TCA

# REGULATORY VIEW

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## Federal Issues Update

### FCC Form 477

The FCC has reopened the filing portal for the Form 477 for data as of June 30, 2014. These forms are now **due December 11, 2014**.

### Special Access Data Request

RLECs and any other respondent that is certifying that it does not provide special access services in price cap LEC areas, must file by December 15. However, respondents that provide special access services and are required to submit data have been granted an extension. Small businesses (less than 1,500 employees) must file their data by February 27, 2015.

### CAF and USF Reform Order

At its December open meeting, the FCC will vote on an Order that will advance the implementation of the CAF II. Reports indicate the FCC's Order will also address certain RLEC issues, such as the QRA replacement for the high cost loop support (HCLS) mechanism. The FCC will very likely adopt a new method of capping the HCLS fund, switching from a per-line cap to a percentage cap (as it proposed in its FNPRM in

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## Your TCA Regulatory Consultants

- Kevin Kelly
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- Daniel Meszler
- Curt Huttsell

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April). The mechanics of the FCC's new method include freezing the national average cost per loop (as of December 31, 2014) and applying a percentage "haircut" to all HCLS recipients (perhaps as much as 7% in 2015). Other issues the FCC is likely to address include: 1) increasing minimum broadband speeds to 10/1Mbps, 2) enforcing 100% competitive overlap rules for ILECs, and 3) softening penalties for late Form 481 filings.

**Rural Broadband Experiments**

The FCC has received 181 applications for 600 Rural Broadband Experiments (RBE) projects nationwide. The FCC indicates that it will identify provisional winning bidders who will be required to prove their financial and technical ability to participate. The FCC contends that winners could "launch their experiments as early as spring 2015."

***TCA View:*** *FCC staff rejected the NTCA compromise on the HCLS cap (50% per line/50% percentage) because it did not do enough to protect low cost RLECs from losing support over time. Unfortunately, the FCC's change will be yet another blow to RLECs that have invested in their networks and anticipated recovering the costs of such an investment from the HCLS. There are several other issues that will be included in this Order, look for further analysis from TCA in future publications.*

TCA Contact: Stacey Brigham

# Annual and Ongoing Compliance Requirements

Several regulatory obligations are required to be performed either annually or in an ongoing manner - without a specified due date. TCA strongly recommends all rural LECs ensure that they are performing these tasks. Some of these obligations include:

1. Annually, wireline and wireless carriers (including resellers) must notify their customers via bill insert of their right to register or revoke registrations on the national Do-Not-Call database.
2. In an ongoing manner, eligible telecommunications carriers (ETCs) must advertise the availability of the FCC's supported services and charges using media of general distribution (such as a newspaper). This includes advertising the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
3. Red Flags Rules Compliance Officer should report to the board of directors on compliance with the rules. TCA also recommends incorporating this report into board meeting notes to provide documentation of compliance.

TCA Contact: Stacey Brigham

## Navigating the New TCA Regulatory View

We've made some updates to the layout, but don't worry, all of the content you need and enjoy is still here!

* Links are now imbedded right into the articles. Just look for the blue text to know where to click.
* Click on article names in the Table of Contents to jump to that article.
* Click on "Continued on page" text to go to the continuation of the article.
* The "Return to the Table of Contents" link is at the bottom of most pages.
* For any questions on the *Regulatory View* or any regulatory matters, contact the TCA Regulatory Team.

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# RLECs Seek FCC Ruling on IntraMTA Calls

More than 150 RLECs, several mid-size LECs and cable companies have jointly petitioned the FCC for a declaratory ruling regarding the applicability of the "intraMTA rule" to wireless calls routed through an IXC. Since 1996, LECs have been prohibited from assessing access charges on wireless calls the FCC deems as "local," instead being limited to reciprocal compensation. Local calls for wireless traffic are defined as calls between two points within a single MTA, that is, intraMTA calls. The petition for declaratory ruling seeks the FCC's confirmation that the intraMTA rule does not apply when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services. It is anticipated that the FCC will soon release a Public Notice requesting comment on the petition - with the comment cycle possibly concluding during the first quarter of 2015.

The petition was filed in response to the more than 60 lawsuits Sprint and Verizon have filed in over 40 states arguing that they do not owe switched access charges on intraMTA wireless traffic exchanged with LECs over long-distance trunks. Sprint alone has filed 30 lawsuits against approximately 250 LECs, all of which seek a refund of access charges on intraMTA wireless traffic as well as a declaration that future intraMTA traffic delivered over the Feature Group D access trunks will be exempt from access charges.

The petition coincides with an Iowa District Court referring the Sprint lawsuits filed against a dozen RLECs to the FCC - citing the doctrine of primary jurisdiction. The RLECs had sought either a dismissal or in the alternative referral to the FCC from the District Court in response to Sprint's lawsuits.

***TCA View:*** *As noted in the petition, the intraMTA rule has existed for almost two decades, and only now are Sprint and Verizon attempting to reinterpret the rule in an effort to justify their demands for refunds of access charge payments they voluntarily have made for years. The petitioners held an ex parte meeting with FCC staff to discuss the issue, and reported that their arguments were well received and the need for a declaratory ruling was recognized.*

TCA Contact: Curt Huttsell

# Time to Report Local Rate Increases to $16

On November 19, NECA notified members reminding them of the upcoming 2014 mid-year local rate floor data collection. While the mid-year data collection is only required for a few RLECs, it affords companies an opportunity to report rate increases that were effective after June 1, 2014, and to report updated line counts. **RLECs increasing local rates to the $16.00 rate floor by December 1 need to report the higher rates and updated line counts in order to avoid forfeiting High Cost Loop Support (HCLS).** RLECs with local rates above $16.00 on June 1, 2014 need not submit data.

NECA's data collection is **mandatory** for RLECs receiving HCLS and reducing rates after June 1, 2014, resulting in a local rate less than $20.46. NECA's Local Rate Floor Data Collection Website is open until December 11.

***TCA View:*** *RLECs who increased their local rates to at least $16 to avoid forfeiting HCLS must report the rates in effect and line counts as of December 1, 2014. Certification by an officer of the company is required. TCA consultants are ready to assist with this task if you desire.*

TCA Contact: Curt Huttsell

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# FCC Finally Advances Call Completion Data Collection

The FCC has finally released an Order addressing the petitions for reconsideration regarding the calling data collection requirements established in October 2013 in its Rural Call Completion Order and FNPRM. The FCC had received a number of Petitions for Reconsideration and numerous comments in reply to the FNPRM (see Regulatory View, February 2014). While the FCC dismissed most of the petitions, it did grant the request not to require data collection of "on network" intraLATA traffic. The FCC's action puts the new recordkeeping, retention and reporting requirements adopted last year one step closer to implementation – they are now awaiting OMB approval.

The FCC denied COMPTEL and Carolina West Wireless' request for a change in the FCC's definition of "covered providers" and the small carrier exemption (100,000 or fewer lines). Sprint's requests that the FCC reconsider using the call completion reports as the basis for subsequent enforcement action, and that the RLEC call completion surveys be made available for thorough independent review were also dismissed.

Transcom, a wholesaler of VoIP traffic, had argued that that the Rural Call Completion Order has no limiting principle that would keep the FCC from imposing common carrier duties on non-common carriers such as ISPs. The FCC declared the Transcom petition as procedurally inadequate and dismissed it.

Finally, the FCC did grant the petitions of USTelecom and ITTA that "on network" intraLATA long distance traffic record keeping is unnecessary – as these types of calls are primarily handled by one provider and do not involve intermediate providers. The FCC agreed, commenting that excluding on-network intraLATA toll traffic would "reduce the burden of compliance" while still addressing rural call completion problem.

FCC Chairman Tom Wheeler commented, "This resolution will provide certainty to the companies subject to our rules, while ensuring that both the Commission and service providers have sufficient information to combat poor call completion rates." NTCA CEO Shirley Bloomfield expressed support for the "FCC's action to finally move forward with the gathering of data to diagnose and resolve call completion issues."

***TCA View:*** *Once this data collection receives OMB approval, the FCC can collect the data regarding rural call completion, identify the causes of the call completion problem, and take enforcement actions towards those violating the rules.*

*As expected, the petitions for reconsideration yielded very little changes in the Rural Call Completion Order. Stringent enforcement of the adopted rules is the key to ending the problem of rural call completion.*

TCA Contact: Daniel Meszler

## TCA Holiday Office Closures

**In honor of the holiday season, TCA offices will be closed on the following dates:**

### Thanksgiving
**November 26, at 3pm**
**November 27-28, all day**

### Christmas
**December 24, at 12pm**
**December 25, all day**

### New Years
**December 31, at 4pm**
**January 1, all day**

**We wish you all a safe and happy holiday season!**

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# Wheeler Proposes $1.5B increase for E-Rate

FCC Chairman Tom Wheeler has established a goal of providing fiber to every school and Wi-Fi in every classroom – and requests the E-Rate budget be increased by $1.5 billion annually to achieve this goal. Wheeler announced that his E-Rate proposals are being circulated in a draft order to be voted on in the FCC's December 11 open meeting. Wheeler asserted that consumers would pay less than $2 a year for his proposed budget increase.

Increasing the budget would be the second step in the FCC's overhaul of the E-Rate program, which began with the E-Rate Modernization Order and FNPRM (see Regulatory View, July 2014). In that Order, the FCC maintained the current $2.4 billion budget (with adjustments for inflation) and shifted funds away from older non-broadband services such as pagers and voice service to Wi-Fi services. In support of Wheelers plan, FCC staff released an updated report that still claimed that 41% of rural public schools and 31% of suburban and urban public schools lack access to fiber networks (the identical percentages reported in the original report released in July). The report also contended that 45% of school districts lack sufficient Wi-Fi capacity to move to one-to-one student-to-device deployments.

Republican commissioners O'Rielly and Pai - who both dissented on the E-Rate Modernization decision - criticized the chairman's proposed plan. O'Rielly called the proposal a "spending spree," while Pai said it is a "17.2% tax increase" and that the FCC should instead pursue fiscally responsible reforms.

NTCA replied to Wheeler's proposal that, while it shares the FCC's enthusiasm to ensure that no rural school or library goes without affordable access to robust broadband, it should adopt safeguards for those institutions seeking E-Rate funds for building new broadband facilities to ensure against overbuilding in areas that already have a robust broadband network.

***TCA View:*** *Expect the FCC to pass Wheeler's requested increase on a 3-2 party line vote. This could prove problematic for RLECs, as fiscal conservatives in Congress have shown little inclination to increase the $9 billion USF "budget" – which could indicate "savings" need to be found in other parts of the fund.*

TCA Contact: Daniel Meszler

# FCC Addresses IP Transition and NG 911

At the November Open Meeting, the FCC adopted two Notices of Proposed Rulemaking (NPRMs), the first addressing the TDM-to-IP Transition and the second focusing on Next Generation 911 (NG 911) networks. In the TDM-to-IP NPRM, the FCC seeks comment on proposed rule updates that purport to protect consumers subjected to network changes and discontinuance of services, preserve competitive access to last-mile facilities and ensure access to 911 service during power outages. In the NG 911 NPRM, the FCC invites comment on maximizing the availability, reliability, and resiliency of the 911 network, and ensuring the accountability of all participants.

The TDM-to-IP NPRM seeks comment on proposed rules that would provide for customer notice and public comment when copper plant is retired. The current rules only require notice to the FCC as long as no service is

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discontinued. The FCC proposes to require notice of planned copper retirements to affected retail customers and interconnecting carriers and to provide a formal process for public comment. The FCC also asks whether carriers are retiring copper networks without notice by simply failing to maintain them - and whether consumers have been adequately informed of options when copper networks are retired.

The TDM-to-IP NPRM tentatively concludes that, to receive authority to discontinue TDM services used as a wholesale input (unbundled loops and special access) by competitive providers, an ILEC must commit to providing CLECs equivalent wholesale access on the new IP network. However, the FCC is careful to emphasize that it does not seek to impose any new wholesale access obligations.

Specifically, regarding access to 911 during electrical outages, the FCC asks when providers should bear the responsibility for providing backup power at the customer premises, the different back-up power technologies in the marketplace today and strategies for supplying back-up power during prolonged commercial power outages.

In the 911 NPRM, the FCC proposes to extend the rules emanating from the recent *911 Reliability Order* to all providers of 911 connectivity, including IT vendors supplying database resources to LECs. The *911 Reliability Order* required only covered 911 service providers (those that provide service directly to a PSAP) to take reasonable measures to ensure circuit diversity, central office backup power and network monitoring. (See *TCA Regulatory View*, October 2014).

***TCA View:*** *Once again the FCC attempts to resolve problems in highly competitive urban areas – and RLECs get swept along. The FCC has already reduced RLEC support for deploying IP networks – and it now proposes to increase the cost of these networks with mandates for backup power for CPE and "input" before retiring copper plant. The FCC's two NPRMs reflect a continuing concern that the transition to modern IP networks would subject the public to an unacceptable risk of harm unless micro-managed. Fortunately, most RLECs still avoid classification as covered 911 providers under the FCC's expanded definition.*

TCA Contact: Curt Huttsell

# News from the States

The **California** Public Utilities Commission (CPUC) will consider a Commissioner's Proposed Decision to adopt changes to the state high cost fund to support broadband deployment in areas served by RLECs. The proposal continues the CPUC's current policies of barring wireline competition in RLEC territories and allowing "all reasonable investments necessary to provide for the delivery of high-quality communication services and the deployment of broadband-capable facilities in their rate base." Additionally, the Proposed Decision would not impute any retail revenues from affiliated ISPs to the RLEC during a rate case, but it would adopt corporate operations expense caps, similar to those used in the federal USF mechanisms.

The **Kansas** Corporation Commission (KCC) is managing the state high cost "efficiently and effectively" according to a third party audit of the fund mandated by 2013 legislation. While the auditor recognized that the state high cost fund had contributed to the deployment of broadband-capable networks that provided rural Kansans greater access to both broadband and fiber networks than most of the rest of the nation - his report asserted that this contradicted statutes, which only allow support for broadband service in limited instances. The auditor concluded that FCC separations and cost allocation rules for RLECs are outdated and allocate an "excessive" amount of loop costs to traditional voice services. The auditor proposed "correcting this problem" with a second loop allocation, which - if adopted - would eliminate RLEC access to their $30 million portion of the state fund.

The **Nebraska** Public Service Commission (NPSC) is seeking comment on changing the contribution method for its state high cost fund. The NPSC asserts its current revenue-based assessment is unstable due to declining intrastate end-user telecommunications revenues and requests comment on an assessment based on either connections or numbers. The NPSC stresses that it is not considering the assessment of broadband services and contended that it cannot wait for the FCC to reform contributions at the federal level, which the NPSC believes will be, "several years away."

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# Important Deadlines and Due Dates

**December 8, FCC Form 497, Low Income Monthly Report:** All ETCs that request reimbursement for participating in the low-income program must submit to USAC their Lifeline and Link-Up Worksheet. This form must be electronically submitted by the eighth day of each month to receive support in that month. If the form is late or not electronically filed, support will be received the following month.

**December 11, FCC Form 477, Local Competition and Broadband Reporting Form:** The FCC modified the reporting requirements effective with this filing and now requires a single nationwide filing (not state by state). Wired, terrestrial fixed wireless and satellite broadband services providers will report per Census Tract the maximum speeds sold (not speed tier) as well as the number of subscribers for each advertised speed. In addition, mobile wireless broadband providers must report coverage areas by technology, minimum advertised upload and download speeds and spectrum band. Mobile providers must also provide a list of census tracts where service advertised and available to actual and potential customers and must report voice coverage areas by technology and spectrum. Providers of VoIP service are also required to report number of subscribers per census tract. **This filing is delayed due to technical issues with the web portal. The FCC will announce the new due date in an upcoming Public Notice.**

**December 15, Special Access Data Request:** All Form 477 filers must complete relevant portions of the FCC's Special Access Data Request. The filing applies to special access services provided in price cap LEC territories only, therefore RLECs will only need to certify that they are exempt, and affiliates that only provide broadband internet access in price cap areas will need to certify that they are under the de minimis threshold, if they have fewer than 15,000 customers and 1,500 business customers. However, CLECs or other affiliates that provide dedicated special access services (including ETS) in a price cap area, will need to complete the data collection. RLECs and non-providers must certify by December, 15 but providers will have until January 29, 2015 (for large providers) or February 27, 2015 (for providers with less than 1,500 employees).

**December 31, FCC Form 509, Annual Common Line Actual Cost Data Collection Form:** Incumbent LECs must submit actual results of operations for the preceding calendar year. This information is used to "true up" ICLS amounts disbursed.

**December 31, Annual Lifeline Recertifications:** ETCs must recertify Lifeline customers from the previous year that were reported on the February FCC Form 497, affirming that they are still eligible to receive Lifeline discounts. These certifications must be completed **by December 31** and will be reported to USAC **by January 31**.

**January 16, FCC Form 655, Hearing Aid Compatibility (HAC)** Report: Wireless providers, including resellers must electronically file reports showing that they are in compliance with HAC rules during the previous calendar year. The FCC requires that; 1) 50% of all handsets offered must be compatible with hearing aids, 2) HAC handsets must be offered at varying levels of functionality, 3) all packaging includes labels clearly displaying the handset's rating and an explanation of the rating system, 4) all multi-modal handsets operating in untested bands must include disclosures, 5) company websites include a list of all HAC models offered with ratings and an explanation of the rating system.

**January 30, Broadband Stimulus Agency Reports:** all ARRA Broadband Stimulus awardees must provide financial and penetration information to RUS and/or NTIA for the previous quarter. These reports are due no later than 30 days after the end of each quarter.

**January 31, FCC Form 555, Annual Lifeline Recertifications:** ETCs must report on their efforts to recertify Lifeline customers from the previous year that were reported on the February FCC Form 497 of the current year, affirming that they are still eligible to receive Lifeline discounts. These certifications must be completed by December 31 and will be reported to USAC by January 31.

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# December 2014

**Look for TCA Consultants at the following meetings**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 WSTA Committee Meeting; Madison, WI | 10 NTA Winter Meeting; Lincoln, NE | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 TCA Offices Closed | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

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Give us a call for more information about our services and products

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