

From: Public Policy Law360 <news-q@law360.com>  
To: Adams, ChaneyChaneyAdams@gov.sc.gov  
Date: 8/18/2016 4:37:47 AM  
Subject: FCC's Municipal Broadband Loss Cuts Off Policy Options

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## PUBLIC POLICY

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Thursday, August 18, 2016

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### TOP NEWS

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#### FCC's Municipal Broadband Loss Cuts Off Policy Options

The Federal Communications Commission's Sixth Circuit loss last week over its push to promote expanded municipal broadband by preempting state laws leaves the FCC with little recourse but to ask a likely reluctant Congress for new authority, experts said.

#### Aetna Told DOJ Its ACA Plans Hinged On Merger Suit

Aetna Inc. threatened the U.S. Department of Justice that it would largely pull out of the Affordable Care Act marketplace — which it did Monday — if the government tried to block its \$37 billion purchase of Humana Inc., according to a letter made public Wednesday.

#### Sex Discrimination Also Covers Gender Identity, GSA Says

The General Services Administration said Wednesday that it agrees with the interpretation of agencies such as the U.S. Equal Employment Opportunity Commission that sex discrimination includes bias based on gender identity, saying that federal facilities must adhere to that rendering of anti-discrimination statutes.

#### S&P Urges Transparency In Banks' Plans To Weather A Crisis

Globally systemically-important banks need to provide more information to their creditors about their recovery and resolution plans and internal financing so that investors can better understand the risks involved during a crisis, Standard & Poor's Financial Services LLC said in a report published Wednesday.

#### IRS Finalizes Foreign Procurement Excise Tax Guidance

The IRS released final rules on Wednesday on the 2 percent excise tax on the U.S. government's payments to foreign persons for goods or services provided under a government contract.

#### FCC Pushed To Recognize Special Access Competition

A trade group representing midsize communications companies, along with representatives from CenturyLink and Frontier Communications, are pushing the Federal Communications Commission to ensure tech neutrality and recognize key issues in its plan for a new regulatory framework governing the market for special access services.

#### Ill. Republicans Hesitant To Mention Trump At State Fair

With a little less than 12 weeks to go before Election Day, Illinois

### LAW FIRMS

Akin Gump  
Arnold & Porter  
Baker Botts  
Barnes Richardson  
Boies Schiller  
Bracewell LLP  
Bryan Cave  
Chadbourne & Parke  
Cozen O'Connor  
Cravath Swaine  
Crowell & Moring  
Dorsey & Whitney  
Drinker Biddle  
Earthjustice  
Foley Hoag  
Gallivan White  
Gibson Dunn  
Gordon & Rees  
Greenbaum Rowe  
Hunton & Williams  
Husch Blackwell  
Jenner & Block  
Jones Day  
Keker & Van Nest  
King & Spalding  
Kopon Airdo  
Lockridge Grindal  
McDermott Will  
Michael Best  
Morgan Lewis  
Morvillo Abramowitz  
Much Shelist  
Nelson Mullins  
O'Melveny & Myers

Republicans rallied the party faithful at the State Fair on Wednesday, all while hardly mentioning the man at the top of the ticket: Donald Trump.

## ANALYSIS

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### Unpaid Duties Will Keep Heat On Enforcement Regime

The U.S. Government Accountability Office has uncovered \$2.3 billion worth of unpaid anti-dumping and countervailing duties, which experts say will amplify persistent calls for a robust trade enforcement strategy, even if relief is a long way off.

### 4 Things To Watch As New Truck Emissions Regs Get In Gear

The Obama administration's newly finalized regulations aiming to curb greenhouse gas emissions from the nation's trucking fleet will push owners, operators and manufacturers toward new efficiency goals through a mix of heightened standards and incentive provisions. Experts identified four things to keep an eye on as the ambitious new regulations are rolled out and implemented over the next decade.

### Struggling ACA Can Take Cues From Past Medicare Woes

The Affordable Care Act's current struggles resemble previous turbulence experienced by private Medicare and Medicaid plans that are now on solid ground, according to experts who say the ACA can benefit from that past experience.

## BANKING & SECURITIES

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### SEC's Investor Advocate Praises Proposed Audit Rules

The U.S. Securities and Exchange Commission's Investor Advocate sent a letter Monday encouraging the Public Company Accounting Oversight Board to move forward with proposals to require auditors to highlight complex and challenging matters in their reports.

## ENERGY & ENVIRONMENTAL

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### Enviros, Industry Groups Clash Over New EPA Ozone Rules

Challengers of the U.S. Environmental Protection Agency's tighter national ozone limits lobbed legal shots at each other in the D.C. Circuit Wednesday, with environmental groups claiming industry groups are recycling rejected arguments against tougher standards and industry groups saying assertions that the new standards aren't strong enough are meritless.

### Mass. Top Court Nixes Ratepayer Subsidies For Pipelines

Massachusetts' top court on Wednesday nixed a rule allowing state utility regulators to review and approve ratepayer-backed subsidies for new gas pipeline construction, saying it undermined the state's electricity deregulation laws by shifting the financial risk of pipeline projects onto consumers.

## HEALTH & LIFE SCIENCES

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### CMS Beats Hospitals' Suit Over Uncompensated Care Pay

A D.C. federal judge cleared the Centers for Medicare and Medicaid Services on Wednesday of allegations that it improperly calculated the

Petti & Briones

Polsinelli

Seyfarth Shaw

Sheppard Mullin

Sidley Austin

Squire Patton Boggs

Stearns Weaver

Steptoe & Johnson LLP

Wagner Law Group

White & Case

## COMPANIES

21st Century Fox Inc.

Aetna Inc.

All Aboard Florida - Operations LLC

Allina Health System Inc.

American Federation of Labor and Congress of Industrial Organizations

American International Group Inc

American Trucking Associations Inc.

Anthem Inc.

Apple Inc.

Avalere Health LLC

BDO USA LLP

Barclays PLC

Broadcom Corporation

Burford Capital LLC

CIGNA Corporation

CenturyLink Inc.

Chevron Corporation

Computer & Communications Industry Association

Conservation Law Foundation

Deloitte Touche

DraftKings Inc.

Engie

Ernst & Young

Facebook

FanDuel Inc.

Fireman's Fund Insurance Co.

Fox Entertainment Group

Frontier Communications Corporation

Gawker Media LLC

amount nine hospitals in New York, Florida and Minnesota should be reimbursed for uncompensated care in 2012 by basing its Medicare calculations on a vacated rule.

## INSURANCE

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### Pols Urge End To EU 'Discrimination' Against US Insurers

As talks between the U.S. and European Union continue to unfold over the equivalence of both sides' insurers and reinsurers in the marketplace, a pair of House committee members Wednesday expressed concern over "discrimination" against American businesses they said was created by new EU regulations.

## COMPETITION

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### Menendez Urges 3rd Circ. To Reconsider Corruption Charges

U.S. Sen. Bob Menendez, D-N.J., has called on the full Third Circuit to revisit a decision upholding charges he unlawfully assisted a Florida eye doctor in exchange for gifts and political contributions, arguing the ruling improperly permits consideration of a lawmaker's motive in evaluating whether legislative acts are constitutionally protected.

## PRIVACY & CONSUMER PROTECTION

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### Peter Thiel Wrong About 'Revenge Porn' Bill, Lawmaker Says

The federal lawmaker behind a bill that would criminalize "revenge porn" rejected on Tuesday tech entrepreneur Peter Thiel's suggestion that the legislation was designed specifically for his controversial legal campaign against Gawker Media.

## PRODUCT LIABILITY

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### FDA Guidance Partially Undone In Tobacco Labeling Suit

A D.C. federal court on Tuesday vacated part of the U.S. Food and Drug Administration's revised procedures for the approval of certain tobacco products, saying that a premarket approval requirement for label changes is prevented by federal law.

## GOVERNMENT CONTRACTS

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### DOD Has Hard Time Distinguishing Everyday Spending

The U.S. Government Accountability Office may want the Pentagon to better distinguish its reporting on day-to-day spending, but the defense agency has a hard time doing just that, consistently spending more than what Congress authorized, according to a GAO report published Tuesday.

### White House To Let Domain Name Contract Expire

The Obama administration said Tuesday that plans to privatize the internet's domain name system will move forward, committing to letting a contract for the government's stewardship expire and to transfer sole American control over internet address and domain name management to the global multistakeholder community.

### DOD Eases Small Biz Subcontract Reporting Requirement

The U.S. Department of Defense has issued a new deviation from federal

Gerchen Keller Capital LLC  
Google Inc.  
Henry Schein, Inc.  
HuffingtonPost.com LLC  
Hulu LLC  
Humana Inc.  
IMF Bentham Ltd.  
International Association of Defense Counsel  
Internet Corporation for Assigned Names and Numbers  
Ion Media Networks Inc.  
Johnson Controls Inc.  
KaloBios Pharmaceuticals Inc.  
Lehman Brothers Holdings Inc.  
Litigation Counsel of America  
McGraw Hill Financial Inc.  
Methodist Hospital System  
Montefiore Health System Inc.  
Morgan Stanley  
Mount Sinai Hospital  
Murray Energy Corp.  
National Collegiate Athletic Association  
Netflix Inc.  
New York Times Co.  
NewYork-Presbyterian Hospital  
Oracle Corporation  
Papa John's International Inc.  
Philip Morris USA Inc.  
Public Company Accounting Oversight Board  
Rimini Street Inc.  
Sierra Club  
TYCO International Ltd.  
TechFreedom  
Thomson Reuters Corporation  
Trinity Industries Inc.  
U.S. Chamber of Commerce  
UnitedHealth Group Inc.  
Univision Communications Inc.  
Vascular Solutions Inc.  
Verizon Communications  
Wells Fargo & Co.  
Zeughauser Group LLC

## GOVERNMENT AGENCIES

acquisition rules, easing the requirement for defense contractors to issue small business subcontracting reports, among other tweaks to subcontract reporting requirements.

## INTERNATIONAL TRADE

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### Agencies Harmonize Docs For Defense, Dual-Use Exports

The U.S. Department of State and the Bureau of Industry and Security issued a pair of complementary final rules Wednesday amending the International Traffic in Arms Regulations, bringing an ITAR export report form in line with BIS' Export Administration Regulations and making several other ITAR-related clarifications.

### US Releases 1st-Ever Status Report On Peruvian Timber

A significant portion of a timber shipment from Peru to the U.S. last year was not compliant with the South American nation's laws, regulations and other requirements on the harvest and trade of timber products, according to the results of a first-of-its-kind report published Wednesday.

## TAX

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### UK Proposes Tough Penalties For Tax Avoidance Enablers

The U.K. government on Wednesday proposed stiff penalties for banks, lawyers and accountants involved in creating, marketing and facilitating tax-avoidance schemes that are defeated in British courts.

### IRS Urged To Define CPA In Co-Employer Regs

The American Institute of Certified Professional Accountants has told the IRS its proposed regulations for certified professional employer organizations do not define what exactly independent CPAs are, who represent such co-employers that handle companies' payroll.

### Ill. Voters Could Save Money For Roads Via Ballot Measure

A group of transportation advocates and construction companies want Illinois voters to know that they will have the option of protecting funding for the state's transportation infrastructure this November, blocking the cash-strapped state from dipping into money meant to maintain highways when it needs to pay its bills.

### Johnson, Tyco Ink \$16.6B Inversion As Shareholders Balk

Shareholders for Johnson Controls and Tyco International PLC approved their \$16.6 billion corporate inversion Wednesday, the day after a putative class of shareholders objected with a federal suit over the terms of the deal.

### Fla. Counties' Rail Bond Suit Against DOT Stays On Track

A D.C. federal judge on Tuesday kept alive most claims brought by two Florida counties against the U.S. Department of Transportation's approval of a \$1.75 billion bond offering for the All Aboard Florida rail project, but tossed one of the counties' Internal Revenue Code section-related claim.

## NATIVE AMERICAN

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### SD Inks Tax Collection Deals With Three Tribes

South Dakota has finalized tax agreements with three tribes under which the state's revenue department will collect sales, use and excise taxes on

Alabama-Coushatta Tribe of Texas

Bureau of Industry and Security  
Centers for Medicare & Medicaid Services

Central Intelligence Agency  
Department of Commerce  
Drug Enforcement Administration  
Equal Employment Opportunity Commission

European Commission  
European Securities and Markets Authority

Executive Office of the President  
Federal Acquisition Regulatory Council

Federal Aviation Administration  
Federal Communications Commission

Federal Reserve System  
Food and Drug Administration

Government Accountability Office  
Illinois Supreme Court

Internal Revenue Service  
International Monetary Fund

National Highway Traffic Safety Administration

National Institutes of Health  
National Telecommunications and Information Administration

Office of the U.S. Trade Representative

Securities and Exchange Commission

Small Business Administration  
Texas Attorney General's Office

U.S. Agency for International Development

U.S. Army

U.S. Attorney's Office

U.S. Department of Defense

U.S. Department of Health and Human Services

U.S. Department of Justice

U.S. Department of State

U.S. Department of Transportation

U.S. Department of the Treasury

U.S. Environmental Protection

the tribes' behalf to enforce tax laws, according to a statement Wednesday.

## Texas Seeks To Shut Down Tribe's Electronic Bingo

The state of Texas on Monday told a federal court that the Alabama-Coushatta Tribes of Texas are in violation of a 2002 court-ordered block on gambling and that the tribe's electronic bingo games that have been operational since May are illegal.

## TELECOMMUNICATIONS

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### Univision Urges FCC To Protect UHF Ownership 'Discount'

Univision was one of several broadcasters lobbying the Federal Communications Commission to at least retroactively safeguard their ultra high frequency station ownership stake "discount" as the agency mulls how UHF stations are treated under a regulation that caps nationwide market share, according to an ex parte filing Monday.

## EXPERT ANALYSIS

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### Fuel Tax Law Creates Big Leak In Aviation Trust Fund

The 2006 "fuel fraud law" has reportedly cost the Aviation Trust Fund — an important source of finance for airport improvements — between \$1 billion and \$2 billion per year, if not more. At this rate of decreased revenue, the Federal Aviation Administration faces a serious impediment in the upcoming years as airport, airline and consumer demands put pressure on the aviation industry, says Rachael Wallace of Cozen O'Connor PC.

### New Biz Continuity Obligations For Investment Advisers

A U.S. Securities and Exchange Commission rule recently proposed makes it important for investment advisers to implement measures to protect client interests from being placed at risk as a result of a business disruption or transition. However, there is no one-size-fits-all strategy to addressing business continuity planning, say attorneys with Bracewell LLP.

### Marijuana Status Quo Maintained: What's Next?

With its reaffirmation of marijuana's Schedule I status the U.S. Drug Enforcement Administration took two additional actions: clearing the way for additional medical marijuana research studies and clarifying the limitations and regulations involving hemp production and distribution. Bob Morgan at Much Shelist PC explains how these decisions impact the legal and health care industries and what to expect in the coming months and years.

### The Shifting Junction Of Trade Secret Law And Noncompetes

While trade secrets are currently gaining greater protection, noncompetes are facing greater scrutiny. David Almeling and Tony Beasley of O'Melveny & Myers LLP explore this changing intersection of law, and explain how direct protection for trade secrets is waxing, while indirect protection in the form of noncompetes may be waning.

### Beware The 'Standard' Mediation Confidentiality Agreement

There are several risks involved with signing a "standard" mediation confidentiality agreement, both to your clients and to yourself. Once you recognize these risks, you will never sign a standard MCA again, at least not without a lot of thought and a lot of disclosures to your client, says Jeff Kichaven of Jeff Kichaven Commercial Mediation.

## Agency

U.S. General Services  
Administration

U.S. House of Representatives

U.S. Senate

U.S. Supreme Court

## LEGAL INDUSTRY

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## Dorsey Backs Away From Controversial Shkreli Invite

Days after Dorsey & Whitney LLP announced that the polarizing former Turing CEO Martin Shkreli would headline an upcoming firm event, it abruptly rescinded the invitation on Wednesday, citing the scandal surrounding the pharmaceutical bad boy.

## How Firms Are Finding Success In The Midwest

As rent and staffing costs on the coasts skyrocket, several BigLaw firms with a strong presence in the Midwest have quietly increased revenue and headcount, leveraging lighter costs to implement a lower-rate strategy that experts say allows them to stand out in a crowded legal market.

## Litigation Powerhouse: Boies Schiller & Flexner

Throughout its 19-year history, Boies Schiller & Flexner LLP has garnered a reputation as a firm that excels at taking complicated cases to trial and has locked down major litigation victories for clients including Barclays and Oracle, earning it a place among Law360's Litigation Powerhouses.

## Law Grad Employment Rate Flat, Salaries Up, Report Says

The employment rate for members of 2015 law classes remained at the same rate seen by 2014 graduates while average salaries for new hires from the class of 2015 saw modest gains from the previous year, according to a report released Wednesday.

## GCs Giving Firms More Work, But Atty Friction Continues

With in-house legal teams continuing to increase the amount of work outsourced to firms, it would seem that the working relationship between general counsels and outside attorneys is a happy one, but that is far from the case, according to an International Association of Defense Counsel survey released on Wednesday.

## Litigation Financing Forced Into The Light By Chevron Case

A California judge's decision to force attorneys to say who is funding their \$1.5 billion proposed class action against Chevron over a Nigerian offshore rig explosion has the potential to force the burgeoning and secretive industry of litigation funding out of the shadows, experts say.

## Rainmaker Q&A: Morvillo Abramowitz's Jeremy Temkin

Some lawyers will promise potential clients unrealistic results and create a situation where the client is almost certain to be disappointed later. While sugar-coating might help land the matter, I'd rather be candid with the potential client even if it makes the relationship less likely, says Jeremy Temkin, a partner at Morvillo Abramowitz Grand Iason & Anello PC.

## Rainmaker Q&A: Kecker & Van Nest's Ashok Ramani

When I first made partner, I had this quaint notion that results and reputation speak for themselves, and that clients will find you if you do good work and have a good reputation. While results and reputation are of course critical, clients have so many demands on their time that it's important to stay top of mind, says Ashok Ramani, a partner at Kecker & Van Nest LLP.

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