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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



USAC PROPOSES FEDERAL USF SUPPORT MECHANISM QUARTERLY CONTRIBUTION BASE FOR 1Q19 – CONTRIBUTION FACTOR SET

On November 30, 2018, the Universal Service Administrative Company (USAC) submitted the [Federal Universal Service Support Mechanisms Quarterly Contribution Base](#) for first quarter 2019. USAC

projected collected interstate and international end-user revenue base to be used in determining the USF Support Mechanisms contribution factor for first quarter 2019 at \$12,289,162,461, down from \$12,406,691,101 in fourth quarter 2018.

On December 12, 2018, the FCC Office of Managing Director issued a [public notice](#) announcing the proposed universal service contribution factor for the first quarter of 2019 will be 20 percent. The fourth quarter contribution factor was 20.1 percent. (DA No. 18-1249)

ROSENWORCEL URGES CARRIERS TO PROVIDE FREE ROBOCALL BLOCKING

On December 12, 2018, the Commission issued a [news release](#) announcing that Commissioner Rosenworcel had sent [letters](#) to major telecommunications companies urging the companies to offer free robocall blocking solutions to their subscribers. According to Commissioner Rosenworcel, “There are call identification and blocking technologies that are available right now, which some service providers make available at no cost. It is time for every consumer to be able to access these tools for free and stop the incredible surge in these nuisance calls.” Commissioner Rosenworcel’s letter asks the companies to provide her with a description of any tools they offer today, including a description of the costs charged.

PAPERWORK REDUCTION ACT COMMENTS ON REVISED POLE ATTACHMENT COMPLAINT PROCEDURES DUE JANUARY 4

On December 5, 2018 the Commission issued a [notice](#) in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments on a revision of its currently approved information collection regarding pole attachment complaint procedures. The Commission’s August 3, 2018 [third report and order and declaratory ruling](#) created an incremental paperwork burden on utilities should they elect to challenge the presumption that incumbent local exchange carriers are entitled to rates, terms and conditions of similarly situated telecommunications attachers. PRA comments are due January 4, 2019.

RLEC BDS INCENTIVE FURTHER NOTICE OF PROPOSED RULEMAKING COMMENTS DUE JANUARY 14

On November 29, 2018, the Wireline Competition Bureau issued a [public notice](#) announcing that following publication in the *Federal Register*, the deadline for filing comments in the Commission's *Second Further Notice and Further Notice* in its regulation of business data services (BDS) for rate-of-return local exchange carriers proceeding is January 14, 2019. Reply comments are due February 12, 2018. The two Further Notices of Proposed Rulemaking relate to the Commission's [report and order](#) governing rural local exchange carrier incentive regulation for business data services. On October 24, 2018, the Commission released the *Second Further Notice*, proposing to eliminate *ex ante* pricing regulation of rural local exchange TDM-based transport services when rural local exchange carriers opt into a proposed incentive regulation framework. The Commission proposed to eliminate pricing regulation from the price cap carrier TDM transport services as a result of the Eighth Circuit Court's remand of the Commission's 2017 BDS rules. (WC Docket Nos. 17-144, 16-143, 05-25 and RM-10593)

USDA RUS ANNOUNCES BROADBAND FUNDING OPPORTUNITY

On December 14, 2018, the Rural Utilities Services (RUS) of the U.S. Department of Agriculture (USDA) published a [funding opportunity announcement](#) and solicitation for applications in the *Federal Register*. The announcement addresses the USDA's general broadband pilot program funding policy and application procedures established under the Consolidated Appropriations Act of 2018. The USDA funding opportunity provides loans, grants and loan/grant combinations to facilitate broadband deployment in rural areas under three funding categories. Each category is subject to different application windows and deadlines. According to the notice, RUS will finalize the application window by notice in the *Federal Register* and Grants.gov website on February 22, 2019. The USDA also released a [fact sheet](#) and [FAQ](#) on the ReConnect program.

PAY-PER-CALL PAPERWORK REDUCTION COMMENTS DUE JANUARY 28

On December 27, 2018, the Commission issued a [notice](#) in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments on extending the currently approved information collection associated with certain Part 64 rules governing pay-per-call service billing disclosure requirements ([47 C.F.R. § 64.1509](#)). According to the Commission, billing disclosure requirements are intended to ensure telephone subscribers billed for pay-per-call or other information services are able to understand the charges on their bills and are informed of their rights and responsibilities with respect to payments. PRA comments are due January 28, 2019.

FCC FORM 499 COMMENTS DUE JANUARY 20

On December 27, 2018, the Commission issued a [Public Notice](#) announcing that comments regarding proposed revisions to the annual and quarterly Telecommunications Reporting Work sheets, FCC Form 499-A and FCC Form 499-Q, and related instructions are due on January 20, 2019. Changes include updated contact information for the Local Number Portability Administrator, updated references, date changes, a change in circularity factor, instructions for reporting international revenues, and "clarifications and stylistic changes." (WC Docket No. 06-122) [FCC Form 499-A amendments](#); [FCC Form 499-A instruction amendments](#); [FCC Form 499-Q amendments](#); [FCC Form 499-Q instruction amendments](#)

FCC FORM 477 BROADBAND DATA RELEASED

On December 12, 2018, the Commission issued a [public notice](#) announcing the Wireline Competition and Wireless Telecommunications Bureaus release of updated data on [fixed broadband deployment](#) and [mobile voice and broadband deployment](#). These data were collected through FCC Form 477 submissions and are available on the Commission's [Reports and Research website](#). The fixed broadband data include revisions made by filers through November 13, 2018; mobile deployment data include revisions through June 13, 2018. (DA No. 18-1246). (Docket No. 11-10)

COMMUNICATIONS MARKETPLACE REPORT RELEASED

On December 26, 2018, the Commission released its market place [report](#). The report consolidated several previously separate Commission reports into a single report regarding the state of the broader communications market in the United States including competition in the fixed broadband market, investment trends and market barriers, comparative international data on broadband services, and a year-to-year measure of the extent of broadband service capability,

including speeds and prices, in the United States and select communities and countries abroad. (GN Docket No. 18-231 WT Docket No. 18-203 MB Docket No. 17-214, MB Docket No. 18-227, IB Docket No. 18-251) [Pai Statement](#), [O’Rielly Statement](#), [Carr Statement](#), [Rosenworcel Statement](#), [Mobile Wireless Market Appendices](#), [Video and Audio Market Appendices](#), Fixed Communications [Market Appendices](#), [Broadband Deployment Appendices](#), [International Broadband Data Report Appendices](#), [Measuring Broadband America Reports](#)

IN THE COURTS

EIGHTH CIRCUIT DENIES CHARTER VOIP DECISION REHEARING

On December 4, 2018, the U.S Court of Appeals for the Eighth Circuit Court issued an [order](#) denying the Minnesota PUC’s [petition for rehearing](#) of the Court’s September 17, 2018 [decision](#) affirming the Minnesota district court’s ruling that Charter’s VoIP service is an information service under the Telecommunications Act.



COMMISSION FILES BRIEF IN WIRELESS SITING STREAMLINING ORDER APPEAL

On December 6, 2018, the Commission a [brief](#) with the U.S. Court of Appeals for the D.C. Circuit in the case reviewing petitions for review of the Commission’s March 2018 [second report and order](#) that adopted a new streamlined wireless infrastructure siting review process. The Commission argued that petitioners asked the Court to endorse a new theory that conflicts with decades of precedent from this court and other circuits and threatens to federalize broad swaths of private conduct in both the telecom and non-telecom spaces alike. The Commission also maintained that the petitioners’ had failed in challenging that the Commission had failed to comply with the Administrative Procedures Act in its rulemaking proceeding.

STATE REGULATORY NEWS



KENTUCKY – Declaratory Ruling Finds that Interconnection Rights are Technology Neutral

The Kentucky Public Service Commission has released a declaratory ruling, finding that all telecommunications carriers, regardless of the underlying technology being used, have the same interconnection rights. The Commission’s ruling approves a 2015 Competitive Carriers of the South, Inc. (CompSouth) petition –assumed by Windstream Communications, Inc. when CompSouth was dissolved last year - that had sought the declaratory ruling. In its original petition, CompSouth requested that the Commission declare interconnection under Sections 251 and 252 of the federal 1996 Telecommunications Act (the Act) and state statute to apply on a technology-neutral basis, a position shared by Windstream. AT&T Kentucky, Verizon Communications, and others opposed the petition. AT&T Kentucky argued that the Commission was not authorized under the 1996 Telecommunications Act or state statute to issue a declaration relating to federal law. Verizon maintained that the FCC had not mandated VoIP interconnection and that VoIP traffic is not subject to sections 251-252 of the Act. Windstream maintained that without a declaratory ruling, incumbent local exchange carrier agreements like these for IP-based services would not be filed with the commission, and that competitors would be unable to review the agreements when they are negotiating with the incumbents for IP-interconnection. In its ruling, the Commission found that the FCC has not determined if interconnection under section 251 is also service-neutral or what portions of the interconnection regime should apply to IP services or interconnection. The Commission concluded that interconnection issues should be addressed on a case-by-case basis in an arbitration proceeding. “Kentucky law does not prohibit this result, nor does the current state of the FCC or federal law,” the commission said. “However, each petition for arbitration stands on its own, and each case is 'tied to factual circumstances or otherwise circumscribed in various ways' and does not guarantee interconnection with an IP network.” The Commission rules that “ regardless of the underlying technology, transmission media, or protocol the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply and permit a requesting carrier to file a petition with the commission requesting an order addressing requested interconnection with an ILEC; and ... carriers must file with the commission any existing agreements for the exchange of IP voice traffic so that the commission may determine if they are available to be adopted by other telecommunications carriers.”(Case 2015-00283)

NEBRASKA – E911 Surcharge Retained

The Nebraska Public Service Commission ordered that the current Enhanced Wireless 911 Fund surcharge for 2019 will remain at \$0.45 per active telephone number or functional equivalent per month. The surcharge has remained unchanged since January 1, 2013. (Case 911-002)

NEW MEXICO – State USF Surcharge Set

The New Mexico Public Regulation Commission has set the 2019 State Rural Universal Service Fund (SRUSF) surcharge at \$1.24 per communication connection. The commission had adopted a \$1.17 per-communication connection fixed dollar surcharge for the remainder of 2018 to give fund administrator, GVNW Consulting, additional time to recommend the 2019 surcharge following New Mexico's change in methodology from a percentage-of-interstate-revenue surcharge to a per-communication connection surcharge. GVNW recommended the commission adopt a surcharge ranging from \$1.24 to \$1.30 per connection. The commission's recent order adopts and approves a projected SRUSF size of \$29,211,663.36, and a per-communication connection charge of \$1.24 for 2019. (Docket 18-00252-UT)



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](#).

We wish readers prosperity and health in the New Year. Happy New Year!