FCC to Address Public Safety Concerns at November Meeting

November 3, 2019

The FCC plans to prohibit the use of Universal Service Fund ("USF") support to purchase equipment or services from foreign entities that it determines pose national security risks at its next meeting scheduled for November 19, 2019. As we previously reported, the ban may severely impact participants in all federal USF programs and involve a costly "rip and replace" process to remove foreign-made equipment from domestic telecommunications networks. The FCC also expects to move forward on its heavily-anticipated E911 vertical accuracy (*i.e.*, z-axis) proceeding and adopt new requirements for wireless carriers to better identify caller locations in multi-story buildings. Rounding out the major actions, the FCC anticipates proposing new rules for suspending and debarring entities from participating in USF and other funding programs; removing longstanding unbundling and resale requirements for certain telecommunications services; and widening the contribution base for the Internet Protocol Captioned Telephone Service ("IP CTS") to include intrastate revenues.

The draft items cover the gamut of telecommunications issues, affecting everything from the construction of next-generation 5G networks to legacy intercarrier competition rules, and should be closely watched. You will find more details on the most significant November FCC meeting items after the break:

USF National Security Ban: The draft Order and Further Notice of Proposed Rulemaking seeks to fortify the United States' communications infrastructure from potential foreign surveillance and denial of service attack and would prohibit the use of USF support to purchase any equipment or services provided by a "covered company" that the FCC determines poses a national security threat to the integrity of domestic communications networks. The initial ban only would apply prospectively, but would include spending related to any maintenance or upgrades to existing equipment and services. The FCC would preliminarily designate Chinese equipment manufactures Huawei Technologies Company and ZTE Corporation as covered companies and seek comment on whether the designation should be made permanent. The FCC also would establish a process to designate other covered companies in the future. In addition, the FCC would propose: (1) requiring all USF recipients to stop using existing equipment and services provided by covered companies and (2) creating a reimbursement program to offset the "reasonable" transition costs associated with this requirement. In order to determine the scope of this potential "rip and replace" project, USF recipients would be required to report to the FCC on whether they use equipment and services from covered companies and the estimated costs of transitioning to new suppliers.

E911 Vertical Location Accuracy Requirements: The draft Order and Further Notice of Proposed Rulemaking is designed to push carriers to better identify 911 callers' locations within buildings and would adopt an E911 vertical location accuracy standard of +/- 3 meters for 80 percent of E911 calls from z-axis location capable handsets. The nationwide wireless carriers would be required to deploy z-axis location capable technology that meets the new standard in the 25 largest markets by April 3, 2021, and in the 50 largest markets by April 3, 2023. Non-nationwide wireless carriers would have an extra year to meet each of these deadlines. The FCC also would seek comment on tightening the E911 vertical location accuracy standard over time and whether carriers eventually should be obligated to report a caller's floor number.

New Suspension and Debarment Rules: The draft Notice of Proposed Rulemaking would request input on whether the FCC should adopt new suspension and debarment rules to cover a wider range of misconduct, in accordance with federal guidelines adopted by many other federal agencies. The FCC's current rules generally only allow the FCC to suspend and/or debar individuals from the USF programs after they are convicted or receive a civil judgment involving fraud or certain criminal offenses. The proposed rules would allow the FCC to suspend and/or debar individuals without a conviction or final judgment and for **repeat violations of FCC rules, failures to pay regulatory fees, or other offenses "indicating a lack of business integrity**." The proposed rules would apply not only to USF participants, but also to participants in the Telecommunications Relay Service and National Deaf-Blind Equipment Distribution programs. Participants in these programs would be subject to new disclosure obligations and would be required to verify that they do not work with suspended or debarred entities. The FCC also plans to establish a system of reciprocity, in which entities suspended or debarred from participation in funding programs administered by other agencies would be similarly suspended or debarred from participating in the FCC programs. The FCC further asks whether it should be able to apply the new suspension and debarment rules retroactively to cover conduct occurring before their adoption, significantly increasing the potential liability for program participants.

Eliminating Unbundling/Resale Obligations: The draft Notice of Proposed Rulemaking proposes relieving incumbent local exchange carriers of their longstanding obligations to make certain network elements available on an unbundled basis and offer certain telecommunications services on a wholesale basis to competitive carriers. The draft item would address the few remaining unbundling and resale obligations left over from the Commission's broad forbearance order adopted earlier this year. Specifically, the FCC would propose removing the unbundling requirements for: (1) DS1 and DS3 loops in competitive areas, with an exemption for DS1 loops providing residential broadband and telecommunications services in rural areas; (2) DS0 loops in urban census blocks; (3) narrowband voice-grade loops; and (4) dark fiber transport for wire centers within a half mile of alternative fiber. The FCC also would propose eliminating resale obligations for services offered in non-price cap incumbent carrier service areas. The FCC would argue that such unbundling and resale obligations are no longer necessary in light of increased competition. The FCC anticipates phasing in the reforms over a three-year period.

Expanding IP CTS Contribution Base: The draft Order would expand the contribution base for IP CTS, which provides call captioning for individuals who are deaf or hard of hearing, to include intrastate end-user revenues from contributing telecommunications carriers and VoIP providers. When the FCC initially authorized support for IP CTS, it decided as an "interim" measure to cover the service's costs based only on interstate telecommunications revenues. The draft item would find that the interim funding mechanism unfairly burdens providers and users of interstate telecommunications services and is insufficient to address the overall decline in contributions. The FCC would note that the statute governing IP CTS provides it with broad authority to support captioning on intrastate as well as interstate calls and the Communication Act's general reservation of state authority over intrastate communications does not apply in this instance. The FCC also would note that it does not expect the reforms to increase or otherwise affect the total contributions needed to support IP CTS.