



4304 92ND AVENUE NW
GIG HARBOR, WA 98335
253.851.6700
WWW.MILLERISAR.COM

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Regulatory Review

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

FEDERAL REGULATORY NEWS



STARKS NOMINATED TO SUCCEED CLYBURN AS COMMISSIONER

President Donald Trump nominated Geoffrey Starks as a commissioner at the Commission. Starks replaces outgoing Commissioner Mignon Clyburn. Starks has worked at the Commission's Enforcement Bureau, as well as the Justice Department. Statements by Commissioners [Rosenworcel](#), [Carr](#), [O'Rielly](#), and [Clyburn](#)

USAC SUBMITS 3Q18 USF CONTRIBUTION BASE – FUND SIZE PROJECTIONS; 3Q18 CONTRIBUTION FACTOR SET

On June 1, 2018, the Universal Service Administrative Company (USAC) submitted the [Federal Universal Service Support Mechanism Quarterly Contribution Base for Third Quarter 2018](#). USAC's projected collected interstate and international end user revenue base universal service fund support mechanisms for Third Quarter 2018 is \$12,951,958,416, up from \$12,805,676,391 in the second quarter. The projection is used in determining the universal service fund contribution factor. USAC also submitted its [Federal Universal Service Support Mechanisms Fund Size Projections for the Revised Third Quarter 2018](#) on May 31, 2018. According to USAC, the total high cost support mechanism funding requirements are projected to be \$1.169 billion. On June 13, 2018 the Commission Managing Director issued a [public notice](#) announcing that the proposed universal service contribution factor for the third quarter 2018 will be 17.9 percent, down from the current 18.4 percent.

FY 2018 REGULATORY FEE NPRM COMMENT DUE DATE SET

On June 14, 2018, the Commission [published](#) in the *Federal Register* its May 22, 2018 [Notice of Proposed Rulemaking](#) requesting comment on assessment and collection of regulatory fees for Fiscal Year (FY) 2018. The Commission proposed collection of \$322,035,000 in regulatory fees for FY 2018. Comments were due June 21, 2018 and reply comments are due July 6, 2018.

US TELECOM SUBMITS TRANSITIONAL PROPOSAL FOR 1996 ACT'S UNE FORBEARANCE PETITION

On June 21, 2018, USTelecom submitted an [ex parte notice](#) with the Commission, proposing a transition plan for its May petition seeking Commission forbearance of the 1996 Telecommunications Act's network unbundling requirements, among other obligations. Under USTelecom's proposed transition plan, full network element unbundling obligations would end on February 4, 2021. There would be no price increases on unbundled network elements until the February 4, 2021 termination date. No additional requests for new or additional unbundled network elements under the 1996 Act

could be made after that date. Unbundled network elements ordered before February 4, 2021 would be provided via existing interconnection agreements or other arrangements and subject to the transition plan. After February 4, 2018, new unbundled network element requests would be addressed via commercial negotiations or tariffed services. According to USTelecom, the transition plan is based on discussions with member companies, including Windstream, which had originally opposed the proposal. Under provisions of the 1996 Telecommunications Act, the Commission has one year to act on USTelecom's petition. If the Commission does not act within one year or does not invoke a one-time three month deadline extension, the petition becomes effective.

“SLAMMING” – “CRAMMING” RULES AMENDED

On June 8, 2018, the Commission released a [Report and Order](#), amending its slamming, cramming, and telemarketing rules, specifically Section 64.1120, Verification of Orders for telecommunications services, and Section 64.2401, Truth-In-Billing Requirements. The amendments establish that any change in presubscribed carriers based on a “credible allegation of a sales call misrepresentation” that the carrier is unable to defend will be deemed invalid; Further, the amendments explicitly prohibit carriers from placing unauthorized charges on phone bills – effectively codifying Commission cramming prohibitions under its Truth-In-Billing rules. Additionally, carriers are prohibited from using third-party verification for five years if found to have violated the third party verification process. The Commission also removed the requirement that new subscribers verify each service they are subscribing to – a requirement the Commission determined to no longer be necessary and confusing. [Public Notice](#); Statements from Commissioners [Pai](#), [O’Rielly](#), [Carr](#), [Rosenworcel](#) (Docket No. 17-169)

TOLL FREE ACCESS CHARGE REFORM FNPRM RELEASED

On June 8, 2018, the Commission issued a [Further Notice of Proposed Rulemaking](#) (FNPRM) regarding intercarrier compensation reform for toll free “8YY” NPA calls. The FNPRM, among other things, proposes transitioning interstate and intrastate originating 8YY end office, tandem switching and transport charges to bill-and-keep over a three year period and capping 8YY database query rates. The Commission is also proposing to prohibit the provision of more than one database query rate per call. According to Chairman Pai, robocall companies are using the current compensation system as part of their efforts to “fleece” consumers. “The 8YY intercarrier compensation system gives robocallers incentive to make calls for the sole purpose of generating originating access revenues,” Mr. Pai said. Commissioner Rosenworcel dissented, noting that the efforts to preclude abuse should be done, “in a way that doesn't saddle consumers with the cost,” noting that the proposed approach “could put an end to free 1-800 numbers.” Comments are due 60 days following publication in the *Federal Register* and Replies are due 90 days following *Federal Register* publication. (Docket No 18-156) (FCC No. 18-76) [Release](#); Statements from Commissioners [Pai](#), [O’Rielly](#), [Rosenworcel](#).

ROBOCALL REPORT COMMENTS DUE JULY 20

On June 20, 2018, the Consumer and Governmental Affairs Bureau issued a [public notice](#) to request comment regarding the Commission Enforcement Bureau's “robocalling” report. The Commission had [directed](#) the Bureau to prepare a report in consultation with the Federal Trade Commission's Bureau of Consumer Protection to address actions against unwanted calls. The Bureau requests information on the progress of robocalling initiatives among government, industry and consumers, including notable trends in illegal robocalling. Comments regarding enforcement and remaining challenges are also requested. Comments are due July 20, 2018; reply comments are due August 20, 2018.

UPDATING INTERCARRIER COMPENSATION NPRM ISSUED

On June 5, 2018, the Commission issued a [Notice of Proposed Rulemaking](#), taking on the issue of access stimulation. The Commission proposes to eliminate financial incentives for traffic pumping, the practice of stimulating access termination to increase intercarrier compensation revenues through inflated terminating access rates. Under the Commission's proposal, offending carriers would have two options. Local exchange carriers engaged in access stimulation would become “financially responsible for calls delivered to its network so it, rather than interconnected interexchange carriers pay for call delivery or accept direct connections from the interexchange carrier or an intermediate access provider of the interexchange carrier's choice.” Alternatively, interexchange carriers would be allowed to bypass intermediate access providers selected by the access-stimulating local exchange carrier. The Commission also seeks comments on moving all traffic bound for an access-stimulating local exchange carrier to bill-and-keep – to zero and

comments on other access stimulation deterrents. According to the Commission, access arbitrage opportunities in the intercarrier compensation system harm consumers, undermines broadband deployment and distort competition. Comments are due 21 days following publication in the *Federal Register*. Reply comments are due 35 days following publication. (WC Docket No. 18-155)

COMMISSION ORDER SEEKS TO ELIMINATE INFRASTRUCTURE INVESTMENT BARRIERS

On June 8, 2018, the Commission released a [Second Report and Order](#) in its proceeding to accelerate wireline broadband deployment by removing barriers to infrastructure development. The Commission adopted additional streamlined procedures for carriers that discontinue services, eliminated “burdensome and redundant requirements,” and ensured that Commission network change notification rules “take into account the challenges faced in the wake of catastrophic and unforeseen events.” Among the rule amendments, the Commission grandfathered lower-speed data services where the carrier already provides fixed replacement data services at download speeds of 25 Megabits per second and 3 Mbps for uploads. A ten day public comment period is established and grandfathering automatically becomes effective on 25 days, unless substantive objections are raised. The Commission also streamlined permanent discontinuance of services already grandfathered by the Commission for 180 days. The process will now provide 10 days for comment and 31 days for an automatic discontinuance grant. Additionally, carriers with no customers and no “reasonable requests for service for at least the preceding 30 days” are relieved of service discontinuance approval obligations. The Commission also removed its 2016 outreach notification requirements. The Commission also established an alternative to its “adequate replacement” test for qualifying for streamlined discontinuance of legacy voice service. The test for adequate replacement now includes the provision of stand-alone interconnected VoIP throughout a carrier’s affected service area, and at least one other stand-alone facilities-based voice service being available from another provider. Regarding network change disclosures, the Commission eliminated notice requirements, extended streamlined notice procedures for *force majeure* events to all network changes, and retained the current calculation of waiting period for short term network changes. Commissioner Rosenworcel dissented, noting that in adopting the amendments, the Commission has gutted its basic consumer protection policies. The *Second Report and Order* results from an early 2017 Commission’s investigation into reforming pole attachment, copper retirement, and discontinuance of legacy service rules. Statements by Commissioners [Pai](#), [O’Rielly](#), [Carr](#), [Rosenworcel](#) (Docket No. 17-84)

IN THE COURTS

PENNSYLVANIA APPEALS COURT REVERSES COMMISSION RULING ON DISTRIBUTED ANTENNA SYSTEMS

The Pennsylvania Commonwealth Court has concluded that the Public Utility Commission has jurisdiction over distributed antenna systems (DAS). The ruling follows a Crown Castle NG East LLC and Pennsylvania-CLEC LLC (Crown Castle) appeal of the Commission’s 2017 ruling that the Commission could no longer grant DAS operating authority. The Commission’s had found that “operators of DAS networks are not public utilities under the Public Utility Code and, therefore, are not subject to commission jurisdiction and are not entitled to a certificate of public convenience (CPC) issued by the commission.” The Commission had granted operating authority to DAS providers for more than ten years but in 2015 began to raise issues regarding its authority to issue operating authority to DAS providers, and initiated a proceeding to investigate the issue. According to the appellants, DAS falls under Pennsylvania Public Utility Code definition of a regulated “public utility.” Crown Castle had argued that the commission “erred in interpreting the code’s definition of public utility as excluding it, and other DAS network operators, because they are not providers of commercial mobile radio service, but of telecommunications services that fall within the commission’s jurisdiction.” The Court agreed, finding the Commission had erred in its interpretation of the Code to exclude DAS network operators from the definition of public utility. The Court noted that “‘DAS network operators’ transport service, which conveys or transmits messages or communications to the public for compensation, is a telecommunications service under the Code notwithstanding the fact that the WSPs use it to transmit a service not regulated by the commission, here CMRS.” “Crown Castle NG East LLC and Pennsylvania-CLEC LLC, v. Pennsylvania Public Utility Commission,” case no. 697)



BEFORE CONGRESS



PALLONE, DOYLE REQUEST COMMISSION OVERSIGHT HEARING

On June 5, 2018, House Representatives Frank Pallone (D, NJ) and Mike Doyle (D, PA) sent a [letter](#) to Representatives Greg Walden (R, OR) and Marsha Blackburn (R, TN), requesting that they fulfill their commitment to hold oversight hearings of the Federal Communications Commission.

Representatives Pallone and Doyle urged immediate rescheduling of a postponed February 16, 2018 oversight hearing. They maintained that the hearing must be held because the current Commission has refused to fully answer the letters of committee Democrats 26 times. Representatives Walden and Blackburn are members of the House Energy and Commerce Committee. [News release](#)

ROBOCALL PROHIBITION CALLS INTRODUCED

On June 7, 2018 House [Representative Frank Pallone](#) (D NJ) ([bill](#)) and [Senator Edward Markey](#) (D MA) ([bill](#)) introduced legislation entitled “Stopping Bad Robocalls Act” in both houses. The bills would direct the Commission to enact strong consumer protections for authorized calls and empower the Commission with strong enforcement tools to reign in robocallers.

UNSERVED AREA BROADBAND PRIORITIZATION FUNDING BILL INTRODUCED

Representative Kevin Cramer (R, ND) has [announced](#) introduction of the Reprioritizing Unserved Rural Areas and Locations for Broadband Act of 2018. The “RURAL” Broadband Act would prioritize the Rural Utility Service funds for broadband deployments in unserved areas over underserved areas that are already receiving some universal service fund resources. Senators Steve Daines (R, MT) and Patrick Leahy (D, VT) introduced identical language in [S. 2970](#) on May 24, 2018.

SENATE APPROPRIATIONS COMMITTEE APPROVES FCC FUNDING

On June 21, 2018, the Senate Appropriations Committee approved the [Financial Services and General Government Appropriations Bill](#). The bill allocates \$333.1 million for Commission funding, equal to the Commission’s fiscal year 2019 budget request.

STATE REGULATORY NEWS



CALIFORNIA – 510 Area Code Implemented

The California Public Utilities Commission has approved a petition from Neustar, Inc., the North American Numbering Plan Administrator (NANPA), for implementation of a 510 area code overlay to address anticipated number exhaustion . A new 341 area code will be added to the 510 region. A thirteen-month implementation schedule, including public outreach, was also adopted. (Application 17-05-013)

CONNECTICUT – E911 Program Budget and Surcharge Set

The Connecticut Public Utilities Regulatory Authority has approved the Department of Emergency Services and Public Protection's Enhanced Emergency 911 program operating budget and surcharge for its upcoming fiscal year. Effective July 1, 2018, the E911 surcharge is set at \$0.57 per month. The fiscal year 2019 E911 surcharge represents a \$0.01 per month reduction from the current surcharge, based on a reduced operating budget. The surcharge applies to all local exchange and commercial mobile radio service subscribers, and to payphone providers. (Docket 18-01-30)

MINNESOTA – Telecommunications Access Minnesota Surcharge Set

The Minnesota Public Utilities Commission has approved the Telecommunications Access Minnesota (TAM) program budget and surcharge for the 2019 fiscal year. The TAM surcharge is to remain \$0.05 per wireline and wireless access

line per month for the upcoming fiscal year. TAM supports Minnesota's Telephone Equipment Distribution (TED) program and the Minnesota Relay programs for the Deaf. The commission is authorized to collect up to \$0.20 per month to fund TAM, though it has retained the \$0.05 surcharge since 2016. (Dockets PR-18-15, M-18-194)

NEBRASKA – USF Charge Remains Unchanged

The Nebraska Public Service Commission has determined that the State Universal Service Fund surcharge will remain unchanged at 6.95 percent of intrastate revenues for the upcoming fiscal year. The Commission found that despite declines in Fund contributions it would retain the surcharge while considering how to reform the contribution process through a separate proceeding. The new surcharge becomes effective July 1, 2018. There has only been one change in the surcharge since initiated in 2005. (Application NUSF-4)

NEBRASKA – Botkin Named to Commission

Governor Greg Abbott (R) has appointed Shelly Botkin to the Public Utility Commission. Ms. Botkin has served as director of corporate communications and government relations for the Electric Reliability Council of Texas since 2010. She replaces former Commissioner Brandy Marty Marquez, who resigned earlier this year. Her term expires September 1, 2019.

NEW JERSEY – Bill Would Require ISPs to Retain Confidentiality of Personal Information

SB 2641, a bill that would require Internet Service Providers (ISPs) to retain confidentiality and prohibit disclosure of any subscriber personally identifiable information, has been introduced in the State Senate. The bill would require ISPs to keep "confidential and prohibit any disclosure, sale, or unauthorized access of a subscriber's personally identifiable information unless the subscriber, expressly and in writing, authorizes the ISP to disclose this information." ISPs would be required to provide written notice of its obligations to subscribers at the time of subscription. According to the bill, ISPs would be prohibited from providing service or imposing a supplemental charge or penalizing a subscriber for choosing not to authorize the disclosure of personally identifiable information. Subscribers could revoke the prohibition in writing at any time. The prohibition would not apply in certain instances including the provision of court ordered information.

VERMONT – Data Broker Regulation Law Enacted

HB 764, a law intended to protect consumers from "data brokers" has been enacted. The new law imposes a requirement that data brokers register annually with the Secretary of State and publicly disclose information about the broker's data collection practices and opt-out policies. Data brokers would be required to ensure they have "adequate security standards" to safeguard against data breaches and report data breaches if they occur. Under the new law, consumers may request a specific information from credit reporting agencies, including the names of users requesting their information in the last 12 months. The law also eliminates fees to initiate a freeze on a credit report after a data breach. Under current Vermont law residents must pay \$10 to initiate a freeze of their credit reports should they choose to do so following a data breach; another \$5 is levied to lift the credit freeze. Authority is given to the state attorney general to promulgate rules implementing the law and for enforcement. The attorney general is to submit a report regarding whether additional legislative and regulatory may be needed to protect consumer privacy.

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

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.



[What Happens When Switched Access Customers Won't Pay Their Bills?](#) By Andrew Regitsky Two weeks ago, we discussed the FCC's upcoming (and unexpectedly delayed by at least a month) rulemaking proceeding (Docket 18-155), designed to eliminate the opportunity for carriers to engage in switched access stimulation (aka traffic pumping). In that rulemaking, the Commission proposed to give carriers engaging in access stimulation a choice of either (1) accepting financial responsibility for terminating traffic delivered to their end offices; or, (2) accepting direct connections from the IXC or an intermediate carrier chosen by the IXC. [READ MORE >](#)

[Small ILECs Get Break on Broadband Universal Service Payments](#) By Andrew Regitsky Recent days have not been kind to small telecommunications companies. And that is a vast understatement! For example, last year the FCC used its Business Data Proceeding (BDS) to deregulate price cap ILEC special access services even in markets with no actual competition. This practically guarantees small special access customers without the means to purchase volume or term discounts will face increased prices. [READ MORE >](#)

[ILECs Lambaste CenturyLink's Claim that Local Switching Charges Should Apply to Over-The-Top VOIP Traffic](#) By Andrew Regitsky This week, the industry got its chance to comment on the May 14, 2018 Petition for Declaratory Ruling (Petition) filed by CenturyLink in Docket 10-90. In its Petition, the ILEC requested the FCC to end the industry uncertainty regarding whether switched access local switching charges should apply to traffic carried by over-the-top VoIP providers who ride another carrier's network such as a CLEC, and do not own the end user customer. [READ MORE >](#)

LIGHT READING FROM CORPORATE COUNSEL DAILY UPDATE

Mastering Legal Holds: What Is the Scope of Preservation and Best Practices to Comply? Part III

By John Tredennick

When a legal hold duty arises, an organization must decide what to preserve and how to do it. [Read More](#)

Does Compliance Really Have Different Interests Than Legal?

By Michael W. Peregrine

Recent public comments by well-known compliance consultant Hui Chen provide an important, if not also provocative, perspective... [Read More](#)