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Regulatory Review

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

FEDERAL REGULATORY NEWS



NATIONAL LIFELINE ELIGIBILITY VERIFIER TO LAUNCH IN FIVE STATES

On October 11, 2018, the Wireline Competition Bureau issued a [public notice](#) to announce that the national Lifeline eligibility verifier would launch on October 15, 2018 in Guam, Hawaii, Idaho, New Hampshire, North Dakota and South Dakota. According to the Bureau, the “soft” launch period allows eligible telecommunications carriers to familiarize themselves with, adjust, and test their systems and business processes with, the national verifier online portal before its use becomes mandatory. The bureau [recently announced](#) the national verifier will fully launch in six additional states on November 2, 2018. (DA No. 18-1042). (Docket No. 11-42)

WIRELINE COMPETITION BUREAU ANNOUNCES CONNECT AMERICA FUND MAP AVAILABILITY

On October 10, 2018, the Wireline Competition Bureau [announced](#) that its interactive Connect America Fund (CAF) Broadband Map is available. The map shows locations where funding recipients have already reported CAF-funded broadband deployment to fixed locations. (Docket No 10-90) (DA No. 18-1028)

PAY-PER-CALL PRA COMMENTS DUE DECEMBER 10

On October 10, 2018 the Commission issued a notice in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments regarding an extension of a currently approved information collection associated the Commission’s pay-per-call rules; Sections [64.1501 to 64.1515](#) of the Commission’s Rules. The rules: limit how toll-free numbers may be used to charge telephone subscribers for information services; require common carriers that assign telephone numbers to pay-per-call services to disclose a list of all assigned pay-per-call numbers to all interested parties upon request; and require telephone bills containing charges for interstate pay-per-call and other information services to include information detailing consumers’ rights and responsibilities regarding charges. PRA comments are due December 10, 2018.

SECTION 214, 222, AND 251 PRA INFORMATION COLLECTION COMMENTS DUE NOVEMBER 14

On October 15, 2018, the Commission issued a [notice](#) in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments on a revision to a currently approved information collection associated with a section 214 of the

Communications Act requirement in that a carrier must first obtain Commission authorization either to construct, operate or engage in transmission over a line of communications, or to discontinue, reduce or impair service over a line of communications. The Commission also requested comments on a revision of a currently approved information collection associated with the requirements in sections 222(e) and 251 that local exchange carriers provide competitors with dialing parity and non-discriminatory access to certain services and functionalities, and incumbent local exchange carriers' obligation to provide network information disclosures and numbering administration. PRA comments are due November 14, 2018.

WIRELESS INFRASTRUCTURE ORDER BECOMES EFFECTIVE JANUARY 14

On October 15, 2018, the Commission [published](#) its September 27, 2018 [Declaratory Ruling and Report and Order](#) in the *Federal Register*. The ruling and order clarified the scope and meaning of sections 253 and 332(c)(7) of the 1996 Telecommunications Act, as amended, established a shot clock for state and local approvals for the deployment of small wireless facilities, and provided guidance on streamlining state and local requirements on wireless infrastructure deployment. The order is effective January 14, 2019. (WT Docket No. 17-79; WC Docket No. 17-84) (FCC 18-133)

COMMISSION PROPOSES ELIMINATION OF SPECIFIC PRICE-CAP REGULATED COMPANY TARIFF RULES

On October 18, 2018, the Commission released a [Notice of Proposed Rulemaking and interim waiver order](#) to request comment regarding elimination of certain outdated tariff filing rules for price-cap carriers. According to the Commission, given that the public may access tariffs filed in the Commission's Electronic Tariff Filing System online, the Commission proposes to amend its cross-referencing rule to allow a carrier to refer to its own tariff and the tariffs of affiliated companies in its tariffs. The Commission also proposes to eliminate a requirement that companies submit short form tariff review plans 90 days before their access tariffs are due. The Commission granted waivers to those carriers requesting to be allowed to cross reference their own tariff filings and provided all carriers an interim waiver of the cross-referencing rule pending resolution of the cross-referencing rule proposal in this NPRM. Comments are due within 30 days following *Federal Register* publication, and replies are due 45 days following publication. (WC Docket Nos. 18-276, 17-308)(FCC 18-142)

TOLL FREE NUMBER ASSIGNMENT RULES EFFECTIVE NOVEMBER 23

On October 23, 2018, the Commission published a [notice](#) in the *Federal Register* announcing that rules regarding toll free number assignments and access code trials amended in its Toll Free Numbering [Report and Order](#) become effective November 23, 2018. (FCC 18-137)(WC Docket No. 17-192; CC Docket No. 95-155).

COMMISSION RELEASES INCENTIVE REGULATION OPTION FOR RURAL LECS PROVIDING BDS

On October 24, 2018, the Commission released an [order, FNPRM and second FNPRM](#) in its Business Data Service proceedings, which among other things allows certain rural local exchange carriers that receive fixed high-cost support the opportunity to transition from rate-of-return regulation to incentive regulation for their business data services. According to the Commission, the Order "allows and encourages carriers to move from inefficient, burdensome cost-based regulation to incentive regulation that promotes efficiency, reduces regulatory burdens, and encourages competition." (Docket No 17-144, 16-143, 05-25) (FCC No. 18-146).

PRA COMMENTS ON PROCEDURES FOR PREEMPTION OF STATE PETITIONS DUE DECEMBER 24

On October 25, 2018 the Commission published a [notice](#) in the *Federal Register* soliciting Paperwork Reduction Act (PRA) comments regarding an extension of currently approved information collection regarding section 51.803, Procedures for Commission Notification of a State Commission's Failure to Act and Supplemental Procedures for Petitions Pursuant to section 252(e)(5) of the Communications Act of 1934, as amended. The notice includes the procedures required to file a petition for preemption. PRA comments are due December 24, 2018.

RURAL CALL COMPLETION POINT OF CONTACT REQUIREMENTS EFFECTIVE OCTOBER 24

On October 25, 2018, the Wireline Competition Bureau issued a [public notice](#) announcing that the rural call completion point of contact requirements for covered providers became effective October 24, 2018. A notice was published in the *Federal Register* on October 24, 2018, announcing Office of Management and Budget approval of the information collection requirements. (WC Docket No. 13-39) (DA 18-1085)

PETITIONS ON WIRELESS INFRASTRUCTURE ORDER OPPOSITION FILING DUE NOVEMBER 9

On October 25, 2018, The Wireline Competition Bureau issued a [public notice](#) announcing deadlines for oppositions and replies to [petitions for reconsideration](#) of the August 2 [Wireless Infrastructure Deployment Order and Declaratory Ruling](#). Oppositions to the petitions are due November 9, 2018, and replies to oppositions are due on November 19, 2018. (WC Docket No. 17-84, WT Docket No. 17-79)

OFFICE OF ECONOMICS AND ANALYTICS APPROVAL GRANTED

On October 25, 2018, the Commission [announced](#) that it had received final approvals for establishment of a new Office of Economics and Analytics (OEA). The OEA is intended to enable Commission economists, data professionals and attorneys to collaborate more closely to improve economic analysis and data usage in agency proceedings.

COMMISSION TO IMPOSE \$63.5M FINE FOR LIFELINE PROGRAM VIOLATIONS

On October 25, 2018, the Commission released a [notice of apparent liability \(NAL\) and forfeiture](#) adopted during its October 23, 2018 Open Meeting, proposing a \$63,463,500 forfeiture penalty against American Broadband & Telecommunications Company. The NAL finds that the Company violated Commission's Lifeline program. The Commission alleges that American Broadband: apparently created, then sought and obtained, Lifeline support for ineligible or duplicate Lifeline accounts; sought and obtained Lifeline support for deceased individuals; repeatedly filed Forms 497 seeking Lifeline support; and failed to de-enroll ineligible subscribers that it knew or should have known were ineligible to receive Lifeline support.

COMMENTS ON LIST OF INTEROPERABLE DEVICES FOR VOICE SERVICE DISCONTINUANCE DUE NOVEMBER 28

On October 30, 2018, the Office of Engineering and Technology and the Wireline Competition Bureau released a [public notice](#) requesting comments on expanding the list of key applications and functionalities for which a carrier must demonstrate interoperability when requesting to discontinue a legacy voice service pursuant to the adequate replacement test. Commenters are asked to address whether additional applications and functionalities should be added to the interoperability list in light of changes in market conditions, industry developments or Commission rules since the interoperability component of the adequate replacement test was adopted in 2016. Comments are due November 28, 2018; reply comments are due December 13, 2018. (GN Docket No. 13-5)(DA 18-1110)

IN THE COURTS

DOJ – OTHERS CHALLENGE CALIFORNIA'S NET NEUTRALITY LAW – COURT GRANTS STAY

On September 28, 2018, the U.S. Department of Justice filed a [complaint](#) in U.S. District Court for the Eastern District of California challenging California's recently enacted [net neutrality bill](#). The law is intended to guarantee stringent net neutrality protections. Justice's complaint requested a Declaration invalidating and preliminarily and permanently enjoining the bill, asserting preemption under federal law. Justice argued that in light of federal preemption, the law violates the Supremacy Clause of the United States Constitution. Commissioners [O'Rielly](#) and [Rosenworcel](#) released statements.



On October 3, 2018, ACA, CTIA, NCTA and USTelecom joined the Department of Justice in seeking a permanent injunction of the law, filing a separate [complaint](#) challenging the State's net neutrality law in U.S. District Court for

the Eastern District of California. The Complainants argued that the law was intentionally designed to counter and undermine federal law by imposing the same regulations expressly repealed by the Commission in its 2018 [Restoring Internet Freedom Order](#) on broadband internet access service providers, despite the fact both the Commission decision and the Communications Act of 1934 prohibit states from attempting to regulate jurisdictionally interstate services. Separately, the parties filed a [motion](#) for preliminary injunction from enforcing the new law.

And on October 26, 2018, the U.S. District Court for the Eastern District of California issued an [order](#) granting a [stipulation](#) between the [U.S. Department of Justice](#) and [ACA, et al.](#) and the state of California, *et al.* for a temporary stay of litigation and agreement not to enforce recently enacted [California Senate Bill 822](#). Under the stipulation, the State of California agreed not enforce, or direct the enforcement of, the law in any respect, including through participation in any private action seeking to enforce the bill. Further proceedings will be stayed until the U.S. Court of Appeals for the D.C. Circuit issues its opinion in the pending [Mozilla v. FCC](#) case and the period for seeking further review from the D.C. Circuit and the U.S. Supreme Court has expired; or a final decision has been issued by the D.C. Circuit or the U.S. Supreme Court in response to any petition for rehearing or certiorari either denying such petition or issuing a final decision.

COMMISSION SUBMITS BRIEF IN RESTORING INTERNET FREEDOM APPEAL

On October 11, 2018, the Commission submitted its [brief](#) with the U.S. Court of appeals for the D.C. Circuit on appeal of the Commission’s Restoring Internet Freedom Order. The Commission argued it had reasonably classified broadband internet access service (BIAS) as an information service and mobile broadband internet access service as a private mobile service. The Commission stated that the parties challenging the order are trying to re-litigate a 2005 Supreme Court decision regarding proper classification of broadband Internet access service. Non-governmental entities, telecommunications service providers, tech sector companies and trade groups, purchasers of BIAS, and public interest groups have challenged the Order, arguing that the Commission misinterpreted statute in its regulatory reclassification of BIAS, and that “the FCC’s failure to consider the evidence, abandonment of the open Internet rules, and denial of motions to introduce additional evidence, violates the Administrative Procedure Act or is otherwise contrary to law.” Twenty-two state attorneys general and other state and local government entities have also challenged the Order, arguing that the Commission’s preemption of state laws that impose net neutrality protections violates the Communications Act of 1934, as amended, which established “a system of dual state and federal regulation.” Oral argument is scheduled for February 1, 2019.

MINNESOTA COMMISSION SEEKS REHEARING ON CHARTER VOIP DECISION

On September 21, 2018, the Minnesota Public Utilities Commission filed a [petition for rehearing](#) with the U.S. Court of Appeals for the Eighth Circuit (St. Louis, MO) seeking reconsideration of the court’s September 17, 2018 [decision](#) regarding Charter’s VoIP service. The Eighth Circuit had affirmed a Minnesota district court ruling that Charter’s VoIP service is an information service under the Telecommunications Act and not subject to Commission regulation. According to the Commission, the decision is inconsistent with the 1996 Act, and conflicts with the Court’s prior opinion in the FCC’s Universal Service Order decision regarding VoIP provider Vonage, and the Supreme Court “Brand X” decision. The Commission argued that the issue is a difficult and novel issue of exceptional importance that would benefit from the careful consideration and well-reasoned analysis that would result from *en banc* consideration by the court. The Eighth Circuit issued [an order](#) on October 17, 2018, setting October 29, 2018, as the deadline for filing a response on the petition.

UTILITIES PETITION FOR FCC POLE ATTACHMENT ORDER REVIEW

On October 19, 2018, American Electric Power Corporation, *et al.* filed a [petition for review](#) of the Federal Communications Commission’s August 3, 2018 [Report and Order and Declaratory Ruling](#) with the U.S. Court of Appeals for the Eleventh Circuit (Atlanta, GA). The Commission’s Report and Order and Declaratory Ruling authorized “one-touch make-ready for pole attachments by entities making attachments, made further reforms to the pole attachment process, and found that section 253(a) preempts state and local moratoria on telecommunications facilities deployment. Petitioners claimed they are adversely affected by the Commission’s order.

USTELECOM, AT&T, CENTURYLINK SUPPORT FCC IN STAY OF BDS COURT ORDER PENDING REMAND

On October 22, 2018, USTelecom, AT&T and CenturyLink, filed a [response](#) in support of the Commission's [motion](#) to stay the U.S. Court of Appeals for the Eighth Circuit (St. Louis, MO) review of the Commission's [mandate](#) vacating provisions in the Commission's 2017 business data services (BDS) [Report and Order](#) regarding with legacy time division multiplex (TDM) transport services. The Commission had argued that a stay would avoid extensive and unnecessary disruption in the BDS market while the agency addresses a notice issue that had been identified by the court regarding part of a complex and interconnected order on remand. USTelecom, *et al.* said that on remand, the Commission is expected to re-adopt and successfully justify the same transport rule the court found unlawful and argued issuing the mandate during the remand would be highly disruptive and cause intervenors irreparable harm. The BDS order had eliminated *ex ante* price regulation of packet-based BDS and transport services, as well as TDM services in counties "deemed competitive," after a transition period. Incumbent local exchange carriers had challenged the order related to the productivity factor, or "X factor," for the price cap formula for BDS, which the incumbents argued failed to address the Commission's own admission that the formula was expected to overstate productivity gains. Competitive carriers challenged the deregulatory aspects of the order, including the TDM provisions.

BEFORE CONGRESS

TRUTH-IN-BILLING ACT INTRODUCED

On September 28, 2018, Congresswoman Anna Eshoo (D-CA) issued a [news release](#) to announce introduction of "The Truth-In-Billing, Remedies, and User Empowerment over Fees ('TRUE Fees') Act" bill. The bill would require telephone, cable and internet providers to include all charges in the prices they advertise for service and would provide remedies for consumers when they have been wrongfully charged.

INTERNET BILL OF RIGHTS PRINCIPLES PROPOSED

On October 4, 2018, Representative Ro Khanna (D-CA) [released](#) ten principles for an "Internet Bill of Rights." The principles focus on data privacy and net neutrality and include Internet access and use without Internet service providers blocking, throttling, engaging in paid prioritization, or otherwise unfairly favoring content, applications, services or devices; access to and knowledge of all collection and uses of personal data by companies; and access to multiple viable, affordable internet platforms, services and providers with clear and transparent pricing.

SENATE DEMOCRATS REQUEST COMMISSION OIG INVESTIGATION INTO RIF COMMENTS

On October 29, 2018, Senators Richard Blumenthal (D-CT), Brian Schatz (D-HI) and Edward Markey (D-MA) sent a [letter](#) to Commission General Inspector David Hunt urging initiation of an investigation into the Commission's handling of potential fraud in the net neutrality rulemaking process. The Senators requested that the Commission address its policies and procedures for investigating and addressing fraudulent comments, and when the Commission became aware of the fraudulent comments in the rulemaking, among other things. [Press Release](#)

WYDEN, THUNE REINTRODUCE DIGITAL TAX BILL

Senate Commerce, Science, and Transportation Committee Chairman John Thune (R. S.D.) and Senate Finance Committee ranking minority member Ron Wyden (D, OR) have reintroduced the [Digital Goods and Services Tax Fairness Act](#) (S 3581). The legislation would prohibit multiple state and local taxes on electronic goods and services, discriminatory state and local taxes on digital goods and services, and would establish that state and local taxing authority over the sale of electronic goods and services must be based on the customer's tax address. The proposed defines electronic goods and services as incorporating digital goods and services as well as audio or video programming service or video over Internet protocol service.

STATE REGULATORY NEWS



ALASKA – Bill Expanding TRS Surcharges to Wireless-VoIP Subscribers Enacted

Governor Bill Walker (R) has signed SB 80, a bill that extends the State’s telecommunications relay service (TRS) surcharge to wireless and interconnected VoIP subscribers. The surcharge funds the provision of relay services to Deaf, hard of hearing, and speech disabled individuals.

IOWA –Board Proposes Amendments to Wholesale Telecommunications Rules

The Iowa Utilities Board has requested additional comments on amendments to its wholesale telecommunications service rules. The amendments would apply to Chapter 38 governing Board jurisdiction over mediation and arbitration of interconnection agreements. As proposed, the amendments would streamline the rules by, among other things, eliminating a 75,000 line threshold for tariff filing requirements. The Board noted that any limitation on the requirement for a local exchange carrier with fewer than 75,000 access lines to file a tariff implementing unbundling for the facilities has expired. The Board rejected a CenturyLink proposal that rules be revised to clarify that Board regulations “do not require unbundling of network elements that the Federal Communications Commission ... has found do not meet the impairment test of 47 U.S.C. § 251(d)(2).” An Iowa Communications Alliance proposal to expand the rule to apply to terminating access charge complaints by adding wireless carriers, interexchange carriers, or intermediate providers was also rejected. According to the Board, neither proposal had been fully addressed in the absence of responsive comments regarding the proposals. The rulemaking is part of a Board effort to remove outdated, redundant, inconsistent or incompatible rules. (Docket RMU-2016-0028)

MICHIGAN – Customer Migration Rules Re-Adopted

The Michigan Public Service Commission has re-adopted rules governing basic local exchange service customer migrations, without change. Section 202 of the Michigan Telecommunications Act, requires rule re-adoption every three years, or the rules sunset. The Michigan Cable Telecommunications Association had proposed revision of Rule 5(9), R 484.85(9), to delete the requirement that the new local service provider (NLSP) ensure that directory listing information is accurate, consistent with federal regulation. The Commission rejected the proposal noting that the proposed amendment “would leave no provider accountable for verifying the accuracy of directory listing information,” and found that federal regulations were too broad. (Case U-20161)

MICHIGAN – Commission Adopts Rules to Implement IP-Based 911 Provider Reimbursement Law

The Michigan Public Service Commission has adopted new rules that reimburse IP-based 911 service providers for transport, routing, or delivery of wireless emergency services to public safety answering points (PSAPs) costs associated with providing 911 service. The rules follow enactment of Michigan’s Emergency 9-1-1 Service Enabling Act in March. Under the new law, IP-based 911 service providers are to be reimbursed for 911-related costs, although the law does not establish specific types of costs to be included or whether recurring or nonrecurring costs are reimbursable. To implement the law, the Commission initiated an investigation earlier this year and solicited public comment on the type of costs that IP-based 911 providers would incur. Based on its investigation, the Commission established specific reimbursable costs under the law’s transport, routing, or delivery of wireless emergency service cost categories, subject to IP-based 911 service provider cost studies. Allowable IP-based 911 provider costs will be reimbursed if requesting providers submit adequate documentation and justification. ([Case U-20146](#))

MICHIGAN – Commission Re-Adopting UNE, Interconnection Rules

The Michigan Public Service Commission has re-adopted rules governing the provision of unbundled network elements and local interconnection before they sunset in 2019. AT&T Michigan had proposed that the rules be allowed to end in 2019, arguing that the rules were unnecessary “because minimum service quality standards are already fully addressed by commission order in an industrywide proceeding or through the negotiation/arbitration process for interconnection agreements required by federal and state law.” The Midwest Association of Competitive

Communications, Inc. (MACC) and the Michigan Internet and Telecommunications Alliance (MITA) maintained that the rules should be retained. According to MACC, the rules were “consistent with federal law, encourage competition, and codify existing practices.” The Commission agreed with MACC and MITA in re-adopting the rules. ([Case U-20160](#))

UTAH – USF Contribution Methodology Rulemaking Initiated

The Utah Public Service Commission has initiated a rulemaking proceeding and requested comments regarding the assessment methodology for funding the Utah Universal Service Fund (UUSF). The Commission stated that “The Utah Legislature has expressed a preference that the PSC maintain a UUSF balance of at least three months of UUSF payments and that the PSC not modify the UUSF contribution method more than once every three fiscal years.” In October 2016 the Commission had increased the UUSF contribution from one percent of billed intrastate retail rates to 1.65%. On January 1, 2018, the Commission moved the contribution method to a flat per line assessment, and introduced a \$0.36 per month per access line or connection fee. Comments regarding the UUSF contribution methodology are due on or before November 15, 2018, and reply comments are due December 6, 2018. ([Docket 18-999-15](#))

COMPLIANCE REPORTING

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

FEDERAL REPORTS DUE IN NOVEMBER

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

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



With the recent introduction of CCMI’s expanded Blog, readers are invited to access CCMI’s additional content, including Andy Regitsky’s weekly regulatory blog and back copies of the Miller Isar, Inc. *Regulatory Review* at the [CCMI HUB Blog web site](#).

LIGHT READING

From *Corporate Counsel Daily Update*

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How Companies Avoid Legal Pitfalls When Drafting NDAs By Caroline Spiezio NDAs can help protect company trade secrets, but not if they're overly broad or poorly enforced. [Read More](#)