



4304 92<sup>ND</sup> AVENUE NW  
GIG HARBOR, WA 98335  
TELEPHONE: 253.851.6700  
FACSIMILE: 866.474.3630  
WWW.MILLERISAR.COM

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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 legal counsel.*

### FEDERAL REGULATORY NEWS



#### SENATE CONFIRMS PAI

On October 2, 2017, the Senate voted to confirm President Trump’s re-nomination of Chairman Ajit Pai to the Commission. Pai’s term will be for five years, beginning July 1, 2016. Pai issued a [statement](#).

#### INFORMATION COLLECTION FOR COPPER RETIREMENT NOTICES APPROVED

On October 11, 2017, the Commission published a [Notice](#) in the *Federal Register* announcing that the Office of Management and Budget had approved the information collection associated with the Commission’s network change disclosure rules pertaining to copper retirement notices contained in the July 15, 2016 [Second Report and Order and Order on Reconsideration](#). The amendment to section 51.329(c)(1), network change disclosure notices, became effective on October 11, 2017 and will remain in effect for three years.

#### INCUMBENT BUSINESS DATA SERVICE TARIFF AND TARIFF REVIEW PLAN FILING PROCEDURES ADOPTED

On October 13, 2017, the Commission issued an [Order](#) establishing procedures for incumbent local exchange carriers subject to price cap regulation (ILECs) to file access charge tariff revisions and Tariff Review Plans (TRP) under the Commission’s Business Data Services [Order](#). ILECs are required to incorporate provisions in their tariffs to implement the new productivity offset (X-factor) adopted in the Order. The tariff amendments are to become effective on December 1, 2017 for submissions made on 15 days’ notice and December 4, 2017 for submissions made on seven days’ notice. The Order also makes available revised TRP worksheets to support any necessary rate revisions reflected in the ILECs’ business data tariffs. Amendments made on 15 days’ notice are due November 16; petitions are due November 24; and replies are due November 28. Amendments made on seven days’ notice are due November 27; petitions are due November 29; and replies are due November 30, 2017.

#### COMMISSION STREAMLINES INTERNATIONAL REPORTING REQUIREMENTS

On October 24, 2017, the Commission [announced](#) that it has streamlined international service reporting in section 43.62 of the Commission’s rules by eliminating annual traffic and revenue reports and streamlining the Circuit Capacity Reports filed by international service providers. According to the Commission’s [Report and Order](#), Commission reliance on international reports as the basis for development and enforcement of the Commission’s benchmark policy and enforcement of its International Settlements Policy – adopted to prevent monopolies from abusing control on the foreign end of calls and seeking unfair concessions – has “substantially diminished over time.” The Commission also cited the reduction in international service rates as a factor in its decision. Following a Commission 2016 Biennial Review of telecommunications regulations per Section 11 of the 1996 Telecommunications Act and comments received in support of further streamlining or elimination of the Section 43.62 reporting requirements, the Commission initiated a rulemaking proceeding in March 2017 to consider elimination of traffic and revenue reports and streamline the Circuit Capacity Reports. Based on its rulemaking, the Commission concluded that annual traffic and revenue reports will no longer be required as the cost of data collection exceed the benefits of the information. The Commission indicated that it will rely instead on targeted data collection when necessary

and third part commercial data sources. Section 43.62 of the Commission's rules was deleted. International facilities-based service providers are being required to submit and maintain a list of routes on which they have direct termination arrangements with a foreign carrier and to update lists within thirty days after they add a new termination arrangement. Regarding Circuit Capacity Reports, the Commission eliminated the requirement to file world total circuit data for terrestrial and satellite facilities. Its decision was also based on a cost benefit analysis. The International Bureau was directed to revise the reporting Filing Manual to include the changes to the Circuit Capacity Report and delay the March 31, 2018 filing deadline for reporting, until the filing manual has been released. The Circuit Capacity Reporting requirements have been incorporated into new Section 43.82. Statements by Commissioners [Pai](#), [Clyburn](#), [O'Rielly](#), and [Carr](#). (Docket Nos. 17-55, 16-31)

### **SECURE DATA ENCLAVE FOR SPECIAL ACCESS DATA TO CLOSE DECEMBER 31**

On October 2, 2017, the Wireline Competition Bureau issued a [Public Notice](#) to announce that the secure data enclave used by authorized parties for accessing and analyzing highly confidential business data filed in the BDS proceeding will close on December 31, 2017. The Bureau found little, if any, utility in maintaining continued access to the complete BDSs dataset via the secure data enclave, and maintaining that access would entail significant public expense and require continued oversight by Commission staff. (DA 17-959, WC Docket Nos. 16-143, 15-247, 05-25 and RM-10593)

### **COMMENTS ON TOLL-FREE NUMBER ASSIGNMENT DUE NOVEMBER 13**

On October 13, 2017, the Commission published in the [Federal Register](#) a [Notice of Proposed Rulemaking \(NPRM\)](#) that authorizes the Commission to assign toll-free numbers by auction, on a first-come, first-served basis, by an alternative assignment methodology, or by a combination of methodologies. The NPRM also seeks comment on whether to consider changes to overall toll free number administration. Comments are due November 13, 2017; reply comments are due December 12, 2017.

### **COMMISSION RELEASES NUMBER PORTABILITY NPRM-ACCESSIBILITY ORDER**

On October 26, 2017, the Commission released a Notice of Proposed Rulemaking and Notice of Inquiry to request comments on how to complete nationwide number portability between all service providers, adopted at its October 24, 2017 Open Meeting. The Commission also requests comment on how technical aspects of the current local number portability and dialing parity rules undermine efficient routing of calls throughout the network. **Comments are due thirty days after publication in the Federal Register and replies are due sixty days after publication.** [Press Release](#) A separate [Report and Order and Order on Reconsideration](#) regarding accessibility of wireless and wireline phones by people with hearing loss, also adopted at the Open Meeting, was released. [Press Release](#)

### **NECA AVERAGE SCHEDULE HCLS MODIFICATIONS BECOME EFFECTIVE JANUARY 1**

On October 23, 2017, the Wireline Competition Bureau issued a [Public Notice](#) approving the National Exchange Carriers Association [2018 Modifications of Average Schedule High Cost Loop Support Formula](#) for the period beginning January 1, 2018, through December 31, 2018

### **IN THE COURTS**

#### **NINTH CIRCUIT DENIES COMMISSION POST-ARGUMENT SUBMISSION REQUEST IN AT&T MOBILITY DATA CASE**

The U.S. Court of Appeals for the Ninth Circuit (San Francisco) has denied a Commission Motion for leave to submit a post-oral argument submission in a case involving the Federal Trade Commission (FTC) and AT&T Mobility. In September, the Court had - at the FTC's request - reheard arguments in the case *en banc*. Last year a three-judge panel of the court ruled that AT&T was entitled to have an FTC unfair business practices lawsuit against it dismissed under the FTC Act's common "carrier exemption." (FTC v. AT&T Mobility LLC" (Case 15-16585). In its Motion, the Commission argued that during the *en banc* oral argument, AT&T "contended for the first time that the Federal Communications Commission's authority to impose structural separation on common carriers would mitigate any concerns about a 'regulatory gap' resulting from AT&T's status-based interpretation of the Federal Trade Commission Act's common carrier exception. That contention, which we believe to be incorrect, received considerable attention at the oral argument." The Commission urged the Court to accept and consider an accompanying submission to correct the record. The motion was denied without explanation.



## COMMISSION TELLS EIGHTH CIRCUIT THAT MINNESOTA PUC EXCEEDED AUTHORITY ON VOIP

On October 27, 2017, the Federal Communications Commission filed an [amicus curiae brief](#) with the U.S. Court of Appeals for the Eighth Circuit (St. Louis) regarding a Minnesota Public Utilities Commission [appeal](#) of a federal district court [ruling](#) finding that Charter's Voice over Internet Protocol service should be classified as an information service exempt from state regulation. The district court had overturned a Commission 2015 Order that directed Charter to comply with all Minnesota laws and rules applicable to local exchange service. The Commission argued the Minnesota Commission had overstepped its authority in an attempt to regulate Charter's interconnected VoIP service, and argued that the Minnesota Commission's sweeping assertion of regulatory authority over VoIP service threatened to disrupt the national voice services market. The Commission also maintained that relevant Commission orders provide more measured and appropriate mechanisms for regulating VoIP service.

### BEFORE CONGRESS

#### HOUSE SUBCOMMITTEE APPROVES FCC REAUTHORIZATION BILL DRAFT

On October 11, 2017, The House Subcommittee on Communications and Technology [held a markup session](#) and approved draft [legislation](#) reauthorizing and reforming the Commission. The bill provides for certain procedural changes to Commission rules to maximize opportunities for public participation and efficient decision making, as well as other purposes, and includes the text of several bills that have already passed the House. These include the Federal Communications Commission Consolidated Reporting Act of 2017 (HR 599), the Federal Communications Commission Process Reform Act of 2017 (HR 290), the Securing Access to Networks in Disaster Act (SANDy Act) (HR 588), the Amateur Radio Parity Act of 2017 (HR 555), the Improving Rural Call Quality and Reliability Act of 2017 (HR 460), the Federal Anti-Spoofing Act of 2017 (HR 423), and the Kari's Law Act of 2017 (HR 582). The draft bill also includes the Rural Wireless Access Act of 2017 (HR 1546), introduced in March. That bill would require the FCC establish a methodology for the collection of mobile service coverage data within 180 days of enactment. The full committee is scheduled to vote on the measure. Commissioner O'Reilly issued a [statement](#).

### STATE REGULATORY NEWS



#### **CALIFORNIA – Commission Ex Parte Communications – Commission Reform Bills Enacted**

Governor Jerry Brown (D) has signed SB 385, a bill that requires any commission decision-maker who participates in an *ex parte* communication submit a notice of the communications, including “the date, time, and location of the communication, whether the communication was oral or written, or a combination of both, and the communication medium used; the identity of the interested person, the identity of the person initiating the communication, and the identities of any other persons present; the topic of the communication, including any applicable proceeding numbers; and a brief description of the communication.” The new law also gives the Commission discretion to conduct meetings in affected geographic areas to inform the public of proposed area code changes and relief options rather than a minimum of three meetings, to reduce costs.

Separately, the Governor Brown also signed SB 19 prohibits a public utility company executive from serving as a commissioner within two years following employment with a utility. The commission is to maintain an updated conflict-of-interest code, a statement of incompatible activities, and establish an ethics officer within the legal division of the commission. A chief administrative law judge is to be appointed as a chief internal auditor. Further, the Commission must conduct financial and performance audits of any entity or program created by any order, decision, motion, settlement, or other action and act in accordance with findings and recommendations. And a public adviser is to be appointed to receive complaints and comments from members of the public concerning how the commission is performing its functions. The new law becomes effective January 1, 2018

#### **COLORADO – CPCN and Letter of Registration Holders Directed to submit Biennial Information**

On September 29, 2017, carriers who have been authorized to provide intrastate telecommunications services in Colorado under a Certificate of Public Convenience and Necessity (CPCN) or Letter of Registration (LoR), were reminded to submit a [Statement of Information](#) (SoI) begging October 1, 2017 and every two years thereafter. Providers whose CPCN or LOR was granted after January 1, 2017, are to file an SOI on the second July 1 anniversary following a Commission order granting the company a CPCN or LOR. The biennial SOI is to contain updates to the company's information previously provided to the Commission. Rule 2006(b) of the Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 Code of Colorado Regulations (CCR) 723-2 established the SoI submission requirement. According to the Commission, the

SoI has been updated; the “Type of PUC Authority” for both a CPCN and LOR now contains an option of “Pre 5/9/2014” for CPCNs and LORs obtained prior to that date. The SoI was revised to avoid any confusion regarding CPCNs and LORs obtained prior to deregulation and reclassification of services to Part IV (competitive) services. SoIs may be filed electronically using the Commission’s E-Filings system in Proceeding No. 17M-0606T.

**MARYLAND – Commission Informs CLECs of Detariffing Process**

On October 25, 2017, the Maryland Public Service Commission released a notice to competitive local exchange carriers (CLECs) establishing the process for seeking retail local exchange service detariffing. CLECs serving less than 20,000 Maryland subscribers make seek detariffing by submitting a letter to the Commission executive secretary making the request and attaching a signed affidavit from a company representative “(1) certifying that it has fewer than 20,000 subscribers in Maryland; (2) certifying that it will comply with all applicable Code of Maryland Regulations and commission orders; (3) acknowledging that it will file a tariff with the commission in the future if it obtains more than 20,000 subscribers; and (4) providing an updated link to an electronic pricing guide for inclusion in the commission's website.” The request letter should contain “Request to Detariff” as the subject. Upon detariffing, each company remains subject to maintaining a price list on the company’s web site, notify subscribers of rate changes, and otherwise remain subject to Commission regulation. Interexchange services were deregulated under state law in 2015. (Case 9414)

**TEXAS – New Rule Clarifies Entities Subject to USF Surcharge**

The Texas Public Utility Commission has amended Texas Administrative Code section 26.430(f) to exempt certain providers from contributing to the Texas universal service fund (USF). Under the amended rule, hotels, motels, and entities that contract and pay for telecommunications services for resale to customers are now explicitly exempt from state USF contributions. According to the rule entities are exempt from paying TUSF assessments on the services that they sell to their guests or tenants are not exempt from TUSF pass-through assessments from telecommunications providers. (Docket 46053)

**NARUC Appoints Commissioner Presley to Board**

The National Association of Regulatory Utility Commissioners has announced that Brandon Presley, chair of the Mississippi Public Service Commission, has been appointed Board President. Chairman Presley's term on the board expires in October 2018; he may be reappointed. Chairman Presley was elected to the Mississippi PSC in 2007, and then re-elected in 2011 and 2015.

**Compliance Reporting**

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 NOVEMBER**

FCC Form 499Q *de minimis* determination notice due November 1 and *ad hoc* as may apply.

FCC Form 499-Q Telecommunications Reporting Worksheet (Quarterly) due November 1.

**REPORTS DUE IN NOVEMBER**

<b>Due Date</b>	<b>Jurisdiction</b>	<b>Report Name</b>			
November	Alaska	Access Minutes Report			
November	Alaska	Carrier and Area Specific Bulk Billed Report	November 1	Idaho	ID Universal Service Fund Form
November	Missouri	Relay Missouri Statement	November 1	Illinois	Staff Data Request - Intrastate Retail Telecommunications Billed Revenue
November	Rhode Island	Telecommunication Education Access Fund	November 9	California	Combined California PUC Telephone Surcharge Transmittal
November	Rhode Island	Telecommunications Relay Service Report	November 9	Oregon	Oregon Universal Service Contribution Worksheet
November 1	Alabama	Inspection and Supervision Fees Report to the Alabama Public Service Commission	November 10	Alaska	Alaska Telecommunications Relay Services Fund - Remittance of Surcharges Collected

November 10	Arkansas	State of Arkansas Universal Service Fund	November 20	Colorado	CO Telecommunications Relay Service Surcharge
November 10	California	Employee Compensation, Dues, and Subscriptions	November 20	Idaho	Idaho Telecommunications Service Assistance Plan (ITSAP)
November 10	Georgia	Local Service Indicators Data Requests	November 20	New Hampshire	Telecommunications Relay Service Remittance
November 10	New York	Service Quality Performance	November 20	Pennsylvania	Remittance Form for Monthly Telecommunications Relay Service (TRS) Surcharge Collections
November 15	Alabama	Revised Survey of Competitive Local Exchange Carriers	November 20	Utah	Utah Universal Service Fund Surcharge Remittance Statement
November 15	Florida	Florida Telecommunications Relay, Inc. (FTRI) Monthly Surcharge Collection Report	November 20	Washington	Telecommunications Relay Service, Washington Telecommunications Assistance Program, and E911
November 15	Georgia	Georgia Telecommunications Relay Service (TRS) Monthly Surcharge Collection Report	November 21	New York	TAF Adjustment Input Form
November 15	Kansas	Kansas Universal Service Fund 2004/2005 Wireless and Wireline Carrier Remittance Worksheet	November 21	New York	Targeted Accessibility Fund Monthly Online Reporting Form
November 15	Kentucky	Commonwealth of Kentucky Telecommunications Relay Service Fund Telecommunications Devices for the Deaf Distribution Fund	November 21	Oregon	Residential Services Protection Fund Surcharge Remittance Form
November 15	Kentucky	Commonwealth of Kentucky Universal Service Fund	November 22	Arkansas	Arkansas Intrastate Carrier Common Line Pool Report
November 15	Maine	Maine Telecommunications Education Access Fund	November 25	Minnesota	Minnesota Annual 911/TAM/TAP Fees Report Form
November 15	Maine	Maine Universal Service Fund	November 25	Texas	Texas Universal Service Fund Worksheet
November 15	Missouri	Quarterly Quality of Service Report	November 30	Mississippi	Mississippi Dual Party Fund Statement of Revenues
November 15	Nebraska	Nebraska USF & E911 Remittance Worksheet	November 30	Nebraska	State of Nebraska Dual Party Relay Surcharge Form
November 15	North Carolina	North Carolina Access Line Report - Rule 17-2(K)	November 30	Oregon	Oregon Telephone Assistance Program Reimbursement Form
November 15	North Carolina	Public Utility Regulatory Fee Report	November 30	Tennessee	Wireline Activity Tennessee-CCN Authority
November 15	North Carolina	Questions for Competing Carriers Report	November 30	Vermont	Monthly Disconnect Report
November 15	Oklahoma	State of Oklahoma Universal Service Fund Carrier Remittance Worksheet	November 30	Vermont	Vermont Service Quality Performance Index Report
November 15	Pennsylvania	Pennsylvania Universal Service Fund, FY2004 Carrier Remittance Monthly Worksheet	November 30	Virginia	Service Quality Report
November 15	Puerto Rico	Puerto Rico Universal Service Fund July 2004 - December 2004 Carrier Remittance Worksheet	November 30	Wyoming	Telecommunication Companies Revenue & Assessment Report (Wyoming Universal Service Fund)
November 15	Rhode Island	E911			
November 15	South Carolina	The Public Service Commission of South Carolina SC Dual Party Relay System Invoice			
November 15	Texas	CTP (Certified Telecommunications Provider) Quarterly Reporting pursuant to HB 1777			
November 15	Utah	Hearing and/or Speech Impaired Relay Report			
November 15	Vermont	Vermont Universal Service Fund Carrier Remittance Worksheet			
November 15	Virginia	Telecommunications Relay Service Monthly Report			
November 20	Alaska	State of Alaska Universal Service Fund Monthly Carrier Remittance Worksheet			
November 20	Arizona	Arizona Universal Service Fund Carrier Remittance Worksheet			

### **LIGHT READING**

From *Corporate Counsel Daily Update*

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[ISPs Appeal Net Neutrality Order to Supreme Court](#) By Andrew Regitsky, Oct 6, 2017 10:00:00 AM As we enter the baseball playoffs, ISPs are covering all their bases in their efforts to overturn the FCC's 2015 Open Internet (Net Neutrality) Order. On September 28, 2017, AT&T, USTelecom and CenturyLink filed petitions with the U.S. Supreme Court, requesting the High Court to overturn the decisions of the DC Circuit Appeals in which a panel of judges supported the 2015 Open Internet Order and then refused to let the case be reheard by the entire Court. In legal terms, the Petitioners filed a "Writ of Certiorari." [Read more »](#)

[Consumer Groups Appeal FCC's Business Data Services Order to 8th Circuit Court](#) By Andrew Regitsky, Oct 13, 2017 10:00:00 AM On October 4, 2017, to the surprise of almost no one, Public Knowledge, the Consumer Federation of America, and the New Networks Institute appealed the recent FCC's Business Data Services (BDS) Order to the 8<sup>th</sup> Circuit Court. The consumer advocate organizations argue that the FCC's competitive market test used to deregulate ILEC DS1 and DS3 special access services is "ludicrous." Specifically, they claim it is inconsistent with competition law, unsupported by the record and will lead to higher prices in the BDS market, which will be ultimately borne by consumers. We believe these criticisms hit the mark. [Read more »](#)

[FCC Proposes Auction for Desirable Toll-Free Numbers](#) By Andrew Regitsky, Oct 20, 2017 10:00:00 AM The FCC released a Notice of Proposed Rulemaking (NPRM) on September 28, 2017 in Docket 17-192 proposing changes to its rules for certain toll-free number assignments. Industry comments are due on November 13, 2017. The NPRM is significant because for the first time since toll-free numbers

were introduced in 1967 the Commission would use a competitive auction to assign approximately 17,000 sought after numbers in the new 833 code. [Read more »](#)

[FCC Proposes Nationwide Number Portability](#) By Andrew Regitsky, Oct 27, 2017 10:00:00 AM Some good news from the FCC! This week it adopted a Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) seeking industry comments on how best to move toward complete nationwide number portability (NNP) while at the same time, promoting competition between all service providers and encouraging the efficient routing of calls throughout the network. Industry comments are due 30 days after this item (Docket 17-244) appears in the Federal Register. [Read more »](#)