



4304 92ND AVENUE NW
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

No. 20-08

AUGUST 31, 2020

Regulatory Review

The Miller Isar, Inc. Regulatory Review is a monthly report designed to provide readers 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 NEWS



WHITE HOUSE WITHDRAWS O'RIELLY NOMINATION

On August 3, 2020, the White House [announced](#) withdrawal of Commissioner O'Rielly's nomination for a five-year term from July 1, 2019. His re-nomination was originally sent to the Senate on March 18, 2020. President Trump is expected to nominate National Telecommunications and Information Administration (NTIA) senior adviser Carolyn Roddy. Trump reportedly withdrew Mr. O'Rielly's re-nomination due to comments he made regarding the section 230 Communications Decency Act executive order that White House officials saw as critical. O'Rielly's remarks focused on the importance of the First Amendment in addressing a NTIA *Petition for Rulemaking to Clarify Provisions of Section 230 of the Communications Act* that was filed at the direction of the executive order. Ms. Roddy started at NTIA in early June. She works on broadband, spectrum, and international issues. Ms. Roddy was a member of the Trump transition FCC team following the 2016 election. Her nomination must be approved by the Senate.

FY 2020 ITSP-CMRS DATA AVAILABLE FOR VIEWING

On August 17, 2020 the Commission issued a [public notice](#) announcing that fiscal year 2020 Interstate Telecommunications Service Providers and Commercial Mobile Radio Services data are now available for viewing on the FCC's [electronic filing and payment system](#). Service providers may preview their FCC Form 159 worksheets, which identify revenue information from provider April 1, 2020 FCC Form 499-A submissions, on which fee assessments will be based. When the Commission's Fee Filer opens to accept FY 2020 regulatory fee payments, the Form 159 worksheets will reflect the FY 2020 regulatory fee amount due. CMRS providers were given until August 28, 2020 to make revisions to subscriber count so that the Commission has sufficient time to place the correct subscriber numbers in Fee Filer if amended. Revisions made after August 28, 2020 will be processed on a case-by-case basis.

USAC SUBMITS 4Q20 USF SUPPORT MECHANISMS-FUND SIZE

On July 31, 2020 the Universal Service Administrative Company (USAC) submitted the [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the fourth quarter of 2020. USAC projected the total high-cost support mechanism funding requirements to be \$1.248 billion. ([appendices](#))

USAC FILES SEVENTH UPDATE TO NATIONAL LIFELINE VERIFIER PLAN

On July 31, 2020 the Universal Service Administrative Company (USAC) filed a [seventh update](#) to the Lifeline National Verifier Plan, created in response to the 2017 Lifeline modernization [Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order](#). USAC indicated this updated version describes the systems and processes of the national verifier, provides a status of the project and details the enhancements it is pursuing to improve the system. (WC Docket Nos. 17-287, 11-42, and 09-197)

WIRELINER BUREAU ANNOUNCES LIFELINE MINIMUM SERVICE STANDARDS, INDEXED BUDGET AMOUNT

On July 31, 2020, the Wireline Competition Bureau issued a [Public Notice](#) announcing updated Lifeline minimum service standards governing speed and usage allowances for Lifeline-supported services, as required by the 2015 Lifeline [Order on Reconsideration Second Report and Order, and Memorandum Opinion and Order](#) for fixed and mobile broadband. The Commission's Lifeline order set the minimum service standard for fixed broadband service eligible for Lifeline support at 25 megabits per second downstream and 3 Mbps upstream, to become effective December 1, 2020. The updated standards represent an increase from 20 Mbps/3 Mbps in the 2020 funding year. According to the Commission's Order, if a Lifeline provider did not offer any generally available residential fixed broadband packages that meet the minimum service standard at a subscriber's residence, "the Lifeline provider may receive Lifeline support for the highest performing generally available residential fixed broadband service offering of at least 4 Mbps downstream and 1 Mbps upstream." The minimum Lifeline service standards include a 11.75 gigabyte monthly minimum data allowance for mobile broadband Lifeline service. Mobile voice telephony minimum service standard will remain unchanged at 1,000 minutes per month. The Bureau also announced the budget for federal universal service fund support for the Lifeline program in calendar year 2021 will be \$2.4 billion. (WC Docket 11-42)

CALL BLOCKING FNPRM COMMENTS DUE AUGUST 31

On July 31, 2020, the Commission's July 17, 2020 [Further Notice of Proposed Rulemaking](#) regarding additional steps to further protect consumers from robocalls and inform consumers regarding provider blocking efforts, was published in the [Federal Register](#). With *Federal Register* publication, comments are due August 31, 2020; reply comments are due September 29, 2020. [Public Notice](#) (CG Docket No. 17-59)

COMMISSION ANNOUNCES UPDATED SPEED TEST APPLICATION

On August 3, 2020, the Commission issued a [news release](#) announcing release of an updated version of its speed test application. The Commission said the updated application allows users to test their cellular and Wi-Fi network performance for download and upload speed, latency, jitter and packet loss. The application is available from the Apple App Store and Google Play. The Commission also announced [updated mobile data](#) conducted by the speed test app through the second quarter of 2020.

ZTE, HUAWEI RECONSIDERATION PETITION OPPOSITIONS DUE AUGUST 10

On August 3, 2020, the Commission issued a [Public Notice](#) announcing that ZTE Corporation filed a [petition for reconsideration](#) of the Commission's [Order](#) formally designating the Company as a "covered company" for the purpose of the Commission's November 2019 [Report and Order, Further Notice of Proposed Rulemaking, and Order](#) banning use of universal service support to purchase equipment or services from companies posing a national security threat. Parties opposing ZTE's Petition were to have filed oppositions by August 10, 2020. Reply comments were due August 17, 2020. (PS Docket No. 19-352)

Separately, on August 3, 2020, the Commission issued a [Public Notice](#) announcing that Huawei Technologies Co., Ltd. and Huawei Technologies USA, Inc. (Huawei) filed an [Application for Review](#) of the [Report and Order, Further Notice of Proposed Rulemaking, and Order](#). Parties opposing Huawei's Petition were to have filed oppositions by August 14, 2020. Reply comments were due August 24, 2020. (PS Docket No. 19-351)

SUPPLY CHAIN DECLARATORY RULING BECOMES EFFECTIVE

On August 3, 2020, the Commission's July 17, 2020 [Declaratory Ruling](#) in its Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs proceeding was published in the [Federal Register](#), making the Ruling effective on the original issue date. The [Declaratory Ruling](#), among other things, integrates provisions of the recently enacted Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) into the Commission's existing supply chain rulemaking proceeding. With *Federal Register* publication, the rule became effective on the [Declaratory Ruling](#) release date. (WC Docket No. 18-89)

SUPPLY CHAIN FURTHER NOTICE OF PROPOSED RULEMAKING COMMENTS DUE AUGUST 31

On August 10, 2020, the Commission's *Further Notice of Proposed Rulemaking* regarding integration of provisions of the Secure Networks Act into the Commission's existing supply chain proceeding was published in the [Federal Register](#). With *Federal Register* publication, comments were due August 31, 2020. Reply comments are due September 14, 2020.

RULES AMENDED TO REFLECT NEW COMMISSION HEADQUARTERS

On August 5, 2020, the Commission's Managing Director issued an [Order](#) amending Commission rules to reflect the Commission's new headquarters address, 45 L Street, NE, Washington, D.C. 20554. The *Order* was released in anticipation of the Commission's upcoming move to a new headquarters building. The order also makes changes to clarify certain documents are now available for inspection through the Commission's website; removes references to a Commission copy contractor; and makes minor formatting corrections. The rules are not effective until 30 days following *Federal Register* publication.

PROPOSED NORTH AMERICAN NUMBERING PLAN ADMINISTRATION FUND SIZE AND CONTRIBUTION FACTOR ANNOUNCED

On August 10, 2020, the Commission's Wireline Competition Bureau issued a *Public Notice* announcing the proposed North American Numbering Plan (NANP) Administration Fund size estimate and contribution factor for October 2020 through September 2021. The Fund administrator proposes a funding requirement of \$14,502,652 for Fiscal Year 2021, which includes \$6,000,000 for the Reassigned Numbers Database, and an overall contribution factor of 0.0001267. The contribution factor includes 0.0000699 to support NANP activities and 0.0000568 to support the Reassigned Numbers Database. The NANP portion of the proposed contribution factor is lower than last year's factor of 0.0000908. (Docket No. 92-237).

BROADBAND MAPPING ORDER BECOMES EFFECTIVE SEPTEMBER 17 - FNPRM COMMENTS DUE SEPTEMBER 8

On August 18, 2020, the Commission's July 17, 2020 [Second Report and Order and Third Further Notice of Proposed Rulemaking](#) in the its Digital Opportunity Data Collection and FCC Form 477 data program modernization proceedings was published in the [Federal Register](#). The order adopted specific reporting and disclosure requirements for fixed and mobile broadband availability and quality of service data, and required fixed and mobile wireless providers to submit standardized propagation maps, propagation model details and infrastructure information. With *Federal Register* publication, the order becomes effective September 17, 2020. The *Third Further Notice of Proposed Rulemaking*, requests comment on additional processes for verifying broadband availability and providing technical assistance to service providers; a process to allow consumers and other parties to challenge the accuracy of the maps; implementing the fabric of broadband-serviceable locations; and implementing other requirements of the Broadband DATA Act and proposed targeted reforms to Form 477. Comments are due September 8, 2020, reply comments are due September 17, 2020, and Paperwork Reduction Act comments are due October 19, 2020. (WC Docket Nos. 19-195, 11-10)

ANNUAL BROADBAND DEPLOYMENT NOTICE OF INQUIRY RELEASED

On August 19, 2020, the Commission released its [Sixteenth Broadband Deployment Report Notice of Inquiry](#). Through the *Notice of Inquiry*, the Commission begins its latest annual statutorily mandated assessment of progress in closing the digital divide. Section 706 of the Telecommunications Act of 1996, as amended, requires the Commission to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion" and report annually. In its 2020 Broadband Deployment Report, the Commission concluded that for the third consecutive year advanced telecommunications capabilities were being timely deployed. The Commission invites interested parties to submit comment and information to guide its analysis in the 2021 Broadband Deployment Report. The Commission proposes to maintain the current speed benchmark of 25/3 for fixed broadband and conduct an evaluation of fixed and mobile services using the same four categories for evaluation presented in the April 2020 [report](#): fixed services; mobile LTE services; fixed terrestrial and mobile LTE services; and fixed terrestrial or mobile LTE services. The Commission also asks whether mobile broadband should be treated as a functional substitute for fixed wireline broadband. Comments are due September 18, 2020; replies are due October 5, 2020. (GN Docket No. 20-269)

INSIDE WIRING PRA COMMENTS DUE OCTOBER 23

On August 24, 2020, a [notice](#) was published in the *Federal Register* requesting Paperwork Reduction Act (PRA) comments on an extension of a currently approved information collection associated with inside wiring Section 68.110 (c), Availability of Inside Wiring Information, of the Commission's rules. The Commission said the information is needed so building owners may choose to contract with an installer of their choice on inside wiring maintenance and installation services when modifying existing wiring or assisting with the installation of additional inside wiring. PRA comments are due October 23, 2020.

COMMISSION ISSUES APPLICATION FEE CHANGE NPRM

On August 26, 2020, the Commission issued a [Notice of Proposed Rulemaking](#), requesting comment on proposed amendments to the Commission's existing application fee schedule. According to the Commission, the proposed new and revised fees apply to a number of filings processed by the Commission including: applications, modifications and renewals of wireless, television and satellite licenses; applications to participate in auctions; tariff filings; formal complaints; and certain petitions. The Commission noted that the proposed changes result from modifications to the Commission's statutory application fee authority made by the RAY BAUM'S Act of 2018. Comments are due 30 days after publication in the Federal Register; replies are due 45 days after Federal Register. (MD Docket No. 20-270)

Relatedly, on August 31, 2020, the Commission issued a [Report and Order and Further Notice of Proposed Rulemaking](#), adopting a schedule of regulatory fees to assess and collect \$339 million in regulatory fees for fiscal year 2020. The schedule of regulatory fees for fiscal year 2020 appears at appendix C of the order. The *Further Notice of Proposed Rulemaking* seeks comment on four proposals from commenters to differentiate regulatory fees for different types of non-geostationary orbit satellites in future years. Comments will be due 30 days following *Federal Register* publication; Reply comments will be due 45 days following publication.

NECA SUBMITS HIGH COST LOOP SUPPORT FORMULA

On August 28, 2020, the National Exchange Carriers Association (NECA) submitted its filed its [2021 Modification of the Average Schedule Universal Service High Cost Loop Support Formula](#) to the Commission. The 2021 Modification contains proposed modifications to the formula used to calculate interstate universal service fund high cost loop expense adjustments for average schedule companies. TNECA's modifications become effective on January 1, 2021.

IN THE COURTS

NINTH CIRCUIT UPHOLDS FCC 5G INFRASTRUCTURE ORDERS

On August 12, 2020, the U.S. Court of Appeals for the Ninth Circuit (San Francisco, CA) issued an [opinion](#) denying in part consolidated [petitions for review](#) filed by several municipalities, Sprint, Verizon, AT&T and the American Public Power Association of the Commission's [2018 small cell order](#) and the [moratoria order](#), which limited municipal authority to regulate telecommunications providers, and its [one touch make-ready order](#) (OTMR), which was intended to prevent owners and operators of utility poles from discriminatorily denying or delaying 5G and broadband service providers access to the poles. The court gave the Commission deference in interpreting and enforcing the 1996 Telecommunications Act (the Act), as amended, in the three orders. The Court found that the Commission acted in accord with the congressional directive in the Act, and was not otherwise arbitrary, capricious, or contrary to law, with the exception of one provision. That exception pertained to a Small Cell Order provision regarding local government aesthetic rules. There, the Court held that to the extent that the provision required small cell facilities to be treated in the same manner as other types of communications services, the regulation was contrary to the congressional directive that allowed different regulatory treatment among types of providers, so long as such treatment did not "unreasonably discriminate among providers of functionally equivalent services." The court vacated those portions of the rule and remanded them to the FCC. [Chairman Pai](#) and Commissioner [Carr](#) issued statements.



D.C. COURT OF APPEALS SKIRTS USAC FOIA QUESTION

The U.S. Court of Appeals for the District of Columbia Circuit has avoided answering the question of whether the Universal Service Administrative Company (USAC) qualifies as a government agency under the Freedom of Information Act, and could be compelled to respond to FoIA requests. In appeals filed by Russell DeWayne Lukas separately against Commission and district court rulings regarding FoIA requests to USAC, the Court ruled that Mr. Lukas had not adequately plead a procedural violation of FoIA, because he “did not allege that the FCC had a ‘policy or practice’ of failing to timely act on applications for review in FOIA cases.” The court ruled that Lukas had forfeited any challenge to a district court’s dismissal of this claim by failing to address whether USAC is a federal agency in his case before the district court, noting, “that leaves us with the district court’s unchallenged conclusion that Lukas failed to overcome the presumption of good faith.”

DOJ – CENTURYLINK AGREE TO AMENDED LEVEL 3 FINAL JUDGEMENT OVER WIN BACK EFFORTS

The Department of Justice has announced an agreement with CenturyLink, Inc. to resolve allegations that the incumbent local exchange carrier violated a 2018 court-approved final judgment in the Department’s antitrust lawsuit against the merger of CenturyLink and Level 3 Communications, Inc., by seeking to win customers back from the purchaser of divested assets. In 2017, the Department of Justice, CenturyLink, and Level 3 reached an agreement allowing CenturyLink to divest certain Level 3 metro network assets and certain dark fiber assets. The U.S. District Court for the District of Columbia released a final judgment in 2018 directing the divestiture and prohibiting CenturyLink from soliciting customers that switched to Syringa, the buyer of the divestiture assets. CenturyLink was found to have initiated contact in more than 70 instances over more than a year with former Level 3 customers who elected to switch to the divestiture buyer in the Boise City-Nampa, Idaho metropolitan statistical area. Under the proposed amendments to Judgment, CenturyLink agrees to changes that will “extend the non-solicitation period by two years for the Boise MSA;” “strengthen the compliance provisions, including appointment of an independent monitor and imposition of certain monitoring, notice, and reporting obligations on Defendant;” “add new provisions intended to make future investigations and enforcement of the Final Judgment more effective;” and reimburse the U.S. \$250,000 to cover the fees and costs of the department’s investigation and prosecution.

BEFORE CONGRESS



HOUSE PASSES OMNIBUS BILL – BROADBAND FUNDING

The House has passed an omnibus package, HR 7617, containing appropriations that include \$60 billion in funding for broadband infrastructure grants, \$1 billion to replace communications equipment deemed a national security threat, and \$73 million to implement the Broadband DATA Act for fiscal year 2021. The measure, which passed on a 217-197 vote would also set a FY 2021 spending level for the FCC of nearly \$376.1 million and \$45.5 million for the National Telecommunications and Information Administration. Under the measure, the Commission and Federal Trade Commission would be banned from using any funds in the measure to consider or take action on an executive order signed by President Trump in May targeting social media platforms by calling for regulations to remove the liability shield from companies that censor speech to engage in political conduct.

STATE REGULATORY NEWS



CALIFORNIA – Commission Approves Wireline Competition in Thirteen RLEC Territories

The California Public Utilities Commission has authorized competitive local exchange carriers (CLECs) to operate in thirteen rural local exchange service territories as required by Section 253(a) of the Telecommunications Act of 1996. CLECs seeking to compete will be required to apply for expanded service authority, demonstrate that their service will be provided on a non-discriminatory basis, and make a “good-faith effort to serve a proportional number of residential to commercial customers, and a proportional number of low-income and non-low-income customers.” CLECs will be required to submit service territory maps end-user locations, and network architecture to be used to the Commission. Additionally, CLECs will be required to make their service available for resale on a nondiscriminatory basis, provide Lifeline services to eligible customers, provide 911 and/or E911 services, and comply with Commission consumer

protection rules, including the Consumer Bill of Rights Governing Telecommunications Services. The order applies to the territories served by Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., Siskiyou Telephone Co., Volcano Telephone Co., Happy Valley Telephone Co, Hornitos Telephone Co., and Winterhaven Telephone Co. (Rulemaking 11-11-007).

COLORADO – Commission to Consider 303/720 Overlay Plan

A Colorado Public Utilities Commission administrative law judge has been assigned in the case to consider the North American Numbering Plan administrator (NANPA) petition for approval of an all-services overlay for relief for the "303/720" numbering plan area (NPA). According to NANPA, numbers in the 303/720 NPA are projected to be exhausted by second quarter 2023 unless a new overlay NPA is adopted. Parties in the proceeding were directed to develop and submit an overlay implementation plan within 45 days following release of the Commission's decision. The 303/720 NPA covers the north-central portion of Colorado which includes the Denver metropolitan area and the cities of Aurora, Boulder, Brighton, Castle Rock, Columbine, Englewood, Erie, Highlands Ranch, Lakewood, Littleton, Longmont, Thornton, Westminster, and Wheat Ridge. (Docket 20V-0192T).

COLORADO – Commission Proposes 911 Surcharge – Telephone Charge Threshold

The Colorado Public Utilities Commission has initiated a new proceeding to implement HB 1293 governing 911 surcharge thresholds. Under the new law, the Commission is to establish a local emergency telephone charge threshold, a statewide 911 surcharge, a prepaid wireless 911 charge, and a formula for distribution of money from the statewide 911 surcharge by October 1, 2020. The surcharges and threshold become effective January 1, 2021. HB 1293 changed 911 surcharge requirements from a statutory cap on municipal emergency 911 surcharge to a threshold amount that would set by the Commission. The prepaid wireless 911 surcharge is now to be establish by the Commission based on the average amount of the emergency telephone charges imposed by municipal 911 jurisdictions. Additionally, the Commission is to promulgate dispute resolution rules associated with collection, remittance, payments and audits, and to impose non-compliance penalties. Under interim Commission rules, the authorized threshold amount is \$0.70 a month per 911 access connection through the end of the year. The Commission proposes that the emergency telephone surcharge threshold be set at \$1.72, and \$1.38 a month for prepaid wireless services, by October 1, effective January 1, 2021. Additionally, the Commission proposes that the 911 surcharge apply to every telephone bill in the state, with the exception of prepaid wireless service. Comments on the Commission's proposed surcharge thresholds and formula are due September 16, 2020 and reply comments due September 21, 2020. (Docket 20M-0337T)

INDIANA – CV-19 Utility Extended Payment Requirement Continued

The Indiana Regulatory Utility Commission has extended a requirement that all utilities offer extended payment arrangements to their customers until October 12, 2020 in light of the continued COVID-19 Pandemic. The Commission's original payment extension expired on August 14. The Commission also extended suspension of certain utility fees, including late fees, deposits, and disconnection/reconnection (Cause No. 45380).

PENNSYLVANIA – Commission Initiates Telecommunications Rulemaking

The Pennsylvania Public Utility Commission has initiated a rulemaking proceeding to address proposed telecommunications rule amendments that would create greater parity between regulated and unregulated competitors. According to the Commission, proposed rulemaking seeks to "identify common interests and concerns; reasonably balance competing interests; craft amendments that acknowledge today's telecommunications market but do not require or rely upon formal competitive analyses or designations under Chapter 30; and propose modified regulations that are more equitable for the industry, sufficiently protective for consumers, and structurally feasible for both staff and the industry." The Commission's rulemaking follows comments filed in 2018 and a 2015 decision on a Verizon Pennsylvania LLC and Verizon North LLC petition in which the Commission determined that Verizon's basic local exchange service was competitive in 153 wire centers in seven geographical areas. The decision granted Verizon a five-year waiver of certain regulations, data collection and the completion of a rulemaking. The commission extended the waivers until December 2022, or until a rulemaking is completed. Proposed

amendments are based on recommendations made by commission staff and include revised definitions for the “wire centers” and “telecommunications service,” eliminate current “mandatory reporting requirements,” clearer rules on service requirements and attendant record keeping, revised complaint procedures, and extension of the Commission’s policy on printing and distributing directories to all carriers, among other amendments. Comments are due within 45 days and reply comments are due 30 days following issuance of the Commission’s rulemaking proceeding order. ([Docket L-2018-3001391](#))

REPORTING DUE IN SEPTEMBER

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 SEPTEMBER

September 1	FCC Form 477
September 30	FCC Form 492
September 30	FCC Form 507 (2Q)
September 30	High Cost Loop 2nd Quarter Forms & Certifications
September 30	Universal Service Support "Use" Certification

Copies of FCC forms are available on the Internet at: <http://www.fcc.gov/formpage.html>.

For additional information, please contact Andrew Isar at [aisar@ millerisar.com](mailto:aisar@millerisar.com), or call 253.851.6700