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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



#### SIMINGTON SWORN IN AS COMMISSIONER

On December 14, 2020, Nathan Simington was [sworn in](#) as Federal Communications Commission commissioner. Simington replaced Commissioner O’Rielly, and his term is for five years from July 1, 2019. Simington formerly served in the National Telecommunications and Information Administration. The Senate [confirmed](#) Simington’s nomination on December 8, 2020.

#### FEDERAL USF 1Q21 CONTRIBUTION FACTOR HITS RECORD 31.8%

On December 14, 2020, the Office of Managing Director released a [Public Notice](#) to announce the proposed universal service contribution factor for the first quarter of 2021 will be 31.8%, up from the previous quarter’s 27.1%. This sets an all time record for the highest universal service fund contribution factor ever. The contribution factor is based on the Universal Service Administrative Company’s [Federal Universal Service Support Mechanisms Quarterly Contribution Base](#) for first quarter 2021 filed on December 2, 2020. (CC Docket No. 96-45)

#### 2021 FCC FORM 499A TELECOMMUNICATIONS REPORTING WORKSHEET-INSTRUCTIONS RELEASED

On November 30, 2020, the Commission issued a [Public Notice](#) to announce release of the 2021 FCC Form 499A and FCC Form 499Q Telecommunications Reporting worksheet and instructions. The FCC Form 499A is to be used to report calendar year 2020 revenues on or before April 1, 2021. The FCC Form 499Q is used to report quarterly revenues for the previous quarter and projected revenues for the coming quarter. (Docket No. 06-122)

#### 8YY ACCESS REFORM ORDER EFFECTIVE DECEMBER 28

On November 27, 2020, the Commission’s October 9, 2020 8YY access charge reform [Report and Order](#) was published in the [Federal Register](#). With *Federal Register* publication, amended rules listed in Appendix A to the *Report and Order* became effective December 28, 2020. Sections 51.907(i) through (k) (transition of price cap carrier access charges), 51.909(l) through (o) (transition of rate-of-return carrier access charges), and 51.911(e) (access reciprocal compensation rates for competitive local exchange carriers are to become effective later. A notice will be published in the *Federal Register* announcing the effective date for those Sections. On November 27, 2020, the Wireline Competition Bureau issued a [second erratum](#) to the *Report and Order* making additional rule amendments. The Commission also issued a [Small Entity Compliance Guide](#) providing guidance on compliance requirements, recordkeeping and reporting requirements associated with the *Report and Order*. (WC Docket No. 18-156)

## **SECOND ERRATUM TO COMMISSION 5G FUND ORDER ISSUED**

On November 27, 2020, the Wireline Competition Bureau issued a [Second Erratum](#) to its October 29, 2020 [Report and Order](#) the Commission's establishing a 5G fund for rural America proceeding. The erratum further amends the final rules in appendix A of the Report and Order, codified beginning at Section 54.1011 of the Commission's rules. (GN Docket No. 20-32)

## **ONE-RING ROBOCALL SCAM BLOCKING ORDER ISSUED**

On November 30, 2020, the Commission released a [Report and Order](#) adopting its proposal to expressly enable voice service providers to block calls highly likely to be associated with one-ring scams, consistent with section 12(b)(4) of [S.151 – the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act](#) (TRACED Act). According to the Commission, one-ring scams are those, “in which a caller makes a call and allows the call to ring the called party for a short duration, in order to prompt the called party to return the call, thereby subjecting the called party to charges.” In its [Report and Order](#), Commission confirmed that voice service providers may legally block robocalls used to perpetrate one-ring scams, and gives voice service providers authority to stop these calls and give consumers substantial additional protection from one-ring call scams. “Section 12(b)(3) requires the Commission to consider how, in consultation with the [Federal Trade Commission], to better educate consumers about how to avoid one-ring scams. To implement this section, the Commission will continue and expand its existing collaborative law enforcement and consumer education activities targeted at fraudulent and abusive robocalling practices, including one-ring scams,” the Commission noted. The Commission also extended the recently adopted safe harbor for inadvertent blocking of wanted robocalls using reasonable analytics to one-ring scam blocking. Rule amendments are made to Section 64.1200 (f)(8) and (k)(2)(iv) of the Commission's rules. [news release](#). (CG Docket No. 20-93)

## **COMMISSION ANNOUNCES 2021 REASONABLE COMPARABILITY BENCHMARKS FOR FIXED VOICE, BROADBAND**

On November 30, 2020, the Commission's Wireline Competition Bureau and the Office of Economics and Analytics issued a [public notice](#) to announce the 2021 reasonable comparability benchmarks for fixed voice and broadband services for eligible telecommunications carriers (ETCs) subject to broadband public interest obligations, including rate-of-return carriers, incumbent price-cap carriers receiving Connect America Fund (CAF) Phase II support, RBE providers, CAF Phase II auction winners and Rural Digital Opportunity Fund auction winners. The 2021 rates are: local voice service is \$33.73; reasonable comparability benchmark for voice services is \$54.75; and reasonable comparability benchmarks for broadband range from \$70.69 for 4/1 Mbps (350 GB usage allowance) to \$140.80 for 1000/100 Mbps (unlimited usage). The benchmarks for Alaska Plan carriers are higher, ranging from \$107.50 to \$191.20. ETCs providing fixed voice and broadband services must certify they meet the benchmarks in the FCC Form 481 filed no later than July 1, 2021. The public notice also announced [posting](#) of the fixed voice and broadband services data collected in the most recent urban rate survey, explanatory notes regarding the data, and the required minimum usage allowance for ETCs subject to public interest obligations for fixed broadband. (WC Docket No. 10-90)

## **SOMOSGOV SELECTED AS TELEPHONE NUMBER ADMINISTRATOR, REASSIGNED NUMBERS DATABASE ADMINISTRATOR**

On December 1, 2020, the Commission issued a [news release](#) announcing its selection of SomosGov as the next North American Numbering Plan administrator. In addition to serving as administrator, SomosGov will serve as number pooling administrator and in a new role of reassigned numbers database administrator. The Company's contract extends for a five-year period, with options for contract extension up to a total of eight years. SomosGov is a wholly owned subsidiary of Somos, the current North American Numbering Plan administrator.

## **NECA 2021 MODIFICATION OF AVERAGE SCHEDULED HIGH COST LOOP SUPPORT FORMULA APPROVED**

On December 3, 2020, the Wireline Competition Bureau released an [Order](#), approving the National Exchange Carrier Association, Inc.'s 2021 modification of Average Schedule High Cost Loop Support (HCLS) formula for the period beginning January 1, 2021, through December 31, 2021. According to the Commission, Part 54 of the Commission's rules, provides universal service support to carriers with high loop costs based on the extent that an individual company's cost per loop (CPL) exceeds the national average cost per loop. “Because average schedule companies are not required to perform company-specific cost studies—the basis upon which a carrier's expense adjustment is calculated—the Commission has permitted expense adjustments for average schedule companies to be calculated pursuant to a formula developed by NECA and approved annually by the Wireline Competition Bureau.” (WC Docket No. 05-337)

## **WIRELESS STRUCTURE MODIFICATIONS REPORT AND ORDER EFFECTIVE JANUARY 4**

On December 3, 2020, the Commission's November 3, 2020 [Report and Order](#) in its proceeding to implement state and local governments obligations to approve wireless facility modification requests under Section 6409(a) of the 2012 Spectrum Order was published in the [Federal Register](#). The Commission amended 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. With [Federal Register](#) publication the rule amendments, codified at Section 1.6100, become effective January 4, 2021. (WT Docket No. 19-250 RM-11849)

## **MOBILE BROADBAND PROVIDERS REMINDED THAT SPEED AND COVERAGE DATA REMAIN PUBLIC**

On December 7, 2020, Office of Economics and Analytics issued a [public notice](#) to remind mobile broadband service providers their minimum advertised or expected speed data reported on FCC Form 477 are no longer protected as confidential, and will be included in the public releases of provider-specific coverage data.

## **COMMENTS SOUGHT ON ONLINE ROBOCALL REPORTING WEB PORTAL ESTABLISHMENT**

On December 8, 2020, the Commission issued a [Notice of Proposed Rulemaking](#), requesting comment on a congressional mandate that the Commission promulgate regulations to create a process that streamlines how private entities may voluntarily report information relating to a call or text message that violates the law regarding robocalls or spoofing by June 30, 2021. The Commission proposes to establish and maintain an online web portal where private entities may submit information about violations of sections 227(b) and 227(e) of the Communications Act. Comments are due 30 days after publication in the [Federal Register](#); reply comments are due 45 days following publication. (EB Docket No. 20-374)

## **COMMISSION SUBMITS REASSIGNED NUMBERS DATABASE STATUS REPORT TO CONGRESS**

On December 8, 2020, the Commission submitted a [Report to Congress](#) regarding the status of the Commission's actions to establish a reassigned numbers database. The Report, prepared by the Consumer and Government Affairs Bureau under Section 9 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, includes technical and operational guidance regarding the scope of procurement of a database administrator; database funding; and the requirements for aging of numbers, recordkeeping and reporting permanent disconnection data to the database. The Commission reported that awarded a contract to SomosGov to develop the database and anticipates the database may be operational as early as June 2021.

## **WIRELINE BUREAU CLARIFIES PERFORMANCE MEASURE REQUIREMENTS**

On December 18, 2020, the Wireline Competition Bureau issued an [Order](#) in its Connect America Fund proceeding to clarify aspects of the performance measures adopted in its October 31, 2018 [Order on Reconsideration](#), to provide greater certainty to carriers. The Bureau clarified that: a carrier's final performance testing milestone is at the end of its support term and only then a carrier may be subjected to final performance compliance withholdings; additionally, carriers participating in multiple high-cost programs with required testing or subject to multiple speed obligations in a state will have compliance and non-compliance determined specifically for each program, state and speed tier. According to the [Order](#), the Commission reviewed "performance measures established by the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology ... for recipients of Connect America Fund high-cost universal service support to ensure that those standards strike the right balance between ensuring effective use of universal service funds while granting the flexibility providers need given the practicalities of network deployment in varied circumstances." (WC Docket No. 10-90)

## **CTIA PETITIONS COMMISSION FOR RECONSIDERATION OF CALL AUTHENTICATION TRUST ANCHOR ORDER**

On December 17, 2020, filed a [Petition for Partial Reconsideration](#) seeking partial reconsideration of the Commission's October 1, 2020 [Second Report and Order](#) in the Commission's call authentication trust anchor proceeding. CTIA asked the Commission to reconsider the provision that prohibits U.S. intermediate providers and terminating voice service providers from accepting any voice traffic directly from any foreign voice service provider that does not appear in the Commission's

yet-to-be established robocall mitigation database. CTIA argued that the Commission’s foreign provider prohibition will cause issues with international roaming, that the Commission’s other efforts enable providers to protect from overseas robocalls, and that reconsideration is necessary because evidence of the prohibition’s impact on wireless consumers now available was not considered in the record. (WC Docket No. 17-97)

### **COVID-19 TELEHEALTH PROGRAM INVOICES DUE JULY 31**

On December 18, 2020, the Wireline Competition Bureau and Office of Managing Director issued a [public notice](#), announcing that the invoicing deadline for the COVID-19 Telehealth program is July 31, 2021. The Notice includes additional information on the post-program report, which must be filed with the Commission no later than January 31, 2022 and reminds awardees of the program’s recordkeeping and auditing requirements.

### **PAPERWORK REDUCTION ACT COMMENT DEADLINES SET**

Mobility Fund Phase 1 Support Application On November 30, 2020, [notice](#) was published in the *Federal Register*, requesting Paperwork Reduction Act (PRA) comments on an extension of a currently approved collection regarding FCC Form 680, application for Mobility Fund Phase I support. Following *Federal Register* Publication, PRA comments are due January 29, 2021.

ISP Broadband Service On December 4, 2020, [notice](#) was published in the *Federal Register*, requesting PRA comments on an extension of a currently approved information collection regarding disclosure of network management practices, performance and commercial terms of Internet Service Providers’ broadband internet access service, required under the Restoring Internet Freedom order. Following *Federal Register* Publication, PRA comments are due February 2, 2021.

Deployment of Advanced Telecommunications Services On December 21, 2020, [notice](#) was published in the *Federal Register*, requesting Paperwork Reduction Act comments on a revised information collection implementing sections 201 and 251 of the Communications Act of 1934 to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory. Comments are also requested regarding and promoting deployment of advanced telecommunications services without significantly degrading the performance of other services. Freedom order. Following *Federal Register* Publication, PRA comments are due January 20, 2021.

Caller ID Authentication On December 21, 2020, [notice](#) was published in the *Federal Register* on December 21, 2020, requesting Paperwork Reduction Act comments on a new information collection on compliance with the non-Internet Protocol call authentication solution rules, robocall mitigation database and certification to verify exemption from caller ID authentication. Following *Federal Register* Publication, PRA comments are due February 19, 2021.

### **CALLER ID AUTHENTICATION BEST PRACTICES RELEASED**

On December 22, 2020, the Commission’s Wireline Competition Bureau issued a [public notice](#) containing best practices that voice service providers may adopt as part of their implementation of effective call authentication frameworks to ensure that the calling party on a voice call is accurately identified, under the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. The Bureau recommended “that voice service providers vet the identity of retail and wholesale subscribers when (i) approving an application for service; (ii) provisioning of network connectivity; (iii) entering into a contract agreement; or (iv) granting the right-to-use telephone number resources. This best practice closely tracks the language of the Council Report, with slight grammatical changes for clarity.” Two Call Authentication Trust Anchor working group of the North American Numbering Council recommendations regarding the SHAKEN attestation levels were rejected. The rejected recommendations proposed that originating service providers authenticate calls with attestation level A “only when they can confidently attest that the End-User initiating the call is authorized to use the TN [telephone number]-based caller identity associated directly with the calling line or account of the End-User” and for originating service providers to “only authenticate calls with attestation levels B or C for calls where TN Validation has not been performed on the originating telephone number.” (Docket No 17-97 20-324)

## COMMISSION ADOPTS NEW APPLICATION FEE SCHEDULE

On December 29, 2020, the Commission issued a [Report and Order](#) in its Amendment of scheduled Application Fees proceeding, to adopt a new application fee schedule that updates the previous fee schedule in both types of applications and other processes covered by the fee requirement and amounts. The new and revised application fees apply to applications, modifications, amendments and renewals of wireless, broadcast and satellite licenses, applications to participate in auctions, tariff filings, formal complaints and certain petitions. ((MD Docket No. 20-270))

### BEFORE CONGRESS



#### **SIMINGTON NOMINATION SPARKS CONTROVERSY**

On December 9, 2020, Nathan Simington was confirmed by the full Senate to replace Commissioner Michael O’Rielly on the Commission (see above). Simington was appointed by President Trump after Commissioner O’Rielly had expressed reservations on the Commission’s authority under Section 230 of the Communications Decency Act to review tech company social media policies. Simington’s nomination did not come without partisan concerns. Democratic senators and certain consumer interest and open Internet advocacy groups opposed Mr. Simington’s nomination, maintaining that Simington has no relevant experience and that his confirmation will likely result in an indefinite deadlock at the FCC on key issues, including revisiting the Commission’s net neutrality rules. The Democrat senators and opposing groups also maintained that Senate consideration of Mr. Simington’s confirmation violated a Senate tradition of voting on one Democrat and one Republican appointee. Simington’s nomination also raised concern over his role in the National Telecommunications and Information Administration’s (NTIA) petition requesting Commission clarification of the Section 230 authority to act on tech companies directed by Trump. Senate Minority Leader Chuck Schumer (D, NY) said, “The nominee himself is far from uncontroversial. Mr. Simington’s key qualification seems to be that he supports President Trump’s desired changes to Section 230, a law that regulates internet speech,” Schumer continued, “In fact, it appears that he severely misled Senators on the Commerce Committee when he told them, while working for a federal agency, he played only administrative role in his department’s petition for the repeal of Section 230. It turns out that Mr. Simington was not only pushing the petition himself, he was actively lobbying Fox News to support it — for political reasons.” Sen. Richard Blumenthal (D, CT) called Mr. Simington “the White House’s wingman” on section 230 and said he was “the wrong person at the wrong time for the FCC. He’s unprepared and unqualified.”

### STATE REGULATORY NEWS



#### **CALIFORNIA – Commission Adopts CV-19 Disconnection Moratorium**

On December 17, 2020, the California Public Utilities Commission adopted [Resolution M-4848](#), which imposes a moratorium on communications service provider disconnections and late fee assessments on residential and small business commercial subscribers with five lines or less, who are unable to pay for voice services due to the Covid-19 pandemic. Voice service providers may only require that eligible subscribers attest to their eligibility and to enter into extended payment plans with affected subscribers upon the conclusion of the moratorium. Providers are to submit a Tier II Advice Letter to the Commission attesting to their compliance. The commission said that follow conclusion of the FCC’s Keep Americans Connected Pledge in June, service providers had in many cases given customers flexibility in extending payment for overdue balances to avoid disconnection. “Building on the success of these voluntary programs, the moratorium will be offered proactively as an option to customers facing financial difficulty.” The moratorium allows 30 days for implementation and will then last for 90 days, with an option to extend.

#### **CALIFORNIA – Commission Authorizes Authority Relinquishment Petitions via Advice Letter Process**

The California Public Utilities Commission is considering allowing telecommunications companies seeking to voluntarily surrender or relinquish their California operating authority to do so under a streamlined advice letter process. Under a draft Decision, companies may request that their operating authority be revoked unless the provider is subject to existing mass migration rules and/or meets the “Withdrawal of Service” requirements, including the issuance of customer notices. The draft decision would also delegate authority to the Communications Division to approve requests and to revoke operating authority authorizations without the need to issue a Commission order. Carriers requesting authority to relinquish their operating authority via the advice letter process may not be designated as a Carrier of Last Resort or participate or owe money in any of the Telecommunications Public Purpose Programs, including the California Advanced Service Fund, Universal Lifeline Telephone Service (California LifeLine), Deaf and Disabled Telecommunications Program, California Teleconnect Fund, and California High Cost Fund A and B. And carriers may not have existing customers and must have

complied with all regulatory obligations prior to the filing of the advice letter or have any outstanding citation issued by the Commission.

### **PENNSYLVANIA – USF Contribution Factor Increased**

The Pennsylvania Public Utility Commission has approved an increase in the State universal service fund contribution to 2.1673586% of 2019 average monthly intrastate end-user retail telecommunications revenue; a 4.01 percent increase over the current contribution rate. The Commission acted on the recommendation of GVNW Consulting, Inc., the Pennsylvania Universal Service Fund administrator's, recommendations, to increase the contribution factor. GVNW's recommendation that the PUC maintain the annual funding contingency reserve of 5% in 2021 was also approved. The Commission acknowledged and will investigate GVNW's recommendation that the Commission develop a numbering mechanism for VoIP and wireless providers that contribute to the Fund but do not have a public utility code because they have not obtained a certificate of public convenience. (Docket M-00001337)

*We wish readers a healthy, safe, prosperous and Happy New Year!*