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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 REGULATORY NEWS



COMMISSION INCREASES FILING FEES

On July 10, 2018, the Commission released an [Order](#), amending application processing and other filing fees as set forth in the Commission's Schedule of Application Fees in section 1.1102, *et seq.* of the Commission's rules. Among the amendments, certain application fees are increased to reflect the net change in the Consumer Price Index for all urban consumers of 3.7 percent, an increase of 8.825 index points calculated from October 2015 (237.838) to October 2017 (246.663). New tiers for calculating regulatory fees for submarine cable systems were also adopted. The Commission declined to adopt a new regulatory fee for international section 214 authorizations and retained the optional bulk rate calculation for determining the number of subscribers in multiple dwelling units used to establish cable television regulatory fees. The amendments become effective on August 29, 2018 following publication of the Order in the *Federal Register* on July 30, 2018. (GEN Docket No. 86-285).

NANPA FUNDING PROPOSED

On July 13, 2018, the Commission Wireline Competition Bureau issued a [Public Notice](#) announcing the proposed North American Numbering Plan Administration fund size estimate and contribution factor for Fiscal Year 2019. The Bureau said the proposed fund size will be \$7,058,771, and a proposed contribution factor of 0.0000427.

FORMAL COMPLAINT PROCEEDINGS ORDER RELEASED

On July 18, 2018, the Commission released its [Formal Complaint Proceedings Order](#), adopted during the Commission's July 12, 2018 Open Meeting. The Order establishes uniform formal complaint proceeding procedural rules. Under the Order, responsibility for the procedural rules was transferred from the Market Disputes Resolution Division and Telecommunications Consumers Division to the Enforcement Bureau. The Order also streamlines and consolidates procedural rules governing formal complaints against common carriers, and formal complaints regarding pole attachments and advanced communications services and equipment. (Docket No 17-245) [News Release](#); Statements by Commissioners [Pai](#), [O'Rielly](#), [Carr](#), and [Rosenworcel](#).

PAYPHONE COMPENSATION RULES EFFECTIVE JULY 17

On July 17, 2018, The Commission published a [Notice](#) in the *Federal Register* announcing Office of Management and Budget approval of the information collection associated with the Commission's payphone compensation [rules](#). The amendment to section 64.1310(a)(3) of the Commission's rules became effective July 17, 2018 following Notice publication.

BUSINESS DATA SERVICE INFORMATION COLLECTION EFFECTIVE JULY 23

On July 23, 2018, 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 [Report and Order](#). The *Report and Order* requires that price-cap regulated incumbent and competitive local exchange carriers remove all business data services no longer subject to price-cap regulation from their interstate tariffs by August 1, 2020. With Notice publication, amendments to Sections 61.201 and 61.203 of the Commission's rules became effective July 23, 2018.

COPPER RETIREMENT-DISCONTINUANCE RULE AMENDMENTS EFFECTIVE JULY 30

On July 30, 2018, the Commission published a [Notice](#) in the *Federal Register* to announce Office of Management and Budget approval of the information collection associated with the rules pertaining to incumbent local exchange carrier copper loops and service retirement and discontinuance for a three year period. The amendments to sections 63.19(a), 63.60(h), 63.71(a)(6)–(7), (f), (h) and 63.602 became effective on July 30, 2018. On July 31, 2018, the Commission issued a [Notice](#) in the *Federal Register* to request Paperwork Reduction Act (PRA) comments on revised information collection regarding network change disclosures and notices. PRA comments are due October 1, 2018.

SERVICE DISCONTINUANCE REPORT AND ORDER – NETWORK CHANGE DISCLOSURE RULES EFFECTIVE AUGUST 8

On July 9, 2018, The Commission [published](#) its [Second Report and Order](#) revising Section 214(a) service discontinuance, network change disclosure and the Part 68 customer notification processes in the *Federal Register*. The *Second Report and Order* becomes effective August 8, 2018 with exception of amendments to sections 51.333(g)(1)(i), (g)(1)(iii) and (g)(2), 63.71(f), (h), (k) introductory text, (k)(1) and (3), and (l). Those provisions contain information collection requirements not yet approved by the Office of Management and Budget. The Commission will separately announce the effective date of those sections. Amendments to 47 CFR 63.19(a), as revised in the [2016 Technology Transitions Order](#), become effective August 8, 2018.

SLAMMING AND CRAMMING RULE AMENDMENTS BECOME EFFECTIVE AUGUST 16

On July 17, 2018, the Commission published a [Notice](#) in the *Federal Register* announcing that amendments to section 64.1120 of the Commission's rule adopted in the slamming and cramming [Report and Order](#), become effective August 16, 2018. (DA No. 18-747). (Docket No 17-169)

COMMENTS ON STATE OF FIXED BROADBAND COMPETITION DUE AUGUST 17

On July 27, 2018, the Commission's Wireline Competition Bureau issued a [Public Notice](#), to request comment on the state of fixed broadband competition. The Commission was required to solicit comment under the *Ray Baum Act of 2018*. The Bureau is specifically seeking comment regarding criteria or metrics to be used for evaluation the state of fixed broadband competition and industry data, and competitive dynamics and trending factors in the industry including, subscribership numbers, financial indicators, investment, pricing and network coverage. The Bureau also requests comment on whether laws, regulations, regulatory practices or demonstrated marketplace practices pose a barrier to competitive entry into the fixed broadband marketplace or to the competitive expansion of existing providers. Comments are due August 17, 2018.

CALLER ID RULE INFORMATION COLLECTION EFFECTIVE AUGUST 22

On July 23, 2018, the Commission published a [Notice](#) in the *Federal Register* announcing that the Office of Management and Budget approved the information collection associated with rules adopted in the Commission's October 2017 Caller ID [Report and Order](#). The *Report and Order* authorizes law enforcement authorities to access blocked caller ID information when needed to identify and thwart threatening callers under specific circumstances. The amendments to section 64.1601(d)(4)(ii) and (f) are effective August 22, 2018 for a three year period.

TOLL FREE TEXTING NPRM COMMENTS DUE AUGUST 23

On July 24, 2018, the Commission [published](#) in the *Federal Register* the [Notice of Proposed Rulemaking](#) seeking comment to determine how a toll free service subscriber should clarify authorization to text-enable a toll free number. The NPRM proposes requiring a toll free service subscriber to inform its responsible organization (RespOrg) of an authorization and for the RespOrg to update the appropriate records in the toll free SMS database. Comments are due on

August 23, 2018 and reply comments are due September 7, 2018. Paper Reduction Act comments on the proposed information collection requirements are due September 24, 2018.

8YY TOLL FREE ACCESS CHARGE REFORM COMMENTS DUE SEPTEMBER 4

On July 3, 2018, the Wireline Competition Bureau issued a [Public Notice](#) informing the public of publication of the Commission's [8YY \(toll free\) Access Charge Reform Further Notice of Proposed Rulemaking](#) in the [Federal Register](#). The Commission proposes to transition interstate and intrastate originating end office and tandem switching and transport charges for toll free (8YY) calls to bill-and-keep. The Commission also proposes to cap 8YY database query rates at the lowest rate charged by any price-cap regulated local exchange carrier and to limit charges to one database query charge per call, regardless of the number of carriers in the call path or the number of database queries conducted. Comments are due September 4, 2018, and reply comments are due October 1, 2018.

FCC FORM 477 SUBMISSION DUE SEPTEMBER 4

On July 11, 2018, the Wireline Competition Bureau issued a [Public Notice](#) establishing a FCC Form 477 filing deadline of September 4, 2018. FCC Form 477 filing [interface](#) is accepting data as of June 30, 2018. According to the Bureau, service providers that must file the FCC Form 477, but fail to do so, may be subject to enforcement action under sections 502 and 503 of the Communications Act and any other applicable law. Information on how to file Form 477 is available on the FCC's Form 477 Resources for Filers [webpage](#).

RULE REVISION OR ELIMINATION COMMENTS DUE OCTOBER 29

On July 31, 2018, the Commission published a [Notice](#) in the *Federal Register* seeking comment on whether Commission rules adopted in 2005 and 2006 should be retained, amended or rescinded,. The request complies with the objectives of section 610 of the Regulatory Flexibility Act to minimize any significant economic impact of such rules upon a substantial number of small entities. Certain rules in Parts 54 and 64 of the Commission's rules are included in the review. Comments are due October 29, 2018.

COMMISSION SETTLES INVESTIGATION INTO AT&T MOBILITY NATIONWIDE 911 OUTAGES

On June 28, 2018, the Commission [announced](#) its settlement with AT&T Mobility associated with nationwide 911 outages that occurred in March and May. Under the terms of the resulting [Consent Decree](#), AT&T will pay a \$5.25M fine, implement proactive system changes to reduce the impact of future outages, improve the process for notifying 911 call centers of outages, ensure reliable 911 call completion and file compliance reports with the Commission. According to the Commission, the March outage affected 12, 600 users. The May outage resulted in 2,600 failed 911 calls.

COMMISSION ELIMINATES NATIONWIDE NUMBER PORTABILITY

On July 13, 2018, the Commission released a [Report and Order](#) in its numbering portability proceeding, eliminating and amending certain rules in Parts 51 and 52 of its rules, "intended for a market that was divided along more static, segmented categories of telecommunications providers." The Commission forbears from the interexchange dialing parity requirements established for competitive local exchange carriers to create a more level playing field with incumbent local exchange carriers who received forbearance from the dialing parity requirements in 2015. According to the Commission elimination of the rules, "help set the stage for implementation of number portability on a nationwide basis. "(Docket Nos. 17-244 13-97) [News Release](#). Statements by Commissioners [Pai](#), [O'Rielly](#) and [Carr](#).

UNNECESSARY CELLULAR SERVICE RULES ELIMINATED

On July 12, 2018, the Commission adopted a [Third Report and Order](#) eliminating "obsolete and unnecessary" regulatory Cellular Service rules. The Commission modernized record-keeping rules by removing rules requiring retention of hard copy station authorizations and other records; eliminated requirements for licensees to maintain station control points and personnel on duty at those control points, and eliminated duplicative rules governing operation of mobile stations, operational control of mobile devices, and equal opportunity regulations. (Docket Nos. 12-40 10-112 16-138 RM-11510 RM-11660)

IN THE COURTS

DOJ APPEALS AT&T-TIME WARNER DECISION



The Department of Justice's Antitrust Division is appealing the June U.S. District Court for the District of Columbia ruling rejecting efforts to block AT&T, Inc.'s proposed acquisition of Time Warner, Inc. In the June *U.S. v. AT&T, Inc., et al.* ruling, senior district Judge Richard Leon ruled that the government had “failed to meet its burden to establish that the proposed ‘transaction is likely to lessen competition substantially.’” Judge Leon also concluded that he would not grant a stay in the first instance if the government were to request one due to the unlikely success of a motion for stay on the merits of an appeal. The Companies had completed the transaction two days following the ruling. On July 18, 2018, the Department of Justice requested an expedited appeal, requesting that briefs in the case be filed no later than mid-October and oral arguments follow “as soon as practicable.” The request was granted. The Department of Justice argues that Judge Richard Leon, “rejected fundamental principles of economics” in his original decision. AT&T’s Randall Stephenson said the appeal “changes nothing” for the transaction.

SUPREME COURT AMEx RULING HAS IMPLICATIONS FOR TECHNOLOGY PLATFORMS

On June 25, 2018, the U.S. Supreme Court in a 5-4 decision ruled on an antitrust case in [Ohio et al. v. American Express Co.](#) (case 16-1454), which may have implications for communications and Internet platforms that operate in two-sided markets. The case involved credit card bank policies that prohibited merchants from steering customers to other credit card providers offering lower transaction fees. Those policies forced merchants to pay higher card transaction fees to the banks. Though Visa and MasterCard settled their cases with the Department of Justice in 2010, American Express continued to justify the practice. The Supreme Court affirmed the appellate court’s ruling that hat steering provisions do not violate antitrust laws, opening up the potential that a two-market test may be applied in other instances including the high tech sector where two-side markets are common. Justice Clarence Thomas wrote that two-sided transaction platforms “facilitate a single, simultaneous transaction between participants. ... Because they cannot make a sale unless both sides of the platform simultaneously agree to use their services, two-sided transaction platforms exhibit more pronounced indirect network effects and interconnected pricing and demand. Transaction platforms are thus better understood as ‘suppl[y]ing] only one product’ - transactions.” According to the non-profit research organization Open Markets Institute, “The Supreme Court’s decision risks shielding from effective antitrust scrutiny every dominant tech platform in America, including Amazon, Google, and Facebook. Not only is the new rule unjustified, it is pegged to a concept that is amorphous and potentially unbounded, and may conceivably exempt all sorts of dangerous behavior from effective antitrust enforcement.” Public Knowledge President and Chief Executive Officer Gene Kimmelman said, “Today’s Supreme Court decision is an enormous setback for consumers who rely upon the antitrust laws to promote market competition. This is a particularly dangerous setback that will open the door for communications and internet platforms to continue building dominant market positions virtually impenetrable to innovation from smaller competitors. This Supreme Court decision will make it significantly more difficult for antitrust to police the dominant tech platforms. It is now time for Congress to weigh in to correct this judicial misreading of the law.”

COMMISSION SUBMITS LIFELINE DECISION APPEAL BRIEF

On July 23, 2018, the Commission filed a [brief](#) with the U.S. Court of Appeals for the D.C. Circuit Court in the Court’s proceeding [seeking review](#) of the Commission’s 2017 Lifeline [Order](#). The Commission argued that it had provided ample notice and opportunity for comment on its proposals to restrict the enhanced tribal subsidy to facilities-based providers on rural tribal lands. Further, the Commission stated that it had fulfilled its voluntary commitment to consult with tribal governments prior to adopting the order, and argued its decision to limit the enhanced tribal subsidy to facilities-based providers was reasonable and consistent with its long-standing goals of promoting infrastructure development and managing fund expenditures.

U.S. SUPREME COURT VACATES BERKLEY CELLPHONE USAGE WARNING ORDINANCE DECISION

On June 28, 2018, the U.S. Supreme Court vacated a U.S. Court of Appeals for the Ninth Circuit (San Francisco) order upholding a City of Berkley, CA ordinance that required cellphone retailers to post health warnings about potential adverse health effects of exposure to radiofrequency radiation associated with cellphone usage. The Court granted a petition for *certiorari* by CTIA and remanded the case to the U.S. Court of Appeals for the Ninth Circuit in consideration of a related case in *National Institute of Family and Life Advocates v. Becerra*. The City of Berkley had argued that the warnings were necessary to give consumers information needed to make informed decisions. CTIA maintained that the ordinance was preempted by federal law and violated the First Amendment. (*CTIA, The Wireless Association, v. City of Berkeley, et al.*, case 16-15141)

EIGHTH CIRCUIT RULES TELECOMMUNICATIONS ACT DOES NOT PREEMPT CITY ORDINANCE

The U.S. Court of Appeals for the Eighth Circuit (St. Louis) has ruled that a City of Des Moines, Iowa ordinance that assesses carriers for use of public rights-of-way is not preempted by the Telecommunications Act where carriers do not present evidence that a fee increase formally or effectively precludes entry into the city's telecommunications market. Iowa statute requires municipalities to offer access to rights-of-way, though authorizes assessment of access fees, including management fees. In 1998, Des Moines assessed a management fee based on a charge per facility footage. In 2015 the City significantly increased the fee. On appeal of the increased fee to district court, CenturyLink maintained that the City ordinance exceeded municipal authority and was preempted by federal law. District court ruled in favor of Des Moines, finding that the City had not exceeded its authority under state law and that appellants had "presented no credible evidence to prove the Ordinance would have an actual adverse effect that would eliminate their ability to provide telecommunications services." In its ruling on appeal of the district court decision, the Eighth Circuit upheld the district court ruling, finding that the court had not erred in its findings. The Eighth Circuit affirmed the district court's finding of non-preemption, ruled that carriers presented no evidence that the fee increase formally or effectively prohibits entry into the Des Moines telecommunications market. The court did vacated the district court's ruling that the City did not exceed its authority under Iowa law when it adopted a new management fee schedule and the finding that the ordinance did not violate state law because there were unresolved issues of fact regarding whether the city's construction costs would qualify as management costs. The case was remanded to the district court to make additional findings of fact. *Qwest Corp. v. City of Des Moines* (Case 17-1257)

RESTORING INTERNET FREEDOM APPEAL BRIEFING SCHEDULE RELEASED

On July 30, 2018, the U.S. Court of Appeals for the D.C. Circuit released an [order](#) establishing the briefing schedule in the appeal of the Commission's Restoring Internet Freedom Order. Initial briefs will be due August 20, 2018; final briefs are due on November 27, 2018. Oral argument dates remain pending.

BEFORE CONGRESS



NET NEUTRALITY BILL INTRODUCED IN HOUSE

On July 17, 2018, Representative Mike Coffman (R. CO) introduced a new bill, the "[21st Century Internet Act](#)" that would establish a new Title VIII to the Communications Act of 1934, as amended, governing broadband Internet access service (BIAS) regulation. The bill would include net neutrality protections against paid prioritization, blocking and throttling. Representative Coffman expressed his desire to seek a legislative solution to the controversy following the Commission's rollback of 2015 net neutrality rules in January. The bill would also prohibit BIAS providers from precluding attachment of non-harmful devices to the network or charging fees to edge providers to avoid blocking or throttling. Further, the bill would create a duty for BIAS providers to interconnect and exchange IP traffic on a settlement-free basis with interconnecting providers "on a reasonably localized basis" for the exchange of "at least a reasonable minimum amount" of traffic. The requirement could be fulfilled under an indirect interconnection through an entity that provides settlement-free traffic exchange. BIAS providers would be required to disclose network management practices, performance metrics, including speed, latency, and packet loss, and commercial terms. Competitively sensitive information or information that could compromise network security, or "undermine the efficacy of reasonable network practices" could be withheld from public disclosure but would have to be submitted to the Commission for review. BIAS providers' existing obligations for emergency communications and support of law enforcement, public safety, and national security authorities would be retained. The bill would not prohibit "reasonable efforts" to address copyright infringement or other unlawful activity. Disability access obligations would also apply to on BIAS providers and equipment manufacturers to the extent that access is "readily achievable." The Commission would be authorized "to initiate investigations, bring enforcement actions, issue declaratory rulings, conduct rulemakings, and take such other actions or impose forfeitures under title V. And the bill would exempt the new Title VIII from the forbearance authority granted to the FCC in the 1996 Telecommunications Act.

COMMISSION TRANSPARENCY BILL INTRODUCED IN HOUSE

On July 19, 2018, Representative Adam Kinzinger (R IL [introduced H.R. 6422, the "Federal Communications Commission \(FCC\) Transparency Act,"](#) a bill that would require the Commission to post documents to be considered by the Commission on its web site a minimum of 21 days prior to a vote. Commissioner O'Rielly released a [statement](#) saying as a result of this practice already adopted by the Commission, unnecessary discussions of non-existent issues have been eliminated, conversations are more productive, Commissioners are still speaking their minds and negotiating internally on items and work product has greatly improved. He supports codifying the requirement to ensuring its longevity.

HOUSE SUBCOMMITTEE HOLDS COMMISSION OVERSIGHT HEARING

On July 25, 2018, the House Communications and Technology Subcommittee held a [hearing](#) regarding Commission oversight. In his testimony before the Subcommittee, [Chairman Pai](#) reviewed action taken by the Commission to expand broadband deployment in unserved areas and addressed initiation of the Connect America Fund (CAF) Phase II reverse auction. Chairman Pai reported that the auction is expected to contribute up to \$2 billion over the next decade to bring fixed broadband to unserved areas. He noted that the Commission had already provided \$500 million in additional funding to assist rate-of-return carriers in expanding broadband deployment in rural America earlier this year. Chairman Pai also discussed upcoming spectrum auctions. [Commissioner O’Rielly](#) said the Commission’s broadband deployment efforts should be examined in conjunction with other federal programs including programs administered by the RUS and NTIA and urged that RUS, NTIA and the Commission coordinate implementation of the differing programs. [Commissioner Carr](#) discussed wireless infrastructure and 5G networks. He reported that that in March 2018, the Commission adopted an order exempting small cells from certain federal historical and environmental review procedures. He also addressed the Commission’s Rural Health Care program and new telehealth initiative, which is expected to contribute up to \$100 million for connected care benefiting low-income patients. [Commissioner Rosenworcel](#) expressed concerns with Commission actions regarding net neutrality and proposed Lifeline program reforms. She also stated that the Commission’s broadband mapping practices inaccurately reflect the true state of connectivity, noting that 24 million Americans have no high-speed service.

STATE REGULATORY NEWS



CALIFORNIA – Consumer Privacy Law Enacted

Governor Jerry Brown (D) has signed the California Consumer Privacy Act of 2018, AB 375, into law. The new law establishes an individual’s right to know what personal data is being collected, whether personal data is sold or disclosed and to whom, to prohibit sale of personal data, and to access personal data. Businesses may charge a premium if a consumer does not allow information to be sold. The new law followed revelations of data breaches experienced by Target, Equifax, and Cambridge Analytica and has been hailed by advocates as “landmark reform,” though the technology industry largely opposed the legislation. Opponents maintain that there was insufficient discussion prior to adoption of the bill in the Senate. The new law becomes effective in 2020.

CALIFORNIA – Teleconnect Fund Decreased

The California Public Utilities Commission has adopted a proposed decision to decrease the California Teleconnect Fund (CTF) program surcharge to 0.78percent, effective September 1, 2018. The CTF surcharge decrease stems from unintended consequences of a rule change that the Commission adopted in Decision (D) 15-07-007 that reduced the voice discount from fifty to twenty five percent and changed the status of wireless services from eligible to ineligible for the program. The current CTF surcharge is 1.08 percent. The surcharge applies to all telecommunications and interconnected voice over Internet protocol providers. The CTF offers discounted rates for advanced telecommunications services to qualifying schools, libraries, government-owned health care providers, and community based organizations. (Resolution T-17606)

FLORIDA – New Central Florida Area Code Approved

The Public Service Commission has approved a new 689 area code for Central Florida. The new area code will overlay the existing 407 area code. Adoption of the new 689 area code was necessary in anticipation of 407 area code number exhaustion. The current 407 area code covers Orange, Osceola, Seminole and parts of Lake and Volusia Counties in Central Florida. Ten-digit dialing is already required as a result of a limited 321 area code overlay approved by the Commission in 1998. The new 689 area code had been approved in 2002, but implementation was delayed following the North American Numbering Plan Administrator (NANPA) extension of the existing 407 and 321 area codes. (Docket 20180118-TL)

IOWA – Board Initiates New Dual Party Relay Assessment Proceeding

The Iowa Utilities Board has initiated a new proceeding to implement legislation amending funding provisions for dual party relay for the Deaf in Iowa Code Section 477C.7, enacted July 1, 2018. Under the new law, the Board is directed to

impose an assessment on all wireless carriers and wireline local exchange carriers to fund relay services. The surcharge is established at \$0.03 per telephone number, per month. The Board initiated a new proceeding to solicit stakeholder comment on how to define “telecommunications service phone number” for assessment purposes. Iowa telecommunications carriers have been directed to remit quarterly assessments as required under Iowa Code, as amended by 2018 Iowa Acts chapter 1160. For purposes of determining the amount of the assessment, “telecommunications service phone number” has initially been defined as a “revenue producing telephone number.” (Docket RMU-2016-0025)

MASSACHUSETTS – 911 Surcharge Increased

The Department of Telecommunications and Cable has agreed to increase the monthly E911 surcharge to \$1.50 from the current \$1.00 a month following a petition filed by the Massachusetts State 911 Department. The State 911 Department had sought the increase to cover costs associated to meet its statutory mandates. The increased surcharge will be in effect from January 1, 2019 through Dec. 31, 2023. On January 1, 2024, the surcharge amount will revert to \$1.00 a month. The Department rejected the 911 Department’s request that the increased surcharge take effect on August 1, 2018. A 911 surcharge increase was last approved in 2015, when the surcharge was increased to \$1.25 for one year, followed by reduction to the current \$1.00 surcharge. The Department said that the surcharge adjustment was requested to “support the procurement of an interoperable, statewide radio system known as the Commonwealth of Massachusetts Interoperable Radio System (CoMIRS) while allowing the department to meet its statutory obligations...” (DTC 18-2)

MICHIGAN – Comment Sought on Customer Migration Rules

The Michigan Public Service Commission has requested comment regarding re-adoption of basic local exchange service customer migration rules. Per section 202 of the Michigan Telecommunications Act, the customer migration rules are scheduled to sunset if not reauthorized by the Commission every three years. In 2016, the Commission readopted its rules, having determined not to replace its standards with the federal rules because “the federal rules remain too broad to cover all issues that arise in Michigan.” Comments are due on or before September 14, 2018. A public hearing is scheduled for August 27, 2018. (Case U-20161)

NEBRASKA – Commission Adopts Universal Service Fund Definitions

The Nebraska Public Service Commission has adopted amended definitions pertaining to the State’s universal service fund. The amended definitions are the result of a stipulation with the Wireless Association (CTIA), which had petitioned the Commission for a review of certain definitions following the Commission’s adoption of a connections based methodology to provide a stable source of revenue for the Nebraska Universal Service in October 2017. (Application No. NUSF-I-OO/PI-L93). Under the stipulation, the definitions adopted by Commission, in accordance with the provisions of Neb Rev. Stat. Sec. 86-324(2) include “Connections-Based Contribution Mechanism” defined as “a fixed or flat, rate surcharge assessed on a per-connection basis;” ‘Connection’ defined as “any form of technology used to provide an end-user with access to an assessable service;” and ‘Assessable Service’ defined as “any service subject to a contribution obligation to the Nebraska Telecommunications Universal Service Fund.” (Application No. NUSF-112/PT-217)

NEBRASKA – Outage Reporting Rules Adopted

New rules governing outage reporting have been adopted by the Nebraska Public Service Commission. The Commission stated that although it has been collecting outage information regularly, it was concerned that not all carriers were reporting outages or engaged in inconsistent reporting. In 2017, the Commission initiated a proceeding to consider new reporting rules following amendments last made in 2010. The Commission reviewed data reported by carriers since the commission began collecting it in 1995 to determine whether outages reported in metropolitan areas reflected serious service problems and whether all outages were being properly reported; whether the Commission was collecting all needed information to assess service quality; and whether the outage reporting thresholds were appropriate. A workshop was also held. Under the new rules, service providers must report a service outage within 120 minutes following discovering a service interruption; the date and time of the interruption; the affected area; cause of the outage and estimated restoration time, if known; and an estimated number of working access lines affected by the outage. For outages lasting more than five days, providers must provide interim progress reports of their efforts to resolve the outage every five days. A final written report must be submitted to the commission within 14 days from the date service is restored. The final report is to include information including the date and time of the interruption; the affected area including central office(s); restoration date and time; the name of the affected along with the switch manufacturer(s); the type of equipment or facility involved with the outage if the outage is not central office related, age of the equipment; number of working access lines affected; number of customer reports received related to the outage, if readily available; and a description of the corrective action taken. Reports pertaining to outages resulting from a cable cut must identify: the

contractor doing the work; type of lines were cut; whether facility locates were requested; the number of working access lines affected; the number of customer reports received related to the outage; and a description of corrective action taken. (Case C-4946/PI-209)

NEW HAMPSHIRE – Commission Proceeds to Adopt Pole Attachment Rules

The New Hampshire Public Utilities Commission has been authorized by the Joint Legislative Committee on Administrative Rules to proceed in adoption of utility pole attachment rules. In late June the Committee notified the Commission that the Commission's final proposed rules had been satisfactorily amended according to conditional approval that the committee granted earlier in the month. On April 30, the Commission had approved and submitted final proposed pole attachment rules. Under its proposal, the Commission would adopt the Federal Communications Commission's make-ready work process and timeline rules. According to the Commission, streamlining the make-ready work process and timeline would address the problem of delays in completing necessary make-ready work. A reference to the FCC's current rate formulas was also included in the final proposal. The Commission would not set rates for pole attachments but would establish considerations for determining just and reasonable rates, including the FCC's formulas. Committee amendments to the final proposed rules pertained primarily with pole owner authorization for facilities attachments, notification of parties, establishment of agreements, and make-ready work timelines. (Docket DRM 17-139)

OREGON – Commission Delegation of Authority Revision Proposed

An Oregon Public Utility Commission Administrative Law Judge has proposed reassigning authority for signing certain orders including orders memorializing decisions from public meetings, from the Commission's Central Services Administrator to the Chief Operating Officer. The proposed reassignment would provide uniformity to the delegation of authority to sign orders to members of the Commission's executive management and provide greater efficiency with internal processes according to the proposal.

PENNSYLVANIA – Basic Telecommunications Service Rulemaking Initiated

The Public Utility Commission has initiated a rulemaking proceeding to review the State's "Basic Telecommunications Service" definition. The rulemaking is intended to consider changes in the competitive telecommunications market since the definition was originally adopted. According to the Commission, the proceeding follows a 2015 order reclassifying Verizon's wire centers as competitive. In that order, the Commission determined that Verizon's basic local exchange service was competitive in 153 State wire centers. The Commission is seeking public comment on four key related areas of regulation: "Whether to make waivers that were previously granted to Verizon permanent in any wire center currently classified as competitive or that may be classified as competitive in the future; Whether there are any obsolete or outdated regulations in noncompetitive wire centers that should be modified or eliminated; Whether to create separate chapters in our regulations for competitive versus noncompetitive wire centers; and Whether there are any reasonable alternative regulations or regulatory structures or schemes, other than what is being proposed in the Advance Notice, that the Commission should consider." Comments are due 60 days following publication of the rulemaking in *the Pennsylvania Bulletin*; reply comments are due 30 days following the comment deadline. (Docket L-2018-3001391)

SOUTH DAKOTA – CLECs Must Submit 911 Interconnection Request Commission Rules

The South Dakota Public Utilities Commission has ruled that that when a competitive local exchange carrier requests 911 traffic delivery from a rural exchange carrier, it must submit "a bona fide request for interconnection as contemplated in both state and federal law and file a copy of the request with the commission." The ruling stemmed from a South Dakota 911 Coordination Board petition for a declaratory ruling filed to resolve an issue arising from a related 2015 proceeding, in which the Board requested that the Commission determine if "South Dakota law requires bona fide requests as a prerequisite to determining if [rural local exchange carrier] exemptions do or do not apply when a CLEC is requesting delivery of 911 traffic from an RLEC, assuming voluntary agreements are not feasible." According to the Commission's findings, "assuming voluntary agreements are not feasible ... when a competitive local exchange carrier is requesting delivery of 911 traffic from a rural exchange carrier, it must submit a bona fide request for interconnection as contemplated in both state and federal law and file a copy of the request with the commission." (Docket TC18-013)

COMPLIANCE REPORTING AUGUST

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 AUGUST

FCC Form 499-Q Telecommunications Reporting Worksheet due August 1

499Q *de minimis* determination notice due August 1 and ad hoc as may apply

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.



[ILECS and Windstream Cut Deal to End Unbundled Network Elements](#) By Andrew Regitsky On May 10, 2018 we wrote about the Petition for Forbearance filed by USTelecom, the ILEC association, in which it argued that competition had changed so drastically since 1996, that after an 18-month transition period, the FCC should no longer require them to provide unbundled network elements (UNEs) and Total Service Resale (TSR) to their competitors at below market costs. Moreover, ILECs would be permitted to increase their UNE rates by 15 percent the day the Petition became effective. **[READ MORE >](#)**

[FCC Rule Changes will Facilitate Nationwide Number Portability](#) By Andrew Regitsky It's been a long time coming, but, finally, in its July 12, 2018 meeting next week, the FCC is expected to approve a Report and Order in Docket 17-244 that will modify certain regulations and make nationwide number portability (NNP) possible. For once, we have a regulatory decision that should make everyone in the industry happy! **[READ MORE >](#)**

[AT&T Raises Doubts About Special Access Incentive Regulation for Rate-Of-Return ILECs](#) By Andrew Regitsky If you are a rural ILEC expecting to see your DS1 and DS3 special access services deregulated this year, AT&T may have put a crimp in your plans. You may get that deregulation, but at the cost of seeing your remaining terminating switched access rates moved to bill-and-keep. This potential dilemma for rural ILECs springs from the FCC's recent Notice of Proposed Rulemaking (NPRM) released April 25, 2018 in Docket 17-144, in which the Agency proposed to permit incentive regulation for the special access services of ILECs that still use rate-of-return (ROR) regulation. **[READ MORE >](#)**

[FCC Ruling Would Facilitate Pole Attachments, Forbid Municipalities from Stopping Telecom Facilities Deployment](#) By Andrew Regitsky It's a very unusual summer at the FCC. Usually, the Commission is more interested in beginning their summer vacations than advancing new telecom regulations. This year, however, the agency has been busy, launching proceedings to eliminate access and 8YY arbitrage and advancing nationwide number portability. The action is expected to continue at the Commission's August 2, 2018 meeting when it is expected to adopt a Third Report and Order (Order) and a Declaratory Ruling (Ruling) in Dockets No. 17-84 and 17-79 that will provide a little bit of sunshine to almost everyone in the industry. **[READ MORE >](#)**

[Is Access Stimulation Good for America?](#) By Andrew Regitsky Have you ever picked up a newspaper or book in which the author takes a position so contrary to popular belief that at first you can't believe they are serious? It happened to me this week when I read the joint comments of a group of CLECs in the FCC proceeding (Docket 18-155) called "Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage." In their comments the CLECs, all who engage in access stimulation, remarkably argue that they are providing a service that is helping rural consumers! **[READ MORE >](#)**

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