



## 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



#### 1Q19 USF SUPPORT MECHANISMS SIZE PROJECTION SUBMITTED

On November 2, 2018, the Universal Service Administrative Company (USAC) submitted [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the first quarter of 2019. USAC projects that the total high-cost support mechanism funding requirements will be \$1.147 billion.

([Appendices](#) are available on USAC's website.)

#### FY 2018 FCC FINANCIAL REPORT RELEASED

On November 15, 2018, the Commission released its [FY 2018 Agency Financial Report](#) containing Commission financial and performance information for fiscal year 2018. In the Report, Chairman Pai noted that under his leadership, the Commission has acted to link its mission to its strategic goals, including closing the digital divide, promoting innovation, protecting consumers and public safety, and reforming Commission processes. Pai also wrote that the Commission has received an unmodified opinion on its financial statements from the Commission's Office of Inspector General's independent auditors for the 13th straight year.

#### UNIFIED AGENDA OF PROCEEDINGS PUBLISHED

On November 16, 2018, the Commission [published](#) a unified agenda of major items and other significant proceedings under development or review relating to the Regulatory Flexibility Act, 47 U.S.C. §602, in the *Federal Register*. The unified agenda also provides Code of Federal Regulations citations and legal authorities that govern those proceedings. The complete unified agenda will be available online in a searchable format. The searchable agenda is accessible via this [link](#).

#### NATIONAL LEAGUE OF CITIES, OTHERS SEEK WIRELESS INFRASTRUCTURE ORDER STAY

On October 31, 2018, the National League of Cities, the United States Conference of Mayors, the National Association of Counties, among others, filed a [motion for stay](#) of the Commission's September 27, 2018 [declaratory ruling and report and order](#) that clarified the scope and meaning of sections 253 and 332(c)(7), established shot clocks for state and local approvals for the deployment of small wireless facilities, and provided guidance on streamlining state and local requirements associated with wireless infrastructure deployment. The parties requested a stay of the [January 14, 2019](#) effective date until a decision on the appeal of the order was issued. Further, the parties noted that a stay would provide time to enable local governments to bring themselves into compliance following a final decision. (WC Docket No. 17-84)

## **MUNIS SEEK WIRELESS INFRASTRUCTURE ORDER RECONSIDERATION**

On November 14, 2018, the City of New Orleans, the Virginia Municipal League, the Kentucky League of Cities, *et al.* filed a [petition for reconsideration](#) of the Commission's [Declaratory Ruling and Third Report and Order](#) on wireless infrastructure deployment. Petitioners maintain that the Commission failed to consider legitimate municipal costs, and resource limitations in the Commission's findings regarding fees. They argue that the Commission has allowed a shifting of corporate costs from carriers to municipal governments by exaggerating the number of abuses by a limited number of municipalities, while at the same time ignoring abuses by wireless providers. Separately, on November 15, 2018, Crown Castle submitted a letter opposing the municipalities' motion for stay. Crown Castle argued the stay request is without merit and there is no reason to delay the effective date of the order. Crown Castle also addressed statements made in the stay request, noting Crown Castle is not a wireless carrier and is not challenging the order. The Company rejected the suggestion that there will be no harm to Crown Castle from a stay. (WT Docket Nos. 17-79 and 17-84)

## **STUDY FINDS REDUCTION IN INFRASTRUCTURE INVESTMENT FOLLOWING TITLE II INTERNET REGULATION**

On November 1, 2018 The Phoenix Center released a [study](#) entitled "Infrastructure Investment After Title II." The study concluded that there was a decline in capital spending following the Commission's 2015 Open Internet Order. According to the study, an estimated \$24 to \$30 billion in telecom sector investment was lost as a result of the Commission's Internet Title II classification since 2015. [press release](#)

## **COMMISSION RELEASES VOICE TELEPHONE SERVICES REPORT**

On November 20, 2018, the Wireline Competition Bureau released its [voice telephone services report](#). The Report summarizes information collected on telephone services as of June 30, 2017. The Report reveals that as of June 2017, there were 55 million end-user switched access lines in service, 64 million interconnected VoIP subscriptions and 336 million mobile subscriptions in the United States. Interconnected VoIP subscriptions increased at a compound annual growth rate of eight percent, mobile voice subscriptions increased at a compound annual growth rate of two percent, and retail switched access lines declined at 11 percent per year over the previous three-year period.

## **TELEPHONE NUMBER AGING RULE TEMPORARILY GRANTED FOR COMPANIES SERVING CALIFORNIA SUBSCRIBERS**

On November 23, 2018, the Wireline Competition Bureau issued an [order](#), granting, on its own motion, a temporary waiver of the Commission's telephone number aging rule for carriers serving in areas of California affected by severe wildfires. The Bureau specifically waived section 52.15(f)(ii) establishing that providers may only age telephone numbers that have been disconnected for up to 90 days before assigning them to other customers. The waiver enables service providers in the affected areas to temporarily disconnect customers' telephone service to avoid billing issues, and then reinstate the customers' same numbers when service is reconnected, upon request. The waiver went into effect immediately and expires August 22, 2019. (DA 18-1193) (CC Docket Nos. 95-116, 99-200)

## **TOLL FREE NUMBERING RULES EFFECTIVE**

On November 27, 2018, the Wireline Competition Bureau released a [public notice](#) to announce that the Commission's [report and order](#) revising toll free numbering rules to promote the efficient allocation of toll free numbers was published in the [Federal Register](#) on October 23, 2018, making the rules adopted under the report and order effective November 23, 2018. (DA No. 18-1195). (Docket No 17-192 95-155)

## **INTERMEDIATE PROVIDER REGISTRY INFORMATION PRA COMMENTS DUE DECEMBER 27**

On November 27, 2018, the Commission published a [notice](#) in the *Federal Register* requesting Paper Work Reduction Act comments on the information collection required by the Improving Rural Call Quality and Reliability Act of 2017. That act requires the Commission to establish a registry for intermediate providers to register with the Commission before offering to transmit covered voice communications. Comments are due December 27, 2018.

## **NATIONAL LIFELINE VERIFIER ROLLOUT ANNOUNCED**

On November 27, 2018, the Wireline Competition Bureau issued a [public notice](#) announcing launch of the Commission's national Lifeline eligibility verifier in Missouri, North Carolina, Pennsylvania and Tennessee. The launch is scheduled for December 4, 2018. The Bureau said that the next four states joining on December 4, 2018, will be rolled out under a

“soft” launch period before fully launching. This allows eligible telecommunications carriers to become familiar with the national verifier and adjust and test their systems and business processes before use becomes mandatory.

#### **RATE OF RETURN BUSINESS DATA SERVICE FNPRM COMMENT DEADLINE SET**

On November 29, 2018, the Commission [published](#) in the *Federal Register* the second Further Notice of Proposed Rulemaking (FNPRM) and FNPRM accompanying the Commission’s [report and order](#) allowing some rural local exchange carriers that receive fixed high-cost support to transition from rate of return (RoR) regulation to incentive regulation for their business data services (BDS). The FNPRMs seek comment on creating a pathway to ending *ex ante* pricing regulation for the lower speed TDM-based transport services of RoR carriers opting into the incentive regulation framework. Comment is also sought on the Commission’s proposed removal of pricing regulation of TDM transport services of price cap regulated carriers pursuant to the U.S. Court of Appeals for the Eighth Circuit’s remand decision on the 2017 price cap BDS rules. Comments are due January 14, 2019; reply comments are due February 12, 2019. (WC Docket Nos. 17-144, 16-143, 05-25)

#### **PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS CARRIERS OF BACKUP POWER ORDER DEADLINE**

On November 27, 2018, the Commission’s Public Safety and Homeland Security Bureau issued a [Public Notice](#) reminding facilities-based fixed residential voice service providers that are not “line-powered” of the Commission’s requirement to provide twenty four hours of backup power for customer premises equipment by February 13, 2019. The requirement was adopted in on August 7, 2015 in its Ensuring Continuity of 911 Communications” proceeding [Report and Order](#) . The corresponding rules established in Section 12.5 of the Commission’s rules, [47 C.F.R. §12.5](#) (PS Docket No. 14-174)

#### **IN THE COURTS**

##### **EIGHTH CIRCUIT STAYS BDS REMAND ORDER**

On November 9, 2018, the U.S. Court of Appeals for the Eighth Circuit (St. Louis, MO) issued an [order](#) granting the Commission’s [request](#) for a stay for one year, until November 12, 2019, of the court’s [decision](#) that vacated provisions in the 2017 [BDS Report and Order](#) affecting TDM transport services and remanded to the Commission for further review. The Commission had asserted that a stay of the BDS Report and Order would avoid extensive and unnecessary disruption in the BDS market while the Commission addresses the notice issue raised by the court on remand. Its request was supported by U.S. Telecom Association, AT&T, Inc., and CenturyLink, Inc.



##### **TENTH CIRCUIT TO CONSIDER COMMISSION WIRELESS INFRASTRUCTURE REVIEW PETITIONS.**

On November 2, 2018, the U.S. Judicial Panel on Multidistrict Litigation issued an [order](#) selecting the U.S. Court of Appeals for the Tenth Circuit (Denver, CO) as the court to consider petitions for review of the Commission’s 2018 [declaratory ruling and report and order](#) that clarified the scope and meaning of sections 253 and 332(c)(7). The order also established shot clocks for state and local approvals of small wireless facility deployments, and provided guidance on streamlining state and local requirements on wireless infrastructure deployment. Petitions were filed in the First, Second, Ninth and Tenth Circuit Courts by PRTC; Verizon; city of San Jose, et al.; city of Seattle, *et al.*; city of Huntington Beach; and Sprint.

#### **BEFORE CONGRESS**

##### **ROBOCALL BILL INTRODUCED**



On November 16, 2018, Senator John Thune (R. SD), chairman of the Senate Commerce, Science, and Transportation Committee, and Sen. Ed Markey (D. MA) [announced](#) the [introduction of S. 3655](#), the Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act. The

TRACED Act would give regulators more time to find scammers, increase civil forfeiture penalties for those caught, promote call authentication and blocking adoptions, and bring relevant federal agencies and state attorneys general together to address impediments to criminal prosecution of robocallers who intentionally ignore laws current. Chairman Pai has made Commission action on robocalling a priority.

## **STATE REGULATORY NEWS**



### **CALIFORNIA – TEN DIGIT DIALING TO BEGIN IN 510 NPA**

Beginning on December 15, 2018, those located in the 510 area code will be required to dial ten digits to place local and toll calls in anticipation of the introduction of the new 341 area code.

In June Commission had approved a Neustar, Inc. petition to implement a 341 area code overlay for the 510 NPA. The December 15, 2018 ten-digit dialing date is part of a 13 month 341 area code implementation schedule proposed by the industry and adopted by the Commission. The area served by the 510 area code includes the western portions of Alameda and Contra Costa counties. (Application 17-05-013)

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

The District of Columbia Public Service Commission has released notice of its intent to amend retail service quality rules for companies serving more than 10,000 access lines in the District. The Commission is considering amendments to sections 2720 and 2799 of title 15 DCMR that would add a trouble clearing time measure and a repeat trouble measure to evaluate the time needed to repair service-affecting but not out-of-service problems, and the percentage of repeated problems with a particular service line. Additionally, the Commission is considering changing certain reporting requirements and requiring aggregation of results and disaggregation of results both by the type of customer and the type of facility used to provide service. (Docket RM27-2014-01)

### **KENTUCKY – TRS SURCHARGE TO REMAIN UNCHANGED**

The Kentucky Public Service Commission has announced that the current Telecommunications Relay Service Fund surcharge is to remain the same through January 1, 2020, despite a modest increase in Fund disbursements. An investigation into proper funding levels is conducted annually. (Docket 2018-00332)

### **MAINE – COMMISSION SETS ANNUAL LATE PAYMENT CHARGE INTEREST RATE**

On November 15, 2018, the Commission announced that the maximum late payment charge interest rate will be 2.57 percent. The interest rate is based on the Federal Reserve H.15 Prime Rate on the first business day in November plus 8.00% (rounded to the nearest 0.25% and subject to a maximum of 18.00%). For utilities choosing to compound, the equivalent monthly maximum late payment charge for 2019 will be 1.04%. According to the Commission, “In Docket No. 2014-00065, the Commission revised Chapter 870 to require that the interest rate on all deposits held by a utility shall equal the rate on one-year Treasury Securities reported in the Federal Reserve’s H.15 Statistical Release in effect the first business day in November (November 1, 2018) or a floor of 0.20%. The one- year Treasury Securities rate on November 1, 2018 was 2.57%; therefore, notice is hereby given to all utilities that the rate payable on customer deposits for 2019 will be 2.57%.” The new rate becomes effective January 1, 2019.

### **MINNESOTA – UNOPPOSED PETITIONS RULES REVISED**

The Minnesota Public Utilities Commission has adopted rule amendments that streamline and shorten the process for consent dockets that are not subject to disputes. Under the amended rules, comments on a petition must be filed and served within 45 days after a “consent” petition is submitted. Responsive comments must be filed and served within five days after the Department of Commerce files comments rather than the current 20 days. Separately, the Commission elected not to adopt a proposed revision of the process for 911 plan submissions in the rulemaking. (Case CI-18-382)

### **OREGON – RSPF SURCHARGE RATE TO INCREASE**

On November 28, 2018, the Oregon Public Utility Commission announced that the Residential Service Protection Fund (RSPF) surcharge rate will increase to \$0.11 per line/instrument, effective January 1, 2019. Companies submitting RSPF payments are to continue using the current \$0.06 surcharge rate for December 2018 submissions that are due January 22, 2019. A new form and guidelines implementing the increase are being released. Providers are urged to file using the RSPF online system. ([Order 18-414](#))

### **WEST VIRGINIA – COMMISSION ADOPTS 911 FEE RULE AMENDMENTS**

The Public Service Commission has adopted amendments to its emergency telephone service rules to provide further guidance regarding biannual audit and re-specification of the wireless enhanced 911 fee. The amended rules establish

that data collection, E911 fee re-calculation, and commission notice to commercial mobile radio service (CMRS) providers occurs well before the July 1 effective date for the E911 fee re-specification. Under the amended rules, staff is to provide the commission and registered providers with E911 fee calculations and recommendation by May 7. Registered CMRS providers are to submit data to the commission on or before April 7 each year. The Commission is to issue an order addressing the audit and the E911 fee prior to the July 1 effective date for the fee re-specification.



With the 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*

**The Growing Gig Economy Brings New Worries for In-House Counsel** By MP McQueen | Caroline Spiezio  
Outsourcing employees doesn't always mean outsourcing legal complications. [Read More](#)

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**Federal Data Privacy Legislation Is Likely Next Year, Tech Lawyers Say** By Dan Clark

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*Warmest Regards.*