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Regulatory Review

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



1Q21USF SUPPORT MECHANISMS SIZE PROJECTION SUBMITTED

On November 2, 2020, the Universal Service Administrative Company (USAC) submitted its [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the first quarter of 2021. USAC projects that the total high-cost support mechanism funding requirements will be \$1.359 billion.

PAI TO DEPART FCC

On November 30, 2020, Federal Communications Commission Chairman Ajit Pai announced that he intends to leave the Federal Communications Commission on January 20, 2021. [Release](#)

CPNI INFORMATION COLLECTION PRA COMMENTS DUE DECEMBER 3

On November 3, 2020, the Commission published a [notice](#) in the *Federal Register*, requesting Paperwork Reduction Act (PRA) comments on extension of a currently approved collection associated with customer proprietary network information. PRA comments are due December 3, 2020.

WIRELESS STRUCTURE MODIFICATIONS REPORT AND ORDER RELEASED

On November 3, 2020, the Commission released the [Report and Order](#) implementing amendments to its wireless modification request rules under Section 6409a) of the Spectrum Act of 2012, adopted during the Commission's October 27, 2020 Open Meeting. The *Report and Order* implements rule amendments to facilitate collocation of antennas and associated ground equipment subject to streamlined state and local review of modifications that involve limited ground excavation or deployment. The Commission notes that while recognizing the role of state and local governments in land use decisions, the Commission revises its section 6409(a) rules to provide that excavation or deployment in a limited area beyond site boundaries would not disqualify the modification of an existing tower from streamlined state and local review on that basis. (WT Docket No. 19-250, RM-11849)

FCC FORM 477 DATA RELEASED

On November 12, 2020, the Commission's Office of Economics and Analytics, Wireline Competition Bureau and Wireless Telecommunications Bureau issued a [Public Notice](#) announcing release of updated data on fixed broadband deployment and mobile voice and broadband deployment as of December 31, 2019. The data is taken from FCC Form 477 submissions. [Fixed deployment data](#) includes revisions made by filers through October 8, 2020, and [mobile](#)

[deployment data](#) includes revisions made by filers through May 28, 2020. Additional information is available on the Commission's FCC Form 477 Resources webpage at www.fcc.gov/form477. [news release](#) | [Commissioner Carr statement](#)

FCC CIRCULATES TRACED ACT SECTION 10(A) NPRM

On November 12, 2020, the Commission [circulated](#) a *Notice of Proposed Rulemaking* regarding implementation of Section 10(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. The *Notice of Proposed Rulemaking* is pending Commission release. (See *National Law Review* TRACED Act [Implementation Timelines](#)) CG Docket No. 02-278

FISCAL YEAR 2020 FINANCIAL REPORT RELEASED

On November 16, 2020, the Commission released its fiscal year 2020 [agency financial report](#). The financial report contains performance information regarding Commission action during the 2020 fiscal year. Chairman Pai said under that during his tenure as Chairman, the Commission has acted to link its mission to its strategic goals, including: closing the digital divide; promoting innovation; protecting consumers and public safety; and reforming Commission processes. According to Pai, the Commission has received an unmodified opinion on its financial statements from the Office of Inspector General's independent auditors for the 15th straight year the.

BIDEN ANNOUNCES COMMISSION TRANSITION REVIEW TEAM

On November 16, 2020, the Biden-Harris Transition team [announced](#) that John Williams; former FCC Commissioner Mignon Clyburn; Edward Smith; and Paul de Sa will be members of the Commission agency review team.

CALLER ID AUTHENTICATION ORDER EFFECTIVE DECEMBER 17

On November 17, 2020, the Commission's October 1, 2020 [Second Report and Order](#) in its call authentication trust anchor proceeding, was published in the *Federal Register*. The *Second Report and Order* adopted rule amendments supporting caller ID authentication technology deployment to stop spoofed robocalls. A [Public Notice](#) was also released on November 17, 2020, stating that the Office of Management and Budget had approved the exemption from the Commission's June 30, 2021 caller ID authentication implementation deadline for voice service providers adopted under the *Second Report and Order* on November 2, 2020. The *Second Report and Order* becomes effective December 17, 2020. The rule amendments are included at Sections 64.6300 to 64.6307 of the Commission's rules. Amendments to instruction 10 (Section 64.6306) became effective November 17, 2020. Instructions six (Section 64.6303(b)), nine (Section 64.6305(b) and (c)), and 11 (Section 64.6306(e)) are delayed indefinitely. The Commission will announce the effective date of these instructions in the *Federal Register* when established. On November 18, 2020, the Commission issued an [erratum](#) to the Second Report and Order, amending the final rules in appendix A to conform to the publishing conventions of the *Federal Register*. (WC Docket No. 17-97)

STIR/SHAKEN FRAMEWORK ANNOUNCED

On November 18, 2020, the Wireline Competition Bureau issued a [Public Notice](#), announcing that the Secure Telephone Identity Governance Authority had issued an update to its service provider code Token Access Policy. Under the revised policy, an entity will no longer need direct access to telephone numbers to participate in the STIR/SHAKEN caller ID authentication framework. The revised policy requires an entity to be listed in the Commission's upcoming robocall mitigation database. (WC Docket No. 17-97)

NATIONAL LIFELINE VERIFIER DEPLOYED IN CALIFORNIA

On November 18, 2020, Wireline Competition Bureau released a [Public Notice](#) announcing initiation of the national Lifeline eligibility verifier in California. The Bureau noted that beginning the national verifier will take responsibility for eligibility verification for all new subscribers of standalone broadband service, beginning December 18, 2020. Eligible Telecommunications Carriers must cease using legacy eligibility processes for these subscribers. The national verifier will also reverify existing subscribers of standalone broadband service to ensure federal Lifeline discount eligibility. (WC Docket No. 11-42)

CONSUMER BROADBAND SERVICES TESTING AND MEASUREMENT PRA COMMENTS DUE DECEMBER 24

On November 24, 2020, the Commission’s notice seeking Paperwork Reduction Act (PRA) comments on an extension of a currently approved information collection relating to consumer broadband services testing and measurement was published in the [Federal Register](#). With *Federal Register* publication, PRA comments are due December 24, 2020.

5G RURAL AMERICA FUND RULES BECOME EFFECTIVE DECEMBER 28

On November 25, 2020, the Commission’s October 29, 2020 [Report and Order](#) in its establishing a 5G fund for rural America proceeding, was published in the [Federal Register](#). Following *Federal Register* publication, the *Report and Order* becomes effective on December 28, 2020, with exception of certain amendments to sections 1.21001, 1.21002, 54.313, 54.322, 54.1014, 54.1016, 54.1018, 54.1019 and 54.1020, which are delayed. A separate notice will be published in the *Federal Register* announcing when those section amendments become effective. (GN Docket No. 20-32)

GAO ISSUES 5G RECOMMENDATIONS

On November 24, 2020, the Government Accountability Office issued its [5G Wireless: Capabilities and Challenges for an Evolving Network](#) technology assessment to Congress. The assessment addresses how the performance goals and expected uses can be realized in U.S.: 5G wireless networks; challenges that could affect the performance or usage of 5G wireless networks in the U.S.; and policy options to address these challenges.

COMPETITIVE BIDDING PROCESS INFORMATION COLLECTION PRA COMMENTS DUE JANUARY 25

On November 24, 2020, the Commission published a notice in the [Federal Register](#), requesting Paperwork Reduction Act (PRA) comments on a revision of a currently approved information collection on the competitive bidding process. The requested information will be used by the Commission to determine whether applicants are eligible to participate in auctions for universal service fund support. PRA comments are due January 25, 2021.

IN THE COURTS

COMMISSION UNE FORBEARANCE ORDER UPHeld

On November 3, 2020, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission’s August 2, 2019 [Memorandum Opinion and Order](#) granting U.S. Telecom’s petition for forbearance from the 1996 Telecommunications Act’s analog loop unbundling and resale obligations on appeal from [INCOMPAS](#) and the [California Public Utilities Commission](#). The Court concluded that the Commission had correctly found that incumbents face significant and increasing intermodal competition for voice services, and their former market dominance had been significantly reduced as a result. Circuit Judge David S. Tatel concluded, “Rather than the near-complete monopoly that incumbents had as recently as 1996, now incumbents account for just 12% of all voice connections (both wired and mobile voice plans) and 37% of all wireline telephone connections (the subset of all voice connections that are physical rather than wireless—e.g., TDM [time division multiplexed] copper, cable, and fiber). Lines sold through the unbundled copper loops account for less than 0.5% of all voice connections (less than 2% of wireline connections) and resold lines account for just over 1% of all voice connections (3% of wireline connections). Further, the Commission found that next-generation voice services like mobile phones and Voice Over Internet Protocol (VoIP) services are rapidly growing, whereas traditional copper wire voice services are declining in both market share and in absolute terms.” Regarding the California Public Utilities Commission’s concerns that forbearance would jeopardize emergency communications, Judge Tatel wrote, “As we have observed, that is up to the decision of the incumbents, who can, if they wish, discontinue the use of copper networks. California is nevertheless correct that the FCC’s Order did not explicitly respond to California’s contention that the Order could have a negative impact on public safety... This omission presents a troubling problem for the FCC, as we recognized the FCC’s statutory mandate to consider public safety in a previous case. ...The Commission may not subsequently assert that public safety issues were redundant of other issues that were addressed — that would be an off-limits post hoc rationalization. ...Were it not for exceptional circumstances, the Commission’s failure to address public safety considerations — which is an error — would require a remand... However, California has essentially conceded the issue, which makes a remand pointless. At oral argument, CPUC ultimately admitted that the Order would not reduce the availability of line-powered TDM copper. And, as the FCC pointed out in its brief, California is itself migrating its legacy 9-1-1 system to an IP-based communication system. The California Office of Emergency Services, the very state agency responsible for emergency



preparedness, explained (apparently shortly before the Commission’s Order issued) that incorporating next-generation networks would increase the safety and reliability of California’s 9-1-1 system. CPUC did not dispute these statements. We would normally not take into account this non-record information, particularly when the information is subsequent to the promulgation of the rule. However, this is an unusual situation, where we actually have Petitioner’s admission contrary to — or at least severely undermining — its position in its Brief. In other words, the FCC’s error was not prejudicial. ... Given that CPUC effectively conceded that greater consideration of public safety would not change the outcome, we think a remand on this issue unnecessary.” Judge Tatel concluded that the FCC’s analysis of both the unbundling and wholesale pricing issues focuses on market conditions, and the petitioners’ challenges before the court “overlap, except that CPUC presents a safety argument regarding the 9-1-1 system which we are obliged to deal with separately. Petitioners contend that somehow it was inappropriate to analyze both requirements in similar fashion, but we think there is absolutely no merit to this contention because the concerns that justify the Commission’s forbearance of the two provisions are essentially the same.” The court rejected arguments that FCC must use the same analytical framework in different forbearance proceedings, noting that the court previously found the FCC is “free to tailor the forbearance inquiry to the situation at hand.” (Case 19-1164)

BEFORE CONGRESS



SENATE COMMERCE COMMITTEE TO REVIEW FCC COMMISSIONER NOMINATIONS

On November 24, 2020, the Senate Committee on Commerce, Science and Transportation [announced](#) that it will hold an executive session on December 2, 2020, to consider presidential nominations for FCC Commissioner to replace Commissioner O’Rielly. Among the candidates is

Nathan Simington, who, if confirmed, would take office with a five-year term from July 1, 2019, when Commissioner O’Rielly’s term officially ended.

STATE REGULATORY NEWS



CALIFORNIA – COMMISSION DIRECTS PROVIDERS TO COMPLY WITH DRAFT CV-19 RESOLUTION

On November 23, 2020, the California Public Utilities Commission issued a notice to state service providers requesting that providers comply with draft Resolution M-4848 - Approval of Moratorium on disconnection for Non-Payment and Fees Late Payment for Telephone Service During the Governor’s Declared State of Emergency Due to the COVID-19 Pandemic – in anticipation of formal adoption on December 17, 2020. The draft resolution, among other things, requires providers to apply the moratorium on telephone disconnections for non-payment and fees for late payment for residential and small business voice services customers – business customers with five lines or less and prohibits sending residential and small business voice services customers late fee or disconnection notices during the pendency of the moratorium. Providers are to submit Tier 2 advice letters “describing all reasonable and necessary actions to implement the moratorium to support California residential and small businesses voice services customers” upon formal adoption of the Resolution. Additional information is available on the Commission’s [COVID-19 web site](#).

MAINE – COMMISSION ESTABLISHES LATE PAYMENT CHARGE INTEREST AND DEPOSIT RATES

On November 23, 2020, the Maine Public Utilities Commission established the maximum Late Payment Charge utilities may charge for 2021. The new fee is 3.25%, based on the Prime Interest Rate on the first business day in November (November 2, 2020). On November 18, 2020, the Commission waived its rule requirement that 800 basis points be added to the prime rate. For utilities choosing to compound, the equivalent monthly maximum late payment charge for 2021 will be 0.267%. In Docket No. 2014-00065, the Commission revised its rules to require that the interest rate on all deposits held by a utility shall equal the rate on one-year Treasury Securities reported in the Federal Reserve’s H.15 Statistical Release in effect the first business day in November (November 2, 2020) or a floor of 0.20%. The one-year Treasury Securities rate on November 2, 2020 was 0.13%; the rate payable on customer deposits for 2021 will be the floor of 0.20%. (Docket No. 2020-00312)

NEW MEXICO – NEW PER-CONNECTION USF SURCHARGE SET FOR 2021

The New Mexico Public Regulation Commission has adopted a per-connection surcharge of \$1.08 per communication connection for 2021. According to the Commission, final rules regarding computation of the State Rural Universal Service Fund were recently adopted. The commission continued the current freeze of the residential benchmark rate at \$18.00 in the near term, until any docket is opened and concluded for determination of a residential benchmark rate. (Case 20-00153-UT)

OREGON – COMMISSION DECREASES STATE UNIVERSAL SERVICE FUND SURCHARGE

The Public Utility Commission of Oregon has ordered a reduction of the Oregon Universal Service (OUS) surcharge rate to five percent from the current eight and a half percent, effective January 1, 2021. The reduction complies with new statutory limits on the contribution base. Senate Bill 1603 extended the contribution base to include retail commercial mobile radio services and retail interconnected voice-over-Internet protocol services and lowered the surcharge cap from eight and a half percent to six percent. The law limits the size of the fund to \$28 million and provides for a transfer to the state broadband fund. (UM 1594)

To our readers, we wish you the joy of the Holiday season.