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Regulatory Review

The Miller Isar, Inc. Regulatory Review is a monthly report designed to provide clients and industry 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



NEW FCC HEADQUARTERS RULE AMENDMENTS EFFECTIVE OCTOBER 13

On October 13, 2020, the Commission's August 4, 2020 [Order](#) amending its Rules of Practice and Procedure to reflect the Commission's new headquarters address, 45 L Street, NE, Washington, D.C. 20554, in anticipation of the Commission's upcoming move, was published in the [Federal Register](#). The [Order](#) also adopts amendments 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. With [Federal Register](#) publication, the amended rules became effective October 13, 2020. On October 15, 2020, the Commission issued a [Public Notice](#) to announce the move. The [Public Notice](#) noted that nothing in the [Order](#) or [Public Notice](#) alters the Commission's current prohibition against the delivery of hand-carried documents to its headquarters location due to the CV-19 pandemic, nor does it change other ongoing pandemic restrictions or instructions regarding access to Commission facilities.

NPRM ON TELEPHONE CONSUMER PROTECTION ACT IMPLEMENTATION RELEASED

On October 1, 2020, the Commission released a [Notice of Proposed Rulemaking](#) (NPRM) seeking comments regarding additional rules to implement the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, the Commission proposed rules to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act ([TRACED Act](#)). In its NPRM, the Commission, among other things, sought comment on how to ensure that any exemption adopted pursuant to sections 227(b)(2)(B) or (C) of the TRACED Act includes requirements regarding: (1) the classes of parties that may make certain calls; (2) the classes of parties that may be called; and (3) the number of such calls that may be made to a particular called party. The Commission noted that it is also mindful of protecting individual privacy interests without preventing calls consumer want and requests comment on "any conditions that are necessary to ensure that the existing exemptions for calls made to residential telephone lines satisfy section 8 and propose to allow residential consumers to opt out of any calls made pursuant to an exemption." On October 9, 2020, the [Notice of Proposed Rulemaking](#) was published in the [Federal Register](#). With [Federal Register](#) publication, Comments were due on October 26, 2020; reply comments are due November 3, 2020. (CG Docket No. 02-278)

COMMENTS ON CALLER ID AUTHENTICATION REQUESTED

On October 1, 2020, the Wireline Competition Bureau issued a [Public Notice](#), requesting comment on the extent to which providers of voice service have implemented caller ID authentication frameworks in the IP and non-IP portions of their networks, and on the efficacy of those frameworks in addressing all aspects of caller ID authentication. The Bureau will use collected information to prepare a report to Congress pursuant to the T Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act ([TRACED Act](#)). Comments are due October 16, 2020; replies are due October 26, 2020. (WC Docket No. 20-323)

CALLER ID AUTHENTICATION INFORMATION COLLECTION PRA COMMENTS DUE OCTOBER 29

On October 8, 2020, a Commission notice seeking Paperwork Reduction Act (PRA) comments on a new information collection associated with caller ID authentication exemptions adopted by the Commission was published in the [Federal Register](#). The information collection resulted from the Commission's October 1, 2020 [Second Report and Order](#) which adopted rules governing intermediate providers and caller ID authentication in non-IP networks, implemented exceptions and extensions established by the TRACED Act, and prohibited line-item charges for caller ID authentication. The Commission established two exemptions: one for a voice service provider's IP networks if the provider meets all four statutory criteria for all calls it originates or terminates in SIP; and one for a voice service provider's non-IP networks if the provider meets both statutory criteria for all non-SIP calls it originates or terminates. The information received through the certification process adopted under the *Second Report and Order* will permit the Commission to determine which voice service providers qualify for one or both of these exemptions by the TRACED Act's statutory deadline of December 30, 2020. With *Federal Register* publication, PRA comments were due October 29, 2020. (WC Docket No. 17-97)

COMMENTS ON NANC CALL AUTHENTICATION BEST PRACTICES DUE OCTOBER 16

On October 1, 2020 The Wireline Competition Bureau issued a [Public Notice](#) requesting comment on a North American Numbering Council's (NANC) [report](#) providing recommendations for call authentication best practices by the NANC Call Authentication Trust Anchor working group. Comments were due October 16, 2020; replies were due October 26, 2020.

RDOF PHASE I AUCTION EDUCATIONAL MATERIALS RELEASED

On October 2 2020, the Rural Broadband Auctions Task Force, Office of Economics and Analytics, and Wireline Competition Bureau issued a [Public Notice](#) announcing availability of educational materials for the Rural Digital Opportunity Fund Phase I auction. These materials include a bidding system user guide, online tutorial, and file formats document. The materials are available in the Education section of the [Auction 904 website](#). (AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90)

COMMISSION RELEASES GIS DATA FOR RDOF AUCTION

On October 21, 2020, the Wireline Competition Bureau, Office of Economics and Analytics, and the Rural Broadband Auctions Task Force issued a [Public Notice](#) to announce release of a census block group and identifier file for use in the bidding system included in RDOF Phase I Auction 904. According to the Bureau and Task Force, the data is not new but the format may be useful for bidders. The Bureau and Task Force also announced that the geographic information system files accompanying Auction's [eligible areas map](#) have been reprocessed to correct a display issue regarding a small subset of census blocks split by tribal land boundaries. The reprocessed data is available on the [Auction 904 website](#).

RESPONSE TO DATED PENDING ROBOCALL PETITIONS DUE NOVEMBER 20

On October 6, 2020, the Commission released a [Public Notice](#) seeking to determine petitioners' continuing interest on ten pending petitions that had asked the Commission to preempt state protections against unwanted robocalls and faxes. According to the Commission, the petitions were filed between 2003 and 2005, have not been subject to any advocacy for several years, and the requested relief appears to be moot or otherwise no longer relevant in light of both federal and state regulatory changes that have occurred since the Petitions were filed. The Commission stated

that unless petitioners take action by November 20, 2020, the petitions will be dismissed. With [Federal Register](#) publication on October 6, 2020, responses are due November 20, 2020. (CG Docket No. 02-278)

AMENDED ADMINISTRATIVE HEARING PROCEDURAL RULE EFFECTIVE NOVEMBER 5

On October 6, 2020, the Commission's September 14, 2020 [Report and Order](#) adopting amendments to its procedural rules governing administrative hearings was published in the [Federal Register](#). The amendments expand use of a process that relies on written testimony and documentary evidence in lieu of live testimony and cross-examination, and authorizes Commission staff to act as a case manager to supervise development of the written hearing record when the Commission designates itself as the presiding officer at a hearing. The amendments also dispensed with the preparation of an initial opinion whenever the record of a proceeding can be certified to the Commission for final decision. With [Federal Registration](#) publication, the order becomes effective November 5, 2020. (EB Docket No. 19-214).

PHYSICAL COLLOCATION PRA COMMENTS DUE DECEMBER 8

On October 9, 2020, a notice was published in the [Federal Register](#) seeking Paperwork Reduction Act (PRA) comments on an extension of a currently approved information collection relating to implementation of sections 201 and 251 of the 1996 Telecommunications Act to provide for physical collocation on rates, terms and conditions that are just, reasonable and non-discriminatory, and to promote deployment of advanced telecommunications services without significantly degrading the performance of other services. With [Federal Register](#) publication, PRA comments are due December 8, 2020.

COMMISSION CORRECTS POLE ATTACHMENT RULE

On October 9, 2020, the Commission a notice was published in the [Federal Register](#) revising section 1.1413(b) (complaints by incumbent local exchange carriers) contained in the Commission's August 3, 2018 [Third Report and Order and Declaratory Ruling](#) regarding pole attachments, previously published in the September 14, 2018 [Federal Register](#). The Commission corrected an error in a cross-reference contained in section 1.1413(b). This correction is effective October 9, 2020. (WC Docket No 17-84, WT Docket No. 17-79)

8YY ACCESS CHARGE REFORM ORDER RELEASED

On October 9, 2020, the Commission released its 8YY (toll free) access charge reform [Report and Order](#). The Commission moved 8YY originating end office access charges to bill-and-keep over a three year period, and, as a transitional step toward bill-and-keep, combined 8YY originating transport and originating tandem switching into a single nationwide tandem switched transport access service rate capped at \$0.001 per minute. The Commission also transitioned charges for the 8YY database queries needed to route all 8YY calls to \$0.0002 over three years and prohibited carriers from charging for more than one such query per call. Carriers are authorized to rely on existing cost recover mechanisms to recover lost revenue. [News Release](#) (WC Docket No. 18-156)

COMMISSION AFFIRMS ITS BUSINESS DATA SERVICE ORDER

On October 9, 2020, the Commission issued its [Order on Review](#) affirming its March 30, 2017 [Order](#) regarding proper application of its "Ten Percent Rule" for business data service (private line) revenue allocation for determining universal service fund contributions, following [XO Communications Services, Inc.](#) and [TDS Metrocom, LLC](#) petitions for review. The Commission's 2017 [Order](#) found that the Universal Service Administrative Company had properly applied the Commission's long-standing Ten Percent Rule in allocating business data service revenues on appeal from several carriers. The Ten Percent Rule establishes that the costs of mixed-use private or WATS lines be directly assigned to the intrastate jurisdiction when interstate traffic amounts to ten percent or less of total traffic on the line, and to the interstate jurisdiction when interstate traffic exceeds ten percent under Section 36.154 of the Commission's rules. In affirming the 2017 [Order](#), the Commission concluded that its, "decision ensuring that our filing requirements are adhered to by all contributors helps to safeguard the integrity of the Fund, resulting in a more stable funding base for the preservation and advancement of universal service." The

Commission did grant XO Communications Services, Inc. and TDS Metrocom, LLC requested rule waivers. (CC Docket Nos. 96-45 and 97-21, WC Docket No. 06-122)

COMMISSION REAFFIRMS REMANDED PORTIONS OF RESTORING INTERNET FREEDOM ORDER

On October 27, 2020, the Commission reaffirmed its 2017 *Restoring Internet Freedom Order* on remand from the U.S. Court of Appeals for the District of Columbia Circuit. When the Court upheld the Commission's *Restoring Internet Freedom Order* in 2019, it directed the Commission to evaluate any impacts that its reclassification of broadband as an information service and elimination of conduct rules might have on public safety, pole attachment regulations, and the inclusion of broadband in the universal service Lifeline program. In its [Order on Remand](#), the Commission concluded that after thoroughly reviewing the record compiled in response to its request for additional comment on the issues, the it found no basis to alter its conclusions from the *Restoring Internet Freedom Order*. The Commission found that the *Restoring Internet Freedom Order* promotes public safety, facilitates broadband infrastructure deployment by Internet service providers, and allows the Commission to continue providing Lifeline support for broadband Internet access service. Democratic Commissioners Jessica Rosenworcel and Geoffrey Starks, dissented.

On September 30, 2020, New America's Open Technology Institute submitted its July 2020 [The Cost of Connectivity](#) report in the Commission's proceeding refreshing the record in the restoring internet freedom and Lifeline proceedings. The Institute says that the Report shows the cost of broadband service is higher in the United States than in Asia or Europe. (WC Docket No. 17-108, 17-287, 11-42)

COMMISSION ENDS ILEC BUSINESS DATA SERVICE UNBUNDLING AND RESALE OBLIGATIONS

On October 27, 2020, the Commission eliminated incumbent local exchange network unbundling requirements for business data services. The Commission's [Report and Order](#), "eliminated unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide." The Commission did preserve unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition. Additionally, the Commission unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, with an eight-year transition period for existing circuits, to avoid stranding investment and last-mile deployment by competitive local exchange carriers that may harm consumers. According to the Commission, "we end unbundling and resale requirements where they stifle technology transitions and broadband deployment, but preserve unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans." [Press Release](#) (Docket No. 19-308)

IN THE COURTS

NINTH CIRCUIT DENIES EN BANC SMALL CELL OTMR RULING REHEARING

On October 22, 2020, the U.S. Court of Appeals for the Ninth Circuit (San Francisco), [denied](#) in part [petitions for en banc review](#) of a three-judge panel [opinion](#) upholding the Federal Communications Commission's September 27, 2018 [Declaratory Ruling and Third Report and Order](#) and August 3, 2018 [Third Report and Order an Declaratory Ruling](#) "adopting a new pole attachment process that includes "onetouch make-ready" (OTMR), in which the new attacher performs all make-ready work." In an order in *City of Portland v. USA* (consolidated cases beginning with 18-72689), the court denied petitions filed by localities and the [American Electric Power Service Corporation and Southern Company](#), the [American Public Power Association](#) and the [City of Albuquerque, New Mexico, et al.](#) and a petition for panel rehearing filed by the American Electric Power Service Corp. and Southern Company. Localities are meeting to determine the level of support for a petition for a *writ of certiorari* with the Supreme Court.



STATE REGULATORY NEWS



COLORADO – Commission Establishes 911 Surcharge Threshold

The Colorado Public Utilities Commission has established a new emergency telephone surcharge threshold for the State’s 911 surcharge, a prepaid wireless surcharge, and a formula for fund distribution to implement a new law. The law enacted through HB1293, amended amended requirements for surcharge collection from a statutory cap to a Commission set threshold. Formerly, municipalities could impose a 911 surcharge up to the statutory cap with Commission approval if exceeding a Commission threshold amount. The new law requires the Commission to establish the capped surcharge amount based on the average amount of the emergency telephone charges imposed by local governing bodies and the amount of the surcharge. The law also authorized the Commission to promulgate rules regarding collection, payment, remittance, and audit of the emergency telephone charge and 911 surcharge dispute resolution, and to impose penalties for noncompliance with certain statutory provisions and commission rules. The Commission’s new rules establish: “(1) an authorized emergency telephone charge threshold of \$1.72; (2) a statewide 911 surcharge of \$0.10; (3) a prepaid wireless 911 charge of \$1.38; and (4) a distribution formula through which the commission will distribute funds from the statewide 911 surcharge, less administrative costs to be determined by the commission but not exceeding 4%, to each 911 governing body in amounts proportional to the number of concurrent sessions each 911 governing body maintains at its public safety answering points (PSAPs) as a percentage of the total number of concurrent sessions in the state.” The new rules become effective January 1, 2021. (Docket 20M-0337T)

COMPLIANCE REPORTING

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 NOVEMBER

FCC Form 499Q *de minimis* determination notice due November 1 and *ad hoc* as may apply.

FCC Form 499-Q Telecommunications Reporting Worksheet (Quarterly) due November 1.

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