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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



#### USTELECOM FORBEARANCE PETITION GRANTED IN PART

On April 12, 2019, the Commission issued a [memorandum opinion and order](#), granting in part USTelecom’s petition for forbearance from certain requirements under the 1996 Telecommunications Act. Specifically, the Commission granted forbearance to regional Bell operating companies (RBOCs) and independent incumbent carriers from the requirement that independent rate-of-return incumbent local exchange carriers offer long-distance telephone service through a separate affiliate. Additionally, the RBOCs and independent price cap carriers are no longer subject to nondiscriminatory provisioning interval requirements and the statutory requirement that RBOCs provide nondiscriminatory access to poles, ducts, conduit and rights-of-way. Notably the Commission did not act on USTelecom’s request for forbearance from unbundling and resale requirements under Section 251 of the 1996 Act, saying that it would not address that part of USTelecom’s request at this time. The unbundling and resale forbearance requests have been highly controversial and been met with significant opposition. Although supporting the Commission’s grant, Commissioner Jessica Rosenworcel indicated that the Commission’s actions raised concern over how the Commission Republican majority could allow the remaining requests in the USTelecom petition take effect by not explicitly acting on them. In her statement, she noted, “[W]e save for another day the most complex issues before us, including forbearance from unbundling and resale obligations that are designed to foster competition. I fear that this is intentional because if the FCC does not act on the remainder of this petition by August 2, the issues we do not address here will be deemed granted under the law. In fact, this kind of thing has happened before. So let me lay down a marker. I believe the FCC needs to resolve the outstanding issues in this petition with a decision. Instead of leaving the remainder of the petition to languish and take effect as a matter of law, I believe we need to vote on it.” (WC Docket No. 18-141, CC Docket No. 00-175)

#### ADDITIONAL COMMENTS REQUESTED ON BUSINESS DATA SERVICES – USTELECOM FORBEARANCE PROCEEDING

On April 15, 2019, the Wireline Competition Bureau issued a [public notice](#) announcing that the Commission seeks to supplement the record in its price-cap business data services proceedings with additional Commission Office of Economics and Analytics data developed from highly confidential data received as part of the 2015 data collection in the proceeding. The Bureau requests focused public comment on the extent to which the data accurately reflects the extent of competition and competitive pressure in the market for lower speed (DS3 and below) time division multiplex transport services in price-cap incumbent local exchange service territories. The Bureau also announced reopening of the secure “data enclave” allowing parties to access the 2015 data collection data and opportunity to comment. Additionally, the Bureau stated that pending resolution of any objections to the incorporation of the 2015 data collection into the record of the USTelecom forbearance petition proceeding, it will incorporate the April data tables into the record in that proceeding. It will also seek comment in the USTelecom forbearance petition proceeding on the extent to which the 2015 data collection provides relevant information to evaluate USTelecom’s request for forbearance from the requirements to provide transport as an unbundled network

element basis. On April 16, 2019, the Commission released a [data collection protective order](#) that allows parties in the USTelecom forbearance petition proceeding to access and analyze confidential information and data that had been submitted in the Commission's 2015 data collection in the price cap business data services proceedings. The protective order establishes that the secure data enclave is to remain the exclusive method for authorized parties to access and analyze confidential data submitted in the 2015 data collection. Comments are due 14 days after publication in the *Federal Register*; replies are due 21 days after publication. Separately, on April 15, 2019, [US TelePacific \(TPx\)](#) and [INCOMPAS](#) filed objections to inclusion of their highly confidential and confidential information and data in the USTelecom forbearance proceeding, pursuant to the Commission's April 3, 2019 [public notice](#). TPx said the original data it provided was incorrect, noting that while it filed corrected data, that data was struck from the final business data service Order. TPx maintained that the Commission should not rely on TPx's data unless it provides sufficient opportunity for TPx to review and correct the underlying data. INCOMPAS asserted using this data as a basis of support for the USTelecom petition would be inconsistent with and undermine the Commission's forbearance rules, and violate basic principles of procedural fairness and the complete-as-filed rule. (WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593)

#### **NATIONAL LIFELINE VERIFIER LAUNCH IN ADDITIONAL STATES ANNOUNCED**

On April 5 2019, the Wireline Competition Bureau issued a [public notice](#) announcing launch of the national Lifeline eligibility verifier for new program enrollments in Alaska, American Samoa, Delaware, the District of Columbia, Maine, the Northern Mariana Islands, Rhode Island and the U.S. Virgin Islands. The verifier begins on May 7, 2019. Eligible Telecommunications Carriers that serve subscribers in these jurisdictions will be required to use the national verifier to make eligibility determinations for all consumers applying for Lifeline service instead of legacy eligibility processes for verifying Lifeline program eligibility. (WC Docket No. 11-42)

#### **WORKING PAPER SUPPORTS OEA CREATION**

On April 5, 2019, the Commission's Office of Economics and Analytics (OEA) [released](#) a working paper entitled "The Organization of Economists in Regulatory Agencies: Does Structure Matter?" The paper adds to a working group report that led to the Office of Economics and Analytics creation in December 2018. The paper concluded that organizational consolidation of economists into a single unit, consistent with the OEA organization, provides more independent and higher quality economic analysis within regulatory agencies.

#### **COMMISSION CORRECTS DISCONNECTED NUMBERS DATABASE ORDER**

On April 11, 2019, the Commission released a [notice](#) in the *Federal Register* correcting the compliance dates contained in a March 26, 2019 *Federal Register* notice regarding establishment of a comprehensive database for recent permanent disconnection dates for toll-free numbers and for each number allocated to or ported to each provider that receives North American Numbering Plan U.S. geographic numbers. The correction establishes that compliance will not be required for Sections 52.15(f)(1)(ii) and (f)(8), 52.103(d) and 64.1200(1)(1) and (2) until the Commission publishes documents in the *Federal Register* announcing the compliance dates. (CG Docket No. 17-5)

#### **2018 WIRELESS INFRASTRUCTURE ORDER COMPLIANCE GUIDE RELEASED**

On April 11, 2019, the Commission released its [Small Entity Compliance Guide](#) governing a September 2018 [declaratory ruling and third report and order](#) that established and codified specific rules pertaining to the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. The order amended the Commission's rules, adding new Section 1.6003 that requires a siting authority, such as a state or local governmental entity, to take timely action on a siting application, and establishes the parameters for a reasonable time to act on a siting application. The resulting rules became effective on January 14, 2019. (WC Docket No. 17-84; WT Docket No. 17-79)

#### **POLE ATTACHMENT INFORMATION COLLECTION APPROVAL AND EFFECTIVE DATE ANNOUNCED**

On April 19, 2019, the Commission published a [notice](#) in the *Federal Register* announcing that the Office of Management and Budget approved information collection associated with the Commission's revised pole attachment access rules contained in the [third report and order and declaratory ruling](#) for a three years period. The amendments to sections 1.1411 (timeline for access to utility poles), 1.1412 (contractors for surveys and make-ready) and 1.1415 (overlashing) become effective May 20, 2019. (WC Docket No. 17-84; WT Docket No. 17-79)

## **PRA COMMENTS SOUGHT ON FCC FORM 502 INFORMATION COLLECTION**

On April 22, 2019, the Commission published a [notice](#) in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments regarding extension of a currently approved information collection associated with FCC Form 502, Numbering Resource Optimization. The Commission noted that the data collected on Form 502 helps the Commission manage the 10-digit North American Numbering Plan. PRA comments are due June 21, 2019.

## **COMMISSION INVITES PETITIONS TO SET ASIDE 833 NPA TOLL FREE NUMBERS**

On April 16, 2019, the Commission's Wireline Competition Bureau released a [Public Notice](#) inviting interested government entity and non-profit public health and safety organizations to file a "Petition for an 833 Toll Free Number" for public health and safety purposes. Petitions are requested on or before May 16, 2019. (WC Docket No. 17-192; CC Docket No. 95-155)

## **COMMISSION REPEALS POLICY FOUND TO INCREASE RURAL RATES**

On April 12, 2019, the Commission issued a [News release](#), announcing elimination of the Commission's 2011 "rate floor" rule. The rule had been intended to limit universal service support received by rural carriers whose rates were below a set minimum rate. According to the Commission, "the practical effect of the rate floor has been to artificially raise telephone rates for many rural Americans, including elderly and low-income Americans, and consumers who keep a phone for limited purposes, such as 911 calls. Absent action by the FCC, the rate floor was scheduled to rise from \$18 to \$26.98 on July 1, nearly a 50% increase for rural consumers. .... By eliminating the rate floor, the FCC has repealed a de facto federal government mandate that increased rates paid by rural Americans." (WC Docket No. 10-90)

### **BEFORE CONGRESS**



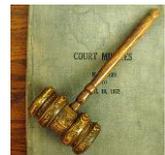
#### **HOUSE PASSES SAVE THE INTERNET AMENDMENTS**

The U.S. House has passed amendments to the [Save the Internet Act](#), HR 1644 introduced last month. The Save the Internet Act would rescind the Commission's 2017 restoring Internet freedom (RIF) order and restore its 2015 open Internet order and related rules. The first amendment, an amendment in the nature of a substitute (AINS) adds language stating that any decisions to forbear from provisions of the Communications Act or a Commission regulation made in the 2015 open Internet order would be permanent. The AINS also added a one-year exemption from the 2015 order's enhanced transparency provision for broadband Internet access service providers with 100,000 or fewer subscribers, and would require the Commission to report to Congress within 180 days on whether it recommends that the exemption be made permanent. The House approved on voice vote an amendment offered by Representative Michael Burgess (R., TX) to require the Government Accountability Office to report within one year of enactment on the effect that the restored rules from the 2015 order will have "on the virtuous cycle of the internet ecosystem and whether such rules protect the access of consumers to a free and open internet." The House also approved on voice vote an amendment offered by Rep. Bob Latta (R., OH) that would require the Commission to submit a list of the 27 provisions of Title II of the Communications Act and the 700 Commission rules and regulation from which the Commission's 2015 order forbore, within three days of enactment. NCTA, CTIA, and the U.S. Telecom Association sent a letter to the Democratic and Republican leaders of the House and House Commerce Committee urging rejection of the Save the Internet Act

### **IN THE COURTS**

#### **CALIFORNIA SUPREME COURT DENIES WIRELESS CARRIER APPEAL OF S.F. AESTHETIC ROW GUIDELINES**

The California Supreme Court has denied a wireless carrier appeal of a San Francisco ordinance that requires wireless equipment installed in the public rights-of-way to comply with "established aesthetic guidelines." In 2011, T-Mobile West LLC, Crown Castle NG West LLC, and ExteNet Systems appealed a city and county of San Francisco ordinance "requiring all persons to obtain a site-specific permit before seeking to construct, install, or maintain certain telecommunications equipment known as personal wireless service facilities on existing poles in the public right-of-way." In adopting the ordinance, the City maintained that San Francisco's "beauty" was essential to the economy, and that the ordinance was necessary "to regulate placement of such facilities in order to prevent telecommunications providers from installing wireless antennas and associated equipment in the city's public rights-of-way either in manners or in locations that will diminish the city's beauty." The wireless carriers appealed, seeking declaratory and injunctive relief. They argued that the ordinance was preempted by state utility code section 7901.1, giving municipalities the right to exercise reasonable



control as to the time, place, and manner in which roads, highways, and waterways are accessed but also providing that such control be “applied to all entities in an equivalent manner,” and giving utilities the right to “construct lines and erect equipment along public roads so long as they do not obstruct the path of travel.” Further, the carriers noted that they were being treated unfairly as other utilities, including Comcast, AT&T, and PG&E, had installed equipment on utility poles in the city's public right-of-way without the same prior approval. In 2016, trial court and the California Court of Appeals upheld the ordinance, concluding that nothing in section 7901.1 “explicitly prohibits local government from conditioning the approval of a particular siting permit on aesthetic concerns.” On further appeal, the California Supreme Court, in a unanimous April 4, 2019 ruling, concluded that “The city has inherent local police power to determine the appropriate uses of land within its jurisdiction. That power includes the authority to establish aesthetic conditions for land use.” Regarding the section 7901 arguments, the Supreme Court reviewed whether the Legislature had intended to preempt local regulation based on aesthetic considerations. It ruled that “Under our preemption cases, the question is not whether the incommode clause can be read to permit the city's exercise of power under the ordinance. Rather, it is whether section 7901 divests the city of that power. We also disagree with plaintiffs’ contention that section 7901's incommode clause limits their right to construct lines only if the installed lines and equipment would obstruct the path of travel. Contrary to plaintiffs' argument, the incommode advancement is not paramount to all others by including the incommode clause in section 7901.1, thereby leaving room for local regulation of telephone line installation: and maintained that the ordinance “treats all entities similarly.” (T-Mobile West LLC, et al., v. City and County of San Francisco, *et al.*, cases S238001, A144252)

#### **NINTH CIRCUIT DENIES FCC MOTION TO STAY ONE-TOUCH-MAKE READY PREEMPTION ORDER APPEAL**

On April 24, 2019, the U.S. Court of Appeals for the Ninth Circuit (San Francisco) issued an [order](#) denying the Commission’s [motion](#) to continue the stay of the briefing schedule in the proceeding reviewing petitions for review of the Commission’s August 3, 2018 [order and declaratory ruling](#) in its one-touch make-ready (OTMR) pole attachment proceeding. The order and declaratory ruling preempted states and municipality moratoria on telecommunications services and facilities deployment, concluding that such moratoria are barred by section 253(a) of the Act because they “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” On October 2, 2018, the City of Portland filed a *Petition for Declaratory Ruling* with the Ninth Circuit, arguing that the Commission’s order exceeded the Commission’s statutory authority, was arbitrary and capricious and constituted an “abuse of discretion,” otherwise contrary to law and the U.S. Constitution. The City requested that the Court find the Commission’s order unlawful. On February 19, 2019, the Commission filed a *Motion to Continue Stay of Proceeding*, noting that the City of New York, the Country Road Association of Michigan, and the “Smart Communities and Special Districts Coalition” filed petitions for administrative reconsideration of the Declaratory Ruling with the Commission. The Commission argued that “Those petitions involve the same issues presented in this case” and asked the Court to stay the appeal proceeding until the Commission could address the petitions for administrative reconsideration. In adopting the briefing schedule, the Court effectively denied the Commission’s Motion, noting only that it would address the FCC’s Motion separately. The court said the [briefing schedule](#) previously established remains in effect.

#### **STATE REGULATORY NEWS**



#### **CALIFORNIA – 909 Area Code Overlay Approved Under Draft Order**

A California Public Utilities Commission draft order, if adopted, will approve a request by numbering plan administrator, Neustar, Inc. to adopt a numbering overlay plan for the 909 area code under a 13 month implementation schedule. In 2018, Neustar informed the Commission of that available numbers in the 909 area code would be exhausted by third quarter of 2021. The 909 area code includes Big Bear Lake, Colton, Chino, Chino Hills, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Yucaipa, as well as unincorporated areas in San Bernardino County; Claremont, Diamond Bar, Industry, La Verne, Pomona, San Dimas, Walnut, as well as unincorporated areas in Los Angeles County, and Calimesa, and Eastvale, and unincorporated areas in Riverside County. (Application 17-06-020)

#### **CALIFORNIA – Commission Sets Pole Attachment Fee**

A Commission presiding officer decision in the complaint filed by California Cable & Telecommunications Association (CCTA) against San Diego Gas & Electric Co. for assessment of unreasonable charges for access to the utility’s infrastructure, establishes a pole attachment fee of \$28.95 for billing year 2017 and \$28.82 for billing year 2018. CCTA had maintained that San Diego Gas & Electric Co. had significantly increased rental fees for space on its poles by 87% to \$30.58 from \$16.35, without justification. The decision noted that the parties had previously entered into a settlement agreement

that included a pole attachment fee schedule for 2009 through 2016, resulting in a 2016 attachment rate of \$16.35. In September 2016, the utility notified CCTA that its 2017 pole attachment rate would increase to \$30.58. (Case 17-11-002)

### **CALIFORNIA – Bill Would Extend Telecommunications Deaf and Disabled Program Surcharge Through 2025**

The California Assembly Committee on Communications and Conveyance has passed AB 497, a bill that would extend the collection of the surcharge used to fund the Deaf and disabled telecommunications program through January 1, 2025. The current authorization for the program expires January 1, 2020, and requires the Commission to establish a rate recovery mechanism through a surcharge not to exceed 0.5% uniformly applied to a subscriber's intrastate telephone service. The bill has been referred to the Assembly Committee on Appropriations.

### **GEORGIA – Electric and Telephone Co-op Broadband Law Enacted**

Georgia Governor Brian Kemp (R) has signed two bills authorizing telephone cooperatives and electric cooperatives to provide broadband service directly or indirectly to their customers into law. Under SB2, an electric membership corporation (EMC) is authorized to provide and operate broadband facilities for its own use or lease facilities on a nondiscriminatory basis. EMCs are prohibited from engaging in cross-subsidization between broadband service activities and gas or electric service activities. SB 17 provides that in addition to furnishing telephone service, "cooperative nonprofit corporations may also furnish broadband services directly or indirectly through a contractual arrangement or through a broadband affiliate."

### **NEBRASKA – Relay Service Surcharge Increased**

The Nebraska Public Service Commission has approved an increase for the state telecommunications relay service surcharge to \$0.03 per month, per access line beginning on July 1, 2019. The surcharge is based on relay service advisory committee recommendations. It had been set at \$0.01 per month per access line. (Case C-5032)

### **NEW MEXICO – Commission Initiates Consumer Protection and Service Quality Rulemaking**

The New Mexico Public Regulation Commission has initiated a new rulemaking proceeding to address consumer protection and service quality markets, over CenturyLink objections. In 2017, the Commission initiated a rulemaking proceeding to implement SB 53, that eliminated the mid-sized carrier classification, and limit Commission jurisdiction to regulate incumbents serving 50,000 or more access lines. Commission staff recently proposed a discussion draft proposal for regulation of former mid-sized carriers, including CenturyLink. The incumbent had maintained that since no rules resulted from the 2017 rulemaking, the carrier has not been subject to service quality or consumer protection rules. CenturyLink asked the Commission to address potential conflicts between the proposed staff rule and SB 53 before reinitiating the rulemaking proceeding. The Commission found that alternative proposals could be made during the rulemaking proceeding rather than delaying the proceeding, while taking "issue with CenturyLink's remark that no consumer protection or quality of service rules have applied to CenturyLink since the act was amended in 2017." The commission noted that 17.11.16 NMAC, Consumer Protection, and 17.11.22 NMAC, Quality of Service, still apply, by their express provisions, to all local exchange carriers other than incumbent rural telecommunications carriers and carriers subject to AFOR provisions. Comments on staff's proposed rules are due May 17, and reply comments are due May 31. In addition, a public hearing on the proposed rules is currently scheduled for June 19. (Case 17-00186-UT)

### **UTAH – State USF Surcharge Increased**

The Utah Public Service commission has made final its approval of a staff recommendation to increase the state universal service fund contribution surcharge to \$0.60, beginning on May 1, 2019. (Docket 18-999-15)

### **VIRGINIA – 757 Area Code Overlay Proposed**

The North American Numbering Plan Administrator (NANPA) has submitted an application for use of an all-services overlay plan to relieve the anticipated numbering shortage in the current 757 numbering plan area (NPA). According NANPA, numbering exhaustion in the 757 NPA is anticipated in the fourth quarter of 2021. NAPA has proposed an overlay that would superimpose a new area code on the existing 757 NPA. Public hearings on the plan are being scheduled. (Case PUR-2019-00059)

## **REGULATORY REPORTING APRIL**

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**

Rural Call Completion Data Collection Report due May 1.

FCC Form 499-A Telecommunications Reporting Worksheet due April 1.

[Communications and Video Accessibility Act of 2010](#) Compliance certification due April 1.

FCC Annual Rate Integration Letter due May 1.

FCC Form 499Q due May 1



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