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Regulatory Review

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

FEDERAL REGULATORY NEWS



COMMISSION EXTENDS USTELECOM FORBEARANCE PETITION

On February 14, 2019, the Wireline Competition Bureau issued an [order](#) extending by 90 days, until August 2, 2019, the date by which USTelecom's [petition for forbearance](#) from certain regulatory obligations imposed on incumbent local exchange carriers shall be deemed granted in the absence of a Commission denial. Section 10 of the 1934 Communications Act, as amended, establishes that if the

Commission does not act on a petition for forbearance within one year of receipt, the petition shall be deemed granted. Section 10 authorizes the Commission to extend a deadline by 90 days, if more time is needed to complete its analysis of whether a petition meets the statutory criteria. (Docket No. 18-141).

USAC FILES 2Q19 USF SUPPORT MECHANISMS AND FUND SIZE PROJECTIONS

On February 1, 2019, the Universal Service Administrative Company (USAC) submitted [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the second quarter of 2019. USAC projects the high-cost support mechanism funding requirements at \$1.108 billion. (Appendices are available on [USAC's website](#).)

NEW COMMISSION FRAUD DIVISION CREATED

On February 4, 2019, the Commission issued an [order](#) creating a new fraud division under the Enforcement Bureau. According to the Commission, this new division is tasked to investigate and prosecute Universal Service Fund fraud and coordinate with the Commission's Office of Inspector General, the U.S. Department of Justice and other law enforcement agencies to prosecute unlawful conduct. The division will be staffed with experienced Enforcement Bureau staff. The Commission's [press release](#) noted that the fraud division will be established following review and approval by the Office of Management and Budget and the House and Senate Appropriations Committees, and publication of the order in the *Federal Register*.

ILEC UNBUNDLING OBLIGATIONS INFORMATION COLLECTION PRA COMMENTS DUE MARCH 8

On February 6, 2019, the Commission published a [notice](#) in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments on an extension of a currently approved information collection associated with incumbent local exchange carrier unbundling obligations resulting from the Commission's February 2005 [order on remand](#). The Commission noted that the remand order imposed unbundling obligations in a more targeted manner where requesting carriers had made their own facilities-based investments and are using unbundled network elements in conjunction with self-provisioned facilities. PRA comments are due March 8, 2019. (CC Docket No. 01-338 and WC Docket No. 04-313)

ILLEGAL ROBOCALL REPORT RELEASED

On February 14, 2019 the Commission issued a [news release](#) announcing Chairman Pai's release of the Commission's report on illegal robocalls. The [Robocall Report](#) addresses provider implementation of proactive blocking of invalid, unallocated and unused numbers, [authorized](#) under a 2017 Commission rule change. The Report also addresses progress toward [caller ID authentication](#) through adoption and implementation of STIR/SHAKEN standards. Additionally, the Report explains the Commission's development of a reassigned number database; reports on the Commission's proposed or imposed monetary forfeitures totaling \$245,923,500; and explains Commission efforts for industry-wide cooperation with agency [traceback](#) efforts. (GC Docket No 17-59)

COMMISSION RELEASES NPRM IN SECTION 503 OF RAY BAUM'S ACT AND TRUTH IN CALLER ID IMPLEMENTATION

On February 15, 2019, the Commission released a [Notice of Proposed Rulemaking](#) (NPRM) in its implementation of Section 503 of RAY BAUM'S Act and the Truth in Caller ID Act of 2009 proceedings. The NPRM proposes rules to preclude fraudulent spoofing activity – use of inaccurate and misleading caller ID information, and to modify the Commission's current Truth in Caller ID rules consistent with federal law. The RAY BAUM'S Act expands the reach of covered entities from “any person within the United States” to include “any person outside the United States if the recipient is within the United States.” The Truth in Caller ID Act directed the Commission to enhance rules to further protect consumers from caller ID spoofing. The proposed rules include additional definitions in Section 64.1600 of the Commission's rules that expand the scope of each term consistent with the statutes, and amends Section 64.1604(a) of the Commission's rules to include prohibitions on calls or text messages intended to defraud the public whether originated within or outside the U.S. Comments are due 30 days following publication in the *Federal Register* and reply comments are due 60 days following publication. [News Release](#) (Docket Nos. 18-335 11-39).

DRAFT 2019 BROADBAND DEPLOYMENT REPORT CIRCULATED

On February 19, 2019, the Commission issued a [news release](#) announcing that Chairman Pai has circulated a draft of the Commission's 2019 broadband deployment section “706 Report” to his fellow commissioners. The draft report finds that the “digital divide between Americans with and without access to modern broadband networks has narrowed substantially,” and “concludes that advanced telecommunications services - broadband - is being deployed on a reasonable and timely basis.” The draft report shows that since release of the 2018 report, the number of Americans lacking access to a fixed broadband connection meeting the Commission's benchmark speed of 25 Mbps/3 Mbps has dropped by over 25 percent, from 26.1 million Americans at the end of 2016 to 19.4 million at the end of 2017, and the majority of those gaining access to high-speed connections live in rural America. “The number of Americans with access to 250 Mbps/50 Mbps fixed broadband grew by over 45%, to 205.2 million, and the number of rural Americans with access to such service more than doubled.” The Commission is expected to vote on the report in the coming weeks.

BEFORE CONGRESS

HOUSE SUBCOMMITTEE HOLDS OPEN INTERNET HEARING



On January February 7, 2019, the House Communications and Technology Subcommittee held a [hearing](#) entitled “Preserving an Open Internet for Consumers, Small Businesses, and Free Speech.” [Tom Wheeler](#) of the Brookings Institute and former Commission Chair, testified that Commission

open Internet policies established prior to 2017 and articulated in the 2015 Open Internet [Order](#), are backbone concepts for the network oversight. He also said any further policy considerations should use the 2015 concepts as the starting point to secure the public's critical interest in a free and open internet. [Joseph Franell](#), CEO of Eastern Oregon Telecom, said the application of Title II as part of net neutrality had a dramatic effect on rural telecom and made investors hesitant to invest in the telecommunications sector; yet following repeal of net neutrality rules, investors have been much more willing to invest in rural telecommunications. Testimony was also given by: [Denelle Dixon](#), Mozilla; [Ruth Livier](#), UVLA doctoral student; and [Jessica Gonzalez](#), Free Press and the Free Press Action Fund.

Republican members of the House Energy and Commerce have introduced the Open Internet Act of 2019; three bills that would prevent throttling, blocking and paid prioritization. The Republican members are asking their Democratic colleagues to consider the bills a starting point toward a bipartisan net neutrality resolution. The bills have not received a favorable

response from Democrats or net neutrality activists, because they lack a general conduct standard and does not apply Title II regulation to Internet service providers, according to opponents.

TELECOMMUNICATIONS FEE LEGISLATION INTRODUCED

On February 14, 2019, Senator Ed Markey (D. MA.) and Representative Anna G. Eshoo (D. CA) introduced legislation that would require phone, cable, and Internet providers to include all charges in advertised service prices and offer remedies for consumers who have been wrongfully charged. According to a [news release](#), the Truth-In-Billing, Remedies, and User Empowerment over Fees (TRUE Fees) Act (S 510 and HR 1220) “requires phone, cable, and internet providers to include fees, charges, and surcharges in the prices they advertise for service; allows customers to end their contract without early termination fees if their provider increases prices; prevents hikes on equipment fees unless providers improve equipment; and prohibits forced arbitration clauses for wrongful billing errors.” Representative Eshoo had introduced a similar bill in 2018.

IN THE COURTS

WINDSTREAM ANNOUNCES BANKRUPTCY

On February 25, 2019, Windstream Holdings, Inc., announced that it filed in the U.S. Bankruptcy Court for the Southern District of New York to reorganize under chapter 11 of the U.S. Bankruptcy Code. According to the Company, the filing comes as a result of a decision to “address debt maturities that have been accelerated as a result of the recent decision by Judge Jesse Furman in the Southern District of New York against Windstream Services, LLC, a subsidiary of the Company.” District Judge Furman had ruled in favor of bond holders who challenged a 2015 spinoff of certain telecom network assets by Windstream subsidiary Windstream Services LLC into a real estate investment trust (REIT). The action led Windstream Holdings to postpone the release of its 2018 fourth-quarter and full-year financial results. Windstream President and Chief Executive Officer Tony Thomas said, “Following a comprehensive review of our options, including an appeal, the Board of Directors and management team determined that filing for voluntary Chapter 11 protection is a necessary step to address the financial impact of Judge Furman's decision and the impact it would have on consumers and businesses across the states in which we operate.”



AT&T – TIME WARNER MERGER RULING UPHELD

The U.S. Court of Appeals for the District of Columbia Circuit has affirmed a decision by Senior U.S. District Judge Richard Leon in June 2018, rejecting the Justice Department's opposition to the AT&T, Inc., and Time Warner, Inc. merger. AT&T and Time Warner had concluded the merger two days after Judge Leon's ruling after the Justice Department agreed not to seek a stay of the ruling pending appeal. Justice also agreed not to oppose elimination of the waiting period imposed by the district court's case management order in exchange for commitments from AT&T to “manage the [TWI] Turner networks as part of a separate business unit, distinct from the operations of AT&T Communications, which includes AT&T's DIRECTV and U-verse businesses.” D.C. Circuit Judge Judith W. Rogers concluded that the government had not offer an analysis of data regarding vertical mergers to counter the analysis offered by the defendants, and that the expert opinion and economic modelling predicting increases in content pricing “failed to take into account [TWI subsidiary] Turner Broadcasting System's post-litigation irrevocable offers of no-blackout arbitration agreements, which a government expert acknowledged would require a new model.” Judge Robert L. Wilkins and Senior Circuit Judge David B. Sentelle, noted, “Evidence also indicated that the industry had become dynamic in recent years with the emergence, for example, of Netflix and Hulu. In this evidentiary context, the government's objections that the district court misunderstood and misapplied economic principles and clearly erred in rejecting the quantitative model are unpersuasive.” "U.S. v. AT&T et al." (Case 18-5214).

STATE REGULATORY NEWS



KENTUCKY – STATE USF SURCHARGE REDUCED

The Kentucky Public Service Commission has ordered a reduction in the monthly state universal service fund surcharge applicable to all access lines in the state. The new surcharge is \$0.07 per access line, a reduction from \$0.09 per access line. The surcharge is to remain in place during a Commission rulemaking regarding the long-term future of the fund or until further order by the commission. The monthly surcharge had been increased to \$0.14 per month from \$0.08 in March 2016 to stabilize the fund, which was found to becoming insolvent, and opened an investigation into the state fund consider options for stabilizing the fund. The Commission subsequently ruled that the state

fund would support Lifeline service only. In September 2017, the surcharge was lowered to \$0.09 per month following a finding that the Fund had reached sufficient funding levels. (Case 2016-00059)

UTAH – COMMISSION INCREASES USF SURCHARGE

The Utah Public Service Commission has approved an increase in the state’s Universal Service Fund surcharge to \$0.60 per month, effective May 1, 2019, following a recommendation by the Division of Public Utilities recommendation. The Division had determined that the existing \$0.36 surcharge was insufficient to maintain fund obligations including an increase in high cost support approved by the Commission. A challenge was raised by the Utah Rural Telecom Association, which called the increase unsustainable. The Commission noted that the increase was necessary to meet legislative directed universal service fund requirements. (Docket 18-999-15)

WEST VIRGINIA – COMMISSION SETS INTEREST RATE ON SECURITY DEPOSITS

On February 8, 2019, the West Virginia Public Service Commission issued an [Order](#) setting the interest rate to be paid on customer deposits held by telecommunications companies. The interest rate was set at 2.67 percent (0.0267), based on the average rate paid on Treasury Bills during fourth quarter 2018. The rate became effective on the Order date.

COMPLIANCE REPORTING MARCH 2015

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 MARCH

<u>Due Date</u>	<u>Jurisdiction</u>	<u>Report Name</u>
March 1	Federal	Local Competition and Broadband Reporting FCC Form 477
March 1	Federal	Customer Proprietary Network Information Compliance Certification
March 31	Federal	Circuit Status Report (facilities based international carriers).
April 1	Federal	FCC Form 499A



CCMI HUB Blog

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](#).

From Corporate Counsel Daily Update

Real World Scenarios for the California Consumer Privacy Act By Kelly Wilkins **The California Consumer Privacy Act (CCPA) launches on Jan. 1, 2020. Businesses are wisely beginning to prepare. As... [Read More](#)**

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