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Regulatory Review

The Miller Isar, Inc. Regulatory Review is a monthly report designed to provide readers 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 legal counsel.

FEDERAL NEWS



ROSENWORCEL, CARR CONFIRMED AS FCC COMMISSIONERS

On August 3, 2017, the Senate Commerce, Science & Transportation Committee issued a [Press Release](#) announcing confirmation of Jessica Rosenworcel and Brendan Carr as FCC commissioners. Commissioner Carr is to complete the remainder of former Commission Chairman Tom Wheeler's term on the Commission, which expires June 30, 2018. Former Commissioner Rosenworcel, will serve a five-year term ending June 30, 2020. President Obama had nominated Commissioner Rosenworcel to an additional term, but the Senate never voted on the nomination forcing her to step down after 4 ½ years as a Commissioner when the 114th Congress ended in January. Commissioners [Pai](#), [Clyburn](#) and [O'Rielly](#) issued statements.

FOURTH QUARTER USF FUND SIZE PROJECTIONS FILED

On August 3, 2017, the Universal Service Administrative Company filed [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the Fourth Quarter 2017. The High Cost Support Mechanism funding requirements are projected to be \$1.125 billion. ([Appendices available on USAC's website](#))

NANP FUND SIZE ESTIMATE AND CONTRIBUTION FACTOR ANNOUNCED

On August 17, 2017, the Wireline Competition Bureau issued a [Public Notice](#) to announce the proposed North American Numbering Plan Administration (NANP) fund size estimate and contribution factor for Fiscal Year 2017. The NANP billing and collection agent, Welch LLP, proposed a funding requirement of \$8,032,418 for Fiscal Year 2017, and a contribution factor of 0.0000518. The fund size estimate and the contribution factor is considered approved by the Commission and becomes effective if the FCC takes no action within the 14-day period following release of the Public Notice.

FCC FORM 477 FNPRM RELEASED

On August 4, 2017, the Commission released a [Further Notice of Proposed Rulemaking](#) addressing enhancements for improved and more accurate FCC Form 477 data collection, adopted during the Commission's August 3, 2017 Open Meeting. The Commission seeks comment on how the Commission may modify FCC Form 477 to increase the quality and accuracy of the information it will continue to collect, while streamlining reporting requirements to

reduce the burdens on filers, among other things. Comments are due 30 days after *Federal Register* publication; replies will be due 45 days after *Federal Register* publication. (FCC 17-103, WC Docket No. 11-10)

SLAMMING-CRAMMING NPRM COMMENTS DUE SEPTEMBER 13

On August 15, 2017 the Consumer and Governmental Affairs Bureau issued a [Public Notice](#), to announce that comments regarding proposed amendments to the Commission’s unauthorized account transfer (slamming) and third party billing (cramming) rules released in the Commission’s July 14, 2017 [Notice of Proposed Rulemaking](#) (NPRM) were published in the [Federal Register](#) on August 14, 2017. With publication of the NPRM in the *Federal Register*, the comment deadline is September 13, 2017; reply comments are due October 13, 2017. The Commission has proposed to codify a rule prohibiting misrepresentations on carrier telemarketing calls to consumers. According to the Commission, the intent is to prevent unscrupulous carriers from targeting vulnerable populations from committing fraud either on sales calls or when “verifying” a consumer switch. A number of other amendments are also proposed.

SERVICE PROVIDERS REMINDED TO REGISTER WITH NUMBER PORTABILITY ADMINISTRATOR

On August 8, 2017, the Wireline Competition Bureau released a [Public Notice](#) reminding Number Portability Center (NPAC) users to register with the new administrator, Technologies, Inc. dba iconectiv. Registration is part of the transition in number portability administrators from Neustar to iconectiv. Users are urged to register as soon as possible to provide for sufficient testing. Cutovers to the iconectiv NPAC begin March 2018 for certain services, and are scheduled to be completed by May 2018.

MOBILE VOICE – BROADBAND DATA REPORT RELEASED

On August 25, 2017 the Commission’s Wireless Telecommunications Bureau issued a [Public Notice](#) to announce that it has released data regarding mobile voice and broadband deployment as of June 30, 2016, and December 31, 2016. These deployment data were collected through FCC Form 477 and are available on the Commission’s Mobile Deployment Data – FCC Form 477 [webpage](#). Coverage area maps showing mobile voice and broadband network deployment for each combination of provider and network technology are available for download. Service providers are to complete registration by August 31, 2017, if planning to test their interfaces, but no later than October 31, 2017, if no testing is anticipated. Testing was expected to begin in August.

BROADBAND AVAILABILITY SURVEY RELEASED

On August 23, 2017, NCTA, the rural broadband association, released its [2016 Broadband/Internet Availability Survey Report](#). According to the NCTA report, 89 percent of survey respondents cited the cost to deploy fiber infrastructure as the number one barrier to its widespread availability, although 82 percent of respondents indicated they had a long-term fiber deployment strategy. NTCA reported 41 percent of respondents’ broadband customers are served via FTTH, 36 percent via copper loops, 12 percent cable modem, 9 percent FTTN, 1 percent licensed and unlicensed fixed wireless and 0.2 percent satellite. NTCA also noted 67 percent of respondents’ customers can receive a maximum downstream speed of greater than 25 Mbps and 20 percent can receive between 10 Mbps and 25 Mbps. [Press release](#)

BEFORE CONGRESS

SENATE COMMERCE COMMITTEE PASSES TELECOMMUNICATIONS AND TECHNOLOGY BILLS

On August 3, 2017, the Senate Commerce, Science & Transportation Committee issued a [Press Release](#) to announce passage of telecommunications and technology bills including: [S. 96](#), the Improving Rural Call Quality and Reliability Act of 2017 - legislation that would require the Commission to establish quality and reliability standards for rural phone networks; [S. 134](#), the Spoofing Prevention Act of 2017, intended to stop transmission of misleading or inaccurate caller ID information via telephone calls and text messages originating overseas; and [S. 174](#), the

Federal Communications Commission Consolidated Reporting Act of 2017, that would require the Commission to condense duplicative reports on competition in the telecommunications market into one comprehensive report released every two years.

IN THE COURTS

BUSINESS DATA SERVICES ORDER APPEAL BRIEFING SCHEDULE RELEASED



On August 3, 2017, the U.S. Court of Appeals for the Eighth Circuit (St. Louis) released a [briefing schedule](#) in the FCC's Business Data Services (BDS) [Order](#) appeals case. Initial briefs are due September 29, 2017; responsive briefs are due 30 days after; and reply briefs are due 14 days after responsive briefs. The BDS order eliminated *ex ante* price regulation of packet-based business data services and transport services, as well as legacy time division multiplex (TDM) services in counties that are "deemed competitive," following a transition period. The court also issued an [Order](#) granting and denying various motions to intervene, denying a motion to transfer and denying a motion for stay pending judicial review. The Court consolidated cases and granted motions by the Ad Hoc Telecommunications Users Committee, et al., AT&T, Inc., et al., Comcast Corp., and NCTA to intervene in the case. It also granted the Ad Hoc Users' petition to file under seal. A National Association of State Utility Consumer Advocates to petition to intervene was denied. Parties appealing the BDS order include Citizens Telecommunications Co. of Minnesota, the Ad Hoc Telecommunications Users Committee, BT Americas, Inc., Incompas, Sprint Corp., Windstream Services LLC, CenturyLink, Inc., Granite Telecommunications LLC, Access Point, Inc., Alpheus Communications LLC, New Horizons Communications Corp. Xchange Telecom LLC. (Case 17-2296)

Separately, the Commission asked the U.S. Court of Appeals for the District of Columbia Circuit to transfer to the U.S. Court of Appeals for the Eighth Circuit the joint Access Point, Inc., Alpheus Communications LLC, New Horizons Communications Corp., and Xchange Telecom LLC appeal of the Commission's BDS order (case 17-1168) following the Judicial Panel on Multidistrict Litigation selection of the Eighth Circuit to hear the consolidated appeals by lottery. The Commission said that the petitioners had consented to its motion.

EIGHTH CIRCUIT UPHOLDS COMMISSION POLE ATTACHMENT ORDER

The U.S. Court of Appeals for the Eighth Circuit (St. Louis) has upheld the Commission's 2015 pole attachment Order on appeal. In November 2015, the Commission modified a formula used for computing the cost of providing space on poles and a resulting reasonable pole attachment rate for telecommunications provider facility attachments. The Commission also eliminated a cost distinction between poles located in urban and non-urban areas. Ameren Corp., American Electric Power Service Corp., and Virginia Electric and Power Company appealed, arguing that the order "defies Congress's intent to establish two different rates in § 224(d)(1) and § 224(e)." The Court disagreed finding that the 2015 Order had provided a "reasonable interpretation of the ambiguity in § 224(e). According to the Court, the Commission had attempted to eliminate the disparity between the cable and telecommunications pole attachment rates to avoid subjecting cable providers offering broadband service to a higher telecommunications rate, and to avoid rate disparity between states whose pole attachment rates are regulated by the Commission and states that had elected to regulate pole attachment rates using the cable rate even for telecommunications providers. The court also rejected the appellants' argument that the Commission's interpretation of the statute renders Section 224(e) superfluous. "Whether or not the rates diverge, the Cable Rate must fall within the range set forth in § 224(d) and the Telecom Rate must be calculated according to the formula set forth in § 224(e). Thus, the formula for calculating the Telecom Rate under § 224(e) is not superfluous." And the court stated that the Court of Appeals for the D.C. Circuit's decision in American Electric Power upholding a Commission April 2011 pole attachment order was persuasive, despite the appellants' efforts attempt to distinguish the appeal from the American Electric case. "Ameren Corporation et al. v. FCC" (case no. 16-1683)

STATE REGULATORY NEWS



COLORADO – Telecommunications Tariffs to be Voided September 1

On August 3, 2017 the Colorado Public Utilities Commission informed telecommunications providers that following amendment of telecommunications rules in accordance with the State's 2014 telecommunications deregulation legislation, all tariffs on file with the Commission containing rates, terms, and conditions no longer subject to regulation – “Part 4” services – “will be deemed null and void by operation of law,” effective after September 1, 2017, the effective date of the amended rules. No action or filing from telecommunications providers is necessary for unregulated service tariffs to be voided. Providers whose tariffs contain unregulated and regulated services, including switched access, emergency and wholesale services, are to file an Advice letter with the Commission to cancel those tariffs and file replacement tariffs that contain regulated services only. (Proceeding No. 16R-0453T, Decision C17-0490).

FLORIDA – Commission Annual Report Reflects Continued Wireline Migration

The Florida Public Service Commission's annual Report on the Status of Competition in the Telecommunications Industry released to the State Legislature concludes that wireline subscribers are migrating to wireless and interconnected VoIP services for the sixth year in a row. According to the Report, residential lines declined an additional 15 percent in 2016 and business line declines were only 4 percent. Wireline business access lines exceeded total residential lines. During 2016, CenturyLink experienced a 6 percent decline in residential access lines, while AT&T declined 22 percent and Frontier declined 25 percent in the Florida market. The Report found that there are approximately 21.1 million wireless handsets in Florida and 4.2 million cable VoIP subscribers. More than 73 percent of Florida households have a broadband connection with download speeds of at least 3 megabits per second. “The market consolidation trend continued last year with several telecom mergers and acquisitions, as the industry displays dynamic growth and innovation,” said PSC Chairman Julie Brown, concluding “The number and variety of competitive choices among all types of service providers suggest that competition is positively impacting Florida's telecommunications market.”

IDAHO – Mandatory Ten-Digit Dialing in 208 Area Code Initiated

On July 31, 2017, the Idaho Public Utilities Commission announced that mandatory ten-digit dialing in the 208 area code would begin on August 5, 2017. Mandatory ten-digit dialing is part of the new 986 area code overlay implementation plan adopted in November 2015. Numbering assignments in the new 986 area code begin September 5, 2017. Idaho is one of few states maintaining a single area code. The 208 code was issued in 1947

IOWA – Retail Service Quality Deregulated

The Iowa Utilities Board (IUB) has released an order deregulating retail local exchange service quality. Service quality deregulation includes virtually all customer service requirements, specific service quality standards, and discontinuation of service. According to the Commission, service quality deregulation results from “the widespread availability of effective competition for retail local exchange communications services and is taken pursuant to Iowa Code § 476.1D.” Iowa Code section 476.1D(1) provides for deregulation of communications services if the Board determines that the services are subject to effective competition. Among the factors that must be considered in a finding of effective competition are whether a comparable service or facility is available from a supplier other than the regulated telephone utility and whether market forces are sufficient to assure just and reasonable rates without regulation. The Board must also consider whether alternative wireless communications, cable telephony, and VoIP service are available. In its order the Board noted that a review of broadband availability in Iowa resulted in a finding that 97 percent of Iowa households can be served by some form of non-mobile broadband service sufficient to support VoIP or voice communication service. The Board also noted that most Iowans consider wireless service to be an adequate or preferable alternative to landline local exchange service. Board data reflect that 54 percent of wireline users have migrated to wireless service, while only 4.6 percent rely exclusively on wireline services. The

Board retains jurisdiction over 911 services, regulation of alternative operator services, unauthorized changes in service, and utility crossings of railroad right-of-way. (Docket INU-2016-0001)

OREGON – Commission Staff Clarifies that State RSPF Surcharge Applies to VoIP

On August 23, 2017, the Oregon Public Utility Commission staff provided a clarification that Oregon [Senate Bill 84](#) enacted during the 2017 Oregon Legislative Assembly clarified that the State Residential Service Protection Fund (RSPF) surcharge applies to interconnected Voice over Internet Protocol (VoIP) subscribers as it does for wireline and wireless subscribers who have access to the Oregon Telecommunications Relay Service. “Effective January 1, 2018, interconnected VoIP service providers must charge and collect the RSPF surcharge from its subscribers. Interconnected VoIP service providers must also identify the surcharge on each subscriber’s bill as a separate line item named, “RSPF Surcharge.” Staff noted. The Commission will notify companies of the surcharge rate in October or November 2017 for calendar year 2018 after the Oregon Public Utility Commission determines whether an adjustment is necessary. Surcharge rates are calculated annually. All monthly RSPF remittance reports and surcharges are due to the Commission on or before the 21st calendar day after the close of each month no later than 5 p.m. PST. Interconnected VoIP service providers’ first remittance report and surcharges will be due to the Commission on or before 5 p.m. PST February 21, 2018. Delinquent reports and surcharge remittances are subject to penalties, interest, and late reporting fees.

IDAHO – USF Surcharge to Increase

The Idaho Public Utilities Commission has ordered that the monthly Universal Service Fund (USF) surcharge rates for 2018 will be \$0.25 per residential line, \$0.44 per business line, and \$0.009 per message telecommunication service (MTS) and wide area telecommunications service (WATS) minute. The new surcharge rates represent an increase from current surcharge rates of \$0.12 per residential line, \$0.20 per business line, and \$0.005 per intrastate long-distance billed minute. They go into effect September 1. (Case GNR-T-17-04)

COMPLIANCE REPORTING DUE IN SEPTEMBER

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 SEPTEMBER

- September 1 FCC Form 477
- September 30 FCC Form 492
- September 30 FCC Form 507 (2Q)
- September 30 High Cost Loop 2nd Quarter Forms & Certifications
- September 30 Universal Service Support "Use" Certification

Copies of FCC forms are available on the Internet at: <http://www.fcc.gov/formpage.html>.

REPORTS DUE IN SEPTEMBER

Due Date Jurisdiction Report Name

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
September	Alaska	Access Minutes Report
September	Alaska	Carrier and Area Specific Bulk Billed Report
September	Missouri	Relay Missouri Statement
September	Rhode Island	Telecommunication Education Access Fund
September	Rhode Island	Telecommunications Relay Service Report
September 1	Colorado	CO High Cost Support Mechanism Worksheet
September 1	Idaho	ID Universal Service Fund Form
September 1	Ohio	CLEC Data (Report)
September 9	California	Combined California PUC Telephone Surcharge Transmittal
September 10	Alaska	Alaska Telecommunications Relay Services Fund - Remittance of Surcharges Collected
September 10	Arkansas	State of Arkansas Universal Service Fund
September 10	California	Employee Compensation, Dues, and Subscriptions
September 10	Georgia	Local Service Indicators Data Requests
September 10	New York	Service Quality Performance

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
September 15	Alabama	Revised Survey of Competitive Local Exchange Carriers
September 15	Florida	Florida Telecommunications Relay, Inc. (FTRI) Monthly Surcharge Collection Report
September 15	Georgia	Georgia Telecommunications Relay Service (TRS) Monthly Surcharge Collection Report
September 15	Kansas	Kansas Universal Service Fund 2004/2005 Wireless and Wireline Carrier Remittance Worksheet
September 15	Kentucky	Commonwealth of Kentucky Telecommunications Relay Service Fund Telecommunications Devices for the Deaf Distribution Fund
September 15	Kentucky	Commonwealth of Kentucky Universal Service Fund
September 15	Nebraska	Nebraska USF & E911 Remittance Worksheet
September 15	North Carolina	North Carolina Access Line Report - Rule 17-2(K)
September 15	North Carolina	Questions for Competing Carriers Report
September 15	Oklahoma	State of Oklahoma Universal Service Fund Carrier Remittance Worksheet
September 15	Pennsylvania	Pennsylvania Universal Service Fund, FY2004 Carrier Remittance Monthly Worksheet
September 15	Puerto Rico	Puerto Rico Universal Service Fund July 2004 - December 2004 Carrier Remittance Worksheet
September 15	Rhode Island	E911
September 15	South Carolina	The Public Service Commission of South Carolina SC Dual Party Relay System Invoice
September 15	Vermont	Vermont Universal Service Fund Carrier Remittance Worksheet
September 15	Virginia	Telecommunications Relay Service Monthly Report
September 20	Alaska	State of Alaska Universal Service Fund Monthly Carrier Remittance Worksheet
September 20	Arizona	Arizona Universal Service Fund Carrier Remittance Worksheet
September 20	Colorado	CO Telecommunications Relay Service Surcharge
September 20	Idaho	Idaho Telecommunications Service Assistance Plan (ITSAP)
September 20	New Hampshire	Telecommunications Relay Service Remittance
September 20	Pennsylvania	Remittance Form for Monthly Telecommunications Relay Service (TRS) Surcharge Collections
September 20	Utah	Utah Universal Service Fund Surcharge Remittal Statement
September 20	Washington	Telecommunications Relay Service, Washington Telecommunications Assistance Program, and E911
September 21	New York	TAF Adjustment Input Form

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
September 21	New York	Targeted Accessibility Fund Monthly Online Reporting Form
September 21	Oregon	Residential Services Protection Fund Surcharge Remittance Form
September 22	Arkansas	Arkansas Intrastate Carrier Common Line Pool Report
September 25	Minnesota	Minnesota Annual 911/TAM/TAP Fees Report Form
September 25	Texas	Texas Universal Service Fund Worksheet
September 30	Louisiana	Service Standard Report
September 30	Mississippi	Mississippi Dual Party Fund Statement of Revenues
September 30	Nebraska	State of Nebraska Dual Party Relay Surcharge Form: and <i>Affidavit Affirming Compliance With Nebraska Universal Service Act and Enhanced Wireless 911 Services Act</i>
September 30	Oregon	Oregon Telephone Assistance Program Reimbursement Form
September 30	Puerto Rico	Puerto Rico Telecommunications Reporting Worksheet
September 30	Tennessee	Wireline Activity Tennessee-CCN Authority
September 30	Vermont	Monthly Disconnect Report
September 30	Vermont	Vermont Service Quality Performance Index Report
September 30	Virginia	Service Quality Report
September 30	Wyoming	Telecommunication Companies Revenue & Assessment Report (Wyoming Universal Service Fund)

LIGHT READING FROM
CORPORATE COUNSEL DAILY UPDATE

New VPN Ban in Russia Latest Step in Increasing Cyber Risk for US Companies Recent Russian cyber actions, such as the restrictive use of VPN technology, may make it more difficult for companies... [READ MORE »](#)

AT&T GC Says Choosing ADR Over Court Has Become 'Overriding Philosophy' David McAtee of AT&T opens up about his company's use of ADR and why it (usually) is preferred over going to court. [READ MORE »](#)

Cloud 101 for Law Firms: Four Myths We Can All Do Without Small to midsize practices face basic assumptions about cloud technology that are obsolete, misguided or simply unfounded. [READ MORE »](#)

Uber Employees Might Bring Their Own Devices. Should Other Companies Have BYOD? BYOD is a growing trend that's all but impossible to fight, according to in-house lawyers. [READ MORE »](#)

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.



[A Big Win for Telecom! Court Sides with FCC in Pole Attachment Order](#) By Andrew Regitsky, Aug 4, 2017 10:00:00 AM The telecommunications industry got a big victory this week when the Eighth Circuit Court of Appeals upheld the FCC's 2015 Pole Attachment Order which mandated rules equalizing the pole attachment rates paid by telecommunications providers and cable owners. Cable company rates are calculated separately under rules ratified by the U.S. Supreme Court in 1987 and have historically been lower than rates paid by telecoms. The decision is extremely important to telecommunications companies because of the large amounts of money involved. By some estimates, pole attachment rentals, comprise up to 1 percent of operating costs for some companies. Moreover, telecom companies have asserted for years that high pole attachment rates delay broadband deployment and force prices out of the reach of many consumers. [Read more »](#)

[FCC's Business Data Services Order Takes Effect](#) By Andrew Regitsky, Aug 11, 2017 10:00:00 AM The FCC's Business Data Services Order (BDS) became effective on August 1, 2017 after the Eighth Circuit Court of Appeals denied a Motion to Stay the Order filed by Windstream Services, LLC, Ad Hoc Telecom Users Committee, BT Americas, Inc., and INCOMPAS. The Court gave no reason for its decision. Although the Order was not stayed, it is important to note that the appeal of the Order itself will now be heard and ruled upon by the Eighth Circuit. That Court determined that it had the appropriate expertise to review the Order and refused a request that it transfer the case to the more experienced DC Circuit Court. It is important to note that a court's refusal to stay an order does not always mean that it will ultimately find the order lawful. That decision will likely be made on the BDS Order within the next year. [Read more »](#)

[Is the FCC's Broadband Deployment Inquiry a Sham?](#) By Andrew Regitsky, Aug 18, 2017 10:00:00 AM I'm done giving the FCC the benefit of the doubt. Because of the many years I spent dealing with the ambiguity and costs of Title II, I defended Chairman Pai and company when they sought to reclassify broadband Internet access service as a Title I information service in the net neutrality proceeding, although I have my qualms about eliminating the Internet bright line rules. I never questioned the Commission's motives when it proposed eliminating some of the restrictions on the pricing

of ILEC special access services, although the competitive market test it used to justify deregulation cannot be taken seriously. [Read more »](#)

[8YY Proceeding a New Test of FCC's Intentions](#) By Andrew Regitsky, Aug 25, 2017 10:00:00 AM The next test for the Trump-era FCC is here. Reply comments were filed on August 15, 2017 in the proceeding which will determine whether originating or terminating access charges will apply to toll-free 8YY calls. The large IXCs believe at a minimum that the current situation in which they pay originating access is untenable. They argue that with the transition of most terminating access charges to bill-and keep nearing transition, industry bad actors have moved their arbitrage schemes to originating access including 8YY calls. As AT&T notes: [Read more »](#)