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### October 24, 2016 HIGHLIGHTS

- The FCC issued the [agenda](#) for its October 27, 2016 Open Meeting. The FCC will consider a Report and Order on broadband customer privacy and four Memorandum Opinions and Orders that dismiss and deny Petitions for Reconsideration of Forfeiture Orders for the deceptive marketing of prepaid calling cards. The FCC will also consider three items as consent agenda and three personnel actions.
- The Wireline Competition Bureau issued a [Public Notice](#) announcing the posting of [information](#) comparing the defined deployment obligations that would apply to RoR carriers electing model-based support versus RoR carriers remaining on the reformed legacy USF mechanisms (including CAF-BLS).
- USAC posted a [Part II](#) of the FCC's responses to questions submitted at the FCC's October 6, 2016 Webinar on the status of implementation of the March 2016 Rate-of-Return Reform Order.
- The Commission is [circulating an item](#) on the Connect America Fund, which is said to be related to Petitions for Reconsideration of rules in the March 2016 RoR Reform [Order](#) pertaining to data used for calculating offers of model-based support to RoR carriers.
- The WCB issued an [Order](#) denying Steelville Telephone Exchange and Grand River Mutual Telephone's separate requests for waiver of the deadlines for filing FCC Form 477 data used in the final version of A-CAM.
- OMB [approved](#) the information collections adopted in the March 2016 RoR Reform [Order](#) associated with both the A-CAM and legacy RoR USF support mechanisms.
- The FCC issued an [Order](#) granting Emery Telcom's Petition for waiver of the ICC Eligible Recovery rules to allow it to include corrected FY 2011 intrastate access amounts collected after the March 31, 2012 deadline in its 2011 Base Period Revenue calculations. It denied four other petitions seeking similar relief.
- NTCA [discussed](#) the need for prompt action immediately after November 1, 2016, on sorting model elections and resolution of budget concerns that may arise if elections result in "oversubscription" for the model.
- Home Telephone [discussed](#) the proposals the WCB is considering if the A-CAM is over-subscribed, and urged the FCC not to eliminate carriers whose model-based support is less than legacy support from the A-CAM in any effort to resolve budget concerns. Great Plains Communications, Consolidated Companies, et al. [discussed](#) options for meeting the budget if elections exceed the budget.
- NTTA [proposed](#) a modification to the method it previously proposed by which carrier-specific buildout obligations would be determined for Tribal Broadband Factor support. [Attachment](#)
- [Comments](#) filed on USTelecom's [petition](#) seeking 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.

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#### Other Key Upcoming Dates

- Oct. 25 - Deadline for [urban rate surveys](#) for 2017.
- Oct. 31 - Replies 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.
- Nov. 1 - Deadline for A-CAM support elections.

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## USF Reform

- The Wireline Competition Bureau issued a [Public Notice](#) on October 20, 2016, announcing the posting of [information](#) comparing the defined deployment obligations that would apply to RoR carriers electing model-based support versus RoR carriers remaining on the reformed legacy USF mechanisms (including CAF-BLS)
- USAC posted a [Part II](#) of the FCC's responses to questions submitted at the FCC's October 6, 2016 Webinar on the status of implementation of the March 2016 Rate-of-Return Reform Order.
- The Commission is [circulating an item](#) on the Connect America Fund, which is said to be related to Petitions for Reconsideration of the March 2016 RoR Reform [Order](#) requesting reconsideration of the rules pertaining to the data used for calculating offers of model-based support to RoR carriers.
- The Wireline Competition Bureau issued an [Order](#) on October 20, 2016, denying Steelville Telephone Exchange and Grand River Mutual Telephone's separate requests for waiver of the deadlines for filing FCC Form 477 data used in the final version of A-CAM. Steelville Telephone had requested waiver of the March 30, 2016 deadline for submitting FCC Form 477 data used to determine a RoR carrier's percentage of broadband deployment, and Grand River Mutual had requested a waiver for submitting FCC Form 477 data used to identify census blocks served by FTTP or cable technologies.
- The FCC published a [Notice](#) in the Federal Register on October 24, 2016, announcing it has received OMB approval for the information collections adopted in the March 2016 RoR Reform [Order](#) associated with both the A-CAM and legacy RoR USF support mechanisms.
- NTCA [spoke with](#) Commissioner O'Rielly's Legal Advisor on October 18, 2016, to stress the need for prompt action immediately after November 1, 2016, on the sorting of model elections and resolution of any budget concerns that may arise should such elections result in "oversubscription" for the model. NTCA urged use of additional on-hand CAF funds to facilitate model elections in the first instance, and observed that failure to achieve quick and carefully calibrated resolution of any budget concerns that arise out of model oversubscription could have a significant punitive impact on non-model mechanisms and on consumer rates for standalone broadband.
- NTCA [spoke by telephone](#) with Wireline Competition Bureau staff on October 19 and 21, 2016, to discuss its Petition for Reconsideration of the RoR Reform Order and the Lifeline Reform Order. NTCA said while recent changes to the Lifeline program appear to contemplate the offering of standalone broadband services to consumers at a discounted rate, a lack of sufficient high-cost support for standalone broadband in rural areas may frustrate, if not preclude, the effectiveness of any such reform, claiming available evidence points to rural retail standalone broadband rates that will likely be well in excess of what urban consumers pay for comparable services. NTCA suggested that additional steps should be considered, consistent with its Petition, to serve the goals both of high-cost program reform and low-income program reform.
- Home Telephone [met separately with](#) Commissioners Rosenworcel and Pai's Legal Advisors and Wireline Competition Bureau staff on October 12 - 13, 2016, to discuss the proposals the WCB is considering if the A-CAM is over-subscribed. Home Telephone urged the Commission not to eliminate carriers whose model-based support is less than legacy support from the A-CAM in any effort to resolve budget concerns, and suggested the Commission lock in all such companies to both obligations and support levels of the initial model run. Home offered a possible solution, suggesting the Bureau could reduce each company's support that is above the original budget on a prorated basis and then lower build-out obligations, and suggested these companies would then have 30 days to elect to move back to legacy support or stay on A-CAM, taking their full support and thus not impact the legacy budget.
- Great Plains Communications, Consolidated Companies, Harold Furchtgott-Roth, and Parrino Strategic Consulting [met separately with](#) Commissioner O'Rielly and his Legal Advisor, and Legal Advisors to Chairman Wheeler and Commissioners Rosenworcel, Clyburn, and Pai on October 13 - 14,

2016, to discuss options for meeting the budget if elections for the A-CAM exceed the budget. They provided analysis they claimed show involuntary disqualifications methods proposed by the Bureau are inferior to methods that decrease the per location funding cap. Great Plains Communications, Consolidated Companies, Reynolds Schultheis Consulting, and Parrino Strategic Consulting also [met with](#) WCB staff to discuss the same issues.

- Accipiter Communications [met via telephone](#) with Wireline Competition Bureau staff on October 18, 2016, to discuss the November 1<sup>st</sup> A-CAM elections. Accipiter noted that if it were to choose the FCC's CAF-BLS support route, rather than the A-CAM, it could incur significant costs to serve the last 9 percent of housing units in the study area, and claimed the FCC's math will prevent Accipiter from ever serving over 80 percent of the housing units in its service area unless it targets areas that already have broadband service from a competitor. Accipiter requested the FCC calculate its broadband deployment ratio in another manner, and also requested the FCC delay Accipiter's election date, claiming its bankruptcy proceedings put its executives in an unusual position of making an election that could very likely impact a potential buyer that might be closing the transaction in early 2017.
- Blackfoot [met separately with](#) Commissioner O'Rielly's Legal Advisor and [Wireline Competition Bureau staff](#) on October 20, 2016, to discuss budget control mechanisms associated with implementation of the A-CAM. It said any budget control mechanism should not have the effect of precluding any RLEC that is currently eligible from continuing to be eligible to elect A-CAM support, claiming the predictability offered with the ACAM is Blackfoot's best method to meet growing demand for broadband and allows RLECs flexibility to design, price and sell broadband products in a way that the current USF rules either prohibit or make overly complex. Blackfoot also discussed the need for greater clarity related to the issue of whether the transmission component of an RLEC's broadband services is exempt from the FUSC.
- The National Tribal Telecommunications Association filed [a letter](#) on October 18, 2016, to propose a modification to the method it proposed in its September 16, 2016 [letter](#) by which carrier-specific buildout obligations would be determined for Tribal Broadband Factor support. It said the modified approach would be derived from the ten-year total of TBF support, but would take into account the fact that not all of the TBF funding will be for capex and the TBF is a limited-duration 10-year fund although it is supporting network investments with longer life spans than the support provided. NTTA said the result of the modified proposal is to roughly triple the carrier-specific TBF build-out obligations that were proposed in the September 16<sup>th</sup> letter. [Attachment](#)
- Sen. Charles Schumer (D-N.Y.) sent a [letter](#) to Chairman Wheeler on October 19, 2016, urging swift consideration of New York State's [Petition for Expedited Waiver](#) of the CAF Phase II auction rules. He urged the Commission, in considering how to allocate unclaimed CAF money, that money be allocated to the states in which the funding was originally awarded, expressing concern that his constituents not be penalized by Verizon's decision not to claim its award of \$170 million to deploy broadband throughout New York.
- The Office of Economic Development for Franklin County, New York, filed a [letter](#) on October 21, 2016, supporting New York State's Petition for Expedited Waiver of the CAF Phase II auction rules. Franklin County said the denial of \$170 million in CAF money not claimed by Verizon has the potential to significantly delay broadband expansion in New York State, particularly in the Adirondack and North Country. It claimed broadband expansion has lagged in these areas due to the primarily rural nature of these areas and the difficulty reaching these areas economically through private enterprise.
- Vyve Broadband filed a [letter](#) on October 20, 2016, to notify the FCC and CenturyLink that it offers broadband internet service at speeds of 3Mbps/768kbps in the census blocks that CenturyLink had indicated it planned to serve in its modified CAF Phase I Round 2 incremental broadband deployment plans. It said the census blocks in the attached spreadsheet should be removed from CenturyLink's list and not be considered eligible for CAF Phase I incremental support. ([attachment](#))
- Salina-Spavinaw Telephone filed a [letter](#) on October 13, 2016, to notify the FCC and CenturyLink that it provides voice and broadband internet service at speeds of 3 Mbps/768 Kbps in a census block identified in CenturyLink's revised CAF Phase I Round 2 deployment plan.

- Chairman Wheeler sent a [letter](#) to Reps. Jason Smith (R-Mo.), Blaine Luetkemeyer (R-Mo.), Billy Long (R-Mo.), and Vicky Hartzler (R-Mo.) on October 14, 2016, responding to their letter urging the Commission to adopt rules for and implement Phase II of the Mobility Fund. They suggested the rules focus on expanding access to 4G LTE service, and discussed promoting wireless and broadband coverage in rural areas of Missouri. Chairman Wheeler said the Commission will move forward with rules for Phase II of the Mobility Fund by the end of the year and the primary focus of Mobility Fund Phase II will be targeting the necessarily limited USF funds to promote 4G LTE service in areas where it might not otherwise be expanded or sustained without federal support.
- The Rural Wireless Association [met separately with](#) Commissioner O'Rielly and his Legal Advisor, Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, and Pai, and Wireline Competition Bureau staff on October 18-19, 2016, to discuss the Mobility Fund II Order. RWA highlighted the importance of mobile wireless networks to precision agriculture, energy production, telehealth, and public safety in rural areas. It discussed coverage definitions, the challenge process, sufficient and predictable funding, MF II disbursement mechanisms, transition from current support, and data roaming impacts.
- Spectrum Policy and Deere & Company [met with](#) Wireless Telecommunications Bureau staff on October 13, 2016, to urge the Commission to address the expanding need for advanced telecommunications capability in active agricultural areas as the Commission designs Phase II of the Mobility Fund. They claimed private investment is not bringing wireless broadband to active agricultural areas and other technology solutions alone, such as Wi-Fi hotspots or satellite coverage, are not feasible or effective solutions to address the growing need for wireless broadband in most areas.
- East Kentucky Network, d/b/a Appalachian Wireless, filed an [amendment](#) to its [Petition for Waiver](#) and request for an extension of the compliance deadlines for the Mobility Fund Phase I to request an additional two-week extension of the deadline for submission of drive test data reports. Appalachian Wireless' original Petition requested the Commission waive the requirements of section 54.1006(b) and extend the construction and applicable drive test data reporting deadline for nine months for certain census tracts to April 19, 2017, and for certain other census tracts to October 17, 2016.

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## ICC

- The Commission issued an [Order](#) on October 20, 2016, granting Emery Telcom's Petition for waiver of the ICC Eligible Recovery rules to allow it to include corrected FY 2011 intrastate access amounts collected after the March 31, 2012 deadline in its 2011 Base Period Revenue calculations. It denied similar petitions from Yukon-Waltz, Smart City Telecom, Laurel Highland Telephone Company and Laurel Highland/Yukon-Waltz, and IAMO Telephone. The Commission also waived the requirement to impute ARC charges for prior tariff periods for Emery, Five Area, West Plains, and Hill Country to reflect the relief granted in this Order and the Halo II Order. It said any additional recovery mechanism revenue that the grantees receive as a result of this Order for 2012, 2013, and 2014 will come from CAF-ICC support and not from ARCs.

## Broadband

- The FCC issued a [Public Notice](#) on October 17, 2016, announcing its Connect2Health Task Force and the Consumer and Governmental Affairs Bureau's Office of Intergovernmental Affairs will host a webinar on November 10, 2016, to further explore the potential of the recently launched "Mapping Broadband Health in America." The Commission said the webinar is particularly tailored to the needs and interests of state and local government offices and agencies.

- Commissioner Clyburn [spoke](#) at the #Solutions2020 Policy Forum at the Georgetown University Law Center on October 19, 2016, discussing the FCC's ConnectingCommunities Tour, which was designed for the FCC to listen to and build relationships with individuals, start-ups, and non-profits across the country. She highlighted a number of prior Commission decisions and outlined a forward-looking framework with six pillars: ensuring affordable communications; empowering communities; broadband as a driver of improved health services; promoting a more diverse media landscape; 5G and beyond for all Americans; and enhancing consumer protections. She said by the end of the year, the FCC plans to release a #Solutions2020 Call to Action.
- Gigi Sohn, Chairman Wheeler's Counselor, [spoke](#) at CLIC Day on October 19, 2016, to discuss the future of local internet choice. She discussed the Open Internet debate and the petitions for pre-emption from Chattanooga's EPB and the City of Wilson, saying these two decisions gave a national and an international platform to the fundamental importance of broadband access and to the need for localities to be empowered to decide how to best serve their citizens. She also discussed the work of local choice advocates who expanded the conversation beyond "muni" broadband to "community broadband," as well as pole attachments and the building and leasing of dark fiber networks.
- NTCA and Silver Star Communications [met with](#) Chairman Wheeler's Legal Advisor and Wireline Competition Bureau staff on October 18, 2016, discuss broadband privacy and Chairman Wheeler's [Fact Sheet](#). NTCA said the FCC should ensure a consistent form of regulation applies to all firms with access to substantively similar data, and said opt-in requirements should neither initiate nor perpetuate regulatory disparity. NTCA also said voluntary industry guidelines to address data security that incorporate scalability, flexibility, and technical and economic feasibility are best suited to respond effectively to evolving threats, and suggested that a sufficient deferral period be established for small providers. They also [met with](#) Commissioner Rosenworcel's Legal Advisor on October 18, 2016, to discuss the data security portions of the proposed broadband privacy rules. NTCA also [met with](#) Legal Advisors to Commissioners Pai and [O'Rielly](#) on October 13, 2016, to discuss similar issues.
- The Competitive Carriers Association [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Pai, O'Rielly, and Rosenworcel and Wireline Competition Bureau staff on October 17 and 18, 2016, to discuss broadband privacy. CCA suggested the definition of small provider should mirror the definition of "small telecommunications company" approved by the Small Business Administration, and small carriers should receive a two-year window to implement any privacy rules and be allotted additional time to notify consumers, the FCC, FBI, or Secret Service of any harmful data breach. CCA also suggested small providers be granted flexibility or, where appropriate, relief from any prescriptive notice or format rules attached to privacy policies, and said they should not be required to assume liability for any attempts by third parties to re-identify data.
- USTelecom [met with](#) Commissioner Clyburn and her Legal Advisor and Commissioner Rosenworcel's Legal Advisor on October 18, 2016, to discuss the draft Order on broadband privacy. USTelecom discussed the need to further harmonize the items considered sensitive to be consistent with the FTC's definition of sensitive information. USTelecom asserted the Commission should not expand the definition of sensitive information to include all web-browsing history, advocating that web browsing and app usage data should be considered sensitive only to the extent the content is otherwise categorized as sensitive information. USTelecom also spoke with Commissioners [O'Rielly](#) and [Pai](#) and their Legal Advisors to discuss the same issues.
- CenturyLink [met with](#) Legal Advisors to Commissioners Clyburn, Pai, and Rosenworcel on October 18 and 20, 2016, to discuss the broadband privacy [Fact Sheet](#). CenturyLink encouraged further alignment with the FTC model by clarifying that opt-in is limited to precise geo-location, and that not all web browsing history and app usage history should be included - only that related to the otherwise sensitive categories of health, children, and financial information. It also sought clarification regarding the timing and scope of the notification to both customers and the FCC.
- Verizon [met with](#) Legal Advisors to Commissioner Pai on October 14, 2016, to discuss what it says are the benefits of a sensitivity-based approach to privacy and data security. Verizon encouraged the FCC to follow the FTC's approach with respect to de-identified data, and said broadband providers should be permitted to market their services to their own customers without first obtaining opt-in or opt-out



consent. Verizon said if consumers do not want to receive direct marketing from their provider, they may opt-out of marketing using other mechanisms, such as companies' Do Not Call lists. Verizon also [met with](#) Commissioner Rosenworcel's Legal Advisor on October 17, 2016, to discuss the same issues.

- Verizon, T-Mobile, Sprint, AT&T and CTIA [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O'Rielly, Clyburn, Pai, and Rosenworcel, and Wireline Competition Bureau staff on October 13, 2016, to discuss aspects of the proposed broadband privacy Order, as described in the [Fact Sheet](#). They discussed the importance of harmonization of privacy policy across the internet ecosystem, the strength of the three-prong test developed by the FTC to guide ISP use of de-identified data, and the operational impact of the consent regime.
- AT&T filed a [letter](#) on October 17, 2016, to address the approach to broadband privacy described in the broadband privacy [Fact Sheet](#). AT&T asserted the Commission should align its rules for first-party marketing with the FTC's determination that most first-party marketing practices are consistent with the consumer's relationship with the business and thus do not necessitate consumer choice. AT&T said the FCC should also align its rules with the FTC's recommendations by removing the blanket determination that all web browsing history and app usage is considered sensitive information.
- AT&T [met with](#) Commissioner Pai's Legal Advisor on October 13, 2016, to assert while the revised broadband privacy rules move closer to the FTC's sensitivity-based approach, there are significant inconsistencies. AT&T suggested the FCC allow inferred consent for first-party uses of non-sensitive information, such as marketing and internal data analytics, and should use the FTC's definition of "sensitive information" and avoid categorizing all web browsing and app data as sensitive. AT&T also [met with](#) Commissioner O'Rielly's Legal Advisor on October 17, 2016, to discuss the same issues.
- AT&T [spoke with](#) Matt DeNero, Chief of the Wireline Competition Bureau, on October 12, 2016, to advocate for an FCC privacy framework that, consistent with the FTC framework, is focused on potentially harmful uses of consumer data. AT&T said customers do not expect different rules to apply to the various entities within the internet ecosystem, specifically with regard to the treatment of web browsing history and first-party marketing, as reflected in the [Fact Sheet](#) released by Chairman Wheeler on October 6, 2016.
- ACA [met with](#) Legal Advisors to Commissioners Rosenworcel, Pai, O'Rielly, and Clyburn on October 14 and 17, 2016, to suggest the FCC increase the time required for smaller ISPs to comply with new data security requirements so that they have at least 90 days more time than larger ISPs and no less than 180 days in total. ACA also claimed the proposed BDS Order erects a barrier to additional investment by limiting the provision of private carriage for business data-like services, and asserted the proposed Order's mandate that non-incumbents providing business data-like services are in virtually all instances common carriers offering BDS is bad policy and is legally flawed.
- NCTA, Charter Communications, Comcast, and Cox [met with](#) Legal Advisors to Commissioners Pai and [Clyburn](#) on October 15, 2016, to discuss harmonizing the FCC's broadband privacy rules with the FTC privacy framework, particularly with regard to the scope and definition of sensitive information. They asserted the Commission should refrain from adding new categories of data to the definition of sensitive information beyond those already set forth in the FTC's 2012 privacy report. They also suggested excluding content-related exchanges and interactions between an ISP and its customers from being classified as sensitive information.
- NCTA, Charter Communications, Comcast, and Cox [met with](#) Legal Advisors to Chairman Wheeler and Commissioner Rosenworcel and Wireline Competition Bureau staff on October 18, 2016, to discuss broadband privacy. They discussed the scope of the Commission's proposed rules and the circumstances in which they would apply to ISPs, and the need to harmonize the FCC's broadband privacy rules with the FTC privacy framework. They also suggested excluding content-related exchanges and interactions between an ISP and its customers from being classified as sensitive information, and discussed the value of adopting an implied consent approach for first-party marketing and advertising activities by ISPs that parallels the FTC framework.

- NCTA [met with](#) Commissioner Rosenworcel's Legal Advisor on October 20, 2016, to discuss NCTA member company concerns about efforts to prohibit arbitration clauses in their contracts with broadband service customers. NCTA claimed arbitration clauses are favored in federal policy and consistently upheld by the courts, and said because Congress and various agencies are reviewing this issue there is no need or basis for the Commission to take action in this area.
- Comcast, Cox, and NCTA [met with](#) Commissioner O'Rielly's Legal Advisor on October 12, 2016, to discuss the need to harmonize the FCC's broadband privacy rules with the FTC privacy framework, particularly with regard to the scope and definition of sensitive information. They discussed the value of adopting an implied consent approach for first-party marketing and advertising activities by ISPs that parallels the FTC framework, highlighting that adopting such an approach to first-party marketing would reflect previous Commission determinations in connection with the voice CPNI rules for using customer data for such internal business and operational purposes as improving network performance, quality of service, and customer satisfaction.
- Cox Communications filed a [letter](#) on October 20, 2016, to help the Commission understand how its proposal to restrict broadband service providers' communications with their customers would negatively impact both broadband providers and their customers and to urge the Commission to follow the FTC's guidance with respect to first-party marketing. Cox asserted a requirement to allow customers to opt-out of all forms of first-party marketing would constrain its ability to offer customers service they have come to expect. Cox said if the Commission does adopt such regulation, it urged them to specify that such opt-out requirements can be made on a channel-by-channel basis and existing opt-out mechanisms for the marketing channels fulfill those new opt-out requirements.
- T-Mobile [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Rosenworcel and Pai, and Wireline Competition Bureau staff on October 12 and 13, 2016, to discuss areas where the FCC could tailor current language on broadband privacy to be more consistent with the FTC's approach. T-Mobile asked the Commission to consider narrowing the scope of sensitive CPNI to the five FTC categories (health, financial, children's, precise geolocation, and social security numbers) and explained that any web browsing or app usage information that includes sensitive information relating to those categories would be covered by those five categories alone. T-Mobile also asked the FCC to ensure that any notice requirements are flexible to ensure that consumers receive notice in a way and at a time that they are most able to consume the information. T-Mobile also [met with](#) Legal Advisors to Commissioners Clyburn and O'Rielly on October 17 and 19, 2016, to discuss the same issues.
- WISPA filed a [letter](#) on October 20, 2016, to discuss how the proposed broadband privacy rules would impose substantial financial hardship and implementation issues for small broadband providers. It said small providers remain committed to protecting privacy using reasonable means and providing notice of data security breaches that are reasonably determined to cause consumer harm, but emphasized they require sufficient time to adopt internal processes to implement reasonable and flexible privacy procedures. WISPA concurred with NTCA's recent statement that "opt-in requirements for broadly construed data sets will impede ISP and customer opportunities to enjoy the full advantage of services, including those that are related to the core broadband offering such as technical support, hardware/software systems, and alarm/security monitoring services," and also supports CCA's proposal that a security breach notification should be made "as soon as practicable" after its discovery.
- iconectiv and CTIA [spoke with](#) Commissioner Pai's Legal Advisor and Wireline Competition Bureau, Wireless Telecommunications Bureau, and Public Safety and Homeland Security Bureau staff on October 18 and 19, 2016, to express support for the permission-less use and sharing of CPNI and CPI for the purposes of mobile identity fraud prevention. They asserted the FCC's regulations should clarify that BIAS providers and traditional communication service providers may share or disclose customer CPNI with a third party without prior customer consent provided that the third party uses the protected data only for the purposes of fraud prevention and response.
- Level 3 [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O'Rielly and Clyburn and Wireline Competition Bureau staff on October 17 and 18, 2016, to discuss the proposed broadband privacy Order, as described in the Chairman's [Fact Sheet](#). Level 3 asserted carriers should be automatically exempt from the Commission's rules implementing section 222 when they are serving

business customers, claiming the provisions of section 222 alone are sufficient to protect business customers' proprietary information. Level 3 urged the Commission to give providers sufficient time to implement all applicable rules, noting that some existing customer contracts, drafted with the existing CPNI rules in mind, may have terms of up to five years.

- INCOMPAS, Level 3, US Cellular, and Orange Business Services US [met with](#) Commissioner Pai's Legal Advisor on October 14, 2016, to assert that with respect to the inclusion of web browsing and app history usage as categories of sensitive information, the FCC could take a more tailored approach that would see the inclusion of web-browsing for the FTC's five categories of sensitive information, or requiring opt-in for marketing based on search terms. They also asked the Commission to consider an implementation period of 12 to 18 months. Level 3, Orange Business Services US, XO, BT, and INCOMPAS [met with](#) Commissioner Rosenworcel's Legal Advisor on October 17, 2016, to discuss the same issues. They also [met with](#) Legal Advisors to Chairman Wheeler and Commissioner's Clyburn and O'Rielly and Wireline Competition Bureau staff to discuss the same issues.
- Nokia filed a [letter](#) on October 18, 2016, to respond to the Chairman Wheeler's broadband privacy [Fact Sheet](#). Nokia expressed support for the Commission's shift to a sensitivity based approach to privacy and toward harmonization with the FTC's privacy framework. Nokia said it could be problematic if the Commission follows through with its broad definition of information that is "sensitive" or applies that category to several routine ISP uses of customer data that demand access to such sensitive information. Nokia also reiterated the importance of allowing ISPs to market services to their own customers without requiring opt-in.
- The Internet Commerce Coalition [met with](#) staff to Chairman Wheeler and the Wireline Competition Bureau on October 14, 2016, to discuss broadband privacy. ICC asserted the categories of sensitive information under the draft final order are inconsistent with the definition established by the FTC and the White House and do not reflect consumer expectations. ICC also suggested the consent requirements for sensitive and non-sensitive data should track the conclusions in the FTC's privacy framework. ICC also [met with](#) Legal Advisors to Commissioners Pai and O'Rielly, and [met with](#) Commissioner Rosenworcel's Legal Advisor on October 13, 2016, to discuss the same issues,
- The Technology Policy Institute filed [comments](#) on Chairman Wheeler's October 2016 Broadband Privacy [Fact Sheet](#) on October 17, 2016. TPI claimed that, based on the Fact Sheet, the Order seems to have at least two fundamental problems: the FCC continues to argue ISPs should be subject to stricter privacy regulations than other industries not within the FCC's purview and the Order does not seem to recognize that the use of data has large benefits.
- TechFreedom [met with](#) Commissioner Clyburn's Legal Advisors on October 14, 2016, to discuss broadband deployment, broadband privacy, and business data services. TechFreedom expressed support for the FCC reviving its Broadband Deployment Advisory Committee and using that forum to take input from key stakeholders and develop form contracts, model agreements, and deployment strategies that can be utilized at the State and local level to promote broadband deployment. TechFreedom also offered suggestions for how the FCC should take on its privacy and consumer protection duties going forward, and stressed the importance of considering threats of competitive entry when assessing the state of competition in a BDS market, however defined.
- MediaFreedom filed a [letter](#) on October 18, 2016, claiming there are better, more flexible options to balance the interests of consumer privacy and competitive innovation than what the Commission has currently proposed. MediaFreedom suggested the FCC more closely accord its privacy regime with that of the FTC, and claimed, while the FTC's framework would allow use of web history and app usage by ISPs, the FCC's proposed opt-in rule effectively bans ISPs from using that data.
- Public Knowledge, Free Press, et al. [met with](#) Commissioner Clyburn's Legal Advisor on October 14, 2016, to express concern with the Commission's proposal to require opt-in consent for sensitive information and opt-out consent for information deemed non-sensitive. They suggested the Commission make information sensitive by default and narrowly define a category of non-sensitive information. They also said the Commission should require some form of consumer consent for the use of de-identified data and to require greater transparency of de-identification techniques.



- The American Association of Advertising Agencies, American Advertising Federation, Association of National Advertisers, Direct Marketing Association, Interactive Advertising Bureau, and Network Advertising Initiative filed a [letter](#) on October 19, 2016, to express concern that the broadband privacy proposal, as detailed in Chairman Wheeler's [Fact Sheet](#), would classify all web browsing history and application use history as sensitive information, and unduly subject such information to an opt-in requirement. They claimed this type of data has never categorically been classified as sensitive in any legislative, regulatory, or self-regulatory regime, and asserted that to do so would undercut the competitive and innovative internet marketplace.
- The American Association of Advertising Agencies, Association of National Advertisers, Direct Marketing Association, and the Interactive Advertising Bureau [met with](#) Chairman Wheeler's Senior Counselor and Wireline Competition Bureau staff on October 13, 2016, to discuss the broadband privacy [Fact Sheet](#). They claimed the Fact Sheet, while professing to follow the FTC privacy framework, in reality expands that framework to place heightened restrictions around data that the FTC has never considered sensitive. They asserted restricting the ability of entities to engage in the collection and use of web browsing and application use data for advertising purposes would limit consumer choice and ultimately harm consumers by interrupting the well-functioning internet economy that provides consumers with free and low cost products and services. They also [met with](#) Commissioner Pai's Legal Advisor to discuss the Fact Sheet's de-identification standard, its definition of sensitive data, and data breach notification requirements.
- The 4A's, ANA, and NAI [met with](#) Commissioner Clyburn's Legal Advisor on October 17, 2016, to discuss Chairman Wheeler's [Fact Sheet](#) on broadband privacy. They discussed the Fact Sheet's definition for the term sensitive data and how it diverges from the FTC privacy framework by including web browsing and application use data in the sensitive data category. They also discussed the approaches taken by the FTC and the widely implemented industry self-regulatory program administered by the Digital Advertising Alliance.
- The Future of Privacy Forum [met with](#) Commissioner Rosenworcel's Legal Advisors on October 13, 2016, to discuss ways in which the Commission could ensure that its proposed broadband privacy rules are consistent with the privacy framework of the FTC and aligned with generally accepted privacy regimes around the world. FPF discussed the online advertising ecosystem, and recommended that any rules the Commission adopts should allow for approaches to de-identification other than aggregation and should distinguish between sensitive and non-sensitive data.
- 18MillionRising.org, and 75 other groups sent a [letter](#) to Chairman Wheeler and the FCC Commissioners on October 17, 2016, asking the FCC to liberate consumers from the set-top box monopoly and to promulgate rules that foster trust in the integrity of broadband privacy so that consumers will readily use the internet. They also asked the FCC to prohibit abusive data caps and zero rating plans that violate net neutrality.
- CALinnovates filed a [letter](#) on October 19, 2016, on Chairman Wheeler's broadband privacy [Fact Sheet](#). CALinnovates claimed the proposal in the Fact Sheet would create overbroad and conflicting standards for the privacy regulations applying to data collected through web browsing and app usage information. CALinnovates urged the FCC to follow the principle of tech neutrality to its logical and pro-consumer conclusion and fully harmonize its approach to privacy with that of the FTC.
- QuintilesIMS filed a [letter](#) on October 18, 2016, to commend the FCC on the de-identification policies described in Chairman Wheeler's [Fact Sheet](#). QuintilesIMS asserted this standard for de-identification will promote consistency across different industries based on an overall goal of protecting individual consumer privacy, while still permitting beneficial uses of consumer information where privacy interests have been minimized. QuintilesIMS asserted this approach tracks the FTC standards, and claimed it will provide the same kinds of protections that consumers see in a broad variety of other settings.
- The Massachusetts Attorney General's Office filed a [letter](#) on October 20, 2016, to express support for the FCC's proposed broadband privacy rules. They commended the opt-in consent requirement from consumers before BIAS providers may collect, use or disclose their sensitive personal information.

They also supported the prohibition on “take it or leave it” offers and heightened scrutiny for provisions that tie service price to privacy protections, and urged the FCC to prohibit BIAS providers from compelling arbitration in their contracts with consumers.

- The Information Technology and Innovation Foundation [met with](#) Commissioner Rosenworcel’s Legal Advisor on October 18, 2016, to assert the broadband privacy proceeding has an outsized risk for negative long-term consequences across the entire Internet ecosystem if the Commission fails to properly align its regulatory regime with the FTC enforcement model. It claimed the categories listed as sensitive in the Chairman’s Fact Sheet are considerably broader than those contemplated by the FTC guidelines, and said there must be considerable narrowing of the default opt-in categories if the Commission is to gain the advantages of a truly uniform privacy regime.
- The International Center for Law and Economics filed a [letter](#) on October 20, 2016, to express concerns with the proposed broadband privacy rules. ICLE said the proposed changes do not amount to a substantive alignment with that of the FTC and ignores the central role of context in the FTC’s privacy framework. ICLE also said the proposal moves far beyond the FTC’s definition of “sensitive” information requiring “opt-in” consent. ICLE urged the Commission to refrain from adopting the regime set forth in the Fact Sheet and ensure these significant deviations from the FTC’s well-accepted framework are addressed before moving forward.
- The Center for Digital Democracy filed a [letter](#) on October 20, 2016, to respond to the Future of Privacy Forum’s [ex parte](#), which suggested ways the FCC could ensure that its proposed broadband privacy rules are consistent with the FTC’s framework. CDD asserted the FCC did not receive information that accurately reflects contemporary digital data collection and marketing practices, and claimed the FTC framework needs significant changes.
- The American Civil Liberties Union, Benton Foundation, Center for Democracy & Technology, et al. sent [a letter](#) on October 20, 2016, to Chairman Wheeler and the Commissioners to urge the Commission to take a strong stance on broadband privacy and to improve the current proposal in modest ways. They said the Commission must not yield to calls to severely limit the scope of covered “sensitive” information, nor otherwise weaken the privacy proposal as outlined in the Fact Sheet. They claimed the FCC has a mandate to protect the privacy of broadband ISP customers, and to comply with that mandate it should adopt rules that require opt-in consent to share all web-browsing history, app usage, IP addresses, and MAC addresses. They argued the FCC should not replicate the FTC’s approach, claiming the Communications Act and the FTC Act protect privacy in different ways and for different reasons.
- The League of United Latin American Citizens, Multicultural Media, Telecom and Internet Council, et al. sent a [letter](#) to Chairman Wheeler on October 20, 2016, on Chairman Wheeler’s broadband privacy [Fact Sheet](#). They expressed concern with the sensitivity-based approach, and asked the Commission to narrow sensitive data to categories that include precise data about a customer’s location, children’s data, social security numbers, or other sensitive information about health or finances. They asserted the Commission can protect consumers in the same way the FTC has done for many years, and can trigger web browsing and app usage data being considered “sensitive” if it touches those categories.
- Color of Change sent a [letter](#) to Chairman Wheeler and FCC Commissioners on October 20, 2016, to urge them to take a strong stance on broadband privacy, help improve the proposed rules, and vote in favor of protections for all internet users and those communities most vulnerable to data collection and predatory schemes. They asserted the internet must be kept safe, open and accessible, and the Commission must improve upon and vote to adopt Chairman Wheeler’s framework for broadband privacy.
- Color of Change [met with](#) Commissioner Clyburn’s Legal Advisor on October 17, 2016, to discuss aspects of the broadband privacy rulemaking and the Chairman’s [Fact Sheet](#), including pay-for-privacy models, de-identification of data, and the categorization of data as sensitive or non-sensitive.
- Comments were filed on October 11, 2016, on NTIA and the National Science Foundation’s [Notice](#) seeking comments on the development of a National Broadband Research Agenda to support the

Broadband Opportunity Council's efforts to improve data collection, analysis, research, and their applications for the benefit of broadband policy development, program implementation, and program evaluation. [NTCA](#) suggested NTIA and NSF consider working with the FCC to refine existing FCC reporting from broadband providers, but should refrain from measures that could result in duplicative and more burdensome reporting requirements. It also said the quantification of economic and other beneficial impacts of broadband deployment and adoption should be used to inform actions that result in measures intended to speed deployment and usage across the Nation, and suggested scientific research that leads to increased broadband capabilities and more reliable service is necessary to enable U.S. leadership in broadband-enabled services, but should not be rooted in applied research that could attempt to overbuild existing networks with duplicative infrastructure. [USTelecom](#) suggested the broadband adoption gap be addressed and made suggestions on opportunities for federal leadership in data collection and research, but expressed concerns that imposing additional reporting requirements on ISPs would be burdensome for providers. [CTIA](#) supported efforts to identify and collect information regarding the socioeconomic benefits of streamlined infrastructure policies that may promote the ability of wireless providers to rapidly and efficiently deploy wireless services to consumers, including next-generation 5G technologies. It also said any data collection requests should not seek to collect proprietary information or otherwise place burdensome reporting obligations on wireless providers. [Link to list of all comments](#)

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## Open Internet

- The FCC issued a [News Release](#) on October 19, 2016, announcing it adopted a [Consent Decree](#) resolving an investigation into whether T-Mobile adequately disclosed speed and data restrictions for its "unlimited" data plan subscribers. The FCC said T-Mobile will pay a fine and benefits to consumers totaling almost \$48 million. The FCC found T-Mobile's company policy allows it to slow down data speeds when T-Mobile or MetroPCS customers on so-called "unlimited" plans exceed a monthly data threshold, but that company advertisements and other disclosures may have led unlimited data plan customers to expect that they were buying better and faster service than what they received. The Commission said its 2010 Open Internet transparency rules require broadband Internet providers to give accurate and sufficient information to consumers about their Internet services so consumers can make informed choice.

## USF

- Comments were filed on October 21, 2016, 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. USTelecom filed a [letter](#) on October 17, 2016, to amend its [Petition](#) to add New Jersey to the list of states where it says a waiver is necessary. The [Missouri PSC](#) supported USTelecom's Petition for Waiver, noting the petition was prompted by complications at the state level to comply with the FCC's new Lifeline eligibility criteria. The PSC said as Missouri will not meet the December 2, 2016 deadline for revising its rules to be consistent with recent FCC reforms, it supports US Telecom's proposed waiver because it reflects a reasonable solution to avoid a conflict between state rules and FCC reforms. [GVNW](#) said USTelecom has requested a targeted and limited waiver, which would apply only in the affected states and only until a particular affected state has updated its statutory and/or regulatory Lifeline eligibility framework, as well as its eligibility databases and other determination processes, and providers have had a reasonable period of time to implement those changes. [GVNW](#) said this narrow approach is prudent and reasonable and should be accepted by the Commission. [Sprint](#) expressed support for the Petition, and said providing service providers and state administrators with additional time to take necessary steps to align state and federal eligibility criteria will help to ensure compliance with federal rules, ensure that financially vulnerable end users continue to have access to critical Lifeline benefits, and control administrative program costs. [CTIA](#) expressed support for Commission decisions to streamline the Lifeline eligibility rules and develop a National Lifeline Eligibility Verifier and said the Petition will

advance that effort by providing a temporary waiver of the rules to allow states to conform their own eligibility rules to the new federal rules. [Public Notice](#) [List of all comments available to date](#)

- No replies were filed on NECA's 2017 [Modification](#) of the Average Schedule Universal Service High Cost Loop Support Formula. [Public Notice](#)
- The Wireline Competition Bureau released an [Order](#) on October 20, 2016, approving Allied Wireless Communications' request to relinquish its ETC designation in North Carolina. AWCX claimed other carriers are servicing the area it intends to relinquish, and noted its assets were acquired by AT&T, effective September 20, 2013, and it no longer has a network or subscribers in the state of North Carolina.
- WTA and NTCA [met with](#) Commissioner O'Rielly's Legal Advisor on October 18, 2016, to discuss [petitions for reconsideration](#) of the Lifeline Reform [Order](#). They discussed minimum service standards, streamlined program eligibility, rolling recertification, port freeze provisions, and support for standalone voice service.
- The Oklahoma Corporation Commission filed [a request](#) for the FCC to hold in abeyance Kajeet's application for FCC designation as a Lifeline broadband ETC. The OCC said there are two unresolved questions Kajeet's application raises; whether or not the FCC has authority to preempt the states and issue its own designations, and what role, if any, state regulatory agencies will have in monitoring the activities of these federally designated Lifeline broadband ETCs to enforce state and federal Lifeline rules. It said the U.S. Court of Appeals is reviewing the former, and the latter is currently before the FCC in the form of a Petition for Clarification filed by the PA PUC.
- Cisco WebEx [met with](#) Wireline Competition Bureau staff on October 14, 2016, to discuss its Request for Review of a USAC Decision. WebEx discussed the time that the request has been pending and the importance of its resolution to WebEx's business planning efforts. WebEx also noted its September 13, 2016, ex parte addressed the application of the Open Internet Order to WebEx and confirmed that WebEx is an information service.

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## Misc.

- The FCC issued the [agenda](#) on October 20, 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, and four Memorandum Opinions and Orders that dismiss and deny Petitions for Reconsideration of four Forfeiture Orders for the deceptive marketing of prepaid calling cards. The FCC will also consider three items as consent agenda and three personnel actions.
- Comments were filed on October 20, 2016, 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. The [Confederated Tribes of Warm Springs of Oregon](#) supported WST's Petition, saying the CTWS wholly owns WST, which is a tribal enterprise of the Tribes, a sovereign nation, and under federal law, the Tribes have the legal right to self-determination on its tribal lands. [NTTA](#) supported the Petition, saying WST has met and exceeded the requirements set out in section 251(h)(2), and as a Tribally-owned carrier, has an inherent advantage in serving Tribal areas. [N-Com](#), a telecom engineering company, said it has designed and assisted WST with deploying a carrier-grade voice and data network since 2011, which WST continues to build out, improve and operate, and thus supports WST's Petition. N-Com claimed WST has substantially replaced the existing ILEC as the primary voice and data service provider on the reservation. [CenturyLink](#) said before granting WST this relief, applicable precedent also requires the Commission to issue an NPRM and then find "by rule" that WST has met each of the criteria in section 251(h)(2). CenturyLink said the Commission should also treat CenturyLink as a non-dominant provider of interstate services in the Warm Springs exchange. Replies are due November 4. [Public Notice](#)

- Chairman Wheeler sent a [letter](#) to Rep. Dina Titus (D-Nev.) on October 14, 2016, responding to her letter expressing concerns with proposed business data services rules. Chairman Wheeler said an Order is circulating on BDS, which provides a new framework that strikes a balance between targeted regulation for legacy services, where evidence of market power is strongest, and lighter-touch regulation for packet-based services, where there has been new entry and competition may be emerging. He also said the proposed Order is grounded in the comprehensive record of this proceeding, including careful review of the sophisticated economic analyses presented by multiple parties as well as other record evidence, including developments since the 2013 data collection.
- AT&T filed a [second supplemental declaration](#) by Mark E. Meitzen, Ph.D., and Philip E. Schoech, Ph.D., on October 20, 2016, to respond to Sprint's October 5, 2016 [letter](#), which provided a critique of their supplemental declaration. Drs. Meitzen and Schoech said there is no basis to attach any credence to the figures developed by Sprint's calculations, asserting the only valid measurements of a BDS X-Factor is the one developed by BLS KLEMS data, and these data show the X-factor to be 1.99 percent over the 2005-2014 period, which suggests there is no empirical basis for any one time reduction (or increase) to current price cap levels.
- AT&T [met separately](#) with Legal Advisors to Commissioners O'Rielly and Pai, and spoke with the Chief of the Wireline Competition Bureau, on October 12, 2016, to discuss Chairman Wheeler's BDS [Fact Sheet](#). AT&T said the Commission should continue to forbear from applying most Title II regulation to packet-based BDS, but disagreed with the other conclusions in the Fact Sheet. AT&T said the record does not support findings that: legacy TDM services should be rate regulated in all markets; proper calculation of an X-factor would result in an 11 percent price cap adjustment or 3 percent X-factor; or new presumptions and heightened scrutiny on ILEC Ethernet services during the section 208 complaint process are justified. AT&T also [met with](#) Commissioner Clyburn's Legal Advisor on October 18, 2016, to discuss the same issues.
- Verizon [met with](#) Commissioner Clyburn's Legal Advisor, [Legal Advisors](#) to Commissioners O'Rielly and Pai, and Commissioner Rosenworcel's [Legal Advisor](#) on October 14 - 19, 2016 to express support for the Commission's move towards adopting a framework for business data services that applies the same set of rules to all competing providers and services. Verizon said the proposed one-time downward adjustment to price caps should apply uniformly to all price-cap LECs, and asserted all business data services are telecommunications services and business data services providers therefore are common carriers.
- CenturyLink [met separately](#) with Legal Advisors to Commissioners Clyburn, Pai, and Rosenworcel on October 17, 18 and 19, 2016, to assert that a downward adjustment in the BDS price cap of 11 percent over 3 years could limit CenturyLink's efforts to improve and expand broadband service to its customers, and claimed the rate reductions in the proposed order would make the business case for deploying fiber and broadband even more difficult, especially in less densely populated areas. CenturyLink urged the Commission to adopt a more balanced approach that recognizes the state of competition in the BDS market and does not negatively affect infrastructure investment.
- Windstream [spoke with](#) Matt DelNero, Chief of the Wireline Competition Bureau, on October 13, 2016, to urge the Commission to ensure viable wholesale last-mile access to locations where competitive carriers lack a feasible case for overbuilding so consumers can continue to benefit from meaningful choices in the IP era. Windstream also claimed the lack of facilities-based competition makes Commission price regulation necessary to ensure just and reasonable rates for Ethernet service at or below 100 mbps. Windstream also [met with](#) Wireline Competition Bureau staff on October 13, 2016, to discuss BDS, and opposed AT&T's argument that it has no authority to regulate ILECs' wholesale rates for business data service.
- INCOMPAS and Windstream [spoke with](#) Wireline Competition Bureau staff on October 14, 2016, to suggest the FCC ensure the rate decreases described in the [Chairman's Fact Sheet](#) occur as quickly as possible. INCOMPAS said it will be important for the Commission to preserve the protections afforded in the Technology Transitions [Order](#), and suggested, in the proposed complaint process for reviewing rates of providers offering packet-based services, the Commission make clear, as a



backstop, that its proposed wholesale-retail comparison and comparison of other customers' rates will ensure no less than pricing parity for purchasers of last-mile inputs.

- TDS, TDS Metrocom, and INCOMPAS met with Legal Advisors to Commissioners [Rosenworcel](#), [Clyburn](#), [Pai](#), and Wireline Competition Bureau [staff](#) on October 18, 2016, to express support for a strong wholesale-retail rule. TDS, et al. asserted the FCC needs to act to ensure competitors like TDS CLEC can purchase wholesale Ethernet at just and reasonable rates that permit them to offer competitive options to small and medium-sized businesses in second and third tier markets.
- Alaska Communications filed [supplemental comments](#) on October 14, 2016, on business data services, in response to Chairman Wheeler's BDS [Fact Sheet](#). ACS asserted the Chairman's plan for reform fails to address the Alaska market and the proposed reforms cannot reasonably be applied to Alaska. It claimed the only regulatory framework that is appropriate for Alaska is to expand pricing flexibility where it was once granted, permit Phase II flexibility in all areas where competition already has made GCI equal with or superior to the ILEC, and refrain from imposing any regulation on non-common carrier services, such as Ethernet, that are competitively offered today.
- NCTA [met with](#) Commissioner Pai's Legal Advisor on October 14, 2016, to reiterate its position that there is sufficient investment and competition occurring in the Ethernet marketplace to render rate regulation unnecessary, and said proposals to impose such regulation would cause significant harm to future investment in fiber networks. NCTA suggested that any regulation of rates for TDM-based services should include a sunset date to encourage customers to transition to IP-based services. It claimed cable operators often provide business data services on a private carrier basis and the record does not provide a basis for a blanket conclusion that such services are, or should be, offered only on a common carrier basis.
- NCTA [met separately](#) with Legal Advisors to Commissioners Clyburn and Rosenworcel on October 17 and 19, 2016, to state rate regulation of Ethernet services is unnecessary because a wide range of competing providers are investing billions of dollars in facilities to provide these services and prices have been declining steadily as a result of this intense competition. NCTA also asserted proposals to benchmark Ethernet rates to rates for legacy services are indefensibly arbitrary and would cause significant harm to future investment in fiber networks by ILECs and competitive providers. NCTA also suggested that any regulation of rates for TDM-based services should include a sunset date so as to encourage customers to transition to IP-based services.
- Comcast [met with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, O'Rielly, Pai, and Rosenworcel and Wireline Competition Bureau staff on October 14 and 18, 2016, to assert the current record cannot support a finding that all business data services are offered on a common carrier basis. Comcast claimed the BDS [Fact Sheet](#) correctly recognizes it is unnecessary to subject the competitive Ethernet segment to ex ante rate regulation, and evidence of an increasingly competitive BDS marketplace also warrants treading lightly in applying rate regulation to legacy TDM services offered by ILECs. Comcast also urged the Commission to consider more modest adjustments to ILECs' TDM rates. Comcast also [spoke with](#) Matthew DelNero, Chief of the Wireline Competition Bureau, on October 12, 2016, to discuss the same issues.
- Cox Communications [met separately](#) with Legal Advisors to Chairman Wheeler and Commissioners Pai, Rosenworcel, and O'Rielly on October 18, 2016, to discuss the proposed BDS rules. Cox asserted the Chairman's decision to exclude cable companies and Ethernet services from ex ante rate regulation was consistent with the strong record of competition for these services, but expressed concern over the decision to impose new regulation on ILEC TDM-based services on a nationwide basis without any assessment of whether there was sufficient competition in any area to constrain ILEC pricing. Cox also expressed concern that a blanket finding that all BDS is a common carrier service would be inconsistent with the record evidence of private carriage and with legal precedent. Cox Communications also [met with](#) Commissioner Clyburn's Legal Advisor on October 14, 2016, to discuss the same issues.
- Charter filed a [letter](#) on October 18, 2016, to assert the Commission cannot lawfully determine that all business data services are provided on a common-carriage basis, saying there is insufficient evidence

to do so. Charter also claimed the Commission cannot avoid the legal problems by adopting an evidentiary presumption that a BDS offering is a common-carriage service and requiring providers to rebut that presumption in a complaint proceeding.

- Charter Communications [met with](#) Commissioner Rosenworcel's Legal Advisor on October 19, 2016, to argue the Commission cannot lawfully regulate the large universe of business data services provided on a private-carriage basis, and suggested price regulation of Ethernet services 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. Charter said the Commission should refrain from regulating Ethernet services at any speed, or, at a minimum, seek further comment before adopting any pricing regulations that directly or indirectly impact Ethernet pricing.
- Sprint [met with](#) Legal Advisors to Commissioners Rosenworcel and Clyburn on October 12 and 13, 2016, to state the FCC should not delay BDS reform any further. Sprint claimed delaying implementation beyond January 1, 2017, is unnecessary and would create real harm across the country, suggesting the FCC should not allow ILECs to delay relief for buyers that purchased BDS under pricing flex rules. Sprint also asserted the FCC should not allow BDS providers to undermine competition by discriminating against wholesale buyers.
- Sprint filed a [letter](#) on October 20, 2016, to assert the Commission's proposal to compute an X factor based, at least in part, on BLS KLEMS data for the broadcasting and telecommunications industry may not be reflective of the productivity of wireline telecommunications, let alone the productivity in the provision of BDS. Sprint also presented data showing computed TFP and X factors computed from data from both the 1999 Price Cap Performance Review FNPRM and the BLS KLEMS, averaged over several different time periods.
- Sprint [met separately](#) with Legal Advisors to Commissioners O'Rielly and Pai on October 13, 2016, to emphasize the need to adopt reform for the BDS market and discussed what it says is overwhelming evidence demonstrating a lack of competition in the provision of BDS services at and below 50 Mbps. Sprint said the FCC should apply Phase I price caps across the country. It also discussed the lack of competition in the provision of TDM and Ethernet services above 50 Mbps in most markets.
- Sprint filed a [letter](#) on October 17, 2016, to submit additional information on what it says are the excessive rates it currently is charged for Ethernet-based BDS. Sprint asserted this information demonstrates that competitive forces do not adequately constrain the prices that ILECs assess for virtually all Ethernet services and therefore raises pricing concerns for packet-based BDS the Commission should consider in its forthcoming FNPRM.
- Sprint [spoke with](#) Chairman Wheeler and the Chief of the Wireless Telecommunications Bureau on October 17, 2016, to express support for moving forward with BDS reform and asked the Commission to consider a faster transition to lower BDS rates. Sprint also met with Commissioners [Clyburn](#) and [Rosenworcel](#) and their Legal Advisors on October 17, 2016, to discuss the importance of ensuring that wholesale rates for Ethernet services be less than those charged at retail, and urged them to support Chairman Wheeler's proposed framework for BDS reform.
- Level 3 [met separately with](#) Matt DelNero, Chief of the Wireline Competition Bureau, and Commissioner Clyburn's Legal Advisor on October 14, 2016, to express support for Chairman Wheeler's proposal to apply ex ante rate regulation to DS1 and DS3 business data services provided by ILECs. Level 3 argued it would be appropriate for the Commission to implement the one-time adjustment to the X Factor for the special access basket over two years and to require that ILECs file tariffs implementing the rate adjustments mandated by the Commission prior to the annual price cap tariff filings on July 1, 2017.
- Level 3 [met with](#) Commissioners Rosenworcel and O'Rielly's Legal Advisors and Wireline Competition Bureau staff on September 18 and 20, 2016, to express support for Chairman Wheeler's proposal to apply ex ante rate regulation to DS1 and DS3 business data services provided by ILECs. Level 3 argued it would be appropriate for the Commission to implement the one-time adjustment to the X

Factor for the special access basket over two years and to require that ILECs file tariffs implementing the rate adjustments mandated by the Commission prior to the annual price cap tariff filings on July 1, 2017.

- The Competitive Carriers Association [met separately with](#) Commissioner Clyburn and her Legal Advisor, Commissioner Pai's Legal Advisor and Legal Interns, and Commissioner O'Rielly and his Legal Advisor on October 13-14, 2016, to express disappointment that the circulated Business Data Services item, as described in the [Fact Sheet](#), does not address Ethernet other than through a complaint process that lacks guidance on how to evaluate unjust and unreasonable or unreasonably discriminatory conduct. It suggested changes to the item, which it asserted could provide more significant relief for competitive wireless carriers. CCA also urged the Commission to adopt a presumption that the market for "low-capacity" BDS at 50 Mbps and below, whether provided over TDM or Ethernet, is uncompetitive, and suggested the FNPRM should pave the way for a long-term Ethernet pricing remedy solution to "future-proof" this proceeding.
- Birch Communications filed [a letter](#) on October 17, 2016, to respond to Chairman Wheeler's [Fact Sheet](#) on BDS. Birch urged the Commission to adopt regulatory restraints that recognize that for a period of time in many markets the ILECs will remain formidable competitors and will continue to have the ability to undercut competitors and undermine competitive penetration in the market. It said the Commission must ensure competitors have the tools necessary to compete and at the same time obtain the underlying wholesale services they need to serve end user customers.
- Granite Telecommunications [spoke with](#) Matt DeNero, Chief of the Wireline Competition Bureau, on October 14, 2016, to express support for Chairman Wheeler's proposal to extend the duration of the regulatory backstop for wholesale platform services adopted in the [Technology Transitions Order](#) for four years. Granite also said the Commission should retain the flexibility to extend the duration of the regulatory backstop in the event that competition in the provision of wholesale business voice services for multi-location customers does not develop in the next four years.
- Granite Telecommunications, MetTel, Xchange Telecom, Impact Telecom, Access Point, Birch Communications, Bullseye Telecom, and New Horizon Communications [met separately with](#) Legal Advisors to Commissioners Pai, Clyburn, Rosenworcel, and O'Rielly on October 18, 2016, to express support for delinking the regulatory backstop for wholesale platform voice services adopted in the Technology Transitions [Order](#) from the business data service proceedings. They also expressed support for a multiyear extension of the regulatory backstop, and urged each of the Commissioners to support the Chairman's recently circulated BDS proposal.
- Lightower Fiber Networks, Lumos Networks, and Unite Private Networks [met separately with](#) Commissioners Clyburn and Rosenworcel and their Legal Advisors on October 13, 2016, to discuss BDS proposals that they say could subject their prices to regulation through application of benchmarks based on the ILECs' costs and TDM prices. They also reiterated opposition to the definition of "new entrant" proposed by Verizon, and opposed Verizon's presumption that after approximately three years even new entrants and smaller providers should be subject to benchmark regulation in non-competitive markets.
- Uniti Fiber [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Rosenworcel, O'Rielly, Pai, and Clyburn on October 17 and 18, 2016, to discuss BDS [proposals](#) that could subject Uniti Fiber and other competitive fiber providers' prices to regulation through the application of benchmarks based on ILEC prices. Uniti explained the proponents of applying benchmark price regulation to competitors that have historically been treated as non-dominant have not offered any evidence explaining why such price regulation is necessary or how it would benefit competitive deployment of fiber.
- Public Knowledge, New America's Open Technology Institute, the Schools, Health & Libraries Broadband Coalition, the Computer & Communications Industry Association, and Free Press [met with](#) Chairman Wheeler's Legal Advisor and Counselor on October 17, 2016, to urge the FCC to proceed quickly to reform the BDS market. They expressed support for the plan to prevent BDS providers from

exercising market power with regards to TDM service, but suggested a two-year, rather than three-year, implementation of the downward adjustment of TDM rates and a larger reduction in rates.

- The International Brotherhood of Electrical Workers and Frontier [met with](#) Commissioner Rosenworcel and her Legal Advisor on October 14, 2016, to discuss what they say are significant repercussions that new price regulation would have on middle-class jobs and broadband investment. They also urged the Commission to avoid the drastic 11 percent catch-up rate reduction in the current BDS proposal.
- A group of concerned clergy sent a [letter](#) to Chairman Wheeler on October 20, 2016, to urge the Commission to pass business data services rules that encourage new competitors to enter costly or underserved markets, and to base new regulations and requirements on the real costs and challenges of providing service in different areas.
- The American Council on Education filed a [letter](#) on October 20, 2016, to urge the Commission to clarify the proposed definition of business data services and explicitly state that it does not apply to non-profit, private research and education networks
- USTelePacific [met with](#) Wireline Competition Bureau staff on October 17, 2016, to discuss what it says are unintended consequences of the proposed rules outlined in the BDS [Fact Sheet](#) and options to ensure that DS1 and DS3 rates do not increase as a result of moving from Phase II pricing flexibility to price cap rates. TelePacific suggested the Commission state explicitly that the elimination of Phase II pricing flexibility in those MSAs where it is currently in place should not result in rate increases to any customers.
- BT [spoke with](#) Commissioner Rosenworcel on October 14, 2016, to reiterate the importance of effectively regulated bottleneck BDS to competitiveness in the global network services market.
- The SHLB Coalition [spoke with](#) Legal Advisors to Commissioners Clyburn and Rosenworcel on October 18, 2016, to suggest the final BDS Order should be technology-neutral and consistent with the Technology Transitions [Order](#). SHLB also said: the proposal is illogical and potentially vulnerable on appeal because it divides the BDS market into two separate markets (TDM and Ethernet) when the Technology Transitions Order recognizes they are part of the same market; the record in the proceeding supports an immediate price reduction of between 17 percent and 20 percent for non-competitive services; and the complaint process is not a realistic enforcement option for anchor institutions.
- The SHLB Coalition filed a [letter](#) on October 18, 2016, to express concern that the [BDS Fact Sheet](#) does not do more to bring down the high cost of Ethernet services, and said it appears to offer few benefits to anchor institutions. The SHLB Coalition asserted the proposed regime should be technology-neutral and should apply to both Ethernet and TDM services.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 21, 2016, approving FairPoint Communications' [Compliance Plan](#), pursuant to its May 2013 [Order](#) granting conditional forbearance to price cap carriers from cost assignment rules. The Bureau said FairPoint appropriately addressed in its Compliance Plan the conditions that are required for the requested forbearance and is similar to other price cap carrier plans that have been approved as sufficient to support requested forbearance relief.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 17, 2016, granting Flowroute'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.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 20, 2016, granting FracTel'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.

- The North American Portability Management filed [a letter](#) on October 19, 2016, to submit a written summary of the NAPM's status updates to the FCC on the transition of the current LNPA, Neustar, to the new LNPA, Telcordia d/b/a/ iconectiv. NAPM said it will continue to file written updates of this report with the FCC at the end of each month until the transition is complete.
- The FCC issued a [report](#) on October 19, 2016, entitled "Empowering the 21<sup>st</sup> Century Consumer," which outlines recent actions the FCC has taken to protect consumers while promoting competition and innovation. The report says the FCC has, among other things, promoted unencumbered and fair access to communications technology, transparency in billing, privacy, and safety. It said in the coming months, the Commission will consider adopting or proposing actions aimed at giving consumers the tools to protect their personal information online, ensuring customer choice in the market for video navigation devices, and expanding high-speed mobile data services to the 3.1 million Americans living in unserved or poorly-served areas.

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## Upcoming Filing Dates

- 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. 24 - Comments due on New York State's [Petition for Expedited Waiver](#) of the CAF Phase II auction rules to make available to New York the amount of Phase II model-based support that Verizon declined in the state. Replies due October 31. [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 New York State's [Petition for Expedited Waiver](#) of the CAF Phase II auction rules to make available to New York the amount of Phase II model-based support that Verizon declined in the state. [Public 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. 6 - Comments due on the [FNPRM](#) 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. Replies are due January 5, 2017. [FR](#)
- 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](#)
- Jan. 5 - Replies due on the [FNPRM](#) 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. [FR](#)

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