

[USF Reform](#) [Open Internet](#) [Broadband](#) [IP Transition](#) [USF](#) [Call Completion](#) [Misc.](#) [Upcoming Events](#)

September 26, 2016 HIGHLIGHTS

- The FCC issued the [agenda](#) for its September 29, 2016 Open Meeting. The FCC will consider: a Report and Order and FNPRM 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 [announced](#) that to implement the CAF BLS, all carriers are required to file with USAC forecasted cost and revenue data for the first six months of 2017 on October 1, 2016.
- The WCB [released](#) the weighted average broadband deployment for all RoR carriers and the relevant [deployment figure for each individual carrier](#) based on the December 2015 Form 477 data.
- The WCB issued a [Public Notice](#) announcing urban rate surveys for 2017 will be due October 25.
- The WCB [denied](#) requests for waiver filed by [Shawnee Telephone and Moultrie Independent Telephone](#), [Baraga Telephone](#), and [Clarity Telecom](#) of RoR USF Reform [Order](#) decisions.
- The WCB [announced](#) providers have until November 7 to notify CenturyLink they already serve the census blocks [identified](#) in CenturyLink's modified CAF Phase I Round 2 broadband deployment plans.
- WTA, et al. [discussed](#) WTA's [Petition for Reconsideration](#) of the RoR USF Reform Order, and WTA's [proposal](#) on 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.
- USTelecom [discussed](#) elements of the implementation of the RoR USF Reform [Order](#), and the support for DSL transmission service.
- Minnesota, Wisconsin and Iowa rural ILECs [discussed](#) their concern that the A-CAM eligibility criteria may be changed in some manner at some future date to exclude many currently eligible entities.
- Commissioner O'Rielly wrote a [blog](#) on the FCC's proposed broadband privacy rules, saying if data sharing enticements are prohibited, it would harm the overall operations of the Internet, increase companies' costs for offering features and functions, and decrease consumer options.
- Chairman Wheeler sent [letters](#) to seven U.S. Senators in response to their [letter](#) on the FCC's proposed broadband customer privacy rules.
- Commissioner Pai gave a [speech](#) at the Competitive Carriers Association annual convention, detailing ways to promote broadband deployment. Commissioner Clyburn also [spoke](#) before the CCA, stating the FCC needs to move forward on Phase II of the Mobility Fund.
- [Replies were filed](#) on the [Twelfth Broadband Progress Notice of Inquiry](#).
- The House Energy and Commerce Committee [approved](#) H.R. 2669, the Anti-Spoofing Act of 2015, and H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2016.
- The FCC issued its [Nineteenth Report](#) on mobile wireless competition.

Other Key Upcoming Dates

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

USF Reform

- The Wireline Competition Bureau issued a [Public Notice](#) on September 19, 2016, announcing that to implement the CAF BLS, all carriers are required to file with USAC forecasted cost and revenue data for the first six months of 2017 on October 1, 2016. The forecasted cost and revenue data associated with consumer broadband-only loops, in addition to the previously collected common line data, will be collected on a revised version of [FCC Form 508](#). The Bureau said it expects USAC will publish its analysis of the effect of budgetary controls on or before November 1, 2016, for the January 1, 2017 to June 30, 2017 period, and will include the amount of forecasted CAF BLS each carrier will receive during that six-month period, which will enable RoR carriers to file any necessary tariff revisions for consumer broadband-only loops or other services in time to take effect in January.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 19, 2016, releasing the weighted average broadband deployment for all RoR carriers and the relevant [deployment figure for each individual carrier](#) based on the December 2015 Form 477 data, pursuant to the Rate-of-Return USF Reform Order. The Bureau said these broadband deployment percentages will be used to calculate the capital investment allowance for 2017 and the broadband deployment obligations RoR carriers that receive support based on legacy mechanisms will be required to fulfill over a five-year period (i.e. 2017 through 2021). Based on the December 2015 data, the weighted average broadband deployment for all RoR carriers is 74 percent.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 22, 2016, announcing it will shortly be initiating the urban rate survey for 2017. The information collected in the survey will be used, among other things, to develop voice and broadband reasonable comparability benchmarks that will be in place in 2017. The Bureau said notifications that a provider is required to complete a survey will be sent via e-mail to each selected provider's FCC Form 477 contact person and certifying official on or around September 22, 2016. Completed surveys will be due on October 25.
- The Wireline Competition Bureau issued an [Order](#) on September 21, 2016, denying Shawnee Telephone and Moultrie Independent Telephone's [Petition for Waiver](#) of the Commission's decisions to exclude census blocks served by FTTP from the support calculations and not to make an offer of model-based support to any RoR carrier that has deployed 10/1 Mbps broadband to 90 percent or more of its eligible locations in the relevant state. It also denied Baraga Telephone's [request for waiver](#) of the March 30, 2016 deadline for submitting FCC Form 477 data used to determine a RoR carrier's percentage of broadband deployment for purposes of making the offer of A-CAM support, and denied Clarity Telecom's [request for waiver](#) of the Commission's deadline for submitting FCC Form 477 data used to identify census blocks served by FTTP or cable technologies.
- The Wireline Competition Bureau released a [Public Notice](#) on September 23, 2016, announcing providers have 45 days to notify CenturyLink they already serve the census blocks identified by CenturyLink on September 13, 2016, in its plans to modify its CAF Phase I Round 2 incremental broadband deployment plans. CenturyLink must certify that, to the best of its knowledge, the locations it plans to serve are in fact unserved before it may commence construction. Existing providers have until Monday, November 7, 2016, to notify CenturyLink they currently offer internet service at speeds of 3 Mbps/ 768 kbps or higher in the newly identified census blocks. A machine readable list of the census blocks CenturyLink intends to serve is available [here](#).
- Commissioner Clyburn [spoke](#) before the Competitive Carriers Association on September 20, 2016, focusing on mobile broadband and the Connect2Health initiative. She said the Commission needs to move forward on Phase II of the Mobility Fund expeditiously, but part of the problem has been getting good data on deployment. She indicated she is open to hearing ideas about how the FCC can improve on the data it is using. She discussed the FCC's Connect2Health Task Force, which recently launched a new broadband health mapping tool that allows federal, state and local agencies as well as the private sector to examine the relationship between connectivity and health at a local level, as well as identify current issues and develop future solutions to address connectivity gaps and promote positive health outcomes. She noted on October 19th, she will host a #Solutions2020 Policy Forum in

Washington, DC to explore solutions to bringing affordable and competitive services to consumers and small businesses, which is part of her #ConnectingCommunities tour.

- WTA, LICT Corporation, TDS Telecom, Totah Communications, and Home Telephone [met with](#) Commissioner Rosenworcel's Legal Advisor on September 20, 2016, to discuss WTA's [Petition for Reconsideration](#) of the March 2016 RoR USF Reform Order, and WTA's [proposal](#) regarding 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. WTA, et al. said, as proposed by WTA in its August 3, 2016 letter, the burden of producing evidence for a fixed wireless service provider seeking classification as an unsubsidized competitor should begin with its submission of a list of the towers from which it claims to serve specific census blocks within the targeted RLEC's service area. WTA, et al. also met with Legal Advisors to Commissioners [O'Rielly](#) and [Clyburn](#) and [Chairman Wheeler and WCB staff](#) to discuss the same issues.
- USTelecom [met with](#) Wireline Competition Bureau staff on September 15, 2016, to discuss elements of the implementation of the RoR USF Reform Order, and the support for DSL transmission service in particular.
- New Ulm Telecom, BEVCOMM, and eleven Minnesota, Wisconsin and Iowa rural ILECs [met with](#) Commissioner Rosenworcel's Legal Advisor on September 21, 2016, to discuss their interest in participating in the A-CAM support mechanism and their concerns that the present A-CAM eligibility criteria may be changed in some manner at some future date to exclude many currently eligible entities. The companies expressed surprise and concern with the language in the Wireline Competition Bureau's August 3, 2016 [Public Notice](#) indicating that it might "prioritize" among electing carriers on the basis of one or more of three different potential criteria, and said they view this language as an indication the Bureau is contemplating changing the A-CAM eligibility rules in some presently unknown manner, and perhaps in a manner that might significantly decrease the number of RLECs eligible to participate on the A-CAM path. They indicated the companies have understood the A-CAM support and build-out obligations for those making the November 1, 2016 elections is likely to be reduced in order to satisfy budget constraints, but they never contemplated they might be barred entirely from A-CAM participation.
- Gila River Telecommunications submitted [comments](#) on September 20, 2016, as part of Commissioner Clyburn's Connecting Communities tour. GRTI suggested the Commission adopt targeted policies that will ensure adequate funding for the deployment of wireline and wireless broadband networks, and the transport network that must accompany them, and to address affordability of broadband service on Tribal lands. It also suggested the Commission adopt incentive mechanisms, like the Tribal Radio Priority, to promote greater access to broadcast television and radio opportunities. It said only through these policy changes can the Commission help address the missed opportunities that lack of access imposes on people living in their Tribal communities.
- The National Tribal Telecommunications Association [met with](#) Wireline Competition Bureau staff on September 20, 2016, to urge the Commission to waive or modify the operations expense limitation to 2.5 standard deviations for carriers that primarily serve locations on Tribal lands and adopt a Tribal Broadband Factor to provide additional support to carriers serving Tribal lands for increased broadband investment.
- Southern Tier Wireless [met with](#) Wireline Competition and Wireless Telecommunications Bureau staff on September 19, 2016, to discuss the assignment of weights for the upcoming CAF Phase II auction. STW presented new weights for the FCC to consider and detailed cost data to support them, and discussed the interplay between broadband speed, unserved locations, and bidding price.

[Back to Highlights](#)

Broadband

- Commissioner Pai gave a [speech](#) on September 21, 2016, at the Competitive Carriers Association annual convention. He detailed ways to promote broadband deployment, suggesting that the FCC aggressively use its legal authority to make sure that local governments do not stand in the way of broadband deployment. He said the FCC needs to reform its rules governing pole attachments and should develop a model code for cities and towns that want to encourage broadband deployment and competitive entry. He also suggested the federal government should speed up the deployment of broadband on federal lands, and said “dig once” should be a central tenet of the nation’s transportation policy.
- Commissioner O’Rielly wrote a [blog](#) on the FCC’s proposed broadband privacy rules on September 21, 2016. He said if data sharing enticements are prohibited, it would harm the overall operations of the Internet, increase companies’ costs for offering features and functions, and decrease consumer options. He suggested eliminating the flexibility of consumers to exercise their freedom with regards to their own data would be the definition of anti-choice. He said the Commission should rethink its insistence on enacting new broadband privacy rules, but if it moves forward, it should not prohibit private data exchanges that benefit consumers in the form of lower prices, greater service, or more features and functions.
- Chairman Wheeler sent [letters](#) to seven U.S. Senators on September 7, 2016, in response to their [letter](#) on the FCC’s proposed broadband customer privacy rules. Chairman Wheeler said issues such as transparency, consumer consent, and security were key concepts in the Commission’s NPRM and will be reflected in any final rules the Commission adopts.
- Commissioner O’Rielly [spoke](#) before the International Bar Association Conference on September 20, 2016. He said the discussion of net neutrality, cybersecurity, privacy, encryption, and the right to be forgotten boils down to an overarching, fundamental debate: how do we ensure the continued functionality and growth of the Internet. He discussed zero-rating or sponsored data offerings and the transition of the Internet domain name system (DNS), known as the Internet Assigned Number Authority (IANA) functions, to the Internet Corporation for Assigned Names and Numbers (ICANN).
- Reply comments were filed on September 21, 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. [NTCA](#) said there remains reason for significant concern over the lingering inconsistency between the 25/3 standard proposed in this proceeding to determine “availability” and the use of lesser “minimum targets” for rural consumers under current high-cost USF support mechanisms, and suggested this highlights that USF support under current budget controls is by definition insufficient to attain reasonable comparability, contrary to section 254. NTCA agreed the Commission should consider the impact of pricing and affordability of services as part of its analysis of deployment and availability, and agreed there are significant technical and marketplace differences between fixed and mobile data services such that they cannot be deemed equivalent or substitutable for policymaking purposes, but fixed broadband services are arguably interchangeable from the consumers’ perspective, whether the delivery mechanism is wired, wireless or satellite based. [WISPA](#) said the Commission should retain its existing criteria for defining advanced telecommunications capability, and reject the alternative proposals to use the deployment of all-fiber networks as a benchmark for advanced telecommunications capability. WISPA also opposed the regulation of data caps and usage-based pricing plans as part of the statutory section 706 analysis. The [Wireless Infrastructure Association](#) said the FCC should find that mobile broadband is being deployed to all Americans in a reasonable and timely fashion, and decline to require access to both mobile and fixed service to reach a positive finding in its section 706 assessment. [T-Mobile](#) suggested the FCC make more high, mid, and low-band spectrum available so mobile broadband providers can keep pace with the growth of consumer demand. [The Utilities Technology Council](#) asserted the FCC should not find that broadband is being deployed on a reasonable and timely basis, and claimed there is clear evidence that rural areas continue to lack access to broadband services that are reasonably comparable to the level of broadband services in urban areas. [ViaSat](#) asserted the record establishes the valuable contribution that satellite broadband

providers are making in extending advanced telecommunications capability to all Americans, including by offering services that meet the 25/3 Mbps speed threshold. [List of all replies available to date](#)

- AT&T [met with](#) Chairman Wheeler's Chief of Staff and Wireline Competition Bureau staff on September 19, 2016, to discuss the broadband privacy proceeding. AT&T expressed support for the determination of privacy choices based on the sensitivity of the data, similar to the FTC's framework. AT&T said under this approach, requirements for opt-in approval would be limited to the use or sharing of sensitive customer information for marketing purposes. AT&T also supported the use of aggregate and non-aggregate de-identified data without approval based on the three-part FTC test for de-identification. AT&T also discussed the use of non-sensitive customer information for first-party marketing-based implied approval.
- Verizon [met with](#) Wireline Competition Bureau staff on September 21, 2016, to discuss what it claims are the benefits of harmonizing the FCC's CPNI rules for voice services with any new rules addressing broadband customer privacy. Verizon suggested the FCC adopt a sensitivity-based approach to privacy and data security for both voice and broadband services, and claimed harmonization would provide the FCC with the opportunity to update its existing but outdated voice rules, including those related to authentication that may inhibit providers from taking advantage of new, more secure technologies. Verizon also urged the FCC to exempt business customers from any adopted rules, regardless of whether it harmonizes the voice and broadband rules, and urged the FCC to allow 18 months to implement any new rules.
- Comcast [met with](#) Chairman Wheeler's staff and Wireline Competition Bureau staff on September 20, 2016, to discuss broadband customer privacy. Comcast expressed agreement with FTC's comments that any rules the Commission adopts should use a sensitivity-based approach to consent. Comcast urged the Commission to allow for the use and disclosure of de-identified data, so long as the ISP has taken reasonable and appropriate steps to de-identify the data. Comcast also argued ISPs should be permitted to use non-sensitive customer-related information for first-party marketing based on implied consent, and said in cases where an affiliate's relationship to the ISP is not clear to a reasonable consumer, opt-out consent would be required.
- CTIA, Verizon, et al. filed a [letter](#) on September 23, 2016, to express support for Level 3's suggestion that the Commission exempt the provision of services to wholesale and enterprise customers from subpart U of the Commission's rules in order to give wholesale and enterprise service providers flexibility in how they meet their statutory obligations to protect customer privacy within the framework of the plain language of section 222. CTIA, Verizon, et al. claimed no commenter in this proceeding has opposed this, and said this approach, which closely tracks the definitions adopted by the Commission in the BIAS context, would provide clarity with respect to which regulations apply to a given service and would also maximize harmonization between the BIAS and voice privacy rules.
- The Internet Commerce Coalition filed a [letter](#) on September 20, 2016, to respond to various ex partes that oppose rules setting different standards for sensitive data. The ICC claimed nothing submitted by these parties provides a valid rationale for the FCC to depart from the sensitivity-based analysis used for many years by the FTC and endorsed by the Obama Administration for determining when an opt-in consent requirement is appropriate. The ICC claimed a sensitivity-based data distinction approach is workable, is well established in U.S. privacy law, widely implemented by companies, and successfully enforced by regulators.
- Public Knowledge, the National Association of Consumer Advocates, Public Justice, et al. [met with](#) Chairman Wheeler's staff, Commissioner Clyburn's Legal Advisor, and the Wireline Competition Bureau staff on September 19, 2016, to discuss the provisions in the broadband privacy rulemaking on dispute resolution. They claimed forced arbitration clauses and class action bans unfairly restrict consumers' ability to seek redress when harmed by telecommunications practices, including unfair conduct that potentially violates consumers' privacy rights. They also [met with](#) Wireline Competition Bureau staff on September 20, 2016, to discuss the same issues.

Call Completion/Robocalls

- The House Energy and Commerce Committee [approved](#) H.R. 2669, the Anti-Spoofing Act of 2015, and H.R. 2566, the Improving Rural Call Quality and Reliability Act of 2016, on September 21, 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 legislation would give the FCC 180 days to issue rules to establish a registry of providers, and one year to establish service quality rules.

IP Transition

- USTelecom, AT&T, CenturyLink, and Verizon [met with](#) Wireline Competition Bureau and Public Safety and Homeland Security Bureau staff on September 22, 2016, to discuss concerns about the requirement to certify or show that a replacement service offers comparably effective protection from network security risks when incumbents seek to discontinue a legacy voice service and replace it with a new service. They sought clarification that “enterprise-wide” refers only to those portions of the provider’s enterprise or business that involve the provision of voice service.
- Granite Telecommunications [met with](#) Wireline Competition Bureau staff on September 20, 2016, to ask for an adjustment to the regulatory backstop for wholesale platform services adopted in the Technology Transitions Order. Granite said the backstop for wholesale platform services is set to expire upon completion of the Business Data Services proceeding, and argued this is not the appropriate trigger for eliminating the backstop. Granite asserted the FCC should affirmatively “delink” the wholesale platform services remedy from the BDS proceeding and retain the regulatory backstop for wholesale platform services until the Commission completes an examination of the relevant market for wholesale voice platform services.

USF

- The Wireline Competition Bureau issued a [Public Notice](#) on September 19, 2016, seeking comment on the petitions filed by [Microsoft, Mid-Atlantic Broadband Communities Corporation, et al.](#) and the [Samuelson-Glushko Technology Law & Policy Clinic](#) on behalf of the Boulder Valley School District. The Petitions request the Commission allow E-rate subsidized broadband networks to be accessed by students at home for educational purposes, without an obligation on the E-rate applicant to cost allocate the portion of the traffic attributable to off-campus use. Comments are due November 3; replies are due December 5.
- The Wireline Competition Bureau released an [Order](#) on September 21, 2016, approving Mutual Telephone Company of Sioux Center, Iowa, d/b/a Premier Communications, and Winnebago Cooperative Telecom Association’s [Petition](#) seeking a waiver of the study area boundary freeze to redefine the Consolidated Communications of Iowa, f/k/a Heartland Telecommunications Company of Iowa, study area to exclude the Bancroft and Lakota exchanges and create a new study area for Winnebago comprised of the Bancroft and Lakota exchanges.
- Funds for Learning [met with](#) Wireline Competition Bureau staff on September 15, 2016, to discuss its analysis of FY 2016 E-rate funding data and the responses to a nationwide survey of E-rate applicants. Funds for Learning said the number of gigabits used by schools and libraries more than doubled in the past year, saying 25 percent of sites have fully utilized their C2 budget cap and only 18 percent of school applicants believe that the current \$150/student C2 budget cap is sufficient to meet their on-campus connectivity needs.

- Gtek Computers & Wireless filed a [Request for Review](#) on September 16, 2016, of the denial by USAC of its appeal for cancellation of sanctions and interest and penalties in the amount of \$26,144.46 imposed for Gtek's alleged failure to file Form 499-A for years 2010-2015. Gtek claimed, as a systems integrator that derives less than five percent of its revenues from the resale of telecommunications, it is exempt from filing Form 499-A or contributing directly to the USF.
- TracFone filed a [letter](#) on September 20, 2016, to discuss its [motion](#) 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. TracFone said its enrollee usage records for first quarter 2016 showed 72 percent of Lifeline households who did not use their service for 30 days used their service within the next 30 days. TracFone claimed had the revised rule been in effect during first quarter 2016, it would have had to de-enroll more than 1.1 million Lifeline households. TracFone Wireless also [met with](#) staff of Chairman Wheeler on September 21, 2016, to discuss its [motion](#) for stay or deferral, and discussed data submitted in its September 20 [letter](#).
- Q LINK WIRELESS filed a [Petition](#) on September 22, 2016, to request designation as a Lifeline Broadband Provider ETC in all areas of the United States in which T-Mobile or Sprint provide facilities-based 3G or LTE CMRS data services. Q LINK said granting of its request will expand its ability to offer Lifeline-supported broadband services, including to areas within the 27 states in which it holds ETC designations that are not currently covered by those designations.

[Back to Highlights](#)

State Actions

- Texas District Court issued a [Memorandum Opinion and Order](#) on September 15, 2016, granting AT&T's motion for summary judgment in a [proceeding](#) on payment of switched access charges by calling card companies. AT&T sought compensation from V247 Telecom and Saving Call for originating switched access service charges for international and interstate long-distance telephone calls using its telecommunications network. The court agreed with AT&T that the FCC's 2006 prepaid calling card [Order](#) applied to all types of calling cards, not just the two specifically mentioned, as the defendants alleged. The court stated the 2006 Order provides courts with interim rules applicable to "all prepaid calling card providers," and until the FCC provides further guidance, all prepaid calling card providers are to be treated as telecommunication service providers and subject to access charges as detailed in the 2006 Order.

Misc.

- The FCC issued the [agenda](#) on September 22, 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. The FCC will also consider seven items as consent agenda and six personnel items.
- The FCC issued a [Public Notice](#) on September 20, 2016, seeking comments on Warm Springs Telecom's [Petition](#) for an order declaring WST to be an incumbent LEC pursuant to sections 251(h)(2), and 51.223(b) in the Warm Springs Wire Center and Wanapine Exchange, both located on the Reservation of the Confederated Tribes of Warm Springs in Oregon. CenturyLink filed an [opposition](#) to the Petition on September 19, 2016, contending it is the existing ILEC for the Warm Springs Wire Center. It denied the factual allegations and legal conclusions in the Petition, including allegations regarding the nature of CenturyLink's service on the Warm Springs Reservation, market share information, the history of the relationship between the Confederated Tribes of Warm Springs and

CenturyLink, and WST's ability to function as the ILEC on the reservation. Comments are due October 20; reply comments are due November 4.

- The Wireline Competition Bureau issued a [Public Notice](#) on September 20, 2016, announcing the inflation-adjusted 2015 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes. The revenue threshold between Class A carriers and Class B carriers is increased to \$155.0 million. The revenue threshold between larger Class A carriers and mid-sized carriers is increased to \$9.18 billion.
- The FCC published its revised Schedule of Regulatory Fees in the [Federal Register](#) on September 26, 2016, to recover an amount of \$384,012,497 that Congress has required the Commission to collect for fiscal year 2016. The rules are effective September 26, 2016. The FCC said to avoid penalties and interest, regulatory fees should be paid by the due date of September 27, 2016. The [Public Notice](#) was issued on September 22, 2016, announcing that although the FY 2016 regulatory fees will not become effective until the September 26, 2016 [Report and Order](#) is published in the Federal Register, regulatees may submit payments at any time before the effective due date of FY 2016 regulatory fees. The FCC said multi-year wireless licensees are subject to the rates in effect on the date of such application or renewal, and said for these payors, the FY 2016 rates are applicable as of September 26, 2016, the effective date of the [Report and Order](#).
- The FCC issued its [Nineteenth Report](#) on mobile wireless competition on September 23, 2016, containing data and analyses covering the second half of 2015, pursuant to section 332(c)(1)(C) of the Communications Act. As with past Reports, this Report examines various facets of the mobile wireless industry, including market concentration, the conduct and rivalry of service providers, and competition in other segments of the mobile wireless ecosystem, including spectrum, backhaul, and handsets/devices, as well as consumer behavior. The Report indicated over the last several years, there has been further increased consolidation in the industry, and by 2015, the four nationwide service providers accounted for approximately 98 percent of the nation's mobile wireless service revenue, up from approximately 93 percent in 2012.
- Chairman Wheeler sent [letters](#) to six members of Congress on September 7, 2016, responding to their letters on business data services. Chairman Wheeler said in August 2015 the Commission adopted the interim requirement that incumbent carriers seeking to discontinue legacy TDM services and transition to an all-IP environment must continue to provide commercial wholesale platform services at reasonably comparable rates, terms, and conditions. Chairman Wheeler also said the Commission has an open rulemaking asking how the Commission can best facilitate the continuation of commercial wholesale platform services used by competitive carriers for multi-location voice services, and indicated FCC staff is actively meeting with interested parties and reviewing submissions on this important issue.
- AT&T filed a [letter](#) on September 16, 2016, to respond to the Verizon/INCOMPAS business data services [proposal](#). AT&T asserted Verizon's benchmarks under its proposal would range from 70 percent to 222 percent higher than AT&T's and would exceed those of other providers by significant amounts. AT&T recommended the Commission adopt a light but firm regulatory touch, and continue to forbear from regulating all Ethernet services and other BDS with bandwidth equal to or above 50 Mbps. For legacy TDM services below 50 Mbps, it suggested the Commission should apply the competitive market test proposed by Drs. Israel, Rubinfeld, and Woroch in their white papers to identify areas where such services are not subject to effective competition and apply Phase I price cap rules to those services in those areas.
- AT&T filed a [letter](#) on September 22, 2016, to submit a supplemental declaration by Drs. Meitzen and Schoech of Christensen Associates in response to [Sprint's](#) August 31, 2016 letter that AT&T says attempts to justify a large productivity-related reset to current price caps and a substantial increase to the annual X-Factor. AT&T asserted Sprint's proposal contains violations of basic mathematical and economic principles and uses data that are incorrect, inaccurate, and internally inconsistent. AT&T also claimed the best publicly available source for such data is developed by the Bureau of Labor Statistics of the U.S. Department of Labor.

- AT&T and Compass Lexecon [met with](#) Chairman Wheeler's Legal Advisor and Wireline Competition Bureau and General Counsel staff on September 20, 2016, to discuss AT&T's position on business data services, Compass Lexecon's [analysis](#) of the regressions performed by Prof. Rysman and FCC staff, the benchmarking proposal advanced by [Verizon and INCOMPAS](#), and the most recent X-factor calculation methodology proposed by [Sprint](#). AT&T also spoke with Matt DelNero, Chief of the Wireline Competition Bureau, on September 20, 2016, to discuss the importance of maintaining incentives to invest in fiber deployments and correctly calculating productivity when considering adjustments to the existing price cap indices for certain business data services.
- Verizon [spoke with](#) Matthew DelNero, Chief of the Wireline Competition Bureau, on September 15, 2016, to assert cable providers sell business data services the same way as everyone else in the industry, and argued the way they offer it is common carriage. Verizon claimed the Commission has long held that Ethernet is a telecommunications service, and said its statements in the FNPRM regarding common-carriage merely reiterated and clarified existing law. Verizon also asserted there is no need to take additional action related to terms and conditions or to apply further corrective action to existing agreements because in the Tariff Investigation Order the Commission addressed the terms and conditions in tariff pricing plans that it found unlawful.
- Windstream filed a [letter](#) on September 22, 2016, to respond to CenturyLink's arguments in opposition to the Verizon/INCOMPAS [proposal](#) for downward adjustments to rates for TDM-based BDS. Windstream asserted CenturyLink's data shows BDS revenue increases are outstripping alleged cost increases and confirm that ILEC BDS operations are lucrative and growing. Windstream also asserted CenturyLink's data provides an overinflated view of BDS costs, and that CenturyLink's continuing BDS profits are consistent with Windstream ILEC's and other monopolies and duopolies.
- Jonathan Baker, on behalf of Level 3 and Windstream, submitted on September 20, 2016, a supplemental [reply declaration](#) to various comments made in the BDS proceeding. He asserted potential competition does not constrain ILECs to price business data services competitively, the regression results confirm that the ILECs commonly exercise market power, and ILEC prices are substantially in excess of competitive prices.
- USTelecom and Compass Lexecon [spoke with](#) Office of Strategic Planning and Policy Analysis staff on September 20, 2016, to discuss the data collected in the business data services proceeding. Compass Lexecon explained the basis for its proposed test that would deem a market to be competitive where two or more facilities-based competitors are present. They also discussed shortcomings in the data collection, and explained that the regressions using that data that have been put into the record do not support an inference of market power. Compass Lexecon asserted imposing price regulation based on the flawed data runs the risk of discouraging investment, innovation, and further entry, the costs of which could easily outweigh any modest price reductions that could be gained.
- The Ad Hoc Telecom Users Committee filed a [letter](#) on September 21, 2016, to respond to AT&T's August 16, 2016, [letter](#) opposing what AT&T claimed was Ad Hoc's proposal for using fully distributed accounting costs based on stale and economically arbitrary allocation factors and depreciation schedules for estimating any required reset to current BDS prices. Ad Hoc asserted it has not made any proposal like the one described by AT&T. Ad Hoc discussed accounting costs under the price cap rules, and claimed the price cap rules do not prescribe the rates that ILECs like AT&T charge for interstate access services, such as business data services.
- Sprint [met with](#) Chairman Wheeler's Legal Advisor and Wireline Competition Bureau and Office of Strategic Planning and Policy Analysis staff on September 19, 2016, to suggest the FCC's pending business data services order should address mechanisms for expedited BDS challenge proceedings and the effect of changed BDS rules on existing and new BDS agreements. Sprint also said the Commission should not delay implementation of BDS rules.
- Inteliquent [spoke with](#) Deena Shetler of the Wireline Competition Bureau on September 16, 2016, to discuss Inteliquent's proposal to create a new service subcategory for special access multiplexing.

Inteliquent said it proposes to set pricing flexibility for the multiplexing category at negative 20 percent for the first five years only, suggesting it would have no effect on the overall Special Access Price Cap Index and therefore ILECs would be able to offset these reductions by adjusting other special access rate elements.

- The American Cable Association [met with](#) General Counsel and Wireline Competition Bureau staff on September 20, 2016, to suggest the Commission maintain its light touch regulatory policy for non-incumbents' provision of BDS. ACA also asserted the Verizon/INCOMPAS proposal fails to recognize that a Commission order indicating the Commission will revisit whether to rate regulate non-incumbents will have an immediate impact on investment.
- The Quilt, MCNC, Networkmaine, Utah Education and Telehealth Network, Arkansas Research and Education Optical Network, and Telepoly Consulting [met with](#) Chairman Wheeler's Legal Advisor and Wireline Competition Bureau staff on September 20, 2016, to discuss business data services. The Quilt, et al. recommended the Commission not put research and education networks into the same category as commercial service providers if it adopts a new regulatory framework for BDS. The Quilt, et al. also claimed that because R&E networks are providers of non-common carrier services, the Commission should recognize them as private carriers and exempt them as a class from any regulations governing BDS.
- Uniti Fiber [met with](#) Commissioner Pai's Legal Advisor Wireline and Wireline Competition Bureau and General Counsel staff on September 20, 2016, to discuss proposals that could subject Uniti Fiber and other competitive fiber providers' prices to regulation through the application of benchmarks based on ILEC prices. It discussed how this would harm Uniti Fiber and other CFPs' efforts to deploy new fiber networks for mobile wireless backhaul.
- Uniti Fiber [met separately](#) with Chairman Wheeler's Senior Counsel and Legal Advisor and Legal Advisors to Commissioners O'Rielly, Clyburn and Rosenworcel on September 19, 2016, to discuss the proposals that could subject Uniti Fiber and other competitive fiber providers' prices to regulation through the application of benchmarks based on ILEC prices. Uniti Fiber also discussed how this would harm them and other CFPs and their efforts to deploy new fiber networks for mobile wireless backhaul.
- FairPoint Communications filed a [Petition for Waiver](#) on September 16, 2016, of the requirement in section 69.3(e)(9) that a carrier intending to file its own Carrier Common Line tariff to notify NECA by March 1st of the year in which the tariff will become effective. FairPoint said its RoR ILECs are regulated similarly to carriers that elect the Commission's A-CAM in that they no longer receive cost-based support for carrier common-line elements, yet remain under RoR rules for traffic-sensitive elements. FairPoint said it intends to withdraw from the NECA Common Line pool simultaneously with the ILECs electing the A-CAM, and to the extent that withdrawal is effective as of January 1, 2017, a waiver is required under the Commission's rules.
- Comments were filed on September 21, 2016, 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](#). [NTCA](#) said reforms should include measures to facilitate rural MVPDs' ability to gauge market rates for programming, and prohibit programmers from forcing small MVPDs and consumers to purchase unwanted programming in order to access desired content. NTCA also said the FCC should prohibit mandatory broadband tying, where rural MVPDs are forced to pay per-subscriber fees for non-video broadband customers, and asserted programmers should not be permitted to require rural MVPDs to place content in specific service tiers. [AT&T](#) claimed consumers are the beneficiaries of fierce competition between traditional MVPDs using satellite, cable, and IPTV platforms, and are embracing an ever-expanding choice of over the top offerings that are increasingly competing with traditional pay TV plans. [ITTA](#) urged the FCC to acknowledge the challenges smaller and new entrant MVPDs continue to experience with obtaining access to content on reasonable rates, terms and conditions. [NCTA](#) asserted competition is flourishing in every corner of the video programming marketplace, and claimed regulatory efforts to interfere with the workings of this competitive marketplace are directly at odds with promoting competition. [Free State Foundation](#)

asserted data contained in the Seventeenth Report, as well as more recent data, provide clear and convincing evidence that there is effective competition in the video market. Free State said the Commission should declare that there is effective competition in the national MVPD market. The [National Association of Broadcasters](#) said one of the most important steps the Commission can take to promote competition in the marketplace for the delivery of video programming is to authorize broadcasters' voluntary use of the Next Generation TV standard, also known as ATSC 3.0. Replies are due October 24. [Public Notice](#) | [List of all comments available to date](#)

- The Wireline Competition Bureau issued a [Public Notice](#) on September 19, 2016, seeking comment on FracTel'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, FracTel 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 October 4.
- The Wireline Competition Bureau issued a [Public Notice](#) on September 23, 2016, granting AireSpring's application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. The Bureau said this proceeding will be closed 60 days from the date of this Public Notice if there are no further filings in this proceeding or, if there are additional filings, after 60 days of inactivity in the record.

[Back to Highlights](#)

Upcoming Filing Dates

- 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. 1 - Deadline for carriers to file with USAC forecasted cost and revenue data associated with consumer broadband-only loops, in addition to the previously collected common line data, for the first six months of 2017. [Public Notice](#)
- Oct. 3 - Response due to [petitions for rehearing](#) of the Open Internet [decision](#). [Order](#)
- Oct. 4 - Comments due on FracTel's application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. [Public Notice](#)
- 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. 20 - Comments due on Warm Springs Telecom's [Petition](#) for an order declaring WST to be an incumbent LEC in the Warm Springs Wire Center and Wanapine Exchange. Replies due November 4. [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. 25 - Deadline for urban rate surveys for 2017. [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](#)
- Nov. 3 - Comments due on petitions filed by [Microsoft, et al.](#) and the [Samuelson-Glushko Technology Law & Policy Clinic](#), requesting the FCC allow E-rate subsidized broadband networks to be accessed by students at home for educational purposes. Replies are due December 5. [Public Notice](#)
- Nov. 4 - Replies due on Warm Springs Telecom's [Petition](#) for an order declaring WST to be an incumbent LEC in the Warm Springs Wire Center and Wanapine Exchange. [Public Notice](#)
- Nov. 7 - Deadline for providers to notify CenturyLink they already serve the census blocks [identified](#) in CenturyLink's modified CAF Phase I Round 2 broadband deployment plans. [PN](#)

[Back to Highlights](#)

Editor: [Teresa Evert](#) | Assistant Editor: [Shawn O'Brien](#)