:00:00 AM One of the least known features of the federal universal service fund (USF) is the national “rate floor” requirement. The FCC adopted it in 2011 to ensure that consumers across the country are not subsidizing the cost of voice telephone service to rural customers whose monthly rates are below a set minimum rate. If a rural rate-of-return ILEC chooses to charge its customers less than the authorized rate floor amount for plain old telephone service (POTS), the difference between the amount charged and the rate floor is deducted from the amount of support that carrier receives through the USF. The current monthly national rate floor is \$18, and it was scheduled to increase to \$20 on July 1, 2017 and \$22 on July 1, 2018. [Read more »](#)

[The Problem with Today’s Title II – An Out of Control FCC](#) By Andrew Regitsky, Jun 16, 2017 10:00:00 AM In 2015 the FCC decided that it needed to assume complete control over the Internet including controlling the pricing behavior of broadband Internet service providers. After receiving a directive from President Obama, the agency decided that the most effective way to achieve control was to reclassify broadband Internet service as a telecommunications service governed by Title II of the Telecommunications Act. The Commission took this action, even though Title II was almost one hundred years old and had been used exclusively to regulate phone companies as “utilities.” In this regulatory environment, expenses and a reasonable return on net investment were provided to these companies if they adhered to certain rules, including: [Read more »](#)

Rural ILECs Request Price Caps for Special Access Services

By Andrew Regitsky, Jun 23, 2017 10:00:00 AM Will rate-of-return (ROR) regulation for rural ILECs soon disappear? It clearly is on the ropes for the many small ILECs now using the Alternative Cost Model (ACAM) to recover their loop costs and receive Connect America Fund (CAF) support. These LECS are no longer in the NECA Common Line Pool and not subject to an authorized common line rate of return. [Read more »](#)

LIGHT READING FROM CORPORATE COUNSEL DAILY UPDATE

[Ransomware in Review: 8 Prevention and Response Tips for Your Organization](#) Electronic data is defining the business world, and with its benefits come many threats. Here’s how experts think organizations... [READ MORE »](#)

[DOL Issues Final Regulations on Disability Benefits Claims Procedures](#) On Dec. 16, 2016, the DOL published

final regulations on disability benefits claims procedures for any group plans governed... [READ MORE »](#)

We've Been Hacked—What Do We Need to Disclose in Our SEC Filings? Review how to comply with potential reporting and other disclosure obligations following a cyber incident. [READ MORE »](#)

Taking Stock of Ransomware: What It Is, and Why You Should Care A Legalweek West panel offered quick solutions to mitigate the ransomware dilemma and explored the 'should I pay' question. [READ MORE »](#)

A Possible Landmine for Employers: The Opportunity to Work Act Review employment legislation, such as the Opportunity to Work Act proposed by the California Legislature. While efforts... [READ MORE »](#)