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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



#### COMMISSION POISED TO GUT NET NEUTRALITY RULES

On November 22, Commission Chairman Ajit Pai announced circulation of a draft order that would eliminate Title II broadband Internet access services (BIAS) regulation, undoing the Commission's 2015 net neutrality rules including elimination of rules prohibiting blocking, throttling, and paid Internet access prioritization. According to Pai, elimination of Title II BIAS classification will restore the Federal Trade Commission's (FTC) ability to enforce consumer and competition protections against BIAS providers under section 5 of the FTC Act. The FTC Act's "common carrier exemption" has precluded FTC enforcement actions against BIAS providers since adoption of the FCC net neutrality regulations. Commissioner Clyburn issued a [Fact Sheet](#) on November 22, 2017, entitled "Understanding Chairman Pai's Proposal to Dismantle Net Neutrality." Clyburn asserted the proposal will end net neutrality. On November 29, 2017, Chairman Pai released a [document](#) entitled "Myth vs. Fact; Setting the Record Straight on Chairman Pai's Restoring Internet Freedom Order," to dispel rumors about the proposed Order and its effects. A separate Commission [Fact Sheet](#) and draft order were also issued. Commissioner Clyburn wrote a [post](#) for Medium.com, entitled "The FCC Should Not Give Broadband Providers the Keys to your Internet Freedom" in which Commissioner Clyburn noted that commissioners would benefit from hosting their own public forums and listen to consumers and small businesses concerns. She also said the Commission's Restoring Internet Freedom proposal tramples over the rights of these communities and will prevent the Commission from adopting any related consumer protections. The draft order will be taken up during the Commission's December 14 open hearing.

#### COMMISSION STREAMLINES – REQUESTS COMMENTS ON POLE ATTACHMENT RULES, COPPER RETIREMENT

On November 17, 2017, the Commission released a [Report and Order](#), eliminating the historic preservation review requirement for replacement utility poles that meet specified criteria and consolidating FCC historic preservation review rules and procedures into a single rule, Section 1.1320. Separately, on November 29, 2017, the Commission issued a [Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking](#) regarding pole attachment and copper retirement rules, adopted during its November 16, 2017 Open Meeting. In its Report and Order, the Commission elected to exclude capital expenses recovered via non-recurring make-ready fees from recurring pole attachment rates; established a 180 day "shot clock" for resolution of pole attachment access complaints, and allowed incumbent local exchange carriers (ILEC) to access poles owned by other local exchange carriers. The Commission also eliminated the prohibition on ILEC disclosure of information regarding planned network changes prior to public notice, retained objection procedures for short-term network change notices, and "scaled back" ILEC copper network retirement rules, including streamlining the notice process. Under its Declaratory Ruling, the Commission reversed the "functional test" standard for determining whether a service is being discontinued, reduced, or impaired pursuant to section 214(a) authority adopted by the Commission in 2014. The Commission opted for reliance on a carrier's determination of what comprises a "service" to be offered for purposes of determining whether section 214(a) discontinuance authority is required. In its Further Notice of Proposed Rulemaking, the Commission seeks comment on expediting applications that

grandfather additional data services for existing customers, utility treatment of overlashing to maximize utility pole space, calculating the waiting period for short-term network change notices, public notice requirements for network changes affecting interoperability of customer premise equipment, applying streamlined notice procedures for *Force Majeure* events to all network changes, and forbearance from Section 214(s) discontinuance requirement for services with no subscribers, among matters. Comments are due January 17, 2018; replies are due February 16, 2018. Commissioner Clyburn released a dissenting statement, stating, “We must not lose sight, in the midst of our high-profile debate today around media ownership, Next Gen TV and the Lifeline program, that many of the most fundamental protections the FCC put in place in recent years for consumers of legacy voice service, are moments away from being dumped in the trash heap of history. All of this is being done under the guise of advancing infrastructure.” Chairman Pai noted, “some who oppose this decision have engaged in fearmongering, claiming that consumers will suddenly be left without service or that service will be taken away without notice. So let’s set the record straight: If a carrier wants to stop offering traditional telephone service, then our rules still require notifying the affected consumers and seeking permission through the FCC’s section 214 discontinuance process. That is true today and will be true after this order is adopted.” (WC Docket No. 17-84)

#### **COMMENT DEADLINE SET ON BDS TARIFF INVESTIGATION ORDER**

On November 3, 2017, the Wireline Competition Bureau issued a [Public Notice](#) to request comments regarding AT&T, CenturyLink, Frontier and Verizon tariffed business data services (BDS) pricing plans that the Commission had found unlawful in its Tariff Investigation [Order](#). The request for comments follows the U.S. Court of Appeals for the District of Columbia Circuit’s [Order](#) granting the Commission’s motion for voluntary remand of its Tariff Investigation Order. In its Motion, the Commission acknowledged that its Tariff Investigation Order had not addressed the Court’s *BellSouth v. FCC* decision, while noting the change in Commission composition and policy. Interested parties are asked to address issues that will permit the Commission to consider the extent to which the reasoning in the Tariff Investigation Order is compatible with the 2016 BellSouth decision or to otherwise reconsider its determination that the tariff provisions in question were unlawful. Comments are due December 4, 2017; reply comments are due December 19, 2017.

#### **COMMISSION ANNOUNCES BDS ORDER INFORMATION COLLECTION EFFECTIVE DATE**

On November 29, 2017 the Commission published a [Notice](#) in the *Federal Register* announcing Office of Management and Budget approval of the information collection requirements associated with the Commission’s Business Data Services [Order](#). The amendments to sections 1.776 and 69.701 are effective November 29, 2017 and apply for a period of three years. (WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5 and RM 10593).

#### **FCC FORM 499 PAPER REDUCTION ACT COMMENT DEADLINE SET**

On November 3, 2017, the Commission published a [Notice](#) in the *Federal Register* requesting Paperwork Reduction Act comments on an extension of a currently approved information collection associated with Telecommunications Reporting Worksheets, FCC Forms 499–A and 499–Q. Comments are due December 4, 2017.

#### **COMMISSION ADOPTS NEW RULES TO PROTECT AGAINST ROBOCALLS**

On November 16, 2017, the Commission [announced](#) release of new rules intended to block illegal “robocalls” adopted at the Commission’s November open meeting. Under the new rules, “voice service providers will be authorized to block calls that appear to be from telephone numbers that do not or cannot make outgoing calls, without running afoul of the FCC’s call completion rules.” According to the Commission, illegal robocalls have prompted more than 200,000 complaints over the past year, topping the list of consumer complaints. An estimated more than 2.4 billion robocalls were placed each month in 2016. Statements by Commissioners [Pai](#), [Clyburn](#), [O’Rielly](#), [Carr](#), and [Rosenworcel](#). (CG Docket No. 17-59)

### **IN THE COURTS**

#### **STATES SEEK SUPREME COURT REMOTE SALES TAX DECISION REVERSAL**

Thirty-five states and the District of Columbia have asked the U.S. Supreme Court to reverse a 1992 decision in *Quill v. North Dakota* prohibiting states from requiring online retailers and other sellers that do not have a physical presence in a state to collect state sales taxes on transactions with their residents. In an *amici curiae* brief supporting the state of South Dakota on appeal of a South Dakota Supreme Court decision in *South Dakota v. Wayfair, Inc., Overstock.com, Inc., and Newegg, Inc.* (case 17-494), the states argued that the standing prohibition represents “affront to state sovereignty.” According to the pleading, “The problem with the physical-presence rule is that it was first conceived of in 1967, two years before the moon landing and decades before the first



retail transaction occurred over the Internet.” “If anything, the rule impairs rather than advances the Commerce Clause’s underlying objective of promoting a free market undisturbed by discriminatory advantages. Today, remote retailers ... effectively receive a subsidy because of how unlikely it is that their customers will ever pay the state sales and use taxes that they undeniably owe,” they continued. The States maintained that the issue should be decided by the Court rather than awaiting a federal legislative solution.

### STATE REGULATORY NEWS



#### **ALSAKA – REPORTING RULES DOCKET CLOSED**

The Regulatory Commission of Alaska has closed a proceeding intended to review Commission reporting rules for regulated industries, including telecommunications. Among the changes in the rules, interexchange carriers of last resort are no longer required to submit an annual plant report. Other interexchange carrier reports were also eliminated including service quality, traffic data, and slamming reports. Pay phone and directory assistance provider reports are also no longer required. Reports governing telecommunications relay service; service quality standards and outage reporting; capital programs and planning; billable minutes thresholds for registered intrastate carriers; and facilities mapping for interexchange carriers were also amended. The final rules became effective November 22. (Docket R-15-004)

#### **CALIFORNIA – UTILITIES DIRECTED TO REFUND FIRE VICTIMS FOR SERVICE OUTAGES**

On November 9, 2017, the California Public Utilities Commission issued an emergency [resolution](#) directing all utilities to take several actions to help victims of the State’s October wildfires. Communications Companies operating in fire-impact areas of northern California and Orange County were ordered to refund customers who were without service due to the wildfires for the service outage period. Companies providing Lifeline service must suspend the de-enrollment period for non-usage rules and delay the renewal process for affected customers. The renewal process is to resume February 1, 2018, according to the Commission. The Commission noted that carriers of last resort were obligated under their filed tariffs to provide credits for time out of service, and make accommodations to ensure customers have access to services following the fires including, customer deposit, restoration and connection charge, line extension charge, and temporary service allowances. (Resolution M-4833) Commission [October 2017 Wildfires Web Site](#); [Fact Sheet](#)

#### **DISTRICT OF COLUMBIA – COMMISSION SETS UNIVERSAL SERVICE FUND ASSESSMENT**

The District of Columbia Public Service Commission has approved the District of Columbia Universal Service Trust Fund (USTF) budget and set the USTF assessment rate for calendar year 2018. The new assessment rate will be 0.000679 or 0.0679% of reported and estimated intrastate retail revenue in the District of Columbia. (Docket 2017-T-1184)

#### **DISTRICT OF COLUMBIA – SERVICE QUALITY STANDARDS TO BE AMENDED**

A second notice of proposed rulemaking regarding amendments to Chapter 27 of the District of Columbia Municipal Regulations regarding telecommunications services standards for telecommunications service providers that have more than 10,000 access lines have been released by the District of Columbia Public Service Commission. The proposed amendments to Section 2720 and 2799 of Title 15 DCMR would add a “Trouble Clearing Time measure and a Repeat Trouble measure,” to “evaluate the time needed to repair service-affecting but not out-of-service problems and to evaluate the percentage of repeated problems with a particular service line.” The proposed amendments also include “changing some reporting requirements, requiring aggregation of results and disaggregation of results both by the type of customer and the type of facility used to provide service.” Comments are due December 18, 2017 and replies due January 2, 2018, subject to potential extensions. (Docket RM27-2014-01)

#### **ILLINOIS – IP TRANSITION BILL APPROVED**

On November 8, 2017, the Illinois legislature passed [SB 1381](#), the “2017 High-speed Internet Investment and Telecommunications Modernization Act for Job Creation and Public Safety,” a bill that streamlines the process for large carriers to transition subscribers to Internet Protocol (IP) packed networks. Under the bill, any carrier classified as a “large electing provide” 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. Several procedural requirements relating to notice and appeals apply. A “large electing provider” is defined as a telecom carrier that provided at least 700,000 access lines to end users as of 2016. AARP, the Illinois Energy Association, and Illinois PIRG opposed the bill. The Citizens Utility Board urged lawmakers and the governor to reject the bill, 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.” The bill is pending Governor Bruce Rauner’s (R) signature.

**OREGON – COMMISSION ESTABLISHES LATE-PAYMENT-INTEREST RATES**

On November 21, 2017, the Oregon Public Utility Commission [adopted](#) late-payment and interest rates for regulated utilities. The late-payment rate will be two percent monthly on overdue customer accounts and an annual interest rate of 1.4 percent. Commission rules specify that the Commission is to establish interest rates on customer deposits based on the interest rate for the average yield of Treasury Bills on the last week of October annually. The rates become effective on January 1, 2018.

**NEBRASKA – CONNECTIONS-BASED USF MECHANISM ADOPTED – E911 SURCHARGE REMAINS UNCHANGED**

The Nebraska Public Service Commission has adopted a connections-based Nebraska Universal Service Fund (NUSF) contribution mechanism following a finding that the current revenue-based contribution mechanism was not sustainable. In 2014, the Commission initiated an investigation into alternative contribution methodologies. Contributions to the NUSF have been based upon intrastate end-user telecommunications revenues. Yet as a result of declining contributions – in excess of 13% since last April -the Commission concluded that increasing the NUSF surcharge on a declining base of revenues was unsustainable. The Commission determined that the new connections-based contribution mechanism will be based on intrastate voice connections including wireline and wireless connections as well as VoIP connections and not on standalone broadband Internet access services. A “connection” is now defined consistent with the FCC definition as “A wired line or wireless channel used to provide end users with access to any assessable service.” “Assessable service” is defined as “[a] service which allows a connection other networks through inter-network routing as a means to provide telecommunications.” The Commission clarified that the assessment would continue to be on the end users. (Application NUSF-100/PI-193)

Separately, the Commission determined to retain the current enhanced 911 (E911) fund surcharge for the upcoming year at \$0.45 per active telephone number or functional equivalent, per month. (Application 911-002)

**FLORIDA, PENNSYLVANIA, TEXAS REPORT NEW CHAIR - COMMISSIONERS**

The Florida Public Service Commission has reported a new Chair, while regulatory utility commissions in Pennsylvania and Texas report new commissioners. In Florida, Commissioner Art Graham has been elected to serve as Chairman. Graham will serve for a two year period beginning January 2, 2018. he previously served as chairman from 2010 through 2012, and again from 2014 to 2016. In Pennsylvania, nomination of Norman Kennard to the Pennsylvania Public Utility Commission was unanimously approved by the Senate. Commissioner Kennard is serving the remainder of the term of former Commissioner Robert Powelson, who resigned n August to serve on the Federal Energy Regulatory Commission. Commissioner Kennard's term expires March 31, 2019. Prior to his appointment to the PUC, Commissioner Kennard served as counsel to Commissioner Powelson. In Texas Governor Greg Abbott (R) has appointed Arthur D'Andrea to the Public Utility Commission. Mr. D'Andrea is an assistant general counsel for the Office of Governor, and previously served as an assistant solicitor general for the Office of the Attorney General of Texas. His term expires Sept. 1, 2023.

**REGULATORY REPORTS DUE IN DECEMBER**

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.

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
December	Alaska	Access Minutes Report
December	Alaska	Carrier and Area Specific Bulk Billed Report
December	Idaho	Notice to the ID Public Utilities Commission

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
December	Missouri	Relay Missouri Statement
December	Rhode Island	Telecommunication Education Access Fund
December	Rhode Island	Telecommunications Relay Service Report
December 1	Idaho	ID Universal Service Fund Form
December 1	Ohio	CLEC Data (Report)
December 1	Virginia	Virginia Public Right of Way Use Fee report
December 10	Alaska	Alaska Telecommunications Relay Services Fund - Remittance of Surcharges Collected
December 10	Arkansas	State of Arkansas Universal Service Fund
December 10	California	Combined California PUC Telephone Surcharge Transmittal
December 10	California	Employee Compensation, Dues, and Subscriptions
December 10	Georgia	Local Service Indicators Data Requests
December 10	New York	Service Quality Performance
December 15	Alabama	Revised Survey of Competitive Local Exchange Carriers
December 15	Florida	Florida Telecommunications Relay, Inc. (FTRI) Monthly Surcharge Collection Report
December 15	Georgia	Georgia Telecommunications Relay Service (TRS) Monthly Surcharge Collection Report
December 15	Kansas	Kansas Universal Service Fund 2004/2005 Wireless and Wireline Carrier Remittance Worksheet
December 15	Kentucky	Commonwealth of Kentucky Telecommunications Relay Service Fund Telecommunications Devices for the Deaf Distribution Fund
December 15	Kentucky	Commonwealth of Kentucky Universal Service Fund
December 15	Nebraska	Nebraska USF & E911 Remittance Worksheet
December 15	North Carolina	North Carolina Access Line Report - Rule 17-2(K)
December 15	North Carolina	Questions for Competing Carriers Report
December 15	Oklahoma	State of Oklahoma Universal Service Fund Carrier Remittance Worksheet
December 15	Pennsylvania	Pennsylvania Universal Service Fund, FY2004 Carrier Remittance Monthly Worksheet
December 15	Puerto Rico	Puerto Rico Universal Service Fund
December 15	Rhode Island	E911
December 15	South Carolina	The Public Service Commission of South Carolina SC Dual Party Relay System Invoice
December 15	Vermont	Vermont Universal Service Fund Carrier Remittance Worksheet
December 15	Virginia	Telecommunications Relay Service Monthly Report
December 20	Alaska	State of Alaska Universal Service Fund Monthly Carrier Remittance Worksheet

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
December 20	Arizona	Arizona Universal Service Fund Carrier Remittance Worksheet
December 20	Colorado	CO Telecommunications Relay Service Surcharge
December 20	Idaho	Idaho Telecommunications Service Assistance Plan (ITSAP)
December 20	New Hampshire	Telecommunications Relay Service Remittance
December 20	Pennsylvania	Remittance Form for Monthly Telecommunications Relay Service (TRS) Surcharge Collections
December 20	Utah	Utah Universal Service Fund Surcharge Remittal Statement
December 20	Washington	Telecommunications Relay Service, Washington Telecommunications Assistance Program, and E911
December 21	New York	TAF Adjustment Input Form
December 21	New York	Targeted Accessibility Fund Monthly Online Reporting Form
December 21	Oregon	Residential Services Protection Fund Surcharge Remittance Form
December 22	Arkansas	Arkansas Intrastate Carrier Common Line Pool Report
December 25	Minnesota	Minnesota Annual 911/TAM/TAP Fees Report Form
December 25	Texas	Texas Universal Service Fund Worksheet
December 30	Mississippi	Mississippi Dual Party Fund Statement of Revenues
December 30	Nebraska	State of Nebraska Dual Party Relay Surcharge Form
December 30	Tennessee	Wireline Activity Tennessee-CCN Authority
December 30	Texas	Historically Underutilized Business Report Forms
December 30	Texas	Workforce and Supplier Diversity Form
December 30	Vermont	Monthly Disconnect Report
December 30	Vermont	Vermont Service Quality Performance Index Report
December 30	Virginia	Service Quality Report
December 30	Wyoming	Telecommunication Companies Revenue & Assessment Report (Wyoming Universal Service Fund)
December 31	Hawaii	Public Utility Fee Bill
December 31	North Carolina	Lifeline Report
December 31	Oregon	Oregon Telephone Assistance Program Reimbursement Form

### **LIGHT READING**

From *Corporate Counsel Daily Update*

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[Vimeo GC, Tech Companies Criticize FCC's Latest Net Neutrality Plan](#) One GC called the plan "misguided" in a blog post, and tech companies have denounced the proposed change. [READ MORE »](#)

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[Industry Factions State Their Case for More Switched Access Reform](#) By Andrew Regitsky, Nov 3, 2017 10:00:00 AM It's been six long years since the FCC took the first steps to fix the hopelessly muddled inter-carrier compensation system when it began reducing most terminating switched access charges to bill-and-keep. However, concerned about lost access revenues for rural ILECs, the Commission left originating access charges untouched and only mandated reductions in tandem-switched transport when the terminating price cap carrier owned the tandem in that serving area. Moreover, for rate-of-return ILECs, these charges were capped at interstate levels and not reduced any further. [Read more »](#)

[ISPs Seek to Quash State Net Neutrality Rules](#) By Andrew Regitsky, Nov 10, 2017 10:00:00 AM In less than two weeks the FCC is expected to make public its highly anticipated Net Neutrality Order in which it is expected to both reclassify broadband Internet access service (BIAS) as a Title I information service and eliminate most if not all of the existing net neutrality rules. ISPs are ready to rejoice. They have spent the last two years loathing and trying to overturn the strict rules established in 2015 and are finally about to get their wish. They face one problem however, many state commissions are poised to write their own net neutrality rules, many potentially in conflict with the upcoming Order. This is especially true in states led by Democrats who are adamantly opposed to any changes to the existing rules. [Read more »](#)

[Democrats Now Want Net Neutrality Extended to Internet Content Providers](#) By Andrew Regitsky, Nov 17, 2017 10:00:00 AM Internet edge (content) providers have always been some of the leading advocates for keeping the 2015 Open Internet rules for ISPs in place, including forbidding

the blocking, throttling, and paid prioritization of Internet traffic. For example, Twitter wrote in a blog post earlier this year that, "[w]ithout net neutrality in force, ISPs would even be able to block content they don't like, reject apps and content that compete with their own offerings, and arbitrarily discriminate against particular content providers by prioritizing certain Internet traffic over theirs." [Read more »](#)

[FCC Proposes Massive Cuts to Lifeline Program](#) By Andrew Regitsky, Nov 24, 2017 10:00:00 AM The ever-growing partisan split at the FCC hit new levels of acrimony last week when the FCC on a 3-2 vote decided to immediately limit Lifeline benefits to rural Tribal areas. While that was controversial enough, it was a proposal to limit Lifeline participation to facilities-based providers only that caused the two Democratic commissioners to see red. Here are the details: Lifeline is part of the Universal Service Fund and is administered by the Universal Service Fund Administrative Company (USAC). The program works by providing low-income Americans with a monthly dial-tone line discount. Specifically, it provides a subsidy of up to \$9.25 a month for Americans below 135% of the poverty line. Lifeline is available to eligible low-income consumers in every state, territory, commonwealth, and on Tribal lands. Tribal customers are also eligible to obtain \$25 per month in additional subsidies. [Read more »](#)

*To our loyal readers, we wish you the joy of the Holiday season.*

*Warmest Regards.*