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No. 19-05

MAY 31, 2019

Regulatory Review

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

FEDERAL REGULATORY NEWS



COMMUNICATIONS SUPPLY CHAIN EXECUTIVE ORDER ISSUED

On May 15, 2019, President Trump issued an [executive order](#) that prohibits transactions involving information and communications technology or services designed, developed, manufactured or supplied by persons owned by, controlled by or subject to the jurisdiction or direction of a foreign adversary. Per the order, the secretary of commerce, in consultation with other departments and agencies, including the Commission, is directed to publish regulations implementing the authority delegated to the Secretary by the order within 150 days. The term “foreign adversary” is defined as “any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.” Commission [Chairman Pai](#) and [Commissioner Carr](#) issued statements.

COMMISSION DENIES CHINA MOBILE INTERNATIONAL (USA) INC. APPLICATION FOR INTERNATIONAL SERVICES

On May 9, 2019, the Commission, in a [Memorandum Opinion and Order](#), denied a China Mobile International (USA) Inc. application for global facilities-based and global resale international telecommunications authority pursuant to Section 214 of the Communications Act of 1934, as amended. According to the Commission, China Mobile International (USA) Inc. “is ultimately owned and controlled by the People’s Republic of China (Chinese government)...After reviewing the record evidence in this proceeding, we find that due to a number of factors related to China Mobile USA’s ownership and control by the Chinese government, grant of the application would raise substantial and serious national security and law enforcement risks that cannot be addressed through a mitigation agreement. Therefore, grant of this application would not be in the public interest.” (FCC No. 19-38, ITC-214-20110901-00289)

3Q19 USF SUPPORT MECHANISM FUND SIZE PROJECTIONS FILED

On May 2, 2019, the Universal Service Administrative Company (USAC) filed its [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the third quarter of 2019. The quarterly funding requirement is estimated at \$2.22869 billion, up \$307 million from the second quarter. USAC projected that the total high-cost support mechanism funding requirements are \$1.399 billion.

NATIONWIDE NUMBER PORTABILITY REPORT COMMENTS DUE JUNE 7

On May 17, 2019, the Commission issued a [public notice](#) requesting comments regarding the North American Numbering Council’s [additional findings report on nationwide number portability](#). The additional findings report analyzes the technical requirements for two proposals to implement nationwide numbering portability. Comments are due June 7, 2019.

POLE ATTACHMENT RULES EFFECTIVE MAY 20

On May 20, 2019, the Commission's Wireline Competition Bureau released a [public notice](#) announcing that the Commission's amended "one touch make ready" pole attachment access rules adopted in the August 2018 [third report and order and declaratory ruling](#), became effective. On April 15, 2019, the Commission received Office of Management and Budget (OMB) approval for the revised pole attachment access rules to become effective. On April 19, 2019 the rules and OMB approval notice were published in the *Federal Register*. (DA No. 19-445, Docket Nos. 17-84 17-79)

RURAL DIGITAL OPPORTUNITY FUND PROCEEDING INITIATED

On April 30, 2019, the Commission's Wireline Competition Bureau with the Rural the Rural Broadband Auctions Task Force and the Office of Economics and Analytics issued a [public notice](#) announcing initiation of a "Rural Digital Opportunity Fund" proceeding. Earlier in April, Chairman Pai [announced](#) his intention to create a rural digital opportunity fund that would make available up to \$20.4 billion in support available to connect four million rural homes and small businesses to high-speed broadband networks via a reverse auction. (WC Docket No. 19-126)

USDA RELEASES RURAL BROADBAND REPORT

On April 30, 2019, the U.S. Department of Agriculture (USDA) released its [report](#), "A Case for Rural Broadband: Insights on Rural Broadband Infrastructure and Next Generation Precision Agriculture Technologies." In its Report, USDA concludes that deployment of broadband e-connectivity and next generation precision agriculture technology in farms and ranches throughout the U.S. could result in at least \$47 billion in national economic benefits every year. Further, the Report found that if broadband infrastructure and digital technologies were available at a level that meets estimated producer demand, the U.S. economy could realize benefits equivalent to nearly 18 percent of total agriculture production. Of that 18 percent production estimate, the report concluded that more than one third is dependent on broadband e-connectivity, equivalent to at least \$18 billion in annual economic benefits. [press release](#)

NUMBER PORTABILITY PRA COMMENTS DUE JULY 19

On May 20, 2019, a [notice](#) was published in the *Federal Register*, requesting Paperwork Reduction Act (PRA) comments regarding extension of a currently approved information collection associated with telephone number portability rules (sections 52.21 through 52.36 of the Commission's rules). The Commission stated that the information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission, and is used to comply with section 251 of the 1996 Telecommunications Act, as amended. PRA comments are due July 19, 2019. (CC Docket No. 95-116)

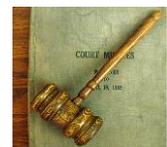
BROADBAND DEPLOYMENT REPORT SHOWS DIGITAL DIVIDE CLOSURE

On May 29, 2019, the Commission released its [2019 Broadband Deployment Report](#) containing statistics on broadband growth in the U.S. The Report concluded that the digital divide has narrowed significantly for a second consecutive year and that advanced telecommunications capability is being deployed on a reasonable and timely basis. According to the Report, those lacking a connection of at least 25 Mbps/3 Mbps dipped from 26.1 million to 21.3 million, a more than 18 percent reduction since the Commission's last broadband deployment report was released. A majority of those gaining access to higher speed broadband connections are located in rural America. The Report also found that the number of Americans with access to at least 250 Mbps/25 Mbps broadband grew in 2017 by more than 36%, to 191.5 million, and the number of rural Americans with access to such broadband increased by 85.1%. [news release](#)

IN THE COURTS

MINNESOTA PUC APPEALS VOIP CLASSIFICATION RULING TO SUPREME COURT

The Minnesota Public Utilities Commission has filed a petition for *writ of certiorari* before the U.S. Supreme Court for review a September 2018 U.S. Court of Appeals for Eighth Circuit (St. Louis) decision, which upheld a lower court's ruling that Charter Advanced Services LLC's interconnected VoIP service is an information service under the federal Telecommunications Act and that state regulation of the service is preempted (*Charter Advanced Services (MN) LLC; Charter Advanced Services VIII (MN) LLC, v. Nancy Lange, in her official capacity as Chair of the Minnesota Public Utilities Commission, et al.*). In that proceeding, the Federal Communications Commission had filed an *amicus curiae* brief arguing that the Minnesota Commission had overstepped



its authority, noting that the Minnesota Commission’s “sweeping assertion of regulatory authority over VoIP service threatens to disrupt the national voice services market.” The Commission stated that relevant Commission orders provide more measured and appropriate mechanisms for regulating VoIP service. The Eighth Circuit subsequently rejected the Minnesota Commission’s petition for an *en banc* rehearing in December 2018. In its petition for *writ of certiorari* the Minnesota Commission asked the Supreme Court to consider whether “in the absence of an FCC decision classifying VoIP service as an information service, FCC policy can conflict with and preempt state regulation of VoIP service ... and [w]hether VoIP service is a telecommunications service or an information service, under the appropriate functional test for classification determinations from [the Supreme Court’s 2005 decision in ‘NCTA v.] Brand X.” The Minnesota Commission argued that federal regulatory preemption will preclude state regulatory agencies from protecting consumers, that the Eighth Circuit’s order is inconsistent with the U.S. Supreme Court’s preemption precedents, that the Eighth Circuit failed to follow a “functional approach based on consumer perception” used by the Commission for classifying communications services, and that the Eighth Circuit’s decision conflicts with a Vermont Supreme Court opinion, “that some, but not all, state regulation of information services is preempted. ‘In re Investigation into Regulation of Voice Over Internet Protocol (VoIP) Services.’ ”

BEFORE CONGRESS



HOUSE SUBCOMMITTEE HOLDS FCC OVERSIGHT HEARING

On May 15, 2019 the House Communications and Technology Subcommittee held a Commission oversight [hearing](#). Chairman [Pai](#) testified on closing the digital divide, establishment of a \$20.4 billion rural digital opportunity fund, broadband infrastructure and preventing robocalling. Commissioner [O’Rielly](#) addressed mid-band spectrum, robocalls and 911 fees; Commissioner [Carr](#) discussed steps the Commission is taking to accelerate the buildout of 5G and other broadband infrastructure; Commissioner [Rosenworcel](#) discussed net neutrality, consumer protection and public safety; and Commissioner [Starks](#) addressed broadband deployment.

BROADBAND MAPPING BILL INTRODUCED IN HOUSE

On May 9, 2019 Representatives Bob Latta (R, OH) and Peter Welch (D, VT) introduced the [Broadband Mapping After Scrutiny Act](#). The bill would require the Commission to establish a challenge process to verify fixed and mobile broadband service coverage data. [press release](#)

RURAL BROADBAND BILL INTRODUCTION ANNOUNCED

On May 22, 2019, Representatives Markwayne Mullin (R, OK) and Collin Peterson (D, MN) [announced](#) introduction of the [Rural Broadband Network Advancement Act](#). The Act seeks to promote expansion of broadband access in rural areas. According to the announcement, the Act would establish a Commission program that would collect network user fees from edge providers based on the data transported over the last mile of networks to be invested by rural broadband providers to help build, maintain and operate robust broadband networks in high-cost rural areas.

INFRASTRUCTURE BILL HEARING HELD IN HOUSE COMMITTEE

On May 22, 2019, the House Committee on Energy and Commerce held a [hearing](#) on bill [H.R. 2741](#), the “Leading Infrastructure For Tomorrow’s America Act.” The bill seeks to rebuild and modernize the nation’s infrastructure by expanding access to broadband and Next Generation 911, modernizing the electric grid and energy supply infrastructure, redeveloping brownfields and protecting public health and the environment. In her testimony, [Former FCC Commissioner Mignon Clyburn](#) stated that capital expenditures should be prioritized for communities currently without broadband capable infrastructure and determinations of where support is needed should be based on reliable and verifiable coverage maps. She also suggested the new funding provided by the proposed legislation should be restricted to those unserved areas not receiving funds from the CAF Phase II, the USDA’s ReConnect program or the upcoming rural digital opportunity fund.

DO-NOT-TRACK BILL INTRODUCED IN SENATE

Senator Josh Hawley (R, MO) has introduced a [Do-Not-Track Act of 2019](#) that would create an online equivalent of the national Do Not Call Registry. The bill would allow Internet users to prohibit websites and companies

from collecting data beyond that required to receive online services. Companies would be prohibited from profiling users who activate the do-not-track (DNT) request for targeted advertising and prohibit discriminating against those requesting DNT through denial or degradation of service or access. Additionally, companies would be prohibited from transferring DNT requesting users to other companies unless the user “expressly consents to the sharing of data in a manner that demonstrates the user's intent for the first-party operator to be an intermediary between the user and the third party.” Under the bill, the Federal Trade Commission (FTC) would be required to implement a DNT system within six months of passage through a downloadable application to “any common connected device” from an FTC website that “sends the DNT signal to every website, on-line service, or online application to which the device connects each time the device connects to such website, service, or application” and that “permits the user of the connected device to designate websites, services, or applications to which such signal should not be sent, but does not exempt any website, service, or application from receiving such signal if it is not so designated.” The Commission and state attorneys general would have enforcement authorization under the bill.

TRACED ROBOCALL BILL PASSES SENATE

On May 24, 2019, the Senate passed the bipartisan Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act ([S 151](#)) on a 97-1 vote. Under the legislation, the Commission would be authorized to impose penalties of up to \$10,000 per call for those intentionally violating telemarketing restrictions. The statute of limitations would be extended by three years for the Commission to take enforcement action against restrictions on placing unauthorized robocalls, and the Commission would be directed to adopt a requirement for voice service providers to implement a call authentication framework and to create a safe harbor for compliance within 18 months. Additionally, the Commission would be directed to initiate a rulemaking proceeding regarding subscriber protection from receiving robo-calls or unauthorized texts from a caller using an unauthenticated number. The bill would also direct the Commission to initiate a separate proceeding to review policies for access to numbering resources. An interagency working group would be established to consult with state attorneys general and to study approaches for prevention and to prosecute Telephone Consumer Protection Act violations. The working group would be directed to submit a report to Congress with recommendations. Separately, the Commission would be required to submit an annual report regarding enforcement actions against robocalling to Congress.

STATE REGULATORY NEWS



CALIFORNIA – 909 Area Code Overlay Approval Anticipated

The California Public Utilities Commission is expected to approve a draft decision that would implement a new numbering overlay for the 909 area code at its June 13, 2019 open meeting. A new area code overlay is intended resolve projected 909 area code numbering exhaustion through a 13 month implementation schedule. The 909 area code serves 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)

NEVADA – Commissioner Pongracz to Chair Commission

Nevada Governor Steve Sisolak (D) has appointed Public Utilities Commissioner Ann Pongracz as Commission chairwoman. Her terms expires September 30, 2019. Pongracz has served as a commissioner since 2016. Prior to her appointment to the commission, Commissioner Pongracz served as special counsel for the Colorado River Commission of Nevada electric services operations, and the Governor's Office of Economic Development. Commissioner Pongracz formerly served as general counsel to Sprint of Nevada.

WEST VIRGINIA – Wireless E911 Surcharge Increased

The Public Service Commission has ordered that the wireless enhanced 911 surcharge is to be increased to \$3.86 per subscriber, effective July 1, 2019. The surcharge had been set at \$3.34 per month. According to the Commission, if the enhanced 911 surcharge exceeds the statutory minimum \$3 per month wireless E-911 fee, the Commission must increase the wireless E-911 fee to the weighted average of the enhanced 911 surcharge but not by more than 25% of the wireless E-911 surcharge at the beginning of the re-specification year. In increasing the surcharge, the Commission found that

annual staff data reflected a reduction in wireline subscriptions and surcharges, resulting in a change in the weighted average enhanced 911 surcharge of \$3.86 as of March 1, 2019.

COMPLIANCE REPORTING JUNE

The following is provided exclusively for informational purposes. Reporting requirements are subject to change and should be verified by filers.

Geographic Rate Averaging and Rate Integration Certification letter were due on May 1.

FCC Form 395 - Common Carrier Annual Employment Report and Discrimination Complaint Report, May 31 (16 employees or more).

Companies should also anticipate the upcoming FCC International Report due July 31.



With the introduction of CCMI's expanded Blog, readers are invited to access CCMI's additional content, including Andy Registsky'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

10 Steps to Navigating NDAs and DPAs to Protect Your 'Secret Sauce'

By Zach Warren

A company naturally wants to make sure it protects its most valuable information. But the execution of a nondisclosure...

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