

TMI Regulatory Digest

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For more details on any of these issues, please contact Amy Gross at agross@tminc.com or 407-740-3032.

Adopted Regulatory Changes:

Court Affirms FCC Reciprocal Compensation Order

The United States Court of Appeals for the District of Columbia Circuit has affirmed the FCC's November 2008, Order retaining its reciprocal compensation rate for out-of-balance ISP-bound traffic. That rate is set at \$0.0007/minute. The Court agreed with the FCC that it had authority under §201 of the Communications Act to set just and reasonable rates for the exchange of ISP-bound traffic.

FCC Issues Enforcement Advisory On Annual CPNI Certifications

The FCC has issued its first-ever Enforcement Advisory relating to the annual CPNI certifications due by March 1 of each year. The Advisory notes that in prior years many companies failed to file or filed certificates that did not comply with the FCC's rules in material respects. Accordingly, providers are reminded that failure to comply with the CPNI rules, including the annual certification requirement, may subject them to enforcement action, including monetary forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000. In this regard, false statements or misrepresentations to the FCC may be punishable



by fine or imprisonment under Title 18 of the U.S. Code.

In 2009, the FCC initiated enforcement action against hundreds of providers who failed to file, or filed incomplete, annual certifications for calendar year 2007. It proposed fines of \$20,000 for providers who failed to file a certification and established a maximum forfeiture amount of \$10,000 for providers who submit CPNI certifications that fail to meet the requirements of its rules. TMI Consulting Services are available to assist you in reviewing your internal compliance procedures and drafting and filing a compliant certification and statement.

Connecticut Announces TRS Assessment For 2010

The Connecticut Telecommunications Relay Service (TRS) 2010 assessment has been calculated. The new rate is an increase to 0.07195% from the current rate of 0.04116% of gross Connecticut telecommunication revenue as reported to Solix. The TRS is funded by assessing carriers on their pro-rata share of the total funding requirement. All carriers generating revenue in Connecticut will be assessed at least \$35 annually

Michigan Begins Implementation Of New Law Capping Access Charges And New Fund

The Michigan Public Service Commission has issued an order requiring telecommunications carriers to submit the data necessary for it to begin to implement the new law capping ILEC and CLEC intrastate switched access charges and implementing a fund to reimburse ILECs for lost revenue. All providers of intrastate retail telecommunications service except VoIP providers are contributing carriers and must contribute to the fund. By February 16, 2010; (1) all contributing providers must provide certain 2008 revenue information to the PSC; and (2) all local exchange carriers must provide information about their July 1, 2009, intrastate and interstate switched toll access rates to the PSC. Each filing must be accompanied by a sworn affidavit by a person knowledgeable of the facts attesting to the accuracy and authenticity of all data provided. Company specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the PSC will be treated as confidential commercial

or financial information, which are exempt from public disclosure.

New York Approves New Area Code

The New York Public Service Commission has approved a new area code overlay for New York City's outer Boroughs served by the 718/347 NPA's. The new area code will be assigned to the Boroughs of the Bronx, Brooklyn, Queens, and Staten Island. All local calls within and between the 718 and 347 area codes and the new area code will continue to be dialed by using 1+10-digit dialing. The new area code will be assigned by the North America Numbering Plan Administrator (NANPA). All carriers providing service in the affected area must develop customer outreach and education plans and submit them by February 5, 2010, to the PSC for review and comment. In conversation with TMI, PSC Staff indicated that the outreach and education plan may be discussed at the next industry meeting. It was suggested that "one collective plan" could be filed for PSC approval.

Oklahoma Approves Overlay Plan For The 918 NPA

The Oklahoma Corporation Commission has approved the recommended all-services overlay plan as the appropriate method of numbering relief for the 918 NPA. The implementation schedule calls for a 15-month transition including customer education, permissive seven-digit dialing, and mandatory ten-digit dialing. NANPA announced that the new area code will be 539. Numbers from the new area code may not be assigned before than April 1, 2011, *i.e.*, after the 15-month transition period. The deadline for network preparation and customer education is August 1, 2010

Pennsylvania Revises Regulations For Basic Service In Bundled Services Package Plans

The Pennsylvania Public Utility Commission has revised its regulations governing the treatment of basic service included in bundled service packages. The revisions include new customer disclosure notices and requirements for conversion of non-paying customers to basic service. Customers who are delinquent in paying for a bundled service package will have an opportunity to maintain access to basic service rather than being terminated from the network. The revised regulations will become effective upon publication in the Pennsylvania Bulletin.



Pending Regulatory Changes:

FCC To Make Only Interim Changes To Non-Rural High-Cost Mechanism

The FCC has tentatively concluded that it should not attempt to complete a comprehensive reform of its high-cost universal service support mechanism for non-rural carriers (HCSM) at this time. This because it anticipates that comprehensive changes to its universal service policies are likely to be recommended as part of its National Broadband Plan (NBP) which must be adopted by February 17, 2010.

However, the FCC seeks comment on certain interim changes to its HCSM rules regarding the rate comparability review and carrier certification. Specifically, the FCC seeks comment on whether it should: (1) define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services; and (2) require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates. The FCC also tentatively concluded that the HCSM as currently structured is consistent with its statutory obligations. Comments are due January 28, 2010; reply comments are due February 12, 2010.

FCC Seeks Comment On Petition For Review Of USAC Treatment Of T-1 Service Used For Wireline Broadband Internet Access

The FCC is seeking comment on a Petition for Review and Reversal of a decision of the USAC holding that a CLEC's wireline broadband Internet access service offered over T-1 facilities is a telecommunications service subject to USF assessment. The Petitioner, U.S. TelePacific Corp., claims that, regardless of the type of facilities used to provide the service, wireline broadband Internet access is properly characterized as an information service which is not subject to USF assessment. TelePacific also filed a companion request for stay of USAC's decision since it requires TelePacific to refile its 2008 FCC Form 499-A by February 8, 2010. Comments on both Petitions are due January 29, 2010; reply comments are due February 3, 2010.

FCC Seeks Comment On Petition For Review Of USAC Rulings On Classification Of Local, DSL, And Carrier's Carrier Revenues

The FCC is seeking comment on a Petition For Review of several USAC audit decisions. The Petitioner seeks review of: (1) USAC's reclassification of a per line local exchange fee as a federal interstate subscriber line charge; (2) classification of a DSL-based Internet access service as a telecom service; and (3) USAC's reclassification of "carrier's carrier" revenues as end user telecommunications revenue. Comments are due February 18, 2010; reply comments are due March 5, 2010.

FCC Seeks Comment On Maine PUC Petition Regarding §271 Access To Dark Fiber Facilities and Line Sharing

The FCC is seeking comment on a Petition filed by the Maine Public Utilities Commission (MPUC) seeking a declaratory ruling on the scope of carriers' §271 obligations regarding dark fiber facilities and line sharing. The MPUC requests that the FCC determine whether line sharing, certain dark fiber loops, dark fiber transport, and dark fiber entrance facilities are facilities falling within Items 4 and/or 5 of the Competitive Checklist found in 47 U.S.C. §271(c)(2)(B)(iv),(v) and must be made available by FairPoint Communications-NNE. The Petition was filed to resolve litigation over the MPUC's 2005 ruling that dark fiber entrance and transport facilities must be provisioned to competing carriers in the state of Maine. Comments on the Petition are due March 1, 2010; reply comments are due March 15, 2010.

Indiana Seeks Comment On Further Revisions To Strawman Rules For Communications Service Providers

The Indiana Utility Regulatory Commission Staff is seeking comment on further revisions to its rule strawman proposed in November 2009. The rule strawman will lead to a proposed rule that will implement the statutory requirement that the Commission identify and eliminate telecommunications rules or policies that are no longer necessary or in the public interest. The revised strawman (1) eliminates the requirement to provide 30 days' notice of a rate increase (only "advance" notice would be required), and (2) revises the bill form and content rule so that it would not apply to VoIP providers.



A workshop will be held on January 14, 2010, so that parties may express any legal and jurisdictional concerns about the strawman. Interested participants are asked to provide a list of issues and the areas of the strawman that are of concern by January 8, 2010. In addition, to facilitate the filing of a proposed rule and fiscal impact statement by early February, staff requests that participants respond to a set of questions by January 8, 2010.

Iowa Seeks Additional Comment In Proceeding To Adopt Rules For High Volume Access Services

The Iowa Utilities Board is seeking additional comment on proposed rule amendments addressing High Volume Access Service (HVAS). Areas for comment include: (1) the definition of HVAS; (2) affidavits pertaining to revenue sharing; (3) effective dates and timeframes; and (4) notice requirements. Comments are due February 1, 2010.

Nebraska Opens Proceeding To Investigate Unfiled Switched Access Agreements; Will Issue Data Requests

The Nebraska Public Service Commission has opened a proceeding to investigate unfiled, off-tariff agreements and/or contracts between carriers to provide switched access service at other than tariffed rates, terms, and conditions. The PSC's investigation will include, but not be limited to, an examination of the implications of such agreements on regulatory policy, competition, and the Nebraska telecommunications marketplace. As part of the investigation, the PSC intends to send a data request to all local exchange and interexchange carriers operating in Nebraska seeking information regarding unfiled agreements for intrastate access services at rates, terms and conditions other than those contained in tariffs filed with the PSC.

Wisconsin To Hold Conference To Discuss "Road Map" For Access Charge Investigation

The Public Service Commission of Wisconsin has scheduled a second technical conference to discuss the "road map" document prepared by Staff setting forth the options for moving forward with its access charge investigation. The conference will be held on January 26, 2010. The "road map" includes the preparation of a number of factual documents addressing issues such as the PSC's legal authority to require various carrier types, including VoIP providers and cellular providers, to reduce their

access rates and flow-through any access reductions to end users.

Broadband Stimulus (ARRA):

NTIA Announces BroadbandMatch Service and Awards Additional Mapping Grants; FCC Seeks To Delay Release Of NBP

The National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) have launched a new online tool called BroadbandMatch. BroadbandMatch is intended to facilitate partnerships among prospective applicants to the agencies' broadband grant and loan programs. In a separate News Release, NTIA announced it had awarded broadband mapping and planning grants to the states of Iowa, Montana, New Hampshire, and Utah and the U.S. Virgin Islands.

In a separate but related matter, the FCC has requested a one month extension for the delivery of the final National Broadband Plan (NBP), until March 17, 2010.

FCC To Allow Final Reply Comments On NBP; Seeks Comment On Privacy Issues; NTIA Announces More Mapping Grants

The FCC has agreed to accept a round of final reply comments on its National Broadband Plan (NBP). Comments can address any issues raised during the course of the proceeding and are due by January 27, 2010. In a separate Public Notice, the FCC also sought comment on various consumer privacy issues in relation to the NBP raised by the Center For Democracy and Technology. Comments are due January 22, 2010.

Separately, the National Telecommunications and Information Administration (NTIA) announced it had awarded broadband mapping and planning grants to the states of Connecticut, Hawaii, Kentucky, Maine, Mississippi, Nebraska, New Mexico, Oklahoma, Pennsylvania, and Texas.

Funds, Fees, and Surcharges:

Arizona Increases Universal Service Fund Rates For 2010

The Arizona Corporation Commission has increased the Arizona Universal Service Fund (AUSF) monthly surcharges effective January 1, 2010. The 2010 Category 1 assessment rate for local exchange service providers is \$0.006942 per access line. The 2010 Category 1 assessment rate



for wireless providers is \$0.069423 per interconnecting trunk. The 2010 Category 2 assessment rate for toll providers is 0.4033 percent of intrastate toll revenues. These are all increases from the 2009 rates of \$0.006471 per access line and \$0.064714 per interconnecting trunk for Category 1 providers and 0.2485 percent of intrastate toll revenue for Category 2 providers.

Indiana Decreases USF Surcharge Level

The Indiana Utility Regulatory Commission has approved a decrease in the Indiana Universal Service Fund (IUSF) surcharge. The surcharge will be reduced from the current level of 0.538% to 0.40% effective March 1, 2010. Providers must notify customers that "effective March 1, 2010, the Indiana USF surcharge assessment has been reduced from 0.538 percent to 0.40 percent of your intrastate retail telecommunications bill." If a provider cannot provide a bill message by March 1, 2010, it may notify its customers the following month. The Commission also approved the use of a rolling 24-month period for true-ups to the IUSF and modified the frequency in which status reports must be submitted by Solix (the fund administrator) from monthly to quarterly beginning January 1, 2010.

Kansas Increases USF Assessment Rate

The Kansas State Corporation Commission has increased the Kansas Universal Service Fund (KUSF) assessment rate for 2010. Effective March 1, 2010, the assessment rate will be increased to 6.06%. The previous rate was 5.03%. Companies may, but are not required to, pass the KUSF charges on to customers. However, no company may assess a higher rate than specified in the Commission's Order.

The Order also clarifies the application of late payment penalties, the treatment of PRI arrangements, and requires a quarterly true-up for companies who report KUSF-assessable revenues on a monthly basis.

Missouri Broadband Providers Must File Data

The Missouri Public Service Commission issued an order requiring each provider of broadband services to provide information to be used to develop state-wide broadband maps. Specifically, providers must: (1) identify the entity that provides broadband or broadband-like services in the state, (2) provide a general description of the area where

the services are provided, and (3) provide the number of subscribers or customers are served. The information is due by January 22, 2010.

Also available from TMI...

COMPLIANCE REPORTING SERVICES

A typical nationwide provider of integrated telecom services must file hundreds of reports with regulatory agencies each year. Mandatory reporting requirements and applicable fees change frequently. Such challenges make it difficult for companies to remain in compliance. Missing reports and deadlines can erode your revenue through late fees, interest, and in severe cases, loss of certification within a state.

TMI's Compliance Reporting Service offers advantages over other outsource vendors and in-house alternatives including:

- Proprietary custom database and software to calendar generate and track reports automatically
- Knowledgeable staff whose sole responsibility is understanding and completing compliance reports for a large number of carriers
- Timely and thorough service that is carefully tracked and professionally managed, with high standards for record retention and accountability
- Flexibility to work with a wide variety of tax vendors to tailor the service

Call 407-740-8575 or email tmi@tminc.com for more information.

BROADBAND REPORTING AND DATA ANALYSIS

TMI has developed and implemented tools on behalf of numerous telecommunications and cable companies to analyze broadband and census data for various purposes, including:

- Preparation of FCC Form 477 broadband reporting by census tract
- Development of data to support funding requests for broadband expansion plans

FCC Form 477

TMI prepares the census tract look-up for the broadband portions of the FCC Form 477—Parts I.A, I.B, and VI. The Form 477 is due two times per year (March and September). New broadband reporting requirements initiated with the March 2009 filing



require all broadband service providers, including telecommunications, cable, and broadband over power line providers, to report broadband services provided by census tract, type of technology, and upload and download speeds.

Other Broadband Data Analysis

TMI's Broadband Data and Reporting Services start with the geocoding of individual addresses provided by the client down to the census block level. The coded addresses are then loaded into a customized database application that allows for retrieval of the data in a variety of formats.

Reports, text files, or Excel spreadsheets can be extracted from this database to meet each client's specific needs, including support for RUS or NTIA broadband infrastructure loan and/or grant applications.

Output can be provided in detailed or summarized formats at the state, county, zip code, tract, block group, or block level. In addition, TMI is able to restrict the results to certain geographic areas defined by longitude and latitude coordinates or other boundary-defining methods requested by the client.

TMI's Other Broadband Data Analysis services are customized to meet each client's requirements with pricing based on the scope of work and size of the data set to be analyzed.

For details regarding types of output and pricing options, please contact us at 407-740-8575 or email jdurstjarrell@tminc.com.

