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### September 12, 2016 HIGHLIGHTS

- The FCC issued a [tentative agenda](#) for its September 29, 2016 Open Meeting. The FCC will consider: a Report and Order and Further Notice on improving wireless emergency alerts; a Report and Order that extends to broadcast licensees the same streamlined rules and procedures that common carrier wireless licensees use to seek approval for foreign ownership; an NPRM on the distribution of independent and diverse programming to consumers; and a Report and Order to allow consumers to use a device of their choosing to access multichannel video programming.
- The Wireline Competition Bureau issued a [Public Notice](#) announcing providers have 45 days, until October 24, 2016, to indicate they already serve the census blocks identified by Frontier in [its notification](#) of intent to modify its CAF Phase I Round 2 incremental broadband deployment plans.
- The FCC filed a [brief](#) with the D.C. Circuit Court in the case addressing AT&T's [Petition for Review](#) of the December 2014 CAF Phase II Order that maintains the ETC and Lifeline obligations of price cap carriers in high-cost and low-cost areas in which the price cap carriers receive no USF support.
- [Oppositions were filed](#) to [petitions for reconsideration and clarification](#) of the CAF Phase II Auction Order. Replies are due September 12. [Notice](#)
- NTCA [suggested](#) the FCC to pursue an implementation schedule to enable all RoR USF reforms to take effect at the same time and to provide carriers with sufficient estimates and data in advance of any implementation deadlines.
- The Small Company Coalition sent a [letter](#) to Chairman Wheeler to update the recommendations it made to reduce the regulatory burdens on small RoR carriers in a letter to Commissioner O'Rielly.
- Clarity Telecom [seeks a waiver](#) of the timeframe by which RoR ILECs were to submit revisions to their June 2015 FCC Form 477 data in order for the revisions to be incorporated in the A-CAM.
- [Comments were filed](#) on the [Twelfth Broadband Progress Report NOI](#) on the appropriate criteria and benchmarks by which to measure whether fixed and mobile broadband services provide access to advanced telecommunications capability. Replies are due September 21.
- The [Second Report and Order and Order on Reconsideration](#) on section 214 discontinuance requirements was published in the Federal Register. Rule changes [are awaiting OMB approval](#).
- The House Subcommittee on Communications and Technology held a [hearing](#) on rural call completion and H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2015. The subcommittee [will markup](#) H.R. 2566 and H.R. 2669, the Anti-Spoofing Act of 2015, on September 12 and 13, 2016.
- Commissioner Pai [asked](#) USAC for information on Lifeline subscribers on Tribal lands.
- The FCC released [two Public Notices](#) on FY 2016 regulatory fees, which are due September 27, 2016, and issued facts sheets for [ITSPs](#), [regulatory fee exemptions](#), and [procedures](#) for filing waivers, reductions, and deferrals of fees.

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#### Other Key Upcoming Dates

- Sept. 19 - PRA comments [due](#) for emergency OMB approval of information needed to implement the [RoR USF Reform Order](#), including revisions to FCC Forms 507, 508 and 509.
- Sept. 21 - Replies due on the [Twelfth Broadband Progress Notice of Inquiry](#).  
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## USF Reform

- The Wireline Competition Bureau issued a [Public Notice](#) on September 7, 2016, announcing providers have 45 days, until October 24, 2016, to indicate they already serve the census blocks identified by Frontier in [its notification](#) of intent to modify its CAF Phase I Round 2 incremental broadband deployment plans. Existing providers have until October 24, 2016, to notify Frontier that they currently offer internet service at speeds of 3Mbps/768 kbps or higher in the newly identified census blocks. A machine readable list of the 3,146 census blocks Frontier intends to serve is available at [https://transition.fcc.gov/wcb/Frontier Census Blocks 08.26.16.xlsx](https://transition.fcc.gov/wcb/Frontier%20Census%20Blocks%2008.26.16.xlsx).
- The FCC filed a [brief](#) with the D.C. Circuit Court on September 2, 2016, in the case addressing AT&T's [Petition for Review](#) of the December 2014 CAF Phase II Order that, among other things, maintains the ETC and Lifeline obligations of price cap carriers in high-cost and low-cost areas in which the price cap carriers receive no support from the USF. The FCC asserted its interim continuance of incumbent's service obligations during the transition is consistent with the Telecommunications Act and its balance of competing universal service principles is reasonable and consistent with the Act.
- In addition to those listed in last week's *REGScan*, oppositions were filed on September 2, 2016, to [petitions for reconsideration and clarification](#) of the CAF Phase II Auction Order. [USTelecom](#) said the Commission should reject proposals to automatically qualify provisionally-selected bidders from the RBE program for participation in the CAF II auction and opposed NRECA and UTC's request for reconsideration of the decision to "exclude certain census blocks from being eligible for funding in the Phase II auction," including census blocks subject to non-winning RBE Category 1 bids where the bidder or another unsubsidized competitor went on to deploy 10/1 Mbps service. USTelecom supported Southern Tier's request for the Commission either to remove the requirement for standalone voice service for all CAF II recipients or provide support for carriers meeting that obligation, and agreed with Verizon that the Commission should reconsider the unlimited usage requirement for the "above baseline" and "gigabit" performance tiers and Verizon's recommendation that the Commission provide greater location flexibility for CAF auction participants than for CAF model-based support recipients. [ViaSat](#) opposed the separate petitions filed by Broad Valley Micro Fiber Networks, Crocker Telecommunications, and Southern Tier Wireless, asserting they are procedurally improper because they focus not on the policies reflected in the Report & Order, but rather respond to specific follow-up questions asked by the Commission in the FNPRM. ViaSat also opposed Verizon's petition, which asks the Commission to prioritize funding to census blocks based on the "dollar per location" instead of the "ratio of bid to reserve price." [List of all available oppositions](#). Replies are due September 12. [Notice](#)
- NTCA [spoke via telephone](#) with Wireline Competition Bureau staff on September 7, 2016, to encourage the FCC to pursue a clear and transparent implementation schedule that will enable all RoR USF reforms (model and non-model) to take effect at approximately the same time and to provide carriers with sufficient estimates, calculations, and other data in advance of any implementation deadlines to help inform upcoming USF support elections. NTCA also noted the importance of providing data that will allow carriers to ascertain the impacts of reforms still being implemented.
- The Small Company Coalition sent a [letter](#) to Chairman Wheeler on August 30, 2016, to update the recommendations it made to reduce the regulatory burdens on small RoR carriers in a letter to Commissioner O'Rielly dated June 1, 2015.
- Clarity Telecom, dba Vast Broadband, filed an [Emergency Request for Expedited Treatment](#) on September 8, 2016, for a waiver of the timeframe by which RoR ILECs were to submit revisions to their June 2015 FCC Form 477 data in order for the revisions to be incorporated in the A-CAM. Clarity said an inadvertent clerical error, consisting solely of an incorrect insertion of the cable modem technology code rather than the DSL technology code in certain census blocks, did not become apparent until after the A-CAM v2.3 was released. It said on September 1, 2016, it revised its June 2015 Form 477 data to correct this error and seeks waiver of the March 30 timeframe to allow the revised, corrected Form 477 data to replace the incorrect data in A-CAM v2.3.

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## Broadband

- Comments were filed on September 6, 2016, on the [Twelfth Broadband Progress Notice of Inquiry](#) on the appropriate criteria and benchmarks by which to measure whether fixed and mobile broadband services provide access to advanced telecommunications capability. [USTelecom](#) said approximately 90 percent of Americans enjoy access to service defined as advanced telecommunications capability, and said the Commission should find that the deployment requirements of section 706 have been met. USTelecom said if the FCC does not so find, it must strictly adhere to its limited section 706 authority by imposing only minimum requirements that are necessary to promote continued broadband deployment by removing barriers to infrastructure investment. [NCTA](#) supported the Commission's proposal to retain its fixed broadband speed benchmark and urged the Commission to ensure that any future changes to this benchmark are derived through a rigorous fact based methodology. NCTA also claimed the section 706 inquiry is not the appropriate context for the Commission to examine factors that go beyond deployment into other areas, such as broadband subscription, performance consistency and usage allowances. [CTIA](#) asserted mobile broadband deployment is reasonable and timely, and said the FCC should take steps to reduce barriers to the deployment of wireless infrastructure, establish a robust and permanent Mobility Fund for rural areas, and facilitate the auction and deployment of new spectrum to meet growing consumer demand. [ADTRAN](#) said it sees no useful purpose to the Commission adopting an additional, long-term speed benchmark for fixed services for purposes of the Twelfth Broadband Progress Report, and asserted the current 25/3 Mbps is already forward-looking. [U.S. Cellular](#) asserted the FCC should conclude that mobile broadband networks are not being deployed in a reasonable and timely manner in rural areas, and said the Commission should give priority to increasing the universal service support available for mobile broadband deployment. [WISPA](#) said the Commission should retain its existing criteria for defining "advanced telecommunications capability," and remain cautious in adopting any additional criteria or reporting burdens on service providers. [O3b Limited](#) said any latency benchmark established should be higher than 100 ms, based on real world needs of advanced telecommunications applications. [Hughes Network Systems](#) said the Commission should not adopt any standards for its Section 706 analysis that exclude or disadvantage satellite broadband networks. [List of all comments available](#) Replies are due September 21.
- AT&T [met with](#) Chairman Wheeler and Wireless Telecommunications Bureau staff on September 7, 2016, to discuss broadband privacy issues. AT&T suggested an FCC privacy framework that is consistent with the long standing FTC framework, which is focused on potentially harmful uses of consumer data, specifically, sensitive information or information shared with a third party. AT&T asserted privacy law should not treat similar technologies within the communications sector differently and that consumers expect to have their information protected based on the sensitivity of that information, not the entity that is collecting it.
- Thirty seven consumer groups sent a [letter](#) to Chairman Wheeler on September 7, 2016, to respond to several arguments made in the broadband consumer privacy proceeding. They opposed requests for the creation of a special carve-out for de-identified customer information, and suggested the FCC resist calls to require opt-in consent only for sensitive information. They also encouraged the Commission to prohibit mandatory arbitration clauses, saying they often leave consumers without any reasonable means of recourse.
- Jon Leibowitz, of Davis Polk & Wardwell, LLP, [met with](#) Chairman Wheeler's Chief of Staff and the Wireline Competition Bureau Chief on September 2, 2016, to discuss the broadband privacy NPRM. He discussed whether an opt-in requirement should apply only to sensitive customer data/web browsing and the timelines and triggers for breach notifications.

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## Call Completion/Robocalls

- The House Subcommittee on Communications and Technology held a [hearing](#) on September 8, 2016, entitled, “Improving Rural Call Quality and Reliability.” The Subcommittee examined issues associated with rural call completion and H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2015, which would require intermediate providers to register with the FCC and comply with the service quality standards set by the agency. Eric LeBeau, General Manager of Dakin Farm, and Lance Miller, President of McClure Telephone, were witnesses.
- The House Subcommittee on Communications and Technology issued a [notice](#) on September 8, 2016, announcing it will markup H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2015, and an amendment on the Nature of the Substitute and H.R. 2669, the Anti-Spoofing Act of 2015, on September 12 and 13, 2016. [Memorandum](#)

## IP Transition

- The FCC [published](#) in the Federal Register on September 12, 2016, the [Second Report and Order and Order on Reconsideration](#) that was issued on July 15, 2016, updating its review and notice procedures governing the filing and processing of section 214 applications to discontinue, reduce, or impair service. The FCC also revised its rules to make a competitive LEC’s application for discontinuance deemed granted on the effective date of any copper retirement that made the discontinuance unavoidable, so as long as the discontinuance application is filed at least 40 days prior to the retirement effective date. The Order will be effective upon approval by the Office of Management and Budget, and the FCC will publish a document in the Federal Register announcing the effective date.
- USTelecom filed an [Opposition](#) on September 7, 2016, to the Ad Hoc Telecommunications Users Committee’s [Petition for Reconsideration](#) of the [Declaratory Ruling](#) that granted USTelecom’s Petition for a ruling that ILECs are non-dominant in their provision of interstate switched access services. Ad Hoc had asked the Commission either to reconsider its decision to declare ILECs non-dominant in their provision of access services or restore the Commission’s rule that applies the same rate protections to both originating toll-free access minutes and terminating switched access minutes. USTelecom asserted Ad Hoc’s Petition is late-filed and should be dismissed on procedural grounds, and claimed Ad Hoc raises no new facts or changed circumstances that have not already been considered by the Commission.

## USF

- Commissioner Pai sent a [letter](#) to Chris Henderson, CEO of USAC, on September 7, 2016, requesting information on Lifeline subscribers on Tribal lands, including: any maps of qualifying Tribal lands USAC may use to verify eligibility for the enhanced subsidy; certifications from subscribers that they reside on Tribal lands; wireless resellers; and inclusion of a subscriber’s eligibility in the National Lifeline Accountability database. Commissioner Pai also asked for information on investigations, audits, or reviews that USAC has conducted from October 2014 to the present that examined whether a wireless carrier sought enhanced subsidies only for eligible subscribers living on Tribal lands, specific information about USAC’s checks to detect fraud and information regarding subscribers, and provision of Lifeline on Oklahoma Tribal lands.
- Commissioner Rosenworcel [spoke](#) before the State Education Director’s Association on September 8, 2016, to discuss the homework gap and how modernization of the Lifeline program will support broadband service. She also said the FCC modernized the program by making sure that the devices used for Lifeline are able to access Wi-Fi signals and can even be turned into wireless hotspots. She also noted the Department of Housing and Urban Development launched the ConnectHome initiative, a public-private partnership designed to bring broadband service, devices, and digital literacy training to families living in low-income housing.

- The Wireline Competition Bureau released a [Public Notice](#) on September 9, 2016, announcing it is seeking nominations for six Board member positions for the USAC Board of Directors for a three-year term. The Bureau is seeking representatives for; incumbent local exchange carriers, libraries that are eligible to receive discounts, state consumer advocates, CMRS providers, cable operators, and schools that are eligible to receive discounts. Nominations are due by October 21.

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## State Actions

- The Court of Appeals for the State of Michigan issued an [Order](#) on September 6, 2016, vacating a PSC [decision](#) that ordered AT&T to pay \$4.3 million to Westphalia Telephone and Great Lakes Comnet for switched access services. The court held the PSC's decision was based on the PSC's conclusion that GLC was not a CLEC for purposes of 47 C.F.R 61.26, and noted that after the PSC decision, the FCC released an [order](#) finding GLC was a CLEC and the interstate rates charged by GLC and WTC were unlawfully high. In vacating the PSC decision, the court said the FCC's decision directly contradicts the conclusion on which the PSC based its decision and thus calls into question the PSC's finding that complainants' intrastate rates, which matched the interstate rates, were lawful.
- Comments were filed with the Iowa Utilities Board in a [rulemaking proceeding](#) on its continued regulatory approach to VoIP and whether the proposed changes to its rules achieve a neutral regulatory application to varying technologies providing local exchange services. [AT&T](#) recommended the Board explicitly classify non-nomadic VoIP as an information service outside the Board's jurisdiction and decline to adopt the proposed rule change removing the existing requirement for CLECs to deduct the carrier common line charge from their intrastate access service tariff. The [Office of Consumer Advocate](#) urged the Board to further refine and amend the proposed rules and eliminate its consideration of the deregulation of VoIP service. [Verizon](#) recommended the Board disregard the suggestion to regulate fixed VoIP until the FCC expressly classifies it as an information service and also argued fixed VoIP is an information service under section 153(24). Comments were also filed by [Dex Media](#), [T-Mobile](#), [Cox Iowa Telecom](#), [CenturyLink](#), the [Iowa Communications Alliance](#), [Windstream et al](#) and [AgriSync](#).

## Misc.

- The FCC issued a [tentative agenda](#) on September 8, 2016, for its September 29, 2016 Open Meeting. The FCC will consider: a Report and Order and Further Notice on improving wireless emergency alert content, delivery and testing; a Report and Order that extends to broadcast licensees the same streamlined rules and procedures that common carrier wireless licensees use to seek approval for foreign ownership; an NPRM on the distribution of independent and diverse programming to consumers; and a Report and Order to allow consumers to use a device of their choosing to access multichannel video programming instead of leasing devices from their cable or satellite providers. ([Chairman Wheeler Fact Sheet](#))
- The FCC released two Public Notices on September 6, 2016, on FY 2016 regulatory fees, which are due September 27, 2016. The first [Public Notice](#) details payment methods and procedures for FY 2016 regulatory fees and indicated the FCC's automated filing and payment system is available for filing FY 2016 regulatory fees. The FCC said while FY 2016 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees may, at their own discretion, submit payments at any time before the effective due date. The other [Public Notice](#) announced the opening of the Commission's automated filing and payment system for FY 2016 regulatory fees, and announced facts sheets are available for [interstate telecommunications service providers](#), [regulatory fee exemptions](#), and [procedures](#) for filing waivers, reductions, and deferments of fees.

- AT&T and CenturyLink filed a [letter](#) on September 8, 2016, attaching a fourth white paper, entitled *Analysis of the Revised Regressions Disclosed By FCC Staff*, authored by Drs. Israel, Rubinfeld, and Woroch, which evaluates the FCC staff's most recent round of regressions for DS1 and DS3 services. They asserted these new regressions do not address the methodological and data-related flaws that the peer reviewers and other economists have identified, and because of these flaws, the regressions continue to produce wildly inconsistent and anomalous results that cannot be reasonably relied upon to draw inferences about ILEC market power for DS1 or DS3 services. They asserted if the Commission chooses to credit these regressions, it must also recognize that these same regressions show current price cap levels are fully constraining ILECs from exercising market power.
- CenturyLink and Frontier [met with](#) Commissioner Clyburn and her Legal Advisor on September 6, 2016, to discuss business data services. They asserted proposals raised by the Commission and other parties, including Verizon and INCOMPAS, do not synch with market realities and would produce results that would be deeply harmful to investment in American broadband connectivity. CenturyLink and Frontier also provided analyst reports and news articles to emphasize the competitive nature of the BDS market.
- Comcast filed a [letter](#) on September 9, 2016, claiming there is no sound policy justification for expanding rate regulation of incumbent providers or new entrants in the BDS marketplace. Comcast said prescriptive rate regulation is appropriate only in the presence of secure monopoly conditions and that such conditions are not present in today's BDS marketplace. Comcast also said there is no need for non-price regulation of new entrants in the BDS marketplace, including wholesale access mandates.
- The Competitive Carriers Association [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly, Wireline Competition Bureau and Office of Strategic Planning and Policy Analysis staff, and the FCC General Counsel on September 7 and 8, 2016, to discuss a study authored by Dr. Raul Katz of Telecom Advisory Services, entitled *Assessing the Impact of BDS Market Dynamic on Innovation and Competition in the Wireless Market*, which CCA included as an attachment to its BDS reply [comments](#). CCA also discussed the impact of BDS pricing on wireless investment, wireless broadband quality of service, and the future ability of competitive carriers to deploy 5G services.
- Public Knowledge [met with](#) Chairman Wheeler's Legal Advisor on August 29, 2016, to discuss a number of issues, including dedicated short range communications, business data services, and broadband privacy. PK recommended the Commission measure whether a BDS market is competitive using the standard metrics it employs in merger analysis, and to recognize the difference between the proposal that ILECs be declared non-dominant as opposed to a finding that markets are considered non-competitive. PK also urged the Commission to conclude the pending broadband privacy rulemaking as swiftly as possible to provide consumers with clear protections for their privacy and to clearly delineate its area of jurisdiction and the jurisdiction of the FTC.
- BT Americas [met with](#) Wireline Competition Bureau staff on September 1, 2016, to discuss business data services issues, including migration from TDM to Ethernet and private vs. common carriage. It suggested minimum revenue commitments and shortfall penalties should be capped at 50 percent or less with respect to contracts entered into with ILECs and/or their affiliates for the provision of dominant services and non-dominant services. BT also asserted neither ILECs nor their affiliates should be permitted to force purchasers to sign up to new contract rates, terms and conditions that include dominant and non-dominant services or face high month-to-month rack rates upon expiration of their existing contracts.
- The Rainbow Push Coalition sent a [letter](#) to Chairman Wheeler on September 7, 2016, to urge the Commission to consider the unintended consequences of any final rulemaking for the business data services market on American workers and small business. They asserted the Commission's actions in this proceeding must result in a transparent and open process that includes all cable and telecommunications providers, accessibility to valid and current data to properly assess where

competition exists in all parts of the nation, and appreciable and recognizable incentives for continued broadband network investment that lead to more livable wage jobs.

- No comments were filed on AireSpring's application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. [Public Notice](#)

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## Upcoming Filing Dates

- Sept. 12 - Replies [due](#) to oppositions to Baraga Telephone's [Petition for Reconsideration and Clarification](#) of the RoR USF Reform Order.
- Sept. 12 - Replies due to oppositions to [petitions for reconsideration](#) of the CAF Phase II Auction Order. [Notice](#)
- Sept. 14 - Comments due on the [VRS Further Notice](#) on interoperability and portability standards. [FR](#)
- Sept. 19 - PRA comments [are due](#) for emergency OMB approval related to information needed to implement the [RoR USF Reform Order](#), including revisions to FCC Forms 507, 508 and 509
- Sept. 21 - Comments due on data and information on the state of competition in the delivery of video programming for the Commission's Eighteenth Report, and to update the information and metrics provided in the [Seventeenth Report](#). Replies due October 24. [Public Notice](#)
- Sept. 12 - PRA comments due on a revision of a currently approved collection associated with the Open Internet rules requiring all providers of broadband Internet access service to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services. [Notice](#)
- Sept. 21 - Replies due on the [Twelfth Broadband Progress Notice of Inquiry](#) on the appropriate criteria and benchmarks by which to measure whether fixed and mobile broadband services provide access to advanced telecommunications capability.
- Sept. 30 - Comments due on NECA's 2017 [Modification](#) of the Average Schedule Universal Service High Cost Loop Support Formula. Replies due October 17. [Public Notice](#)
- Oct. 17 - Replies due on NECA's 2017 [Modification](#) of the Average Schedule Universal Service High Cost Loop Support Formula. [Public Notice](#)
- Oct. 24 - Replies due on data and information on the state of competition in the delivery of video programming for the Commission's Eighteenth Report, and to update the information and metrics provided in the [Seventeenth Report](#). [Public Notice](#)
- Oct. 31 - PRA comments due on an extension of a currently approved collection associated with the FCC's Electronic Tariff Filing System. [Notice](#)

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