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April 25, 2016 HIGHLIGHTS

- The FCC issued the [agenda](#) for its April 28, 2016 Open Meeting, and will consider a Tariff Investigation Order and FNPRM on a new regulatory framework for business data services, an NPRM on real-time text communications over IP communications networks to improve the accessibility of these networks for consumers who are deaf, hard of hearing, deaf-blind, and speech disabled, and an Order on Reconsideration and a Second Report and Order on the spectrum sharing regime.
- The RoR USF Reform [Order is effective](#) May 25, 2016, except for certain rule changes that require OMB approval.
- The FCC issued [FAQs](#) on the [RoR USF Reform Order](#).
- PRA comments [are due](#) May 25, 2016, on Form 481 revisions to reflect reporting requirements for price cap carriers for CAF Phase II support, for recipients of RBE support, a reasonably comparable rate certification for broadband for high-cost support recipients, and an E-rate bidding certification for Phase II model-based support and RoR carrier high cost recipients. NTCA and WTA filed [comments](#) to the similar [Notice](#) issued in February.
- The FCC [granted](#) CenturyLink a waiver to allow it to implement an internal restructuring plan to merge all or some of its ILECs in states in which it has multiple ILECs in order to reduce the number of study areas in a state, and allows CenturyLink to consolidate its switched access rates and Eligible Recovery and to calculate them on the basis of the surviving study area in a state.
- NTCA [discussed](#) the implementation and operation of budget controls under the [USF Reform Order](#), and noted the need for equitable sharing of budget resources and fair application of any budget controls among all RLECs.
- Home Telephone [discussed](#) its concerns over the complexity of the USF Reform [Order](#), and asked the FCC not to implement the penalty for an electing carrier's option to decline a revised offer of A-CAM support. Matanuska Telephone Association, et al. [discussed](#) the proposed Alaska Infrastructure Fund, and suggested companies electing the AIF would exit the NECA common line pool but could choose to continue to participate in NECA tariffs and administrative functions. Alaska Communications [discussed](#) the importance of middle mile capacity for delivering broadband, and [urged](#) the FCC to address regulatory reform for Alaska's RoR LECs independently from the requests made by the ATA for additional support for competitive ETCs. GCI [discussed](#) the methodology used to ascertain which census blocks were "served" by AT&T or Verizon using their own facilities to offer 4G LTE service and which areas would not be eligible for future support under the Alaska Plan.
- Endeavor filed a [reply](#) to comments on its [Petition for Clarification](#) on the separations freeze.
- The FCC [published](#) in the Federal Register the [NPRM](#) on establishing privacy regulations for broadband ISPs. Comments are due May 27; replies due June 27. PRA comments are due June 20.
- The U.S. Senate Committee on Commerce, Science, and Transportation [will hold an executive session](#) on April 27, 2016, to consider [S. 2644](#), The FCC Reauthorization Act of 2016, and [S. 421](#), Federal Communications Commission Process Reform Act of 2015, among other bills.
- Commissioner Pai [asked](#) USAC to provide detailed information on other mobile resellers to combat waste, fraud, and abuse of Lifeline.
- Chairman Wheeler sent [letters](#) to nine U.S. Senators in response to their letter on measuring mobile broadband coverage across the country.

Other Key Upcoming Dates

- Apr. 28 - Comments [due](#) to refresh the record on petitions and applications for review of the 2010 [Declaratory Ruling](#) on Sandwich Isles' cable network lease costs. Replies due May 9.
- Apr. 28 - Comments [due](#) challenging the coverage data for competitors contained in the updated A-CAM.
- May 12 - Comments due on the [FNPRM](#) attached to the [Rate-of-Return USF Reform Order](#). Replies due June 13.

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USF Reform

- The FCC published a [Notice](#) in the Federal Register on April 25, 2016, announcing the March 30, 2016 Rate-of-Return USF Reform [Order](#) is effective May 25, 2016, except for the following rule changes that require OMB approval: §§ 51.917(f)(4) (revenue recovery for RoR carriers); 54.303(b) (eligible capital investment and operating expenses); 54.311(a) (CAF A-CAM support); 54.313(a)(10), (e)(1), (e)(2) and (f)(1) (annual reporting requirements for high-cost recipients); 54.316(a)(b) (broadband deployment reporting and certification requirements for high-cost recipients); 54.319(e) (elimination of high-cost support in areas with an unsubsidized competitor); 54.903(a) (obligations of RoR carriers and the Administrator); 69.132 (end user Consumer Broadband-Only Loop charge for non-price cap ILECs); 69.311 (Consumer Broadband-Only Loop investment); 69.4(k) (charges to be filed); and 69.416 (Consumer Broadband-Only Loop expenses).
- The FCC issued [FAQs](#) on April 21, 2016, on the [RoR USF Reform Order](#), which provides answers to questions on how the USF reforms are to be implemented by RoR ILECs.
- The FCC published a [Notice](#) in the Federal Register on April 25, 2016, announcing PRA comments on a revision to and an extension of two previously-approved information collections are due May 25, 2016. The first entails revisions to FCC Form 481 and its instructions to reflect recent changes to reporting and certification requirements for price cap carriers that elected to receive Phase II model-based support, reporting and certification requirements for recipients of rural broadband experiment support, a reasonably comparable rate certification for broadband for recipients of high-cost support, and an E-rate bidding certification for Phase II model-based support and RoR carrier high cost recipients. The second entails new forbearance petition filing requirements. The Commission requires that petitions for forbearance must be “complete as filed” and explains in detail what must be included in the forbearance petition. The Commission also incorporates by reference its rule, 47 CFR 1.49, which states the Commission’s standard “specifications as to pleadings and documents.” The Notice indicated “precise filing requirements are necessary because of *section 10*’s strict time limit for Commission action.”
- NTCA and WTA filed [PRA comments](#) on April 18, 2016, to the similar [Notice](#) issued on February 17, 2016, on revisions to Form 481 and its instructions. NTCA and WTA said the Commission should make clear the section 54.313(f)(1)(iii) certification of compliance with the reasonably comparable rate requirement for E-rate providers that receive high-cost support is not applicable until the first E-rate funding year after the rate benchmarks are developed and implemented, which has not yet been accomplished. They suggested the Commission should ensure that this certification, even if OMB grants approval of the amended information collection that includes it, does not appear on Form 481 due July 1, 2016.
- The Wireline Competition Bureau issued an [Order](#) on April 20, 2016, granting CenturyLink a waiver to allow it to implement a *pro forma* internal restructuring plan whereby it will merge all or some of its ILECs in states in which it has multiple ILECs in order to reduce the number of study areas in a state. This waiver also allows CenturyLink to consolidate its switched access rates and Eligible Recovery, and to calculate them on the basis of the surviving study area in a state. The Bureau found the requested relief will help facilitate the Commission’s goal of transitioning price cap carriers to the bill-and-keep regulatory regime.
- NTCA [spoke separately with](#) Commissioners O’Rielly and Clyburn’s Legal Advisors on April 19, 2016, and to Chairman Wheeler’s Legal Advisor and Wireline Competition Bureau staff on April 20, 2016, to discuss the implementation and operation of budget controls under the [USF Reform Order](#). NTCA stressed the importance of sufficient USF budgets both to enable voluntary model elections and to ensure that the standalone broadband update will allow provision of services at reasonably comparable rates. NTCA also noted the need for equitable sharing of budget resources and fair application of any budget controls among all RLECs, and also discussed the scope of the five-year service quality improvement plan progress reports that will be due in July of this year, pending implementation of new reporting requirements.

- Home Telephone [met separately](#) with Legal Advisors to Commissioners Rosenworcel and Pai on April 18 and 19, 2016, and expressed concern over the complexity of the USF Reform [Order](#). Home asked the Commission not to implement the penalty which would apply if a rate-of-return carrier that received more support from the legacy mechanisms in 2015 than was offered in the model initially elects model-based support and later opts to decline model-based support if that support is revised to stay within the model's 10-year budget. Home suggested that in implementing an electing carrier's option to decline a revised offer of support, the Commission seek a way to ensure that neither those companies who select model-based support nor those companies who decline that support are harmed if a carrier declines a revised offer of model-based support.
- Matanuska Telephone Association, Copper Valley Telecom, Arctic Slope Telephone Association Cooperative, GCI, and GVNW [met via telephone](#) with Wireline Competition Bureau staff on April 14, 2016, to discuss the proposed Alaska Infrastructure Fund. They claimed the AIF aligns with the March 30, 2016 Rate-of-Return USF Reform Order, suggesting, similar to companies choosing model-based support, companies electing the AIF would exit the NECA common line pool but could choose to continue to participate in NECA tariffs and administrative functions, and they would meet specific performance obligations and milestones. They provided copies of revised proposed rules, which they said reflect suggested amendments to the rules as adopted in the March RoR USF Reform Order.
- ACS [met with](#) Commissioners O'Rielly and Rosenworcel's Legal Advisors and Wireline Competition Bureau staff on April 19 and 20, 2016, to discuss the importance of middle mile capacity for delivering broadband communications capability to unserved Alaska, and in particular to Alaska's 188 remote bush communities. ACS specifically raised concerns about the terms of access to any middle mile put into service in connection with the pending proposal of the Alaska Telephone Association. ACS suggested the Commission's rules for CETC support should ensure that all broadband telecommunications transport capacity constructed or operated using high-cost support: be sufficient for the provision of high-speed, interactive broadband services; permit competitive access by multiple service providers in the same geographic area; be accessible on a reasonably non-discriminatory basis by multiple competitors as well as affiliates of the support recipient; and be reasonably affordable based on a comparison to prices for comparable services in urban areas.
- Alaska Communications filed [a letter](#) on April 18, 2016, to urge the Commission to address regulatory reform for Alaska's RoR LECs independently from the requests made by the Alaska Telephone Association for additional support for competitive ETCs. ACS said ATA's current proposal does not offer a realistic solution for reaching the Alaska Bush, as it does not endorse a specific proposal for closing Alaska's middle mile gap with defined deployment milestones and enforceable performance standards. ACS asserted ATA's CETC proposal would affirmatively harm competition in Alaska, and suggested the FCC adopt specific, enforceable regulations to ensure that competing service providers have access to the middle mile built with federal funds at affordable, cost-based rates and on reasonably non-discriminatory terms.
- GCI [met with](#) staff from the Wireless Telecommunications and Wireline Competition Bureaus on April 15, 2016, to provide responses to questions previously asked by FCC staff. GCI explained the methodology used to ascertain which census blocks were "served" by AT&T or Verizon using their own facilities to offer 4G LTE service and which areas would not be eligible for future support under the Alaska Plan. GCI claimed because "served" blocks are upgraded through carrier performance obligations in the Alaska Plan, while "unserved" blocks are the subject of a reverse-auction mechanism, the Commission may choose to draw the line between "served" and "unserved" at a different level than 15% population served. GCI said the population in the Remote Alaska areas subject to the Alaska Plan is the basis for GCI's revised proposed performance commitments (Attachment A). GCI also attached charts that estimate the population of Alaska Plan-eligible census blocks in which 85% of the population is served by each of two or more carriers (Attachment B) and a simplified explanation of its LTE-over-satellite solution (Attachment C).
- Midwest Energy Cooperative, NRECA, and the Utilities Telecom Council [met with](#) Chairman Wheeler's Legal Advisor and the Deputy Chief of the Wireline Competition Bureau on April 15, 2016, to discuss criteria the Commission could use in the CAF Phase II reverse auction. They expressed support for

minimum eligibility requirements, and said the criteria should set the bar high so the Commission is funding future-proof broadband networks that will promote economic growth, better education and improved health care in rural unserved communities, as well as other Commission policies, such as E-rate and mobile wireless.

- ViaSat [met separately with](#) Legal Advisors to Commissioners O’Rielly, [Pai](#), and [Rosenworcel](#), and Office of Strategic Planning and Policy Analysis [staff](#) on April 19, 2016, to discuss its support for an objective and competitively-neutral CAF Phase II auction that would distribute support to the lowest bidder. It also described its current 25/3 Mbps service offerings and its forthcoming ViaSat2 and recently announced ViaSat 3 satellites, which it claimed will significantly increase the capacity and through-put of the ViaSat broadband network.
- U.S. Cellular [met with](#) Wireless Telecommunications Bureau staff on April 14, 2016, to discuss the license renewal proceeding and the Mobility Fund II. It expressed concern over using a reverse auction format like the one used in Auction 901 for Mobility Fund II, claiming it placed mountainous terrain at a distinct disadvantage over flat terrain to stand a reasonable chance of winning. It also urged the Commission to consider the implications of the coming deployment of 5G technology on the funding that will be necessary to effectively deploy 5G across rural America and reiterated its view that the Commission must assess separately the deployment of networks using CDMA or GSM technology.

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ICC

- Chairman Wheeler sent [letters](#) to Senators Kirsten Gillibrand (D-N.Y.) and Chuck Schumer (D-N.Y.) on April 7, 2016, in response to their February 18, 2016 letter urging the FCC to grant a waiver to Westelcom Network from the rural CLEC rule, 61.26(a)(6), so that it may remain classified as a “rural” CLEC in the Watertown area. Chairman Wheeler said Commission staff is considering the record in this proceeding and he promised to take into consideration the issues and concerns presented by all stakeholders.
- Emery Telcom [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn and O’Rielly, and Wireline Competition Bureau staff on April 18 and 19, 2016, to discuss Emery’s [Petition for Waiver](#) of section 51.917(c) (ii) to permit Emery to include in its 2011 Base Period Revenues amounts received after March 31, 2012, for Transitional Intrastate Access Service. Emery explained the traffic in question appeared as phantom traffic, but the intrastate switched access minutes were billed in 2011, and while 100% of the charges for all of the traffic ultimately were paid by the interexchange carriers, none of the charges were disputed. Emery also explained that because it was not allowed to include all 2011 revenues in its Base Period Revenue amount, Emery was precluded from assessing the ARC that it otherwise would have been allowed to assess. Emery said the revenue shortfall has caused it to reduce its capital budget and fiber investment.

Broadband

- The FCC [published](#) in the Federal Register on April 20, 2016, the [NPRM](#) that was released on April 1, 2016, on establishing privacy regulations for broadband ISPs to implement section 222 of the Communications Act. The NPRM proposes rules to implement the core principles of transparency, choice, and security to ensure that consumers: have the information needed to understand what data the BIAS provider is collecting and what it does with that information; can decide how their information is used; and are protected against the unauthorized disclosure of their information. The scope of the NPRM is limited to broadband service providers, and does not apply to the privacy practices of web sites and other “edge services” over which the Federal Trade Commission has authority. Comments are due May 27; replies due June 27. Comments on the Paperwork Reduction Act proposed information collection requirements are due June 20.

- Chairman Wheeler sent [letters](#) to nine U.S. Senators on April 4, 2016, in response to their letter on measuring mobile broadband coverage across the country. He said the Commission adopted an order in 2013 that required mobile wireless data collection from the mobile wireless carriers through FCC Form 477, and said the FCC expects the data wireless carriers provide through these submissions will be more accurate than the previous data because it comes directly from the entity that is deploying the wireless facilities. He also said the Commission is seeking additional funds in the upcoming fiscal year to provide improved mapping capabilities of mobile coverage data, and the Commission's budget request for fiscal year 2017 would allow the FCC to use the data collected from the Form 477s to create new user-friendly maps that can be made publicly available.
- Commissioner Clyburn [spoke](#) at the 2016 California Telehealth Network Annual Summit on April 18, 2016, on using broadband to modernize healthcare. She said in 2014 the FCC proposed to allocate \$50 million to conduct experiments that would explore how to improve access to advanced telecommunications and information services for healthcare, and for vulnerable populations such as the elderly and veterans in rural, high-cost, and insular areas. She also said Chairman Wheeler recently circulated a Public Notice that will solicit comment, data, and information on broadband-enabled healthcare technologies and solutions.
- The FCC issued a [Public Notice](#) on April 22, 2016, announcing its Connect2Health Task Force, in partnership with the University of Houston Law Center, will hold a policy conference focusing on broadband and mental health on May 18, 2016, in Houston, Texas.
- The Hudson Institute released a [study](#) entitled "The Economic Impact of Rural Broadband" on April 19, 2016. The study estimates the direct and indirect economic effects of the rural telecommunications, or broadband, industry on Gross Domestic Product, and examines the economic impact of rural broadband on other industries. The study's findings include: rural broadband companies contributed \$24.2 billion to the economies of the states in which they operated in 2015; the rural broadband industry supported 69,600 jobs in 2015; and rural broadband supported over \$100 billion in e-commerce in 2015. [Press release](#)
- USDA Secretary Tom Vilsack [announced](#) on April 18, 2016, the USDA is soliciting applications for grants to establish broadband in unserved rural communities through its Community Connect program, and plans to award up to \$11.7 million in grants. The minimum grant is \$100,000 for FY 2016; the maximum award is \$3 million. For more information on how to apply for grants, go to <https://www.gpo.gov/fdsys/pkg/FR-2016-04-18/pdf/2016-08931.pdf>

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IP Transition

- Windstream filed a [letter](#) on April 21, 2016, responding to CenturyLink's [letter](#) on Windstream's [Petition](#) that requested the FCC confirm that an ILEC's obligation to provide DS1 and DS3 capacity loops on an unbundled basis is not changed or eliminated by replacement of copper with fiber or by the conversion from TDM to IP format. Windstream claimed CenturyLink continues to misdirect the Commission's attention by conflating two different requirements contained in sections 251(b)(1) and (c)(4). Windstream asserted the FCC's Local Competition Order drew a distinction between the nondiscrimination requirement of section 251(b)(1) and the wholesale discount requirement of section 251(c)(4), which requires wholesale service to be priced below retail service.
- Windstream filed a [letter](#) on April 21, 2016, submitting previously-filed documents in the special access proceeding into the proceeding addressing Windstream's [Petition](#) on DS1 and DS3. Windstream said it was filing these documents pursuant to the special access protective orders and the April 6, 2016 [Public Notice](#) on the treatment of data that is derived from Highly Confidential data in the data collection. Windstream refiled its January 27, 2016 comments, February 19, 2016 reply comments, and an ex parte filed on March 14, 2016. Windstream also filed a [letter](#) withdrawing the highly confidential and confidential versions of these filings.

- The Midwest Association of Competitive Communications filed a [letter](#) on April 21, 2016, to express support for Windstream's [Petition](#) that requested the FCC confirm section 251 and the Commission's unbundling rules implemented thereunder obligate ILECs to provide DS1 and DS3 capacity loops on an unbundled basis regardless of the underlying transmission technology or medium. The MACC asserted granting the Petition does not mean that ILECs would be obligated to retain copper or TDM-based technologies, claiming it would simply reaffirm the obligation to provide unbundled access to DS1 and DS3 capacity at current prices and regardless of the technology of facility used.

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USF

- Commissioner Pai sent a [letter](#) to USAC on April 18, 2016, asking for assistance in combating waste, fraud and abuse in the Lifeline program. He said the recent investigation of Total Call Mobile showed there are other wireless resellers abusing the program, and he asked USAC to provide detailed information on these other resellers. He also asked for information on wireless resellers that overrode the safeguards of the National Lifeline Accountability Database and an explanation of USAC's plan for reviewing, auditing and investigating eligibility documentation retained by Lifeline wireless resellers.
- The Wireline Competition Bureau released four Orders on April 20, 2016, denying a number of petitions seeking reconsideration of decisions that denied waiver requests for various high-cost filing deadlines. The Bureau said [MTA Wireless/Matanuska-Kenai](#), [Mid-Tex Cellular](#), [OTZ Telecommunications](#), [ASTAC Wireless](#), and [Pine Cellular Phone](#), and [Advantage Cellular Systems](#) did not present any arguments warranting reconsideration of the Bureau's decisions denying the waiver requests.
- The North Carolina Utilities Commission filed a [Petition](#) on April 21, 2016, to request the FCC's agreement to redefine the service area of Central Telephone Company, d/b/a CenturyLink, in order to allow Wilkes Communications to be designated as an ETC in a portion of Central's service area comprising the wire centers serving Central's Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges.

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Misc.

- The FCC issued the [agenda](#) on April 21, 2016, for its April 28, 2016 Open Meeting. The FCC will consider a Tariff Investigation Order and FNPRM on a new regulatory framework for the provision of business data services, and a NPRM on proposals to support real-time text communications over IP communications networks to improve the accessibility of these networks for consumers who are deaf, hard of hearing, deaf-blind, and speech disabled. The Commission will also consider an Order on Reconsideration and a Second Report and Order that will finalize rules for the spectrum sharing regime it created for making 150 megahertz available in the 3.5 GHz band, and will consider as consent agenda 5 media-related items and 3 enforcement items.
- Endeavor filed a [reply](#) on April 22, 2016, to comments on its [Petition for Clarification](#) that rate-of-return carriers who elected to freeze their category relationships in 2001 are permitted to directly assign costs to new categories of investment introduced subsequent to the inception of the freeze if that category is ordinarily directly assigned in accordance with the Part 36 rules. Endeavor asserted that even though section 36.1 expressly identifies direct assignment only in the description of the second step of the separations process, there is nothing to suggest that it is precluded from occurring in step one, along with plant categorization. Endeavor also claimed disallowing its direct assignment methodology would have a perverse and unintended outcome as a result of the reforms adopted in the March 30, 2016 Rate-of-Return USF Reform Order.

- The U.S. Senate Committee on Commerce, Science, and Transportation [will hold an executive session](#) on April 27, 2016, to consider [S. 2644](#), The FCC Reauthorization Act of 2016, and [S. 421](#), Federal Communications Commission Process Reform Act of 2015, among other bills.
- The Wireline Competition Bureau issued a [Public Notice](#) on April 22, 2016, listing Acknowledgements of Confidentiality filed by parties seeking access to confidential information filed in the special access data collection proceeding since the March 7, 2016 Public Notice. Parties that submitted confidential information in response to the collection have until April 29, 2016, to object to the disclosure of their data and information to any of the parties listed in the attachment to this Public Notice.
- USTelecom [met with](#) Legal Advisors to Commissioners Rosenworcel and Pai on April 20-21, 2016, to discuss the importance of ensuring that all providers have incentives to invest in broadband facilities. USTelecom said it will comment on key aspects in the Business Data Services Further Notice, including: how to structure the competitive test that will be used to determine where competition does and does not exist; the need to avoid re-regulating competitive Ethernet services; and the need to include in any new regulatory framework all broadband service offerings currently used by business customers, including cable offerings inaccurately referred to as “best efforts” services.
- USTelecom [met with](#) Commissioner O’Rielly’s Legal Advisor on April 13, 2016, and stressed the importance of ensuring that all providers have incentives to invest in broadband facilities. USTelecom asserted any test for determining where business data services competition does and does not exist must consider all broadband service offerings currently used by business customers, including cable offerings inaccurately referred to as “best efforts” services.
- Verizon [met with](#) Commissioner Clyburn’s Legal Advisor on April 21, 2016, to discuss the importance of seeking comment on how to structure regulation of business data services in markets that are not sufficiently competitive. Verizon discussed the structure of a price cap regime for new services and providers, regulatory structures that encourage competitive entry, regulatory structures that will not impede the transition to IP services, wholesale obligations, and transitions for all or nothing discount plans.
- INCOMPAS [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, O’Rielly, Rosenworcel, and Pai on April 20- 21, 2016, to express support for the Commission’s proposal for a new framework for business data services. INCOMPAS urged swift action by the Commission to complete the proceeding by the end of the year, and stressed the importance of regulatory policies that ensure reasonable rates in non-competitive areas, including for high bandwidth Ethernet, and promoting next generation mobile broadband networks such as 5G. INCOMPAS also [spoke with](#) the FCC’s General Counsel on April 19, 2016 to discuss similar issues.
- AT&T, on behalf of itself and CenturyLink, submitted a [second supplemental declaration](#) of Mark Israel, Daniel Rubinfeld, and Glenn Woroch on April 20, 2016, which AT&T claimed uses the Commission’s recently released data tables to show that the vast majority of locations with special access demand are extremely close to multiple facilities-based competitors. AT&T also asserted, in light of the new data tables, the Commission cannot deny that the vast majority of special access locations and demand are subject to intense facilities-based competition, and the data clearly show competitors have deployed facilities-based networks that are in, or very close to, buildings served by ILECs.
- Cox [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O’Rielly, Clyburn, Pai and Rosenworcel, and FCC General Counsel, Chief Economist, and Wireline Competition Bureau staff on April 20- 21, 2016, to express concern over the possibility of imposing pricing regulation on Cox’s business services and the impact such regulation may have on the company’s plans for continued network investment. Cox urged the Commission to seek comment on ways to achieve its goals without deviating from the FCC’s pro-competitive policies applicable to facilities-based competitors.
- Jonathan Baker, a Senior Consultant for FTI Consulting, on behalf of Level 3 and Windstream, [spoke with](#) the FCC’s Chief Economist and Wireline Competition Bureau staff on April 21, 2016, to discuss what he says are economic reasons why it would be inappropriate for the Commission to presume that markets for business data services with connections above 50 Mbps perform competitively. He

asserted any further inquiry into appropriate benchmarks for identifying markets without market power should be framed as questions rather than presumptive conclusions, and, if a benchmark based on the bandwidth of BDS connections is employed for that purpose, the benchmark should be set at a level well above 50 Mbps.

- Jonathan Baker, a Senior Consultant for FTI Consulting, on behalf of Level 3 and Windstream, filed a Second Supplemental Reply [Declaration](#) to the Declaration of Mark Israel, Daniel Rubinfeld and Glenn Woroch, filed on behalf of AT&T in the special access proceeding. Baker asserted that nothing in the ILEC economists' latest declaration leads him to question the conclusion reached in his report that ILECs likely exercise market power in most dedicated services markets and would be expected to charge prices above competitive levels unless prevented by regulation.
- Frontier [spoke with](#) Chairman Wheeler's Legal Advisor and General Counsel and Wireline Competition Bureau staff on April 18, 2016, to discuss the evolution of the Ethernet market and the ways in which growing demand for Ethernet services and other marketplace trends have enhanced the competitiveness of the business data services marketplace. Frontier asserted the Commission has exempted virtually all of the price-cap ILECs from tariffing and dominant carrier regulation with respect to their Ethernet offerings, resulting in a massive expansion of fiber and other Ethernet-capable facilities. Frontier also discussed the ways in which demand for Ethernet is likely to grow further, leading to expanded revenue opportunities and an ever-improving business case for competitive deployment, as 4G wireless services give way to higher-bandwidth 5G services requiring more and more robust backhaul networks.
- Windstream [spoke with](#) Chairman Wheeler's Legal Advisor and General Counsel and Wireline Competition Bureau staff on April 13, 2016, to discuss business data services. Windstream asserted if CLECs are forced to curtail the extent of their activities in the market, consumers will lose these important alternatives, as well as the pressure they put on the Bells and cable providers to improve services and value provided to customers. Windstream also suggested the Commission should be sure to leave itself a wide range of tools to address market-power problems that exist in the business data services markets today, and that are likely to persist, including existing statutory remedies, as well as such new remedies the Commission may create in the coming months.
- Windstream filed a [letter](#) on April 20, 2016, submitting revised public versions of several previously-filed documents, pursuant to the special access protective orders and the April 6, 2016 [Public Notice](#) on the treatment of data that is derived from Highly Confidential data in the data collection. Windstream refiled its January 27, 2016 comments, February 19, 2016 reply comments, and two ex partes filed on March 14 and April 5, 2016.
- Windstream filed a redacted version of a [letter](#) on April 21, 2016, responding to CenturyLink's April 7, 2016 [letter](#), which asserted the June 2015 Cost Quest [study](#) on the economics of last-mile fiber deployment to non-residential customers, submitted by Windstream, is fundamentally flawed. Windstream claimed CenturyLink's analysis exaggerates the density of dedicated services customers and thus understates the per-location construction costs, and said its additional claims about the state of the marketplace more generally do not undermine the need for Commission action.
- NASUCA and the Maryland Office of People's Counsel filed a [letter](#) on April 19, 2016, urging the Commission to revisit its 2005 decision to deregulate the ILECs' special access rates, based on current market conditions, and determine the current proper rate structure for these services. NASUCA asserted a [recent paper](#) by Dr. Mark Cooper, entitled "The Special Problem of Special Access: Consumer Overcharges and Telephone Company Excess Profits," demonstrates why the ILECs' rates for these services need to be reduced, and claimed it also shows that half of the \$40 billion in special access revenue "is the result of the abuse of market power. . . ." NASUCA asserted the FCC can reform special access based on the record already before it, and a further rulemaking should not be reason for further delay in reform.
- Level 3 [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O'Rielly, Pai, Rosenworcel, and Clyburn, and General Counsel and Wireline Competition Bureau staff on April 19-20, 2016, to express support for the proposal that purchasers of business data services be given the ability to

choose the size of the volume commitments they make under the ILECs' volume and term plans. Level 3 expressed support for the proposal that the shortfall and early termination penalties in these plans should be subject to reasonable limitations in order to ensure compliance with section 201(b). Level 3 also asserted the Commission should require that ILECs enable customers to count their purchases of packet-based BDS, such as Ethernet, toward their volume commitments and should require all commercial agreements to which an ILEC is a party, and that include provisions affecting the prices ILECs charge for DS1 and DS3 BDS, be filed as tariffs.

- Sprint [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai and O'Rielly, and General Counsel staff on April 14, 2016, to discuss business data services. Sprint asserted there is inadequate competition to discipline BDS prices, terms, and conditions, and claimed the data collection also revealed widespread ILEC use of anticompetitive terms and conditions. Sprint provided data on competition by location and census block.
- Sprint [spoke with](#) the Legal Advisors to Chairman Wheeler and Commissioners Clyburn and Rosenworcel, and General Counsel and Wireline Competition Bureau staff on April 19-21, 2016, to discuss the importance of services above 50 Mbps to wireless backhaul. Sprint urged the Commission to ensure that wireless carriers have access to higher bandwidth services at competitive pricing. Sprint also discussed its market experience and asserted the data presented in the record demonstrate that the market for such services remains noncompetitive.
- The Competitive Carriers Association, INCOMPAS, Sprint, T-Mobile, and U.S. Cellular filed a [letter](#) on April 21, 2016, urging the Commission to adopt policies to ensure reasonable access to high capacity business data services, including high bandwidth Ethernet services. They asserted access to high capacity BDS at reasonable prices is vital for wireless providers to meet the current demand for wireless broadband services and to build next generation mobile broadband networks. They also said the FCC's treatment of high bandwidth Ethernet services will directly impact the speed and capacity of the next generation of mobile broadband services.
- Comcast [met with](#) Legal Advisors to Commissioners Rosenworcel, O'Rielly, Pai, and Clyburn on April 19, 2016, to express concern over the prospect of exposing non-dominant, facilities-based providers of Ethernet services to *ex ante* rate regulation and other requirements traditionally applied only to dominant providers. Comcast asserted that doing so would depart dramatically from longstanding precedent founded upon bipartisan policy consensus, and would undercut the important goal of promoting new entry, competition, and investment in the marketplace for business data services.
- ACA [met with](#) Commissioner Clyburn's Legal Advisor on April 19, 2016, to express opposition to the proposal to consider regulating the rates for business data services provided by competitive providers in areas that were deemed "non-competitive." ACA said should the Commission raise this issue in the FNPRM, it should offer its tentative economic rationale for reversing course on its dominant carrier approach to regulation and ask parties to comment on it and any alternative rationales that could plausibly justify such a reversal.
- NCTA [met with](#) Chairman Wheeler's Counselor and Legal Advisor and General Counsel and Wireline Competition Bureau staff on April 18, 2016, to express concern that the Commission is considering changes to the pro-competitive policies applicable to cable operators and other facilities-based competitors in the business data services marketplace. It also asserted that rate regulation of competitive providers not only would be an unwarranted departure from the current streamlined regime, but it would also reduce the incentive and the ability of competitors to continue investing in new facilities. NCTA also [met with](#) Legal Advisors to Commissioners Pai and Rosenworcel on April 19, 2016, to discuss the same issues.
- BT Americas [spoke with](#) the FCC's Chief Economist on April 18, 2016, to clarify the UK price cap regime applicable to leased line access services in the UK. BT confirmed that it has not been able to discover instances in which BT plc has publicly expressed a view on the issue on whether price caps in the UK appropriately capture variations in cost across geographic territories.

- The Phoenix Center for Advanced Legal and Economic Public Policy Studies released a [report](#) on April 18, 2016, in response to the Consumer Federation of America's [study](#), which claimed large incumbent telephone companies have engaged in abusive pricing practices for high-speed broadband "special access" services and asserted overcharges totaled about \$75 billion over the past five years. The Phoenix Center argued that there are significant conceptual and technical problems with the CFA's analysis, and claimed the conceptual underpinning of the method is logically inconsistent and leads to ridiculous policy prescriptions. [Press release](#)
- Chairman Wheeler sent a [letter](#) to Sen. John Thune (R-S.D.) on April 4, 2016, in response questions posed in his letter regarding disclosure of non-public information outside the Commission and the formation of the NG911 NOW Coalition. Chairman Wheeler said Commission practice for several decades has been to brief reporters on the substance of complex and important Commission activities on the record, as well as on background, and when necessary, FCC media relations staff will make subject matter experts available to explain complex Commission policies to reporters. He also said the Chairman must provide written authorization to release non-public information only if that information is to be used for outside writing, teaching, or speaking purposes, and noted that he has not provided such a written authorization to release non-public information since October 29, 2013.
- Neustar [met with](#) Commissioners Pai and O'Reilly and their Legal Advisors and Legal Advisors to Commissioners Clyburn and Rosenworcel on April 14, 2016, to discuss its [Application for Review](#) of the Wireline Competition Bureau's March 31, 2016 [Second Protective Order](#) in the LNP Administrator transition docket. Neustar claimed that under the terms of the Second Protective Order, essentially the only people who can gain access to the proposed MSA are lawyers and outside consultants – and not the technical and managerial personnel, who Neustar claims are in the best position to understand the document and its implications for NPAC users.
- The Open Technology Institute at New America and the LNP Alliance filed a [redacted letter](#) on April 19, 2016, to urge the Commission to adopt a significantly more open and transparent process that will permit all users of the NPAC to review the iconectiv Master Services Agreement currently on file at the Commission. They claimed too much of the MSA is marked "confidential" and smaller companies, like the LNP Alliance members, have not had a fair opportunity to review and comment on it. They claimed this process of establishing iconectiv as the LNPA is not creating an "impartial" entity, but one that is much more closely tied to the nation's largest carriers and not sufficiently answerable to the smaller carriers.
- Vonage filed a [letter](#) on April 21, 2016, withdrawing its [request](#) asking the Commission to expand its existing waiver (granted as part of the Commission's numbering trial) to allow Vonage to request numbering resources directly while OMB approval of the newly-adopted authorization process was pending. Vonage said the Report and Order granting numbering rights to interconnected VoIP providers has come into effect and Vonage has received access to numbers after filing the appropriate application and providing states with the requisite 30-day public notice.
- The Congressional Research Service issued a [report](#) on April 15, 2016, entitled "The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape." The report provides an overview of the FCC, and provides information about FCC leadership and the FCC's structure and strategic plan. It also provides information on the FCC's budget, FCC reporting to Congress, and Congressional legislation related to the FCC.

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Upcoming Filing Dates

- Apr. 26 - PRA comments due on an extension of a currently approved information collection associated with section 69.605, Reporting and Distribution of NECA Pool Access Revenues. [Notice](#)
- Apr. 28 - Comments due challenging the coverage data for competitors contained in the updated A-CAM. [Public Notice](#)

- Apr. 28 - Comments due to refresh the record on Sandwich Isles' [Petition for Reconsideration](#) of the [2010 Declaratory Ruling](#) on Sandwich Isles' cable network lease costs, AT&T's [Application for Review](#) of the Declaratory Ruling, and NECA's [Petition for Clarification and/or Declaratory Ruling](#) of the provisions of the 2010 [Declaratory Ruling](#). Replies due May 9. [Public Notice](#) | [Order](#)
- May 3 - PRA comments due on an extension of a currently-approved collection associated with section 64.1903, which requires ILEC's international, interexchange affiliate to maintain books of account separate from such ILEC's local exchange and other activities. [Notice](#)
- May 3 - PRA comments due on an extension of a currently-approved collection associated with the May 2000 CALLS [Report and Order](#). [Notice](#)
- May 9 - Replies due to refresh the record on Sandwich Isles' [Petition for Reconsideration](#) of the [2010 Declaratory Ruling](#) on Sandwich Isles' cable network lease costs, AT&T's [Application for Review](#) of the Declaratory Ruling, and NECA's [Petition for Clarification and/or Declaratory Ruling](#) of the provisions of the 2010 [Declaratory Ruling](#). [Public Notice](#) | [Order](#)
- May 12 - Comments due on the [FNPRM](#) attached to the March 30, 2016 [Rate-of-Return USF Reform Order](#), The FNPRM seeks comments on proposed rule changes to the FCC's accounting and affiliate transaction rules for ratemaking and USF support purposes "to eliminate inefficiencies and provide guidance to rate-of-return carriers regarding the FCC's expectations for appropriate expenditures." Replies due June 13. [FR](#)
- May 25 - Petitions for Reconsideration due on the RoR USF Reform [Order](#).
- May 25 - PRA comments [due](#) on Form 481 revisions to reflect reporting requirements for price cap carriers for CAF Phase II support, for recipients of RBE support, a reasonably comparable rate certification for broadband for high-cost support recipients, and an E-rate bidding certification for Phase II model-based support and RoR carrier high cost recipients.
- May 27 - Comments due on the [NPRM](#) on establishing privacy regulations for broadband ISPs to implement section 222 of the Communications Act. Replies due June 27. [News Release](#)
- June 13 - Replies due on the [FNPRM](#) attached to the March 30, 2016 [Rate-of-Return USF Reform Order](#), The FNPRM seeks comments on proposed rule changes to the FCC's accounting and affiliate transaction rules for ratemaking and USF support purposes "to eliminate inefficiencies and provide guidance to rate-of-return carriers regarding the FCC's expectations for appropriate expenditures." [FR](#)
- June 16 - ILEC tariffs due, for those filing on 15 days' notice. Petitions to suspend or reject tariff filings due June 23; replies due June 27. [Order](#)
- June 20 - PRA comments due on the proposed information collection requirement in the [NPRM](#) on establishing privacy regulations for broadband ISPs to implement section 222 of the Communications Act. [published](#)
- June 24 - Petitions for court review due on the RoR USF Reform [Order](#).
- June 27 - Replies due on the [NPRM](#) on establishing privacy regulations for broadband ISPs to implement section 222 of the Communications Act. [News Release](#)

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