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September 19, 2016 HIGHLIGHTS

- The Wireline Competition Bureau [authorized](#) over \$1 million in Rural Broadband Experiment support for Big Bend Telecom and Northeast Rural Services, bringing new broadband service to 135 census blocks in Oklahoma and Texas.
- The Wireless Telecommunications Bureau issued an [Erratum](#), amending an ordering clause in the [Order](#) that adopted a high-cost USF support program for Alaska.
- [Verizon, UTC and NRECA, ViaSat](#) and [ACA](#) filed replies to oppositions to the [petitions for reconsideration](#) of the CAF Phase II Auction Order. [Notice](#)
- Cordova Telephone, WTA, et al. [discussed](#) WTA's [Petition for Reconsideration](#) of the RoR USF Reform Order, and detailed WTA's [proposal](#) for producing evidence to demonstrate the presence of an "unsubsidized competitor."
- Baraga Telephone and Vantage Point [discussed](#) Baraga's [Motion to Reconsider](#) or Waiver of provisions in the RoR USF Reform Order to allow corrections to Form 477 data for use in the A-CAM.
- Steelville Telephone Exchange filed a [Petition for Waiver](#) of the procedural rules relating to the calculation of eligibility under the A-CAM.
- The WCB [announced](#) it released data on fixed broadband deployment, as of December 31, 2015.
- Commissioner Pai gave [a speech](#) proposing the creation of "Gigabit Opportunity Zones" to bring broadband and digital opportunity to the nation's most economically challenged areas and a Mobile Broadband plan for rural America. [Summary](#)
- The FCC Managing Director [announced](#) the proposed universal service contribution factor for the fourth quarter of 2016 will be 17.4 percent, down from 17.9 percent.
- The House Communications and Technology Subcommittee [advanced H.R. 2669, the Anti Spoofing Act of 2015](#), and [H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2015](#), to the full committee.
- The WCB [seeks comment](#) on Comcast's [Petition for Limited Waiver](#) of its rural call completion retention and reporting obligations. Comments are due September 26; replies due October 5.
- The Consumer and Governmental Affairs Bureau [announced](#) it will host an information session on technology transitions on September 26, 2016.
- The FCC Commissioners [testified](#) at the Senate [hearing](#) on oversight of the FCC.

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](#).
- Sept. 30 - Comments due on NECA's 2017 [Modification](#) of the Average Schedule Universal Service High Cost Loop Support Formula. Replies due October 17.
- Oct. 3 - Responses [due](#) to [petitions for rehearing](#) of the Open Internet [decision](#).

USF Reform

- The Wireline Competition Bureau released a [Public Notice](#) on September 12, 2016, authorizing Rural Broadband Experiment support for Big Bend Telecom and Northeast Rural Services for the winning bids identified in the attachment to the Public Notice. The Bureau said the aggregate \$1,043,129.43 in support will bring new broadband service to 135 census blocks in Oklahoma and Texas.
- The Wireless Telecommunications Bureau issued an [Erratum](#) on September 16, 2016, to amend paragraph 124 of the August 31, 2016 [Order](#) that adopted a high-cost USF support program for Alaska. Paragraph 124 is amended to read as follows: "IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE 30 days after the date of publication in the *Federal Register*, except for 47 CFR §§ 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5)-(6), 54.316(b)(6), 54.320(d), and 54.321, which contain new or modified information collection requirements that require approval by the OMB under the PRA and WILL BECOME EFFECTIVE after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date."
- Replies to oppositions to the [petitions for reconsideration](#) of the CAF Phase II Auction Order were filed on September 12, 2016. [Verizon](#) noted Hughes agreed with Verizon that the dollar per location ranking method would "maximize the bang for the buck," and only two parties, ViaSat and WISPA, opposed. Verizon asserted the only way to achieve the Commission's goal of maximizing the number of locations supported by the auction is to prioritize the lowest per-location bids rather than the "ratio of bid to reserve" ranking method adopted in the Order. Verizon also noted USTelecom supported its proposal to eliminate the unlimited usage requirement and Verizon's request for the Commission to modify the location flexibility rules. Verizon said WISPA's argument against the latter request lacks merit because it ignores that the Commission has changed the way it counts locations for the buildout obligation. [UTC and NRECA](#) said contrary to USTelecom, the Commission should reconsider its decision to make ineligible certain census blocks that have recently been served by 10/1 mbps. UTC and NRECA also opposed Verizon's and USTelecom's requests to permit providers to impose data caps for the above-baseline and gigabit service tiers in the Phase II auction. Replies also filed by [ViaSat](#) and [ACA](#). [Notice](#)
- Cordova Telephone, Totah Communications, TDS Telecom, Monte Lee & Company, and WTA [met with](#) Commissioner Pai's Legal Advisor on September 11, 2016, to discuss WTA's pending [Petition for Reconsideration](#) of the March 30, 2016 RoR USF Reform Order. WTA detailed its August 3, 2016 [proposal](#) regarding the burden of producing evidence that should be required from entities before they will be deemed to have filed a bona fide claim for classification as an "unsubsidized competitor" that can deprive an RLEC of ICLS and/or CAF-BLS support in one or more census blocks. WTA said it recognizes that entities face criminal penalties for knowingly and willfully making materially false, fictitious, or fraudulent statements or representations in official matters before the Commission, and asked the Bureau to reiterate this fact in its public notices initiating challenges, and to vigorously enforce it.
- Baraga Telephone and Vantage Point Solutions [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Pai, Rosenworcel, and O'Rielly and Wireline Competition Bureau staff on September 13, 2016, to discuss Baraga's [Motion to Reconsider](#) certain provisions of the RoR USF Reform Order, or, in the alternative, to provide Baraga a waiver from those provisions. Baraga requested the FCC eliminate the phrase "that has been submitted as of the date of release of this Order" within paragraph 66 and instead provide a reasonable window for companies to correct or update June 2015 Form 477 data for use in the A-CAM. In the alternative, it requested a waiver to allow it to update its June 2015 Form 477 data for use in A-CAM.
- Steelville Telephone Exchange filed a [Petition for Waiver](#) on September 12, 2016, of the procedural rules relating to the calculation of eligibility under the A-CAM. Steelville said due to circumstances beyond its control, Steelville was unable to provide accurate 10/1 Mbps broadband deployment information as of the June 30, 2015 Form 477 filing deadline and it required more than nine months to compile accurate broadband deployment information. It requested a waiver so that the Commission

may base Steelville's eligibility for A-CAM on correct Form 477 data, filed since March 30, rather than incorrect data that was on file as of March 30.

- The National Tribal Telecommunications Association filed a [letter](#) on September 16, 2016, providing [estimates](#) on which carriers would be covered by NTTA's proposal to waive or modify the operations expense limitation rule and which carriers would be eligible to receive Tribal Broadband Factor support. It also included a complete summary of the TBF proposal, including details on how carrier-specific TBF support amounts and buildout obligations could be derived and estimated support amounts and obligations for eligible carriers. NTTA said the analysis shows fourteen carriers would be eligible for the proposed waiver or modification of the OpEx limitation and an estimated 112 carriers would be eligible to elect the TBF support in exchange for the corresponding buildout obligations.
- ACS [met with](#) Legal Advisors to the Commissioners on September 8, 2016, to discuss the CAF Phase II performance obligations for Alaska Communications. It suggested flexibility is needed to reach the 26,000 locations, and urged the Commission to promptly adopt the final CAF terms. It also asserted the BDS rulemaking and data collection show that Alaska price cap areas are competitive, but the middle mile deficit creates a bottleneck to BDS competition. It suggested the Commission address the lack of effective access to middle-mile facilities in bush Alaska.
- The Competitive Carriers Association [met with](#) Commissioner Rosenworcel and her Legal Advisor on September 9, 2016, to suggest when developing Mobility Fund II the Commission should provide sufficient and predictable funding that can sustain mobile wireless operations, avoid flash cuts for legacy funding, and promote competition and innovation in unserved and underserved areas. CCA said the FCC must account for unique operating and capital expenses to deploy in rural and remote areas. CCA also said concluding the business data services proceeding will help ensure a rapid roll-out of next generation wireless networks for all carriers, and encouraged the FCC to adopt a presumption that low-capacity BDS are not competitive and to apply a competitive market test to high-capacity BDS above-50 or -100 Mbps. The Competitive Carriers Association also [met with](#) Commissioner Clyburn's Legal Advisor on September 14, 2016, to discuss similar issues, and suggested the Commission promote innovation and competition in unserved and underserved areas by, for example, funding at least a CDMA and a GSM provider in an area to ensure coverage when a wireless consumer falls-back from its carrier's LTE network, and futureproof the high-cost program by funding the latest technologies.

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ICC

- West Kentucky and Tennessee Telecommunications Cooperative [met with](#) Legal Advisors to Commissioners Clyburn and O'Rielly on September 12, 2016, to request support for its Petition for Waiver of section 51.917(b)(7)(ii) to permit it to establish a Base Period ICC Revenue that accurately reflects its revenue for the period contemplated by the Commission's ICC rules. It noted that grant of a waiver that ensures an accurate BPR based on actual service provided during FY 2011, and which includes undisputed revenues that were billed and collected for such service and would have been received by March 31, 2012, but for a billing error, would be consistent with the Commission's intent in establishing the rule. It said without the requested waiver, WK&T's inaccurate BPR will continue to have a compounding impact for years to come, with a profoundly negative impact on its ability to provide necessary services to its rural and primarily low-income population.

Broadband

- The Wireline Competition Bureau issued a [Public Notice](#) on September 13, 2016, announcing it released data on fixed broadband deployment, as of December 31, 2015. These data were collected through FCC Form 477 and are available on the Commission's Broadband Deployment Data [FCC](#)

[Form 477 webpage](#). The Bureau said coverage area shapefiles showing mobile broadband network deployment will be made available at a later date. Users can download data on the census blocks where providers report offering fixed broadband services to at least part of the block. These data tables also indicate the technology used to offer the service and the maximum advertised download and upload speeds for both consumer and business services.

- Commissioner Pai gave [remarks](#) at The Branded, a Cincinnati-based startup accelerator, on Digital Empowerment on September 13, 2016. Commissioner Pai emphasized the need to empower Americans living in every community in the nation with online opportunities. He proposed: the creation of “Gigabit Opportunity Zones” to bring broadband and digital opportunity to the nation’s most economically challenged areas; a Mobile Broadband plan for rural America; ways to streamline the nation’s approach to mobile siting and deployment; and called on governments at all levels not to impose old rules on new industries. [Summary](#)
- Rep. Anna G. Eshoo (D-Calif.) [announced](#) she introduced the [Community Broadband Act of 2016](#), which seeks to preserve the right of local communities to provide community-owned broadband service to consumers. Rep. Eshoo said the “legislation clears the way for local communities to make their own decisions instead of powerful special interests in state capitals.”
- N.Y. PSC Commissioner Gregg C. Sayre, on behalf of the State Members of the Federal-State Joint Conference on Advanced Services, filed a [letter](#) on September 16, 2016, attaching the results of a survey on the status of State broadband programs. Commissioner Sayre stated that after discussions with the FCC at the February 2016 NARUC meetings, the State Members determined that a survey to establish the current status of State programs that promote broadband deployment might provide some useful data points for the Commission in its deliberations in the broadband deployment proceeding.
- NTCA [met with](#) Wireline Competition Bureau staff on September 14, 2016, to discuss the potential impact the proposed broadband customer privacy rules will have on the small, facilities-based rural broadband provider members of NTCA. NTCA proposed the Commission rules recognize the difference between data that is analogous to that which is protected currently under CPNI rules and is uniquely available to telecommunications carriers (including BIAS providers) and other data that is typically available to multiple kinds of entities in the internet ecosphere and already subject to other kinds of protections and frameworks. NTCA also discussed opt-in, data security, and liability for third party actions.
- CenturyLink [met with](#) Wireline Competition Bureau and Public Safety and Homeland Security Bureau staff on September 9, 2016, to discuss broadband privacy. CenturyLink said sound data privacy protections, including transparency, choice and data security, are critical to assuring consumer confidence in the technologies and companies that drive the digital economy. CenturyLink asserted default “opt-in” unnecessarily restricts beneficial or necessary uses and sharing of information, and said “opt-out” can be equally or more effective than a default opt-in at accurately reflecting the privacy expectations of most consumers.
- T-Mobile [met with](#) Wireline Competition Bureau and Wireless Telecommunications Bureau staff on September 9, 2016, to discuss the FCC’s broadband privacy rulemaking. T-Mobile asked the Commission to consider a 12-18 month implementation time period after rules are adopted, and asserted the FCC has no legal authority to regulate personally-identifiable information, suggesting any rules should be limited to customer proprietary network information as Congress intended. T-Mobile also asserted the consent regime should be based on the sensitivity of the CPNI, rather than an arbitrary distinction between communications and non-communications related services, and urged the FCC to give carriers the flexibility to make a reasonable determination about when and how to offer notice to consumers.
- CTIA filed a [letter](#) on September 16, 2016, responding to arguments from parties who support the FCC’s proposed broadband privacy rules. CTIA asserted the FCC should adopt a sensitivity-based approach, and claimed the Commission lacks statutory authority under section 222, among other

things, to regulate the use or disclosure of, or access to, information other than individually identifiable CPNI. CTIA also said the Commission cannot ignore the costs of the proposed rules, including what it claims would be higher retail prices, less innovation, and reduced competition.

- INCOMPAS filed a [letter](#) on September 16, 2016, to supplement positions it took during an August 2, 2016 [ex parte meeting](#) with the Wireline Competition Bureau on broadband privacy. INCOMPAS claimed the Commission should exempt business customers entirely from subpart U of the Commission's rules, and instead allow the plain language of section 222 to govern those relationships. INCOMPAS suggested that should the Commission elect to harmonize the current CPNI rules for voice services with the proposed rules for BIAS providers, the Commission should honor existing, private sector practices that telecommunications carriers use to protect CPNI and maintain the flexibility in the current rules that provide for exemptions and alternative arrangements for business customers. INCOMPAS also provided the Bureau with a suggested definition of "Sensitive Customer Proprietary Network Information."
- Prof. Laurence H. Tribe, Harvard Law School, filed a [supplemental white paper](#) on September 13, 2016, to respond to certain commenters disputing claims in his original [white paper](#) that the FCC's proposed broadband privacy rules would violate the First Amendment by imposing on ISPs a significant and unjustified burden on speech, primarily in the form of a sweeping and discriminatory opt-in consent requirement for using customer information for protected expression. Prof. Tribe asserted those criticisms either misstate the white paper's reasoning or fail to acknowledge the force of governing First Amendment precedent. Prof. Tribe filed the white paper at the request of CTIA, NCTA, and USTelecom.
- Bruce Castor, Jr., Pennsylvania Attorney General, sent a [letter](#) to Chairman Wheeler on August 30, 2016, urging the FCC to reconsider its proposed broadband privacy rules. AG Castor asserted the core problem with the Commission's proposal is that it would arbitrarily create two different sets of rules to govern the same data being used for the same purposes by competing internet-based companies and platforms, and said this inconsistency runs counter to years of guidance on privacy from the White House, the FTC, and the FCC calling for one harmonized, consistent set of guidelines.
- Free Press, New America's Open Technology Institute, et al. [met with](#) Commissioner Clyburn's Legal Advisor and [Commissioner Rosenworcel's](#) Senior Legal Advisor and Special Advisor on September 8, 2016, to discuss broadband privacy issues. They discussed arguments regarding de-identification, the sensitive data distinction, mandatory arbitration, and pay for privacy. They claimed a recent Ninth Circuit decision ruled the common carrier exemption to Section 5 of the FTC Act is a status-based exemption and, therefore, the FTC cannot enforce against companies with the status of common carrier. Free Press, et al. asserted the FTC does not provide a backstop for baseline privacy protections, reinforcing the need for strong FCC imposed privacy rules now. They also claimed pay for privacy disproportionately affects low-income consumers and would be particularly problematic in the Lifeline context.
- Free Press, 18MillionRising.org, Center for Media Justice, et al. sent a [letter](#) to Chairman Wheeler on September 15, 2016, to express support for strong broadband privacy rules. They said broadband subscribers should have the right to choose how their personal information is treated by broadband providers. They urged the Commission to adopt a strong opt-in consent framework that prevents ISPs from sharing, using, or even collecting information outside of what is necessary to provide broadband service, and suggested the FCC ban so-called pay for privacy schemes.
- The Future of Privacy Forum and Privacy Analytics [met with](#) the Chief Technology Officer and Wireline Competition Bureau, Enforcement Bureau, and Office of Strategic Planning staff on September 8, 2016, to discuss broadband privacy rules. They discussed the benefits of de-identifying data, and described the various approaches other than aggregation to de-identifying data that preserve the utility of such data while protecting consumer privacy by minimizing the risk that data will be de-identified. With respect to the distinction between sensitive and non-sensitive information, they asserted privacy laws around the world distinguish between the two, and require higher levels of notice and consent for the disclosure of sensitive data.

- Nominum [met with](#) staff from Chairman Wheeler's office, the Wireline Competition Bureau, and the Public Safety and Homeland Security Bureau on September 12, 2016, to discuss broadband customer privacy issues. Nominum asserted the Commission should provide greater clarity that collection and use of DNS and other network-based data is valuable to enhancing the overall security and reliability of a BIAS provider's network. Nominum also discussed questions the Commission raised in the NPRM about how consumers should be notified of certain BIAS provider privacy and data security practices and about any innovative means for doing so, and discussed the importance of including in the final rules an exception for researchers.
- Common Sense Media sent a [letter](#) to Chairman Wheeler on September 13, 2016, to express support for the FCC's proposed broadband privacy rules. Common Sense asserted that because the Ninth Circuit recently ruled common carriers are excluded from FTC jurisdiction in their entirety, even with respect to non-common carrier activities, it is even more important that the FCC move forward with its broadband privacy proposal and enact strong baseline privacy rules to protect all consumers, especially young people.
- Common Sense Kids Action [met with](#) Chairman Wheeler's staff on September 13, 2016, to express support for the Commission's proposed privacy rules. Common Sense reiterated its position that children and teens' information deserves the highest levels of protection, and those protections should be available with the least amount of information disclosure to ISPs. Common Sense also emphasized that the Children's Online Privacy Protection Act does not offer children enough protection in the ISP context, especially in the wake of the Ninth Circuit's decision in *FTC v. AT&T Mobility*, and said the rules should close the gap in children and teen's privacy to give children and teens the utmost protection.

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Open Internet

- The D.C. Circuit Court issued an [Order](#) on August 23, 2016, granting the FCC's [motion](#) for an extension of time to file responses to the [petitions for rehearing](#) of the Open Internet [decision](#). Responses are due October 3.

Call Completion/Robocalls

- The House Communications and Technology Subcommittee [advanced H.R. 2669, the Anti Spoofing Act of 2015](#), and [H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2015](#), to the full committee on September 13, 2016. H.R. 2669 would protect consumers from fraudulent actors and deceptive text messages, and H.R. 2566 would require intermediate providers to register with the FCC and comply with the service quality standards set by the agency to improve call quality in rural areas.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 15, 2016, seeking comment on Comcast's [Petition for Limited Waiver](#) of its rural call completion retention and reporting obligations. Comcast requested a *nunc pro tunc* waiver of its sections 64.2103 and 64.2105 obligations to record, retain, and report complete call completion information for the period up to and including June 30, 2016. Comments are due September 26; replies due October 5.

IP Transition

- The FCC's Consumer and Governmental Affairs Bureau issued a [Public Notice](#) on September 15, 2016, announcing it will host an information session on technology transitions on September 26, 2016. The event will be open to the public, and those interested in participating online may do so by visiting <https://www.fcc.gov/general/live>.

USF

- The FCC Managing Director issued a [Public Notice](#) on September 12, 2016, announcing the proposed universal service contribution factor for the fourth quarter of 2016 will be 17.4 percent, down from 17.9 percent from the previous quarter. If the FCC takes no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of this Public Notice, they shall be deemed approved by the Commission.
- The Wireline Competition Bureau issued an [Order](#) on September 12, 2016, adopting proposals it made in the E-rate eligible services list Public Notice and releasing the ESL for funding year 2017 for the Schools and Libraries support program. The Bureau also authorized USAC to open the annual application filing window no earlier than 60 days after release of this Order.
- GCI [met with](#) Wireline Competition Bureau staff on September 8, 2016, to discuss GCI's pending [Petition](#) for reconsideration or clarification of the new rolling recertification procedures that were adopted in the Lifeline Reform [Order](#). GCI urged a grant of the Petition, or if that is not possible before the rule becomes effective, an interpretation of rolling recertification that permits companies like GCI to continue to recertify their customers at a time and place that is convenient for the customers and effective in securing an accurate recertification.
- Tracfone [met with](#) Wireline Competition Bureau staff on September 16, 2016, to discuss its pending petition for stay or deferral of the December 1, 2016, effective date of the rule that would reduce from 60 days to 30 days the period for de-enrolling certain Lifeline customers who do not use their Lifeline service. It claimed the reduction in the non-usage period from 60 days to 30 days would impose costs on Lifeline providers, impose costs on USAC, and disrupt service to many low-income Lifeline-eligible households who are enrolled in the Lifeline program and who intend to remain enrolled, but who temporarily do not use the service for limited periods of time.
- The Joint Lifeline ETC Petitioners filed a [letter](#) on September 15, 2016, to express support for TracFone's [Motion](#) seeking a stay of the effective date of section 54.407(c)(2), the de-enrollment from Lifeline for non-usage rule. TracFone has asked the Commission to defer the effective date until it has had an opportunity to address the legal and public interest questions raised on reconsideration. The Joint Petitioners said the data it, TracFone, and Print provided indicate the shortened non-usage rule will result in significant harms to consumers, and urged the Commission to grant TracFone's motion for stay or deferral of the effective date of the change to the non-usage rule, pending its action on TracFone's Petition for Reconsideration.
- T-Mobile USA filed a [letter](#) on September 14, 2016, to request withdrawal of SunCom Wireless' Petition for Reconsideration, based on confirmation from USAC that this will finally resolve any issues associated with SunCom's 2006 FCC Form 499-A filing period. T-Mobile acquired SunCom Wireless in 2008.

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Misc.

- The FCC Commissioners [testified](#) at the September 15, 2016, Senate Committee on Commerce, Science, and Transportation [hearing](#) on oversight of the FCC. [Chairman Wheeler](#) detailed major developments since the March 2016 hearing, such as the Open Internet decision, incentive auctions, 5G, business data services, set-top boxes, robocalls, and Lifeline. He also highlighted priorities moving forward, such as next-generation 911 and cybersecurity. [Commissioner Pai](#) discussed ensuring direct dial 911, helping law enforcement locate 911 callers in emergencies, freeing up 5 GHz spectrum for the next generation of unlicensed use, and opening up spectrum bands above 24 GHz for 5G and other innovative wireless technologies. [Commissioner Clyburn](#) discussed the launch of her "#Connecting Communities Tour," an NPRM on independent programming, the Connect2Health Task Force, and deployment of 5G wireless services.

- USTelecom filed a [letter](#) on September 9, 2016, proposing a market test for business data services regulation. USTelecom said its test would apply at a census tract level, and said it can be applied based on the location of all competitive facilities or limited to measuring 2,000 feet only from fiber facilities. USTelecom asserted its test has the advantage of being based on factual data and coherent economic theory, and said where the test is met, price setting by the Commission is very unlikely to improve on the results of the competing firms, but will raise costly barriers to investment and innovation that will harm real competition and will slow the transitions to fiber, 5G wireless, and other new technologies.
- Jonathan Banks, Senior Vice President of USTelecom, wrote a [blog post](#) on September 16, 2016, urging the Commission to use the data it has to justify any changes to current BDS price regulation. He claimed FCC data shows there is no general lack of competitive pricing pressure in this arena, and over 300 CLECs compete with incumbents and nearly 100 cable firms are also rapidly now taking market share. He suggested the FCC stop prohibiting incumbent providers from discounting BDS prices, claiming incumbent BDS providers are not allowed to discount BDS prices in about one-third of the country, and said prices could be lower in those areas if the FCC simply granted more flexibility to incumbent providers to lower their prices in all areas of the country.
- CenturyLink filed a [letter](#) on September 9, 2016, to respond to Verizon and INCOMPAS's proposal to reduce rates for price cap LECs' DS1 and DS3 services by approximately 24% in the first two years based on the assumption that the cost of providing these services has declined precipitously over the past decade. CenturyLink claimed the cost to provide its legacy TDM services has increased over time even as the regulated price of those services has steadily declined in real terms. It said this letter is intended to rebut INCOMPAS's suggestions that CenturyLink's cost analysis is "unreliable," inconsistent with CenturyLink's public statements, or contradicted by its earning statements. CenturyLink asserted there is no credible data in the record to support a reduction in current DSn rates, and the substantial rate cuts sought by INCOMPAS and Verizon therefore would be arbitrary and capricious.
- CenturyLink filed a [letter](#) on September 15, 2016, claiming Verizon's recently submitted [white paper](#) undermines the factual premises of the Verizon-INCOMPAS [proposal](#) on BDS. CenturyLink claimed the competitive BDS marketplace that Verizon describes in the docket for its XO acquisition does not warrant regulatory intervention nor does it justify the proposals Verizon has endorsed alongside INCOMPAS in the BDS proceeding. CenturyLink said the Commission should reject the Verizon-INCOMPAS proposal.
- Verizon [met with](#) Wireline Competition Bureau and General Counsel staff on September 8, 2016, to urge the Commission to adopt Verizon and INCOMPAS's [proposed framework](#) for business data services. Verizon asserted their approach relies first on competition to ensure reasonably priced BDS, and in areas where competition has been insufficient, proposes a policy framework that encourages investment and market entry. Verizon also asserted the Commission should let individually negotiated agreements run their course, including contract tariffs for TDM-based special access in pricing-flexibility areas and agreements for Ethernet services.
- NCTA filed a [letter](#) on September 14, 2016, to express concern with the Verizon/INCOMPAS [proposal](#) for business data services. NCTA asserted a number of key principles outlined in the Verizon/INCOMPAS proposal have been thoroughly refuted on legal, policy, and economic grounds. NCTA offered an alternative proposal, and claimed it recognizes that regulation would only be appropriate for legacy BDS rates in census tracts that meet the following criteria: only a single provider has BDS-capable facilities in the tract; the tract has fewer than 10 BDS customers and therefore may not have sufficient demand to attract additional BDS providers; and no customer purchases fiber-based Ethernet BDS in the tract, suggesting that investment in modern packet-based networks may not be occurring.
- Cox Communications [met with](#) Legal Advisors to Chairman Wheeler and Commissioner Rosenworcel, the FCC's General Counsel, and Office of Strategic Planning and Policy Analysis and Wireline

Competition Bureau staff on September 8, 2016, to assert that direct or indirect rate regulation of Cox's business data services will significantly impact BDS investment decisions. Cox urged the Commission to reject competitive market tests based on overly granular areas, such as census blocks or specific locations, and that require multiple competitors before finding a market competitive. It asserted regulation should be tied to market power and new entrants should be defined as any competitive provider of BDS services after 1996. Cox also [met with](#) Legal Advisors to Commissioners Clyburn and Pai on September 12 and 13, 2016, to discuss the same issues.

- Level 3 [met with](#) Wireline Competition Bureau and Office of Strategic Planning and Policy Analysis staff on September 7, 2016, to express support for the BDS market reforms proposed by Verizon and INCOMPAS. Level 3 said it has proposed the Commission classify: BDS of 100 Mbps and below as non-competitive in all locations; BDS above 100 Mbps up to and including one Gbps as non-competitive except in census blocks where at least four service providers have connections; and BDS above one Gbps as competitive in all locations. Level 3 also proposed the Commission apply *ex ante* rate regulation to the prices charged by leading competitors for services classified as non-competitive, and filed redacted responses to points made in reply comments recently filed in the BDS proceedings.
- ACS [met separately](#) with Legal Advisors to Chairman Wheeler and Commissioners Clyburn, O'Rielly, Pai, and Rosenworcel and Wireline Competition Bureau staff on September 8 and 9, 2016, to discuss the unique characteristics of the BDS market in Alaska. ACS urged the Commission not to regulate BDS services such as Metro Ethernet, and urged the Commission to forbear from regulation or grant maximum pricing flexibility to BDS offerings, such as DS1 and DS3, that are provided within the interstate access tariff.
- Sprint [met with](#) Wireline Competition Bureau, General Counsel, and Enforcement Bureau staff on September 13, 2016, to discuss benchmark enforcement for business data services. Sprint proposed the Commission establish a benchmark for Ethernet-based BDS in markets that are presumed non-competitive (at or below 50 Mbps) or fail the competitive market test (above 50 Mbps up to 1 Gbps). Sprint also said a streamlined dispute resolution process is vital to the proposed benchmark remedy, and discussed a timeline for the process.
- The Utah PSC sent a [letter](#) to Chairman Wheeler on August 23, 2016, to emphasize that any final BDS rule should be based on complete and accurate industry data. It urged the FCC to accept into the record the complete data and to use that data in formulating a final rule.
- Lightower Fiber Networks, Lumos Networks Corp, and Unite Private Networks [met separately](#) with Commissioner O'Rielly and his Legal Advisor, Chairman Wheeler's Senior Counsel, and Legal Advisors to Commissioners Rosenworcel, Pai, and Clyburn on September 13, 2016, to discuss proposals that they suggest could subject competitive fiber provider's prices to regulation through application of benchmarks based on the ILEC's costs and prices. They also discussed how that would harm CFPs and their efforts to build new fiber networks, including build-outs for mobile wireless networks, enterprise customers and community institutions, such as schools and healthcare networks.
- Uniti Fiber filed a [letter](#) on September 16, 2016, to discuss the impact of BDS proposals on competitive fiber providers. Uniti expressed concern about the proposals in which market participants would have their pricing regulated if the Commission's new regulatory framework determined a particular market is non-competitive. Uniti asserted CFPs virtually always face competition from ILECs, and said the Commission should retain its light touch regulatory regime for competitors. Uniti also said regulation of CFP pricing imposes new burdens and costs that CFPs are ill-equipped to handle.
- Prof. Marius Schwartz of Georgetown University filed a [letter](#) on September 15, 2016, to discuss an [economic declaration](#) he and Dr. Federico Mini submitted with ACA's comments on business data services. Prof. Schwartz asserted because cable and other non-incumbent providers' investments to provide BDS have been and are being made without any government grant of a monopoly, any Commission action to regulate non-incumbents, including those risking their own capital to deploy in rural areas, based on their attaining market power would be contrary to sound economics and antitrust policy.

- A group of seven economists filed a [letter](#) on September 14, 2016, to express concern with proposals for business data services regulation, asserting that both economic theory and past experience show rate regulation imposes significant costs, typically obstructs innovation, and acts as a disincentive to investment. They said these proposals lack support in economic theory and in regulatory experience, and urged the Commission to adhere to widely accepted principles of regulatory economics and adopt a competitive market test targeted squarely at combating supra-competitive rents in entrenched monopoly markets.
- The Communications Workers of America sent a [letter](#) to Chairman Wheeler on September 14, 2016, to suggest the Commission is considering a regulatory framework for business data services that could result in a 20 percent or more flash-cut in rates. CWA claimed this proposal will hurt jobs, workers' living standards, and investment, particularly in rural America. CWA also said the FCC's business data services rules must be data-driven, the competitive test must count all providers, and the rules must promote good jobs investment in next-generation networks.
- The Grand Junction Economic Partnership sent a [letter](#) to Chairman Wheeler on August 26, 2016, to suggest the FCC reevaluate the data to include all of the major BDS competitors whose numbers were not included in the original economic analysis. It also suggested the Commission revise the economic analysis of the 2013 data to incorporate the revised cable coverage, count competitors the same way, and give parties in the BDS proceeding an opportunity to comment on it before moving to a final rule.
- Mediacom Communications [met separately](#) with Legal Advisors to Commissioners Rosenworcel and Clyburn and General Counsel and Wireline Competition Bureau staff on September 8, 2016, to suggest the Commission not adopt any new regulations of competitive providers' business data services. Mediacom asserted there is no record evidence that Mediacom's rates are unreasonable or that the company possesses market power. Mediacom also argued that adoption of a competitive test that defines a competitive market as those with at least four facilities-based providers is not reasonably tailored to address isolated allegations of excessive rates because it would treat nearly all markets as non-competitive.
- The Midwest Association of Competitive Communications, CALTEL, the Michigan Internet and Telecommunications Alliance, the Northwest Telecommunications Association, and CompSouth sent a [letter](#) to Chairman Wheeler on September 13, 2016, to urge the Commission to adopt an order that addresses what they say are the harms from the lack of competition in the BDS market. They expressed support for Commission efforts to reform the broken BDS marketplace to provide meaningful price reductions in noncompetitive areas for both TDM and packet-based services, and the adoption of a policy framework for BDS that protects consumers, encourages competition, and is administratively simple and practical.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 12, 2016, announcing the ninth LNP Administrator Transition Outreach and Education Plan webcast is scheduled for September 21, 2016, and will be hosted by PriceWaterhouseCoopers, the Transition Oversight Manager. Interested parties may register for the webcast by visiting: <https://event.webcasts.com/starthere.jsp?ei=1113375>.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 15, 2016, seeking comment on Flowroute's application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. The Bureau said unless otherwise notified by the Commission, Flowroute may provide the states in which it intends to request numbers the required 30-day notice on the 31st day after the date of this Notice. Comments are due September 30.
- The FCC issued a [Public Notice](#) on September 12, 2016, announcing the next Consumer Advisory Committee meeting is set for October 14, 2016. The Committee is expected to consider a recommendation from its No Surprise Billing Task Force regarding the clarity of charges at point of sale and on bills, and the Committee will receive briefings from Commission staff on issues of interest to the Committee.

- The FCC released a [News Release](#) on September 15, 2016, announcing \$11 million in fines against Central Telecom Long Distance, Consumer Telcom, and U.S. Telecom Long Distance for “cramming” unauthorized charges onto consumer telephone bills, “slamming” consumers by switching their preferred phone carriers without authorization, deceptive marketing, and violating the FCC’s truth-in-billing rules. The companies are run as one operation by Data Integration Systems. The FCC issued Forfeiture Orders against [Consumer Telecom](#) for \$3,060,000, [Central Telecom Long Distance](#) for \$3,460,000, and [U.S. Telecom Long Distance](#) for \$4,480,000.
- The Enforcement Bureau issued a [Notice of Apparent Liability for Forfeiture](#) on September 14, 2016, proposing a penalty of \$100,000 against UnityComm for failing to timely file Telecommunications Reporting Worksheets with USAC. The Bureau said UnityComm’s failures to file Worksheets precluded federal program administrators from fully invoicing it for its required payment obligations and enabled it to temporarily avoid making full payments required of interstate and international telecommunications services providers for the USF, TRS Fund, LNP and NANP administration, and federal regulatory fees. UnityComm is an Indiana limited liability corporation, which provides local reseller, toll reseller, interconnected VoIP, and interexchange carrier services in Indiana, Kentucky, Missouri, North Carolina, Ohio, Tennessee, and Texas.

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Upcoming Filing Dates

- 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. 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. 26 - Comments due on Comcast’s [Petition for Limited Waiver](#) of its rural call completion retention and reporting obligations. Replies due October 5. [Public Notice](#)
- 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](#)
- Sept. 30 - Comments due on Flowroute’s application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. [Public Notice](#)
- Oct. 3 - Response due to [petitions for rehearing](#) of the Open Internet [decision](#). [Order](#)
- Oct. 5 - Replies due on Comcast’s [Petition for Limited Waiver](#) of its rural call completion retention and reporting obligations. [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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