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Regulatory Review

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

FEDERAL NEWS



THIRD RURAL CALL COMPLETION ORDER ESTABLISHES NEW INTERMEDIATE PROVIDER REGISTRY

On August 15, 2018, the Commission released a [Third Report and Order and Order](#) in its long-standing rural call completion proceeding, adopting a new rule that establishes an “intermediate provider” registry and requires intermediate providers to register with the Commission before offering to transmit covered voice communications.” The registry had been proposed under a *Further Notice of Proposed Rulemaking* included with the Commission’s [Second Report and Order](#) in the proceeding, as part of a series of rules designed to comply with the [Improving Rural Call Quality and Reliability Act of 2017](#) (“RCC Act”). “Intermediate provider” is defined in new Section 64.2101 (47 C.F.R. §64.2101) as an entity that “enters into a business arrangement with a covered provider (also defined in the rule as an entity that selects the initial long distance route for a large number of lines) or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated ... from an end user connection using a North American Numbering Plan resource; or to an end user... and does not itself... serve as a covered provider in the context of originating or terminating a given call.” Under the new rule, Intermediate Providers will be required to submit their registration to the Commission via an online registration portal within 30 days following a public notice announcing the approval of the information collection requirements associated with the new rule by the Office of Management and Budget. The Commission also adopted rules requiring “covered providers” to use only registered intermediate providers to transmit covered voice communications, requiring covered providers to maintain the capability to disclose the identities of any intermediate providers relied on in the call path to the Commission, and adopting a narrowly tailored exception to its rules in instances of force majeure. The Commission also denied USTelecom’s [Petition](#) to stay limited aspects of the *Second Report and Order*. (WC Docket No. 13-39)

PAPERWORK REDUCTION ACT COMMENTS ON CALL COMPLETION INFORMATION COLLECTION DUE SEPTEMBER 14

On August 15, 2018, the Commission published a [Public Notice](#) in the *Federal Register* to request Paperwork Reduction Act (PRA) comments regarding amendment of currently approved information collection associated with rural call completion. Information to be collected under the Commission’s call completion *Third Report and Order and Order* (see above) will enable the Commission to determine if long-distance providers are complying with their section 201 and 202 obligations to provide rural and non-rural telephone on a just, reasonable and nondiscriminatory basis. The Commission eliminated the existing reporting requirement for “covered providers.” PRA comments are due September 14, 2018. (WC Docket No. 13-39)

ANNUAL BROADBAND DEPLOYMENT NOTICE OF INQUIRY COMMENT DEADLINE EXTENDED

On August 9, 2018, the Commission issued its [14th Broadband Deployment Report Notice of Inquiry](#) as part of its annual assessment of the availability of advanced telecommunications capabilities. The Commission proposes to maintain the current speed benchmark of 25/3 for fixed broadband, and conduct an evaluation of fixed and mobile services using four existing evaluation categories. On August 17, 2018, the Wireline Competition Bureau released an [Order](#) partially granting a [motion](#) by Public Knowledge and others, which sought an extension of time to file comments in the proceedings on [the state of fixed broadband competition](#) and the [Section 706 Notice of Inquiry](#). The Bureau denied the request with respect to the state of fixed broadband competition on which comments were due on August 17, 2018, while extending the deadline to file comments on the [Section 706 NOI](#) until September 17, 2018. Reply comments are now due October 1, 2018. (GN Docket Nos. 18-231, 18-238)

OPPOSITION TO WIRELESS INFRASTRUCTURE ORDER RECONSIDERATION PETITIONS DUE SEPTEMBER 6

On August 22, 2018, the Commission [published](#) a [Public Notice](#) in the *Federal Register* announcing that opposition to petitions for reconsideration of the Commission's [Second Report and Order](#) amending and adopting new rules to streamline the wireless infrastructure siting review process filed by [NATOA](#), the [Apache Tribe of Oklahoma](#) and [PTA-FLA](#), and others are due September 6, 2018. Reply comments are due September 17, 2018. (WT Docket No. 17-79)

TELEHEALTH COMMENTS DUE SEPTEMBER 10

On August 3, 2018, the Commission issued a [Notice of Inquiry](#) requesting comment regarding the creation of a Universal Service Fund pilot program to promote the use of telehealth services among low-income Americans. The Commission is considering up to \$100 million in total funding for a pilot program. Each telehealth pilot project could receive up to \$5 million in funding to support broadband connectivity to low-income patients and increased capabilities for the health care provider. Comments are due September 10, 2018; replies are due October 10, 2018. (WC Docket No. 18-213)

NATIONWIDE NUMBER PORTABILITY REPORT AND ORDER EFFECTIVE SEPTEMBER 19

On August 20, 2018, the Commission [published](#) in the *Federal Register* its July 13, 2018 [Report and Order](#) forbearing from interexchange dialing parity regulation and amending its "N-1" rule to facilitate nationwide number portability completion. The [Report and Order](#) becomes effective September 19, 2018. (WC Docket Nos. 17-244, 13-97)

SECTION 214 DISCONTINUANCE RULE PRA COMMENTS DUE OCTOBER 1

On August 2, 2018 the Commission released a [Public Notice](#) in the *Federal Register* requesting Paperwork Reduction Act comments regarding amendment of currently approved information collection associated with modifications to the rules applicable to section 214(a) discontinuance applications of the 1996 Telecommunications Act, as amended, adopted under the Commission's June 8, 2018 [Second Report and Order](#). Comments are due October 1, 2018. (WC Docket No. 17-84)

FISCAL YEAR 2018 ITSP AND CMRS REGULATORY FEE DATA AVAILABLE

On August 9, 2018, the Commission issued a [Public Notice](#) announcing that interstate telecommunications service providers and commercial mobile radio service providers may log into the Commission's electronic filing and payment system, [www.fcc.gov/fee](#) filer, to view revenue amounts and subscriber counts for purposes of calculating annual regulatory fee assessments. Account information may be accessed using the filer's federal registration number and password. Revenue amounts are based on FCC Form 499A submissions.

FY 2018 REGULATORY FEE ORDER RELEASED

On August 29, 2018 the Commission issued a [Report and Order and Order](#), adopting a schedule of regulatory fees for fiscal year 2018. The Commission seeks to collect \$322,035,000 in regulatory fees. Fee payments are due in September 2018. The Commission also amended its rules in accordance with the directives of the Ray Baum Act regarding the collection of delinquent

debts. The fee rule change becomes effective on October 1, 2018. The schedule of regulatory fees for FY 2018 appears in Appendix C of the order. (MD Docket No. 18-175)

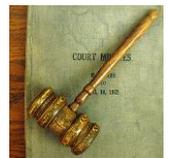
COMMISSION ADOPTS ONE TOUCH MAKE READY POLE ATTACHMENT POLICY

On August 3, 2018, the Commission released a [Third Report and Order and Declaratory Ruling](#) in its proceedings to accelerate broadband deployment adopting, among other things, a one-touch make-ready (OTMR) policy for attaching telecom and cable facilities to utility poles. The policy applies in the 30 states that do not regulate pole attachments. Under the Commission's OTMR, a new attacher will be authorized to perform all functions needed to attach facilities to poles, rather than spreading the work to multiple entities. The Commission also adopted additional improvements to its pole attachment rules including provisions governing overlashing and relieving new attachers from responsibility of the costs of repairing preexisting violations of safety or other codes or utility construction standards discovered during the pole attachment process. Additionally, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred from Section 253(a) of the 1996 Telecommunications Act, as amended, because they prohibit the ability of entities to provide interstate and intrastate telecommunications services. And the Commission made clear that it will preempt state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster on a case-by-case basis. And Commissioner Rosenworcel opposed preemption of state moratoria, maintaining that state and municipal governments were better positioned to assess competitive interests such as public safety. ([WC Docket No. 17-84](#), [WT Docket No. 17-79](#))

IN THE COURTS

COMMISSION FILES BRIEF IN SUPREME COURT OPEN INTERNET ORDER APPEAL

The Commission has filed a [brief](#) with the U.S. Supreme Court regarding petitions for *writs of certiorari* regarding the U.S. Court of Appeals for the D.C. Circuit's 2016 [decision](#) denying petitions for review of the Commission's 2015 Open Internet [Order](#). The Commission brief urged the court to decline review of the decision, noting that the Commission has issued a new order superseding the 2015 order and repealing its conduct rules. According to the Commission, questions regarding procedural and substantive validity of its 2015 order lacked continuing practical significance. The Commission asked the court to grant the petitions for *writs of certiorari*, vacate the court of appeals' decision and remand with instructions to dismiss the petitions for review as moot. (Case Nos. 17-498 through 17-504)



BRIEFS FILED IN RESTORING INTERNET FREEDOM APPEAL

On August 20, 2018 [Mozilla, et al.](#) and the [State of New York, et al.](#) filed briefs on petitions for review of the Commission's January 2018 Restoring Internet Freedom [Order](#) with the U.S. Court of Appeals for the D.C. Circuit. [Mozilla, et al.](#) asserted that the Commission's primary rationale for reclassifying broadband Internet access service (BIAS) as an information service is unambiguously contrary to the law, and maintained that the Commission's conclusion that BIAS inextricably intertwines telecommunications with information services is unreasonable. The State of New York, *et al.* argued the Commission disregarded the serious risk that providers will engage in abusive practices that undermine the open internet and failed to consider the effect of reclassification on universal service and pole attachment rights.

On August 27, 2018, thirteen intervenor briefs were filed on behalf of petitioners in the appeal of the Restoring Internet Freedom Order before the D.C. Circuit. A brief filed by [103 members of Congress](#) argued that broadband access to the internet is a telecommunications service and not an information service and broadband internet access service fits squarely within the plain language of the 1996 Act's definitions of telecommunications and telecommunications service. The members of Congress maintained that none of the Commission's other arguments support its decision to reclassify BIAS as an information service. They urged the Court to reverse the Commission's order. The [Internet Association, et al.](#) argued the Commission's claim that broadband competition will protect net neutrality was unreasonable and unsupported. The group argued that the order unreasonably assesses the costs and benefits of retaining the conduct rules. [The Digital Justice Foundation](#) maintained that the Commission retains authority for a transparency rule under section 257, despite the repeal of section 257(c) by Congress. Briefs were also submitted by [Twilio](#); [Consumers Union](#); [Engine Advocacy](#); [Professors Scott Jordan and Jon Phea](#); [Brief of Professors of Administrative, Communications, Energy, Antitrust and Contract Law and Policy](#); [American Council on Education, et al.](#);

[eBay](#); [Common Cause, et al.](#); [Electronic Frontier Foundation](#); [City of New York, et al.](#); and [Professors of Communications Law](#) (Case No. 18-1051 and consolidated cases)

COMMISSION AMICUS EXPRESSES CONCERN OVER WEIGHT GIVEN TO MARKET ANALYSIS IN AT&T-TIME WARNER CASE

On August 13, 2018, the Commission filed an *amicus* brief with the U.S. Court of Appeals for the District of Columbia in the Department of Justice’s appeal of the AT&T, Inc. - Time Warner, Inc. merger. According to its brief, the Commission neither supported nor opposed the merger, but rather expressed its concern over the district court’s opinion regarding the merger. The Commission stated that the ruling “could be read to misconstrue the nature of FCC adjudicatory proceedings in two key respects that diminish the evidentiary value of documents submitted to the Commission.” It concluded that, “given that the Commission analyzes competition as one component of its public interest review of license transfers, the district court erred in suggesting that differences between ... two standards made documents submitted to the Commission [were] less probative of statements contained therein that relate to market analysis.” U.S. v. AT&T, Inc., et al.” (Case 18-5214)

EIGHTH CIRCUIT REMANDS BDS ORDER TDM PROVISIONS TO COMMISSION, UPHOLDS REMAINING FINDINGS

On August 28, 2018, the U.S. Court of Appeals for the Eighth Circuit (St. Louis, MO) released its [decision](#) regarding petitions for review of the Commission’s April 2017 business data services (BDS) [Report and Order](#). Competitive carriers including the Ad Hoc Telecommunications Users Committee, BT Americas, Inc., Incompas, Sprint Corp., Windstream Services LLC, Granite Telecommunications LLC, Access Point, Inc., Alpheus Communications LLC, New Horizons Communications Corp., and Xchange Telecom LLC. and BDS purchasers challenged had the deregulatory aspects of the order and short Commission notice period. The Court granted in part competitive local exchange carrier (CLEC) petitioners’ appeal of notice issues, vacated only those parts of the Commission’s decision regarding time division multiplex (TDM) transport services, and remanded TDM transport service issues to the Commission for further proceedings. The court agreed with the CLEC petitioners that the Commission failed to provide adequate notice of its ending of *ex ante* regulation of transport services. The court otherwise denied the petitions for review on all other issues, finding that the Commission’s interpretation of the governing statutory provisions was reasonable and not arbitrary or capricious. In his opinion, Judge Grasz stated that the Commission’s 2016 notice of proposed rulemaking preceding the 2017 BDS order had as a stated goal “large scale de-regulation,” while requesting “comment on several suggestions that would have increased regulation.” Judge Grasz concluded that “The FCC, whose composition changed in 2017, emphasized the stated goal in the 2017 Order and followed only the proposals in the 2016 Notice that adhered to that stated goal. The CLEC Petitioners argue that we should vacate the 2017 Order because the 2016 Notice requested comment on a heightened regulatory scheme and that it was impossible for them to anticipate deregulation. We find it significant that the CLEC Petitioners base their argument here on their expectation that the FCC in 2017 would not follow through on its 2016 stated goal... We reject their arguments because their reading of the 2016 Notice entails an interpretation whose basis is not present in the text.” Chairman Pai issued a [statement](#) saying he intended to initiate proceedings “as soon as possible.” (Case No. 17-2296)

STATE REGULATORY NEWS



CALIFORNIA – High-Cost Fund Programs Bill Sent to Governor

A bill extending California’s High-Cost Fund-A (CHCF-A) program and California High-Cost Fund-B (CHCF-B) program requirements to January 1, 2023 has been sent to Gov. Jerry Brown (D) for signature.

The CHCF-A provides universal service rate support to rate-of-return regulated small independent telephone service providers serving rural areas. The CHCF-B program supports providers serving areas where the cost of providing services exceeds rates charged by providers. The California Cable and Telecommunications Association (CCTA) and the California Association of Competitive Telecommunications Companies urged that the bill be amended “to ensure that the small local exchange carrier markets are opened to greater competition.” CCTA also maintained that the CHCF-B was no longer necessary. Enactment of AB 1959 now extends the programs for an additional four years. The programs would otherwise have ended in January 2019.

DISTRICT OF COLUMBIA – Telecommunications Outage Reporting Rules Adopted

On August 8, 2018, the District of Columbia Public Service Commission adopted new rules governing telecommunications service outages. Among the new rules, telecommunications service providers are to identify the “most specific location of the service outage and the geographic area affected by the service outage” that the provider has available when the initial report is filed, and the actual location of the outage and the geographic area affected in the final report. The Commission had undertaken a rulemaking proceeding in an effort to obtain more specific outage location data from providers to inform customers. Under the new rules, service providers must report the date and time that the service outage occurred, the most specific location in the provider's network of the service outage that is available when the report is filed, the geographic location affected by the outage, the estimated number of customers out of service, a preliminary assessment as to the cause of the service outage, and the estimated repair and/or restoration time. Providers must submit a post-outage report to the Commission and Office of the People's Counsel within five days following the end of the service outage. The post-outage report must include description of the service outage and information regarding the cause of the outage; the actual location of the outage; the geographic area affected including street names and neighborhoods, if available; the actual repair and restoration times; a description of the restoration effort, the number of customers affected; a “self-assessment of the telecommunications service provider's restoration efforts in the District of Columbia;” and a description of the steps the provider plans to take to prevent such outages in the future or “improve repair times and processes.” (RM27-2017-01)

FLORIDA – Wireline Access Lines on Decline Commission Report Concludes

An August 1, 2018 Florida Public Service Commission annual report on telecommunications competition to the State Legislature has found a 17 percent decline in wireline access lines in the State in 2017 as compared to 2016. According to the report, CenturyLink, Florida's largest wireline residential provider experienced a 25.5 percent decline in residential access lines during 2017. AT&T experienced a 22.4% decline and Frontier a 24.8 percent decline for the same period residential access lines. Competitors maintained only one percent of the residential wireline market in Florida. Business lines comprise roughly 53 percent of AT&T and Frontier's wireline access lines. Wireline business access lines exceeded total residential lines for the seventh year in a row, the report notes. There are an estimated 21.5 million wireless handsets in Florida and more than 4.5 million cable VoIP connections. According to the FCC, 94 percent of households in Florida had fixed broadband connections of at least 200 kbps at the end of June 2016; the Lifeline subscription rate decreased from 49.8% of eligible households in 2016 to 41.3% in 2017.

IDAHO – USF Surcharge to Remain Unchanged

The Idaho Public Utilities Commission has ordered that the current State universal service fund surcharge remain unchanged for the twelve month period beginning October 1, 2018. The current surcharge rate is \$0.25 per residential line, \$0.44 per business line, and \$0.009 per intrastate MTS/WATS billed minute and is assessed on local exchange service and intrastate MTS/WATS (long-distance) service to fund Idaho's Universal Service Fund. A fund administrator report indicated that the number of access lines and usage on which the surcharge is assessed has been declining, making it challenging to accurately calculate funding requirements. The administrator recommended maintaining current surcharge levels for the upcoming period. The Commission is separately conducting a rulemaking to address the universal service fund. (Docket GNR-T-18-06)

NEBRASKA –Hybrid USF Surcharge Methodology Adopted

The Nebraska Public Service Commission has adopted a hybrid methodology for assessing state universal service fund (USF) surcharges. Under the Commission's new methodology, a per-connection surcharge will be assessed on residential wireline, postpaid wireless, and interconnected VoIP services. A revenue-based surcharge will continue for business and government services. The revenue-based surcharge for toll services, operator services, local private line, special access service, prepaid wireless, and radio paging service providers will stay at the current level of 6.95 percent of company revenue. The connections-based surcharge will be \$1.75 per connection. According to the Commission, the revised contribution mechanism will be based on intrastate voice connections and not on stand-alone broadband Internet access services. The new surcharge methodology goes

into effect on January 1, 2019. The hybrid methodology is considered an interim step, allowing the Commission more time to consider implementation issues. An industry workshop has been scheduled for September 26. (Docket NUSF-111/PI-211)

NEW MEXICO – Connections-Based USF Surcharge Adopted

The New Mexico Public Regulation Commission has approved a per-connection surcharge to fund the State's Rural Universal Service Fund. A \$1.17 per-connection surcharge goes into effect October 1, 2018. The surcharge is intended to be transitional while the fund administrator makes necessary program amendments to adopt the connection-based surcharge, including development of reporting forms. In late 2017, the Commission implemented a 6.06 percent surcharge based on communications provider revenues, while anticipating adoption of a connections-based methodology. The connections-based methodology was adopted over the objections of CTIA, who argued that a per-connection methodology could result in an over collection of revenue. (Docket 17-00202-UT)

PENNSYLVANIA – Comment Deadline Set in Rulemaking

The Public Utility Commission has set an October 2nd deadline for comments on proposed amendments to the Commission's basic telecommunications service rulemaking. The proceeding follows a 2015 order that reclassified Verizon wire centers as competitive in response to Verizon companies' wire center classification petitions. Comment is requested regarding whether current rule waivers granted to Verizon in 2015 for a five year period should become permanent, whether there are obsolete or outdated regulations in noncompetitive wire centers that should be modified or eliminated; whether to create separate chapters in Commission regulations for competitive versus noncompetitive wire centers; and whether there are reasonable alternative regulations or regulatory structures or schemes, other than what is being proposed in the advance notice, that the commission should consider. Reply comments are due November 1. (Docket L-2018-3001391)

COMPLIANCE REPORTING DUE IN SEPTEMBER

The following report listing has been compiled from past reporting requirements and is provided exclusively for informational purposes. Reporting requirements are subject to change and should be verified by filers

FEDERAL REPORTS DUE IN SEPTEMBER

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

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

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.



[Verizon Petition Seeks FCC Ruling Confirming End Office Access Charges Don't Apply to Two-Stage Dialing Platforms](#)

By Andrew Regitsky I think if I worked at the FCC I would have had it by now with constantly having to deal with switched access disputes. These battles spout like wild weeds, from all directions and seemingly between all carriers. I could write about them forever (and usually do). This week we have another! A rather pointless dispute between Verizon, and the CLEC subsidiaries of Peerless Network (Peerless). [READ MORE >](#)

[State Commissions Give Thumbs Down to Elimination of UNEs and Resale](#) By Andrew Regitsky Comments are streaming in regarding USTelecom's Petition for Forbearance (Petition) of sections 251(c)(3) and (4) of the 1996 Telecom Act. Such forbearance would free ILECs from the obligations of providing unbundled network elements (UNEs) and total service resale (TSR) at cost-based rates. [READ MORE >](#)

[Here's What's Wrong with Access Stimulation](#) By Andrew Regitsky In a previous blog, we spelled out why certain CLECs defend their ongoing efforts to stimulate access minutes by making deals with end user customers who generate an abnormally large amount of billable access minutes, and then splitting the profits between them. In short, the competitive LECs defend this practice because if access stimulation is eliminated, and they are forced out of business, their entrenched ILEC competitors will be free to raise prices on rural Americans; and revenues from access stimulation provide the dollars needed to bring broadband to rural consumers in areas of the country where ILECs have not had the incentives to build up their own broadband networks. [READ MORE >](#)

[Consumer Groups, Internet Users and States Seek to Overturn FCC's Restoring Internet Freedom Order](#) By Andrew Regitsky Parties appealing the FCC's Restoring Internet Freedom Order to bring back net neutrality, filed their initial briefs with the DC Circuit Court on August 20, 2018. There were two appeals filed. As we will discuss, neither filing was especially compelling. [READ MORE >](#)

[New Study Punches Hole in FCC Broadband Deployment Stats](#) By Andrew Regitsky When it comes to self-promotion, this FCC is as good as any. For example, despite considerable evidence that rural customers have few, if any, choices in their broadband service, the Commission declared in February that thanks to its actions, such as eliminating Title II broadband regulation and deregulating ILEC special access services, broadband deployment was better than ever. Therefore, no one should be surprised when early in 2019, the Commission eliminates most ILEC unbundled network element requirements, viewing them as no longer necessary. [READ MORE >](#)

LIGHT READING FROM CORPORATE COUNSEL DAILY UPDATE

[The GDPR Was Just the Beginning | The Recorder](#)

The Recorder

Companies that process personal data of California residents will soon be subject to comprehensive new privacy requirements.

[Read More](#)

[How to Build a Compliance Program & Navigate Concerns](#)

Sponsored by: LexisNexis

This white paper outlines step-by-step instructions to build and implement a scalable compliance program that embeds positive compliance culture at your company, regardless of industry or size. [Learn More](#)

Companies fare better when compliance is part of strategy

Compliance programs that seek only to do the minimum fail to measure up to those supported by a strong ethical culture, writes Patricia Harned, CEO of the Ethics & Compliance Initiative. Workplaces that emphasize ethics and compliance in culture and strategy are more likely to report wrongdoing, identify risks and react appropriately when problems are reported, she writes. [SmartBrief/Leadership](#) (8/7)