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October 10, 2016 HIGHLIGHTS

- The FCC issued a [tentative agenda](#) for its October 27, 2016 Open Meeting. It will consider a Report and Order that applies the privacy requirements of the Communications Act to broadband Internet access service providers. Chairman Wheeler issued a [fact sheet](#) on the broadband privacy item. The FCC will also consider four Memorandum Opinions and Orders that dismiss and deny Petitions for Reconsideration of 4 Forfeiture Orders for deceptive marketing of prepaid calling cards.
- Chairman Wheeler issued his [proposal](#) for a Business Data Services Order, reaffirming TDM and Ethernet BDS are both subject to the FCC's Title II oversight, keeping price cap regulation for legacy TDM services, while allowing light touch regulation for packet-based BDS.
- The Wireline Competition Bureau [announced](#) it has posted the mandatory [deployment obligations](#) for rate-of-return carriers who remain on legacy USF support mechanisms.
- USAC posted [slides](#) and [Q&As](#) from its October 6, 2016 webinar on implementation of the March 2016 Rate-of-Return Reform Order.
- The WCB issued an [Order](#) establishing procedures for the filing of access charge tariffs and Tariff Review Plans for RoR ILECs electing to offer broadband-only loop service beginning January 3, 2017. Tariffs made on 15-days' notice are due Dec. 19; petitions due Dec. 27; replies due Dec. 30.
- The [Report and Order](#) adopting a high-cost USF support plan for fixed and mobile voice and broadband service in high-cost areas of Alaska [is effective](#) November 7, 2016, except for sections 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5) and (6), 54.316(b)(6), 54.320(d), and 54.321, which require OMB approval. Comments on the [FNPRM](#) are due December 6; replies are due January 5, 2017.
- 3 Rivers Communications, Wheat State Telephone, US Connect, and WTA [discussed](#) the November 1, 2016 election for either the A-CAM model path or the RoR path for USF high-cost support.
- Reply comments were filed by [Comcast](#), [ERTA](#), and [Flowroute](#) on Comcast's [Petition for Limited Waiver](#) of its rural call completion retention and reporting obligations.
- The FCC filed an [Opposition](#) with the D.C. Circuit Court to [petitions for rehearing](#) of the Open Internet [decision](#). [Cogent, et al.](#) and [Full Service Network](#) also filed responses.
- The WCB [announced](#) the [OMB approved](#) the information collection requirements associated with the rules adopted in the Third Lifeline Reform [Order](#). The Bureau said the initial time period for existing ETCs to elect the forbearance provided by Order with respect to offering Lifeline-supported BIAS will begin on October 3, 2016, and ETCs choosing forbearance must file notice by December 2, 2016.
- The WCB [seeks comment](#) on USTelecom's [Petition](#) for a waiver of the revised rules 54.400(j) and 54.409(a), and applicable sections of the Lifeline Reform [Order](#), to permit Lifeline providers to continue enrolling consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in 27 states and territories. Comments are due October 21.

Other Key Upcoming Dates

- Oct. 14 - Comments due on FairPoint's [Petition for Waiver](#) of the requirement for a carrier intending to file its own CL tariff notify NECA by March 1 of the year in which the tariff will become effective. Replies are due October 31.
- Oct. 17 - Replies due on NECA's 2017 [Modification](#) of the Average Schedule Universal Service HCLS Formula.

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USF Reform

- The Wireline Competition Bureau issued a [Public Notice](#) on October 6, 2016, announcing it has posted the mandatory deployment obligations for rate-of-return carriers who remain on legacy USF support mechanisms. The Bureau said at a later date, it will issue a public notice with information regarding how each carrier will indicate to USAC which method it is selecting for determining its deployment obligation. The deployment obligation under each method for each study area is available at: <https://transition.fcc.gov/wcb/SacBuildoutSheetDisplay.xlsx>.
- The Wireline Competition Bureau issued an [Order](#) on October 6, 2016, establishing procedures for the filing of access charge tariffs and Tariff Review Plans for RoR ILECs electing to offer broadband-only loop service beginning January 3, 2017, whether on a tariffed or detariffed basis. This includes RoR ILECs subject to either section 61.38 or section 61.39, and whether they elect model-based support or CAF BLS. This Order also makes available revised TRP worksheets to support any necessary rate revisions reflected in RoR ILEC interstate access service tariffs. Tariffs made on 15-days' notice are due Dec. 19; petitions due Dec. 27; replies due Dec. 30. Tariffs on 7-days' notice are due December 27; petitions due December 29; and replies due December 30.
- The FCC [published](#) in the Federal Register on October 7, 2016, the [Report and Order](#) adopting a high-cost USF support plan for fixed and mobile voice and broadband service in high-cost areas of Alaska. The Report and Order is effective November 7, 2016, except for sections 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5) and (6), 54.316(b)(6), 54.320(d), and 54.321, which contain new or modified information collection requirements that will not be effective until approved by the OMB. The FCC also [published](#) the accompanying FNPRM in the Federal Register, seeking comment on the process to eliminate duplicative high-cost funding in areas where more than one carrier is receiving support for the provision of 4G LTE service. Comments are due December 6; replies are due January 5, 2017.
- USAC posted the [slides](#) from the October 6, 2016 webinar it hosted on the status of implementation of the March 2016 Rate-of-Return Reform Order. The FCC provided written [responses](#) to questions that were presented during the webinar.
- 3 Rivers Communications, Wheat State Telephone, US Connect, and WTA [met separately with](#) Legal Advisors to Commissioners Pai, [Clyburn](#), and [O'Rielly](#) on October 4, 2016, to discuss the upcoming November 1, 2016 election for either the A-CAM model path or the RoR path for USF high-cost support, the Commission's pending rule making on broadband CPNI and security, and retransmission consent. The companies emphasized the difficulties of deploying additional broadband and operating their existing networks on the limited support from either path, and asked the Commission not to impose unnecessary regulatory burdens and costs on them. WTA explained that RLECs typically do not use CPNI for marketing purposes, and expressed concern regarding the imposition of prescriptive data security requirements on small providers that lack the resources and IT teams of large providers.
- The National Rural Electric Cooperative Association and the Utilities Technology Council [met separately with](#) Chairman Wheeler's Senior Legal Advisor, Wireline Competition Bureau staff, and Legal Advisors to Commissioners [Rosenworcel](#), [O'Rielly](#), and [Pai](#) on September 28, 2016, to discuss their joint [Petition for Reconsideration](#) of the CAF Phase II Order. They asserted the Commission's decision to exclude from eligibility certain census blocks based on recently filed FCC Form 477 data failed to provide sufficient notice and opportunity for comment, in violation of the Administrative Procedure Act, and arbitrarily and capriciously prevented utilities from competing for access to funding in certain census blocks where they submitted non-winning Category 1 applications to provide Rural Broadband Experiments.
- Walter B. McCormick, Jr., President and CEO of USTelecom, [spoke by telephone](#) with Commissioner Pai on September 29, 2016, to discuss the need to move forward on the draft Order adopting CAF II obligations for Alaska Communications Systems so the company can begin building to unserved customers prior to the close of the building season in Alaska.

- StarTouch Broadband Services filed [a letter](#) on October 3, 2016, to notify Frontier that to the best of its knowledge the targeted census blocks referred to in WC Docket No. 10-90 and located within the state of Washington are presently served by StarTouch Broadband Services with upload and download speeds that exceed the minimums of 3Mbps/768k. StarTouch filed the letter in response to Frontier's notification of its intent to modify its CAF Phase I Round 2 incremental support broadband deployment plans.
- Buffalo-Lake Erie Wireless, dba Blue Wireless, [met with](#) Wireless Telecommunications Bureau staff on September 30, 2016, to discuss Mobility Fund Phase II. It stressed the importance of the FCC moving ahead with the Mobility Fund II auction to close the coverage gap in rural areas and of a review and challenge process for coverage areas. Buffalo-Lake Erie Wireless also [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, O'Rielly, and Pai on October 6, 2016, to discuss the same issues.

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ICC

- The Kentucky PSC filed [a letter](#) on October 5, 2016, at the request of West Kentucky and Tennessee Telecommunications pertaining to its Waiver Petition of 2011 ICC Base Period revenues. The PSC confirmed that, in back billing access charges it had under-collected from several carriers, the company acted in conformity with Kentucky laws and WK&T's access tariff. KPSC staff also noted the KPSC has encouraged telecommunications carriers to attempt to resolve billing disputes informally before beginning a formal proceeding before the KPSC.
- FairPoint [met with](#) Commission staff on October 3, 2016, to discuss its pending Petition to restore FairPoint's ICC Transitional Support for its RoR LECs that accepted model-based CAF Phase II support. FairPoint argued the Commission's rules clearly prescribe the method for calculating RoR LECs' Eligible Recovery and ICC Transitional Support, and said to the extent there is any duplication of support in CAF Phase II amounts received by FairPoint as of January 1, 2015, such amounts are *de minimis*.

Open Internet

- The FCC filed an [Opposition](#) with the D.C. Circuit Court on October 3, 2016, to [petitions for rehearing](#) of the Open Internet [decision](#). The FCC asserted the court properly upheld the FCC's decision to reclassify broadband internet access service and to classify mobile broadband service as a commercial mobile service. The FCC also said the court correctly found the Commission had provided sufficient notice of its decisions to reclassify broadband and review interconnection disputes, correctly rejected Alamo Broadband's First Amendment challenge, and rightly reaffirmed the Commission's authority under section 706.
- [Cogent, et al.](#) and [Full Service Network](#) filed responses with the D.C. Circuit on October 3, 2016, to [petitions for rehearing](#) of the Open Internet [decision](#). Cogent, et al. claimed the court's decision is not in conflict with precedent and does not present issues of exceptional legal importance. Full Service Network asserted the court erred and supports rehearing.

Broadband

- The FCC issued a [Public Notice](#) on October 4, 2016, announcing a tentative agenda for Commissioner Clyburn's #Solutions2020 Policy Forum on October 19, 2016, at Georgetown University Law Center. Topics include bridging the affordability gap, broadband and health, combating inequality in the communications sector, digital inclusion in the 21st Century, and unlocking the 5G revolution.

- ITTA [met with](#) Wireline Competition Bureau staff on September 28, 2016, to discuss the FCC's broadband privacy proposals. ITTA expressed its support for a sensitivity-based approach to consumer consent, along the lines advocated by the FTC and other commenters in this proceeding. ITTA also suggested the FCC not adopt additional federal data breach notification requirements for BIAS providers, but if it did, it should apply the current CPNI data breach notification rules to BIAS providers.
- AT&T filed a [letter](#) on October 4, 2016, to address the Commission's authority to adopt privacy regulations for first-party marketing that align with the FTC's regime. AT&T asserted the FCC should allow broadband providers similar freedom to use non-sensitive customer information to market their (or their affiliates') products and services without first obtaining customer consent, and claimed nothing in section 222(c) requires the Commission to adopt a more restrictive rule. AT&T asserted section 222(c) applies only to CPNI, not to other customer-specific information a carrier may obtain, such as names and addresses.
- Google filed a [letter](#) on October 3, 2016, to assert the privacy approach of the FTC has worked well, and urged the FCC to use it as a basis for whatever privacy rules it adopts for internet service providers. Google claimed calls by some parties in this proceeding to extend an opt-in consent requirement to all web browsing information are unjustified, and said the FCC's framework should allow differentiation based on the nature of web browsing information, regardless of the company collecting the data.
- CTIA, USTelecom, and NCTA [met with](#) Wireline Competition Bureau staff on October 3, 2016, to discuss broadband privacy. They discussed the merits of utilizing a sensitivity-based framework similar to the approach taken by the FTC and issues related to the scope and definition of sensitive information. They also discussed adoption of an implied consent exception for first-party marketing and advertising activities by ISPs that parallels the exception in the FTC framework.
- Nokia [met with](#) Commissioner Rosenworcel and her Legal Advisor and Chairman Wheeler's Senior Legal Advisor on October 4, 2016, to discuss the broadband privacy proceeding. Nokia said the FCC's proposed rules would permit, without an opt-in requirement, the ability to: use, disclose, or permit access to customer information necessary to, or used in, the provision of the broadband service; use, disclose or permit access to aggregate customer information; and use customer information to market other communications-related services. Nokia agreed with the FCC that permitting use of customer information in each of these cases is consistent with the Communications Act and provides benefits to consumers and society.
- The Voice on the Net Coalition, Microsoft, and Vonage [met with](#) Wireline Competition Bureau staff on September 29, 2016, to discuss the potential harmonization of any requirements adopted in the broadband privacy proceeding with privacy requirements already imposed on interconnected VoIP providers. Vonage and VON claimed the proposed requirements should not be applied to interconnected VoIP providers because the existing framework established under section 222 adequately protects VoIP customers.
- ACA [met with](#) Wireline Competition Bureau and Public Safety and Homeland Security Bureau staff on September 30, 2016, to discuss broadband privacy. ACA said any data security rule should be based on "reasonableness" rather than strict liability, suggested alternative notice requirements for smaller ISPs, and said the Commission should be notified by ISPs of breaches only involving significant numbers of records. ACA also suggested the FCC could more reasonably require that notice be provided to the Commission at the same time providers give notice to customers (30 days), rather than much earlier.
- WISPA [met with](#) Commissioner Pai and his Legal Advisor and [Wireline Competition Bureau staff](#) on October 4, 2016, to discuss the burdens enhanced privacy regulations will have on small broadband providers and consumers, and expressed support for a small business exemption or, in the alternative, delayed compliance implementation dates. WISPA claimed the proposed rules cannot be looked at in a vacuum, as small providers are or may be subject to Title II regulation, enhanced transparency rules, outage reporting requirements, and the proposed privacy rules. WISPA also expressed support for

adoption of rules based on the FTC's approach and an opt-out regime for non-sensitive personally identifiable information.

- Public Knowledge [met with](#) staff from Chairman Wheeler's office and the Wireline Competition Bureau on September 28, 2016, to discuss broadband privacy. PK said to the extent the FCC makes determinations as to the scope of its rules, it should make clear that its actions do not foreclose subsequent rulemakings or enforcement proceedings under different statutory authority.
- Color of Change [met with](#) staff from Chairman Wheeler's office and the Wireline Competition Bureau on September 29, 2016, to discuss aspects of the broadband privacy rulemaking, including de-identification, the categorization of data as sensitive or non-sensitive, and pay-for-privacy models.
- Common Sense Kids Action [met with](#) Commissioner Clyburn's Legal Advisor on October 4, 2016, to express support for the Commission's proposed privacy rules. Common Sense said that schools and libraries serve populations that are heavily susceptible to privacy harms, and asserted any "pay for privacy" schemes should not be allowed in such institutions.
- The National Grange sent a [letter](#) to Chairman Wheeler and the FCC Commissioners on October 4, 2016, to express support for free data programs from mobile providers to allow consumers to access certain content on their mobile devices that will not count against their monthly data plans. It said doing so would help expand access to mobile broadband for rural Americans, noting 53 percent of Americans in rural areas do not have access to high-speed broadband.
- Home Telephone filed a [letter](#) on October 7, 2016, as a follow-up to an August 12, 2016, letter, to notify the FCC that it has notified the single customer for its DSL service by intra-corporate memo that it will be discontinuing the offering of its broadband Internet transmission service as a separate component of its broadband Internet transmission service. Home Telecom also sent a copy of its August 12, 2016 Notice to the Special Assistant for Telecommunications of the Department of Defense, the Governor of South Carolina, and the Public Service Commission of South Carolina.

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Call Completion/Robocalls

- Reply comments were filed on October 5, 2016, 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 obligations to record, retain, and report complete call completion information for the period up to and including June 30, 2016. [Comcast](#) claimed [NTCA](#) offered no substantive support for its claim that the Petition should be denied. [ERTA](#) agreed with [NTCA](#) that Comcast has not demonstrated good cause exists to grant the waiver request. [Flowroute](#) agreed with NTCA that the Petition fails to meet the Commission's applicable waiver standards. [Public Notice](#)

IP Transition

- The FCC issued a [Notice](#) in the Federal Register on October 5, 2016, seeking Paperwork Reduction Act comments on a revision to a currently approved information collection associated with changes to notices of planned copper retirements, which were adopted in the August 2015 [Report and Order](#). The FCC stated the [Commission revised](#) section 51.329(c) of its network change disclosure rules in July 2016 to make available to filers new titles applicable to copper retirement notices. PRA comments are due December 5.
- Verizon filed a [letter](#) on October 3, 2016, opposing [Granite](#)'s suggestion that the FCC retain the interim rule governing wholesale platform services until the Commission completes an examination of the relevant market for wholesale voice platform services. Verizon asserted while the FCC could delink the

interim rule from the BDS proceeding, it should not begin a new examination of the wholesale voice market or allow this interim rule to remain in place indefinitely.

- AT&T filed a [letter](#) on October 5, 2016, providing a report on the AT&T Wire Center Trials in Carbon Hill, Alabama and West Delray Beach, Florida, covering the second quarter 2016, and provided the Commission with information about the transition to modern communications services by consumers and businesses located in the trial communities. AT&T said voluntary consumer migrations continue the trend seen in the past quarterly reports, and said for the first time since the inception of the trials, more than 50 percent of the combined targeted consumer accounts have migrated to either IP or wireless voice service.

USF

- The Wireline Competition Bureau issued a [Public Notice](#) on October 3, 2016, announcing the [OMB approved](#) the information collection requirements associated with certain rules adopted in the Third Lifeline Reform [Order](#). The Bureau said the initial time period for existing ETCs to elect the forbearance provided by Order with respect to offering Lifeline-supported BIAS will begin on October 3, 2016, and ETCs choosing forbearance must file notice by December 2, 2016. The Bureau also said pursuant to the Order, ETCs that do not provide such notices will be required to offer Lifeline-supported BIAS in the designated service areas pursuant to their existing ETC designations effective December 1, 2016.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 6, 2016, seeking comment on USTelecom's [Petition](#) for a waiver of the revised rules 54.400(j) and 54.409(a), and applicable sections of the Lifeline Reform [Order](#), to permit Lifeline providers to continue enrolling consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in 27 states and territories. Comments are due October 21.
- NTCA and WTA [met with](#) Wireline Competition Bureau staff on September 29, 2016, to discuss their [Petition for Reconsideration](#) of the Lifeline Modernization [Order](#). They discussed their request for reconsideration of the exception to the 10/1 minimum speed standard for fixed BIAS. They also discussed their request for reconsideration of the "rolling recertification" requirement that will require Lifeline providers to recertify their Lifeline customers' continued eligibility annually as measured from each individual subscriber's service initiation date, and their request that the Commission reconsider the phasing out of support for voice-only fixed and mobile service beginning December 1, 2019.
- TracFone Wireless [met with](#) Commissioner Clyburn's Legal Advisor on October 4, 2016, to discuss its pending motion for stay or deferral of the effective date of revised section 54.407(c)(2) that, when effective, will reduce from 60 days to 30 days the period for de-enrolling from the Lifeline program certain customers for non-usage.
- Airvoice Wireless filed a [letter](#) on September 30, 2016, to urge the FCC to grant TracFone's [motion](#) to stay or otherwise defer the December 1, 2016, effective date of section 54.407(c)(2), which will reduce the period for de-enrollment from the Lifeline program due to non-usage of service from 60 days to 30 days. Airvoice claimed this rule will dramatically increase the number of consumers who will be unfairly de-enrolled despite a continued desire and eligibility to remain in the program.
- The Alliance for Retired Americans, Community Action Partnership, and the National Association of American Veterans filed a [letter](#) on October 3, 2016, to express concerns with the FCC's intent to reduce the de-enrollment for non-usage rule from 60 to 30 days for Lifeline-supported service. They claimed reducing the non-usage period from 60 to 30 days would disrupt service and cause unneeded hardship for many thousands of low-income Lifeline-eligible households. They expressed support for TracFone Wireless's [motion](#) for a stay or deferral of the effective date of that rule change.
- Blue Jay Wireless filed a [Petition](#) on October 3, 2016, seeking designation as a Lifeline Broadband Provider ETC for the limited purpose of providing mobile broadband internet access service supported by the Lifeline program. It noted section 214(e)(6) permits the Commission to grant LBP ETC

designation and the Commission's rules provide that states may not designate LBP ETCs. Similar petitions were also filed by [Karma Mobility](#), [Assist Wireless](#), [ZTar Mobile](#), [i-wireless](#), [Telrite](#), and [Truconnect Communications](#).

- Consolidated Communications [met with](#) Commissioner Rosenworcel and her Legal Advisor on September 30, 2016, to discuss its [Application for Review](#) (filed under the name SureWest Telephone) of the Wireline Competition Bureau's denial of its request for waiver of the filing deadlines for submission of state certification of federal high-cost support. It said granting the Application for Review and the requested waiver would benefit the public interest by permitting Consolidated to accelerate broadband deployment projects in California that had to be deferred due to the loss of two quarters' worth of support.
- TerraCom filed its [Fourth Revised Compliance Plan](#) on October 4, 2016, updating its ownership information and the impact that additional investment will have on TerraCom's ability to achieve the goals of the 2016 Lifeline Modernization Order. TerraCom also requested that, concordant with Commission grant of this Fourth Revised Compliance Plan, the Commission also approve its pending amended ETC Petition for the states of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, Virginia, and the District of Columbia.

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Misc.

- The FCC issued a [tentative agenda](#) on October 6, 2016, for its October 27, 2016 Open Meeting. The FCC will consider a Report and Order that applies the privacy requirements of the Communications Act to broadband Internet access service providers. Chairman Wheeler issued a [fact sheet](#) on the broadband privacy item. The FCC will also consider four Memorandum Opinions and Orders that dismiss and deny Petitions for Reconsideration of four Forfeiture Orders for the deceptive marketing of prepaid calling cards.
- Chairman Wheeler issued his [proposal](#) for a Business Data Services Order on October 7, 2016, that would reaffirm TDM and Ethernet BDS are both subject to the FCC's Title II oversight. His proposed rules would continue price cap regulation for legacy TDM (DS1 and DS3) services and provide lighter-touch regulation for packet-based services and circuit-based services above the level of DS3 (45 Mbps). For legacy TDM services, the price caps would be adjusted downward by 11%, phased in over 3 years, beginning in July 2017, and reduced by an annual X factor of 3%, offset by inflation, beginning in July 2017. For packet-based and higher capacity circuit-based services, there would be no ex ante pricing regulation, but an expedited complaint process would be used to resolve disputes. A Second FNPRM would seek comment on how best to collect accurate data on market developments and what administrable means can be developed to deal with any concerns that may emerge with respect to pricing for packet-based BDS.
- USTelecom filed a [letter](#) on October 7, 2016, to respond to claims by certain parties stating that BDS-provided backhaul used in Sprint's wireless network accounts for approximately one-third of the "cost of operating of a cell site." USTelecom claimed that statistic is misleading, the source data are a decade old, and the figure dramatically overstates the impact of BDS on overall wireless costs. USTelecom asserted the portion of wireless costs attributable to backhaul is irrelevant to questions of economic efficiency or market power because it says nothing about the competitiveness of the marketplace, and argued it fails to offer a basis for any new BDS regulation.
- USTelecom filed a [letter](#) on October 6, 2016, to urge the Commission to take the findings of the Georgetown Center for Business and Public Policy's paper on BDS (attached) into account as it determines the appropriate new regulatory framework for BDS. USTelecom noted the paper argues that "FCC-mandated price cuts on BDS are likely to damage the financial viability of both competitive and incumbent BDS providers, with facilities-based providers taking the greatest hit." It said the paper further concludes that "[b]y depriving facilities-based providers of capital, the artificial reduction of any

of these rates is likely to reduce investment in fiber infrastructure in general and competitive providers in particular.”

- AT&T and Laurits R. Christensen Associates [met with](#) Wireline Competition Bureau, Office of General Counsel, and Office of Strategic Planning staff on October 6, 2016, to discuss Christensen Associates’ critiques of the price cap reset and X-factor calculation methodologies proposed by Sprint in an ex parte filed August 31, 2016. Drs. Meitzen and Schoech discussed the importance of balancing the need for stability in the X-factor number with basing the results on recent productivity and market trends when determining the appropriate timeframe for calculating a forward-looking X-factor from historical data. They asserted the only valid source of publicly available data for consistently estimating productivity factors for special access is the BLS KLEMS data, and said these data, over the most appropriate 2005-2014 computation period, support an annual, productivity-based X-factor of 1.99 percent, which they claim suggests there is no basis for any one time reduction to current price cap levels.
- AT&T filed [a letter](#) on October 6, 2016, to express opposition to the Verizon/INCOMPAS proposal and argue that any decision in this proceeding must be based on the extensive factual record and the application of sound economic principles to it. AT&T said certain so-called “compromises” that have been proposed pay no heed to the record evidence. It claimed the proposals to adopt an annual X-Factor in excess of 2.0 percent and to impose a substantial, additional one-time reduction to price caps for legacy DS1 and DS3 services would have severe impacts on all LECs and create powerful disincentives for broadband investment and the IP transition. AT&T suggested the solution is not to create carve-outs from those effects for smaller ILECs, but for the Commission to double down on its commitment to fact-based decision-making.
- AT&T filed [a letter](#) on October 6, 2016, to submit a declaration by Martin Kelly, Associate Director, Technology, that it says documents the substantial changes that would be required, and the associated time and costs for such changes, should the Commission adopt its proposal to change the geographic basis for BDS regulation from MSAs to smaller geographic areas, such as census tracts or census blocks. AT&T said any such change would require extensive modifications to numerous sales, billing and ordering systems, and thus would necessitate a substantial period of transition at substantial cost to AT&T, claiming the changes would likely take at least eighteen months to complete and would cost \$20-\$35 million.
- AT&T filed [a letter](#) on October 6, 2016, to respond to a recent paper submitted by Professor Baker on September 21, 2016. AT&T asserted the paper erroneously claims the regression analyses conducted by Professor Rysman, Commission Staff, and Professor Baker establish that ILECs exercise market power for high-bandwidth (above 50 Mbps) BDS, and the paper incorrectly claims these regressions establish that ILECs also have market power over Ethernet services at all speeds.
- CenturyLink [met with](#) Wireline Competition Bureau staff on October 6, 2016, to assert the current BDS proceeding could limit its efforts to improve and expand broadband service to its customers. CenturyLink claimed the pricing proposals advanced by Verizon and IMCOMPAS will have negative impacts on investments, jobs, and broadband deployment in some of the most difficult to serve territories in the country, and said the rate reductions being discussed would make the business case for deploying fiber and broadband even more difficult. CenturyLink urged the Commission to find a more balanced approach that recognizes the state of competition in the BDS market and does not negatively affect infrastructure investment.
- CenturyLink filed [a letter](#) on October 5, 2016, submitting a proposal for a new BDS framework, suggesting the aggressive regime advanced by Verizon and INCOMPAS suffers from many well-documented problems and cannot plausibly serve as a basis for resolving this proceeding. CenturyLink proposed parameters to measure BDS competition, how competitive markets could be deregulated, how non-competitive markets could be regulated, and that Ethernet services should not be subject to rate regulation. CenturyLink also filed [a letter](#) on October 6, 2016, submitting a Supplemental Declaration by Drs. Mark Schankerman and Pierre Régibeau, which it claims demonstrates the flaws

inherent in Sprint's latest arguments for extreme reductions in the tariffed rates for business data services.

- CenturyLink filed a [letter](#) on October 5, 2016, on business data services. CenturyLink asserted in developing a Competitive Market Test, the Commission must consider the presence of both actual and potential competition in the census tract (or other geographic area) in question. CenturyLink said the Commission should dismiss CLEC urgings to ignore the presence of fiber facilities in a census tract or census block.
- CenturyLink filed a [letter](#) on September 30, 2016, to express concern with the Verizon-INCOMPAS BDS [proposal](#). CenturyLink asserted the proposal relies on unjustified and unreasonable assumptions, while jeopardizing the availability of next-generation services in rural areas.
- Frontier, Sprint, and Windstream filed a [letter](#) on October 3, 2016, detailing two modified transition mechanisms for the phase-in of price cap rate reductions for TDM-based BDS services. They suggested, by default, all price cap ILECs should be subject to the TDM proposal delineated in the Verizon-INCOMPAS proposal to the extent that it includes a one-time adjustment in the Price Cap Index and ongoing updates to the X-factor to address the effective freeze in price cap levels after expiration of the CALLS plan. They also suggested the FCC adopt a more moderate transition for any ILEC that is not the largest price cap ILEC in the state but serves a top 100 MSA, and the FCC adopt a second modification for any price cap ILEC when it does not serve any top 100 MSA in the state above a *de minimis* level or operates in a non-contiguous area.
- Frontier Communications [met with](#) Matthew DelNero, Chief of the Wireline Competition Bureau, on September 29, 2016, to urge the Commission to consider what it says is the disparate impacts that would occur if the Commission instituted a uniform rate reduction for business data services across providers with differing business models and revenue streams, particularly those ILECs that lack wireless or significant CLEC operations. Frontier discussed the need for the Commission to consider a transition period for any BDS rate reductions affecting mid-size ILECs, and described the competitive state of the Ethernet market and its position that no further regulation is necessary at this time.
- Frontier Communications [spoke with](#) Chairman Wheeler on September 30, 2016, to state that any significant reductions in business data services revenue will trigger the need for workforce reductions and capex reductions, and described the need for the Commission to consider a transition period for any BDS rate reductions affecting mid-size ILECs. Frontier also discussed its business model and revenue mix after its recent acquisition of the former Verizon properties in California, Florida and Texas.
- Frontier [met with](#) Wireline Competition Bureau, Office of Strategic Planning and Policy Analysis, and General Counsel staff Oct. 3, 2016, to discuss its BDS revenue streams and its mergers and acquisitions. Frontier claimed these purchases and their associated debt were based upon expected revenues relying on previous performance, including that of BDS, and said the Commission's decisions on the scale of BDS rate cuts will have impacts on both previous activities and future opportunities. Frontier described the need for the Commission to consider a transition period and limited BDS rate reductions for mid-size ILECs who stand to be disproportionately affected by regulatory reform.
- FairPoint [met with](#) Matthew DelNero of the Wireline Competition Bureau on October 3, 2016, to discuss special access and business data services. FairPoint explained that it remains opposed to any decision that would characterize FairPoint's price cap markets as non-competitive, or its special access prices as above-cost. FairPoint asserted the record in this proceeding is devoid of any evidence that FairPoint has market power in the BDS sector, and claimed its prices and revenues consistently have declined over a period of years, while the overall market has grown.
- Windstream filed a [letter](#) on October 6, 2016, on business data services. Windstream proposed a rule setting out the specific requirements for establishing a backstop on wholesale last-mile input rates for business data services, claiming it will better guide parties in commercial negotiations. Windstream

said the Commission should adopt this rule, including an interim safe harbor, as a backstop to supplement additional actions needed for robust competition in the business data services markets.

- Windstream [met separately](#) with Legal Advisers to Commissioners O’Rielly, Clyburn, Rosenworcel, and Pai on September 28 and 29, 2016, to discuss business data services. Windstream claimed the data shows ILECs remain the sole last-mile facilities-based BDS provider to the vast majority of locations, and in almost all of the remaining locations, businesses, governments or non-profit institutions had only two last-mile facilities-based providers. Windstream disagreed with AT&T and other ILECs that potential entry from nearby fiber facilities sufficiently disciplines competition. Windstream also asserted the [analysis](#) provided by Prof. Jonathan Baker is consistent with the manner in which ILECs price and with the overall observed market structure.
- INCOMPAS and Verizon [met with](#) Commissioner Rosenworcel and her Legal Advisor on October 5, 2016, to discuss their proposal for a new framework for business data services. They asserted this framework reflects a balanced approach that will resolve a long-standing issue overhanging the industry and promote the investment needed for anchor institutions and 5G deployment across the country.
- INCOMPAS, Sprint and Windstream [met with](#) Chairman Wheeler’s Legal Advisor and Wireline Competition Bureau staff on September 28, 2016, to urge Commission to move forward with the Verizon-INCOMPAS [framework](#). They asserted the Verizon-INCOMPAS framework was specifically designed to be administrable, using a competitive market test that could be determined from existing data, and proposing an Ethernet benchmark that could be determined based on publicly available data. INCOMPAS also spoke with Chairman Wheeler on September 29, 2016 and FCC General Counsel on September 30, 2016, to discuss the need for comprehensive and meaningful reform, based upon the industry proposal as outline by the INCOMPAS and Verizon letters.
- INCOMPAS, Windstream, and Sprint [met with](#) Wireline Competition Bureau and General Counsel staff on October 3, 2016, to discuss the Verizon-INCOMPAS proposal to reform the business data services marketplace, and to respond to CenturyLink’s concerns with the Verizon-INCOMPAS framework.
- Sprint filed [a letter](#) on October 5, 2016, to respond to the Supplemental Declaration filed by Mark E. Meitzen, Ph.D., and Philip E. Schoech, Ph.D., that provided a critique of the declaration by Chris Frentrup and David E.M. Sappington filed on August 31, 2016. Sprint claimed the one-time PCI adjustment and X-factor computations performed by F&S provide a rational basis for adjusting price cap levels to account for cost changes that have occurred since the completion of the CALLS Plan in 2005, and the criticisms of those computations by M&S do nothing to call those computations into question. Sprint also argued the empirical critiques raised by M&S actually would have the net effect of increasing the estimated PCI adjustment and X-factor in the F&S declaration, and thus, the X-factor and one-time adjustment computed in the original F&S declaration are conservative estimates of the changes needed in the price cap index.
- Comcast filed a [redacted letter](#) on October 5, 2016, asserting the record in the BDS proceeding contains overwhelming evidence that cable providers and others offer particular BDS products, including cellular backhaul service and E-Access service, on a private carrier basis. It claimed Verizon, INCOMPAS, and their allies rely largely on unsupported assertions and mischaracterizations of law in urging the Commission to find that these BDS products are offered on a common carrier basis. Comcast asserted on this record, it would be unlawful for the Commission to conclude that all BDS offerings are common carrier services.
- Comcast filed a [letter](#) on October 3, 2016, to assert the record shows the BDS marketplace is more competitive today than ever before and lends no support to Verizon’s calls for expanding rate regulation. Comcast asserted the only rational course of action for the Commission is to focus on eliminating entry barriers in the BDS marketplace.
- NCTA filed a [letter](#) on October 4, 2016, to respond to Sprint’s September 28, 2016 letter in the special access/BDS proceeding, which responded to AT&T’s opposition to the Verizon/INCOMPAS proposal

for BDS. NCTA asserted there is virtually no issue identified in the Sprint summary that has not been thoroughly rebutted in the record. It suggested the most defensible approach for the Commission is to adopt NCTA's proposed framework for regulation, claiming its proposal does not penalize companies for past investments or discourage them from investing in new facilities, and is supported by substantial evidence in the record.

- Broadview Networks filed [a letter](#) on October 7, 2016, to express support for the Verizon/INCOMPAS proposal, and to suggest additional enhancements and clarifications to the framework. Broadview suggested a census block should only pass a competition test if actual competition is alive and well, which should hinge on the availability of four facilities-based providers providing last mile connections in a geographic market. It also suggested establishing a benchmark for switched Ethernet pricing in noncompetitive markets is appropriate and necessary.
- BT Americas [met with](#) Chairman Wheeler and his Legal Advisors and Mindel de la Torre, Chief of the International Bureau, on September 29, 2016, to discuss regulating TDM and Ethernet-based BDS. BT claimed doing so would promote fair competition and a level playing field, and asserted such action would be important and beneficial for investment and innovation.
- BT sent a [letter](#) to Commissioner Rosenworcel on October 3, 2016, on business data services. BT said reform of BDS would instill much needed competition in the US market, benefiting anchor institutions like schools, libraries and hospitals that require competitive BDS options and Ethernet services to serve their communities.
- Charter Communications [met with](#) Wireline Communications Bureau staff on September 29, 2016, to assert the current deregulatory approach to Ethernet service has created the proper incentives for Charter to invest, deploy fiber, and expand its BDS business. It included redacted information regarding its business and discussed investments by other companies. It asserted falling prices, substantial investment, and new fiber deployment are all signs of a dynamic market, and to adopt Ethernet price regulation on this record would, at best, fail to achieve the Commission's goals while adding unneeded costs and complexity and, at worst, it could irreparably harm investment and reduce competitive options, particularly for small and medium-sized businesses.
- Charter Communications [met with](#) Legal Advisors to Commissioners O'Rielly and Pai and Wireline Competition Bureau and General Counsel staff on October 4 and 5, 2016, to argue that imposing price regulation on cable providers would be harmful to competition in the BDS market. Charter claimed that if the Commission decides to price-regulate cable providers, it cannot lawfully regulate the large universe of BDS provided on a private-carriage basis. It also argued that price regulation of Ethernet services, even if limited to services provided by ILECs, could have a devastating impact on BDS investment from cable and other competitive providers because the rates of competitive providers are effectively capped by the rates charged by the market leaders.
- Level 3 [met with](#) Legal Advisors to Commissioners Pai and O'Rielly on October 4, 2016, to discuss business data services. Level 3 claimed BDS reform is needed to prevent incumbent LECs from abusing their market power in the provision of circuit-based and packet-based dedicated services, and asserted the market competition test proposed by AT&T's and CenturyLink's economic consultants is inappropriate.
- Lightower Fiber Networks, Lumos Networks, and Unite Private Networks filed [a letter](#) on October 5, 2016, to submit supplemental declarations to prior submissions, urging the Commission not to apply the proposed benchmark regulation to competitive fiber providers. They asserted applying such regulation to CFPs is not necessary to ensure their prices are just and reasonable and would be counterproductive, undermining the Commission's primary goal of encouraging competition because it would force CFPs to cut back on new network investment due to compliance cost, uncertainty, and increased cost of capital.
- The Georgetown Center for Business and Public Policy filed [a letter](#) on October 5, 2016, to submit a paper entitled "Business data services: The potential harm to competitive facilities deployment,"

prepared by Anna-Maria Kovacs, which models the effect of mandatory BDS price cuts on the free cash flows of BDS providers. The paper concludes that BDS rate-cuts are likely to do serious damage to the financials of competitive providers, i.e. non-incumbents, as well as incumbents who provide BDS infrastructure. It claimed the heaviest damage is likely to be to those who are primarily facilities-based, but the free cash flows and valuations of resellers are also likely to be harmed. It also asserted the FCC is unlikely to advance the migration from 4G to 5G.

- The Communications Workers of America [met with](#) Commissioner Rosenworcel and her Senior Legal Advisor on September 30, 2016, to discuss business data services. CWA claimed a drastic rate cut for BDS would lead to reduced investment in broadband networks, especially in rural areas, and downward pressure on jobs and workers' living standards. The CWA also reviewed the points made in its Sept. 14, 2016 and Sept. 20, 2016 letters to Chairman Wheeler.
- Blackfoot Communications, TSI, Sonic Telecom, and YourTel America filed a [letter](#) on October 4, 2016, to urge the FCC to adopt a BDS Order that is technology neutral and enshrines bi-partisan competition laws for the future while addressing the abuse of market power in the BDS market for both TDM and Ethernet services. They expressed support for the Verizon/INCOMPAS proposal, saying it will bring pricing relief and set a better path for more competition and fair access in the future.
- The Benton Foundation, Common Cause, Free Press, Public Knowledge, and eight other organizations sent a [letter](#) to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly on October 4, 2016, to urge the Commission to apply rate regulation in markets where Ethernet and TDM-based services are not subject to competition. They claimed the record demonstrates incumbents are exercising market power by charging unreasonably high prices for packet-based business data services, such as Ethernet, as well as legacy services, such as DS1 and DS3 services.
- Zayo Group Holdings [met with](#) Wireline Competition Bureau staff on September 30, 2016, to explain the company's operations and to reiterate comments it submitted in the BDS proceeding.
- The Consumer and Governmental Affairs Bureau released its [Biennial Report](#) on October 7, 2016, for submission to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce, in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010. The Report presents information and assessments on the accessibility of telecommunications services and equipment, advanced communications services and equipment used for ACS, and Internet browsers built into mobile phones, along with a summary of actions taken by the Commission related to the CVAA.
- CenturyLink filed a [letter](#) on October 5, 2016, in the Part 32 Uniform System of Accounts proceeding, attaching a redacted version of a spreadsheet that includes granular balance sheet and income statement financial data for 2013 through 2015 for four of CenturyLink's operating affiliates.
- [AT&T](#) and [Verizon](#) filed letters in the Part 32 Uniform System of Accounts proceeding on October 7, 2016, attaching redacted versions of spreadsheets with financial data.
- To date, no comments were filed on FracTel's application to obtain NANP telephone numbers directly from the Numbering Administrators for its iVoIP service. [Public Notice](#)

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Upcoming Filing Dates

- Oct. 14 - Comments due on FairPoint's [Petition for Waiver](#) of the requirement in section 69.3(e)(9) for a carrier intending to file its own Carrier Common Line tariff notify NECA by March 1 of the year in which the tariff will become effective. Replies are due October 31. [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. 21 - Comments due on USTelecom's [Petition](#) for a waiver to permit Lifeline providers to continue enrolling consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in 27 states and territories. [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](#)
- Oct. 31 - Replies due on FairPoint's [Petition for Waiver](#) of the requirement in section 69.3(e)(9) for a carrier intending to file its own Carrier Common Line tariff notify NECA by March 1 of the year in which the tariff will become effective. [Public 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](#)
- Dec. 5 - PRA comments on a revision to a currently approved information collection associated with changes to notices of planned copper retirements, which were adopted in the August 2015 [Report and Order](#), and [revised](#) in July 2016. [Notice](#)
- Dec. 19 - Due date for broadband-only loop service tariffs made on 15-days' notice; petitions due Dec. 27; replies due Dec. 30. [Order](#)
- Dec. 27 - Due date for broadband-only loop service tariffs made on 7-days' notice; petitions due December 29; and replies due December 30. [Order](#)

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