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## Regulatory Review

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

### FEDERAL REGULATORY NEWS



#### **USAC SUBMITS 2Q21 UNIVERSAL SERVICE FUND SUPPORT MECHANISMS FUND SIZE PROJECTIONS**

On January 29, 2021, the Universal Service Administrative Company (USAC) submitted its [Federal Universal Service Support Mechanisms Fund Size Projections](#) for the second quarter of 2021. USAC projected the total high-cost support mechanism funding requirements at \$1.413 billion.

#### **USAC RELEASES NATIONAL VERIFIER ANNUAL REPORT AND FINAL UPDATE**

On February 1, 2021, the Universal Service Administrative Company (USAC) released its [National Verifier Annual Report and Data](#). The Report summarizes USAC's national verifier deployment efforts and outlines how it meets key Commission Lifeline program objectives to protect against waste, fraud and abuse. USAC also updated status on recent actions taken to respond to the COVID-19 pandemic and released an eighth and final update to the national verifier plan.

#### **COMMENT DEADLINE SET FOR USTELECOM PETITION FOR 8YY ORDER RECONSIDERATION**

On February 2, 2021, the Commission's January 12, 2021 [Public Notice](#) announcing USTelecom's submission of a [Petition for Reconsideration](#) of the Commission's October 9, 2020 8YY access charge [Report and Order](#) was published in the [Federal Register](#). Following [Federal Register](#) publication, the opposition deadline was set for February 17, 2021. Reply oppositions are due March 1, 2021. (WC Docket No. 18-156)

#### **COMMISSION RELEASES UNBUNDLING ORDER SMALL ENTITY COMPLIANCE GUIDE**

On February 3, 2021, the Commission released a [small entity compliance guide](#) associated with its October 28, 2020 [Report and Order](#) in the Commission's modernizing the unbundling and resale requirements proceeding. The guide provides guidance on compliance requirements, recordkeeping and reporting requirements, and establishes a February 8, 2021 implementation date. (WC Docket No. 19-308)

## **INCOMPAS PETITIONS FOR RIF ORDER ON REMAND RECONSIDERATION**

On February 4, 2021, INCOMPAS filed a [Petition for Reconsideration](#) of the Commission's October 29, 2020 [Order on Remand](#) that responded to the U.S. Court of Appeals for the D.C. Circuit's remand of the Commission's January 4, 2018 [Declaratory Ruling Report and Order and Order](#) – the “Restoring Internet Freedom Order.” INCOMPAS asked the Commission to reconsider its decision to uphold reclassification of broadband internet access (BIAS) service as a Title I information service and to reinstate BIAS as a Title II telecommunications service. INCOMPAS also urged the Commission issue a Notice of Proposed Rulemaking to reinstate its open internet rules and oversight of the interconnection practices of the large BIAS providers. (WC Docket No. 17-108, WC Docket No. 17-287, WC Docket No. 11-42)

## **WIRELINE BUREAU PROVIDES DETAILS ON EMERGENCY BROADBAND BENEFIT PROGRAM ROUNDTABLE**

On February 5, 2021, Wireline Competition Bureau issued a [Public Notice](#) providing additional details regarding the Commission's Emergency Broadband Benefit program roundtable held on February 12, 2021. The round table addressed outreach, consumer enrollment, provider participation and consumer choice. A video from the roundtable is available on the Commission's [Roundtable on Emergency Broadband Benefit Program](#) web page. (WC Docket No. 20-445)

## **REASSIGNED NUMBERS DATABASE RULE FOR REPORTING OF DISCONNECTED DATA COMPLIANCE DATE ANNOUNCED**

On February 8, 2021, the Consumer and Government Affairs Bureau issued a [Public Notice](#) announcing that the compliance date for the remaining rule provisions requiring service providers to report disconnected number information to the Reassigned Numbers Database Administrator adopted in its December 13, 2018, *Reassigned Numbers Database Order*, had been published in the *Federal Register* and became effective on February 8, 2021. The Commission notes that, “Beginning April 15, 2021 and recurring on the 15th day of each month thereafter, service providers must report permanent disconnections of their subscribers. The report must contain data for numbers permanently disconnected that were not submitted in the service provider's prior reports.” Smaller service provider with 100,000 or fewer domestic retail subscriber lines have until October 15, 2021 to begin reporting this information to the Reassigned Numbers Database Administrator. (CG Docket No. 17-59)

## **ROBOCALLING REPORTING REQUIREMENT IN EFFECT**

On February 8, 2021, the Commission published a notice in the *Federal Register*, announcing that compliance with the Commission's rule for reporting information about the most recent date of permanent disconnection to the Reassigned Numbers Database adopted in the December 13, 2018 [Second Report and Order](#), and published on March 26, 2019, is now required. (CG Docket No. 17-59)

Relatedly, on February 12, 2021, the Commission's December 14, 2020 [Order on Reconsideration](#) of its interpretation of the Telephone Consumer Protection Act that permitted certain government and government contractor calls to be made without consumers' prior express consent was published in the *Federal Register*. With *Federal Register* publication, the *Order on Reconsideration* became effective on February 12, 2021. (CG Docket No. 02-278)

## **CALLER ID AUTHENTICATION SECOND FNPRM COMMENTS DUE MARCH 19**

On February 17, 2021, the Commission's January 14, 2021 [Second Further Notice of Proposed Rulemaking](#) in its call authentication trust anchor proceeding was published in the *Federal Register*. The Second FNPRM proposes a limited role for the Commission to oversee certificate revocation decisions by the private STIR/SHAKEN Governance Authority that would have the effect of placing providers in noncompliance with its rules. With *Federal Register* publication, Comments are now due March 19, 2021; reply comments are due April 19, 2021.

## **BROADBAND DATA TASK FORCE ESTABLISHED**

On February 17, 2021, Acting Chairwoman Rosenworcel [announced](#) establishment of a Broadband Data task force during the Commission's Open Meeting. The task force is directed to implement improvements to the Commission's broadband data and mapping tools. Jean Kiddoo was designated task force chair. The task force will coordinate the Commission's broadband mapping and data collection efforts across the various expert agency teams, including the Office of Economics and Analytics, Wireline Competition Bureau, and other offices and bureaus.

## COMMISSION RELEASES THIRD SUPPLY CHAIN FNPRM

On February 22, 2021, the Commission released a [Third Further Notice of Proposed Rulemaking](#) (FNPRM) in its protecting against national security threats to the communications supply chain through FCC programs proceeding. The Commission proposes to make changes to its Secure and Trusted Network Reimbursement Program rules by aligning them with the Consolidated Appropriations Act of 2021. The third FNPRM specifically seeks comment on changes regarding eligibility for participation in the reimbursement program; acceptable uses of program disbursements; the eligibility of certain equipment and services for the program; and a prioritization paradigm in the event applications for disbursements exceed the \$1.895 billion appropriated by Congress. Comments are due 21 days following in the *Federal Register* publication; replies are due 35 days following publication. (WC Docket No. 18-89)

## PAYPHONE COMPENSATION INFORMATION COLLECTION PRA COMMENTS DUE APRIL 26

On February 23, 2021, [notice](#) was published in the *Federal Register* seeking Paperwork Reduction Act (PRA) comments on an extension of a currently improved information collection relating to payphone compensation rules. The Commission said revisions adopted in its February 22, 2018 [Report and Order](#) in its payphone compensation rule modernization proceeding significantly decreased the paperwork burden on carriers. Following *Federal Register* publication, PRA comments are due April 26, 2021. (WC Docket Nos. 17-141, 16-132 and CC Docket No. 96-128)

## EMERGENCY BROADBAND BENEFIT PROGRAM RECORDS COMMENTS DUE MARCH 29

On February 25, 2021, [notice](#) was published in the *Federal Register* announcing establishment of a new set of records, FCC/WCB-3, associated with the Emergency Broadband Benefit Program and to request comments. This system of records is maintained for use in determining whether a member of a household meets the eligibility criteria to qualify for a discount on the cost of internet service and a subsidy for low-cost devices such as computers and tablets; to ensure benefits are not duplicated; and to dispute resolution regarding eligibility for the Program, among other things. Written comments are due March 29, 2021. Comments on record establishment action will become effective on March 29, 2021, unless comments are received that require a contrary determination.

## LIFELINE RULE WAIVERS EXTENDED

On February 24, 2021, The Wireline Competition Bureau released an [Order](#) in its Lifeline and Link Up Reform and Modernization proceeding, extending waivers of certain Lifeline program rules through June 20, 2021, due to the effects of the ongoing CV-19 pandemic. On its own motion, the Bureau extended prior waivers of the Lifeline program rules governing documentation requirements for subscribers residing in rural areas on tribal lands, recertification, reverification, general de-enrollment and income documentation. The Bureau declined to further extend the existing waiver of the usage requirements beyond May 1, 2021. (WC Docket No. 11-42)

## IN THE COURTS

### JUSTICE WITHDRAWS CALIFORNIA NET NEUTRALITY LAW CHALLENGE

On February 8, 2021, the U.S. Department of Justice filed a [notice of dismissal](#) of its [complaint](#) challenging the state of California's Internet Consumer Protection and Net Neutrality Act of 2018 with the U.S. District Court for the Eastern District of California. California's Internet Consumer Protection and Net Neutrality Act prohibits broadband Internet access service providers from "blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating." Fixed and mobile Internet service providers are prohibited from "offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affect the performance of broadband Internet access service." The law had remained challenged by a number of industry groups representing broadband Internet access service and Internet service providers. The U.S. District Court for the Eastern District of California had delayed a hearing on a motion for preliminary injunction pending receipt of a status conference statement regarding whether Justice intended to pursue the case further or if "upon review by the Biden administration, it will file a stipulation or motion to dismiss this lawsuit." Acting Chairwoman Rosenworcel issued a [statement](#). On February 23, 2021, the Court upheld the Act.



## D.C. APPEALS COURT DENIES PETITION TO COMPEL COMMISSION ACTION ON LIFELINE PETITIONS

On February 22, 2021, the U.S. Court of Appeals for the D.C. Circuit denied the National Lifeline Association's [petition for writ of mandamus](#) that asked the court to compel the Commission to issue an order addressing [petitions for reconsideration](#) filed by NaLA member eligible telecommunications carriers and others in 2016. In its [order](#), the court concluded that in light of the interim relief measures adopted by the Commission, a forthcoming Commission report of relevance to the pending reconsideration petitions and insufficient evidence of irreparable harm, the delay did not warrant *mandamus*.

## COMMISSION SEEKS CHINA TELECOM APPEAL DISMISSAL

On February 22, 2021, the Commission submitted a [reply](#) with the U.S. Court of Appeals for the Fourth Circuit (Richmond, VA) in support of its [motion](#) to dismiss China Telecom (Americas)'s [petition for review](#) of the Commission's December 14, 2020 [Order Instituting Proceedings on Revocation and Termination and Memorandum Opinion and Order](#) initiating a proceeding regarding revocation of China section 214 authorizations. The Commission argued that China Telecom's attempt to obtain review of an interlocutory order at this juncture was premature and must be dismissed.

## CALIFORNIA AG URGES 6<sup>TH</sup> CIRCUIT TO REVERSE ROBOCALL SUIT RULING

California Attorney General Xavier Becerra (D) and a coalition of 34 attorneys general filed an *amicus* with the U.S. Court of Appeals for the Sixth Circuit (Cincinnati, OH) to reverse a lower court ruling dismissing a lawsuit involving illegal robocalls. In 2019, the U.S. District Court for the Northern District of Ohio dismissed *Lindenbaum v. Realgy LLC*, a case related to the Telephone Consumer Protection Act (TCPA), after finding that the entire TCPA was unconstitutional between 2015 and 2020. In their brief, AG Becerra and the attorneys general argued that the district court's decision created "uncertainty regarding the enforceability of the TCPA during that time." In 2015, Congress amended the TCPA to include a government debt exemption that allow telemarketing calls regarding debts owed to the federal government such as student loans. In 2020, the U.S. Supreme Court ruled that the TCPA's government debt exception violated the First Amendment. The Supreme Court severed the government debt exemption from the TCPA, while retaining remaining prohibitions on unwanted telemarketing, according to amicus brief.

## ELEVENTH CIRCUIT HEARS VOIP 911 FEE CASE ARGUMENTS

The U.S. Court of Appeals for the 11th Circuit (Atlanta, GA) has heard virtual arguments in a case challenging the Commission's unanimous ruling that state, local, and tribal governments cannot charge the same class of subscribers higher total 911 fees for voice-over-Internet-protocol (VoIP) services than for traditional telecommunications services with the same 911 calling capability. In a declaratory ruling, the Commission had clarified what it said was an ambiguous provision in the New and Emerging Technologies (NET) 911 Improvement Act of 2008 stating "[f]or each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services." The ambiguity lay in the meaning of "amount," "fee or charge," and "same class of subscribers," the Commission had said. The petitioners argued that only the base 911 fee can't be higher for VoIP than for traditional telecom services. They maintained that the Commission's declaratory ruling would preempt 911 funding laws that could result in VoIP subscribers being charged a greater total amount more than traditional service subscribers, even if the base 911 fee were equal or less for VoIP service. Petitioners also maintained that that the Commission was obligated to abide by the "presumption against preemption" of state laws unless the court concludes that Congress unambiguously wanted the statute to preempt state power and argued that the court should not allow the Commission to rely on the Chevron case in deference of its interpretation of the NET 911 Improvement Act. The Commission argued that its reading of the congressional VoIP 911-fee parity provision is the only one that is consistent with the text, legislative history, and underlying purposes of the statute. The Commission also maintained that the presumption against preemption does not apply in this case because the federal statute was expressly preemptive, and there is a history of federal jurisdiction over VoIP services.

## BEFORE CONGRESS



### **HOUSE ENERGY AND COMMERCE COMMITTEE REPUBLICANS PROPOSE BROADBAND BILLS – URGE RURAL BROADBAND FUNDING**

On February 16, 2021 House Energy and Commerce Committee Ranking Member Cathy McMorris Rodgers (R, WA) and Subcommittee on Communications and Technology Ranking Member Bob Latta (R, OH) [announced release of 28 bills](#) meant to promote new and upgraded infrastructure deployments, boosting competition, streamlining permitting processes, facilitating broadband deployment on federal lands and closing the digital divide in both rural and urban areas. Commissioners [Carr](#) and [Simington](#) issued statements.

Separately, Representatives McMorris Rodgers and Latta sent a [letter](#) to the National Telecommunications and Information Administration (NTIA) urging NTIA to prioritize unserved and rural areas for broadband deployment when distributing funding for grant programs established under the Consolidated Appropriations Act of 2021. They also urged NTIA to incorporate a challenge process to ensure any broadband deployment funding is properly targeted to truly unserved areas. [press release](#).

### **HOUSE SUBCOMMITTEE HOLDS HEARING ON BROADBAND DURING PANDEMIC**

On February 17, 2021 House Subcommittee on Communications and Technology of the Committee on Energy and Commerce held a [hearing](#) entitled “Connecting America: Broadband Solutions to Pandemic Problems.” Topics included the digital divide, homework gap, lack of availability of broadband service and recent legislation. Testimony was given by: [Dr. Tiffany Anderson, Topeka Public Schools](#); [Jonathan Adelstein, WIA](#); [Matthew Wood, Free Press Action](#); and [Christopher Shelton, CWA](#).

### **ROBOCALL BILL REINTRODUCED**

On February 24, 2021 Senators. Mike Crapo (R, ID) and Amy Klobuchar (D, MN.) reintroduced the [Data Analytics Robocall Technology Act](#). The bill establishes a pilot program to expand the Commission’s efforts to combat unwanted computerized calls by blocking calls that fail authentication technology and procedures used to prevent caller ID spoofing, while allowing emergency service alert calls to remain uninterrupted while not expanding the capabilities of voice service providers to collect or share data. [press release](#)

## STATE REGULATORY NEWS



### **CALIFORNIA – BROADBAND DATA REQUEST SUBMISSION DUE APRIL 1**

On February 25, 2021, the California Public Utilities Commission staff issued a reminder that its Data Request for Voice Data as of December 31, 2020 is due April 1. According to the reminder, Decision [\(D.\)16-12-025](#) requires the submission of voice data by all service providers in California.

Specifically, [D.16-12-025](#) requires all communications providers certificated and/or registered with the Commission, OR that file Voice Data with the Federal Communications Commission via Form 477, submit voice data at a *Census Block level* as of the prior calendar year’s end in a form as designated by Communications Division Staff annually to the Communications Division by April 1. Voice data is to be submitted in the formats available on the [Voice Data Request Guidelines](#) webpage. The data formats and workbooks appropriate for the reporting carriers submission are to be downloaded from the Commission’s web site. “Pure resellers” of voice service are also required to provide the requested voice data using the same subscribership and availability workbooks. Underlying facilities-based provider whose service is being resold must report such service as specified in the data format and workbooks at the above link.

### **WEST VIRGINIA – COMMISSION ANNOUNCES 2021 ANNUAL LEC LINE COUNT REQUIREMENT**

On February 2, 2021 the West Virginia Public Service Commission announced that its 2021 Annual county-by-county line counts are due April 7, 2021. Incumbent and competitive local exchange carriers are to report line counts as of March 1, 2021. Residential and business lines, as well as so-called “company official” lines should be counted. Payphone lines should be counted whether they are used by phone company public telephones or by public telephones provided by competitive payphone service providers. CENTREX line equivalents should be provided rather than the actual numbers of CENTREX

trunks in service (usually CENTREX uses an 8 to 1 truck-to-line ratio). Reporting companies are to use the Commission's [Line Count Form](#)

#### **WEST VIRGINIA – COMMISSION SETS INTEREST RATE ON UTILITY CUSTOMER DEPOSITS**

On February 26, 2021, the West Virginia Public Service Commission released a [Commission Order](#) setting the interest rate to be paid on customer deposits. A simple interest rate of 0.12 percent now applies to the rate applicable to the rate period for customer security deposits for electric, gas, sewer, telephone and water utilities from the date of the Order until the next Commission order setting the rate. The 0.12 percent reflects the average rate paid on Treasury Bills during the last quarter of 2020.

#### **FEDERAL REGULATORY REPORTING MARCH**

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 MARCH**

<b>Due Date</b>	<b>Jurisdiction</b>	<b>Report Name</b>
March 1	Federal	Local Competition and Broadband Reporting FCC Form 477
March 1	Federal	Customer Proprietary Network Information Compliance Certification
March 31	Federal	Circuit Status Report (facilities based international carriers).
April 1	Federal	FCC Form 499A

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