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### October 31, 2016 HIGHLIGHTS

- The FCC [adopted](#) an Order at its October 27, 2016 Open Meeting, containing rules that require broadband ISPs to protect the privacy of their customers. The FCC also released a [Fact Sheet](#) on the Order, and [Chairman Wheeler](#) and Commissioners [Clyburn](#) and [Rosenworcel](#) issued statements. (Order not yet released.)
- The FCC released the [tentative agenda](#) for its November 17, 2016 Open Meeting. It will consider: a Report and Order and Second FNPRM on business data services; a Report and Order on the second phase of the Mobility Fund; an NPRM on roaming obligations of commercial mobile service providers and the regulatory classification of voice over LTE service; and a Report and Order on video accessibility. Chairman Wheeler also released a [Fact Sheet](#) on access to 4G LTE mobile voice and broadband service.
- The FCC is [circulating](#) an item entitled "Small Business Exemption from Open Internet Enhanced Transparency Requirements."
- The Wireline Competition Bureau [announced](#) it made a technical correction to the A-CAM that affects only ILECs listed on the attachment who have affiliated wireline competitive ETCs receiving high-cost USF support within the incumbent's study area.
- The Wireline Competition Bureau issued a [Public Notice](#) announcing USAC has posted the budget control mechanism calculations for RoR carriers for the period January 1, 2017, through June 30, 2017.
- USAC posted [Part III](#) 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 FCC published a [Notice](#) in the Federal Register seeking PRA comments on the new information collection associated with the requirement that certain carriers with high cost reporting obligations must file information about their locations that meet their broadband deployment obligations via a USAC electronic portal.
- NTCA, WTA, USTelecom and ITTA [discussed](#) implementation of USF reforms and reporting requirements. NTCA [emphasized](#) the need for prompt action immediately after November 1, 2016, on sorting the model elections and resolution of any budget concerns that may arise from oversubscription for the model.
- [Comments were filed 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.
- The Wireline Competition Bureau issued a [Public Notice](#) to provide guidance regarding implementation of the rolling re-certification process, as established by the 2016 Lifeline Modernization [Order](#).
- NTCA and WTA seek a temporary [waiver](#) of the language contained in the Lifeline Reform [Order](#) that requires ETCs receiving high-cost support to offer a Lifeline-supported standalone broadband offering where the ETC is required to offer Lifeline-supported BIAS.
- The Lifeline Connects Coalition [seeks](#) a waiver of the revised non-usage rule for Lifeline subscribers.
- The FCC's Robocall Strike Force provided an [update](#) on its work at its October 26, 2016 meeting, identifying three goals, what the group has delivered to date, and the work that remains to be done.

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#### Other Key Upcoming Dates

- 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.

## USF Reform

- The Wireline Competition Bureau issued a [Public Notice](#) on October 28, 2016, announcing it has made a technical correction to the A-CAM Model that affects only ILECs listed on the attachment who have affiliated wireline competitive ETCs receiving high-cost USF support within the incumbent's study area. The Bureau said support has been adjusted downwards and/or the percentage of broadband deployment has been increased. It emphasized no other changes were made, and all other companies' A-CAM support amounts remain the same. The Bureau indicated it will be contacting those companies on the list who have already elected to receive model support, and those companies planning to elect model support should contact the Bureau immediately, before the November 1<sup>st</sup> deadline, so their election reflects the corrected support amount.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 25, 2016, announcing USAC has posted the budget control mechanism calculations for RoR carriers for the period January 1, 2017, through June 30, 2017. It said USAC has calculated the total support available to be distributed to RoR carriers and adjustments to each carrier's support to implement the Commission's mechanism to ensure disbursements remain within the \$2 billion budget adopted in 2011. These new support amounts will apply to support payments beginning in January 2017. It is available at: <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx>
- USAC posted [Part III](#) 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 FCC published a [Notice](#) in the Federal Register on October 25, 2016, seeking PRA comments on the new information collection associated with the requirement that certain carriers with high cost reporting obligations must file information about their locations that meet their broadband deployment obligations via an electronic portal to be established by USAC. Carriers receiving Phase II model-based support, all rate-of-return carriers receiving high-cost support, Phase II auction winners, and recipients of Rural Broadband Experiment funding must submit geocoded location data and related certifications to the portal instead of on FCC Form 481 or as is currently required. PRA comments are due December 27, 2016.
- NTCA, WTA, USTelecom, and ITTA [met with](#) Wireline Competition Bureau staff on October 24, 2016, to discuss questions regarding implementation of USF reforms and reporting requirements. NTCA also raised concerns about the potential effects of impending budget controls on carriers' ability to fulfill the aspirations of the reforms, in particular concerns about whether those receiving non-model support would be able to deliver standalone broadband at reasonably comparable rates or achieve buildout obligations in the face of insufficient support due to budget controls and whether those electing model support would be able to achieve more aggressive buildout obligations in the event of oversubscription in the election process.
- NTCA [spoke with](#) Chairman Wheeler's Legal Advisor on October 24, 2016, to emphasize the need for prompt action immediately after November 1, 2016, on sorting the model elections and resolution of any budget concerns that may arise should such elections result in oversubscription for the model. NTCA asserted 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 the consumer rates for standalone broadband that are already highly likely to be negatively affected by insufficient support budgets.
- Home Telephone (SC) [met via teleconference](#) with Commissioner Clyburn's Legal Advisor on October 24, 2016, to discuss the proposals the Wireline Competition Bureau is considering if the A-CAM is oversubscribed and the impact any such proposals may have on carriers electing the A-CAM whose model-based support is less than legacy support. Home urged the Commission not to eliminate such carriers from the A-CAM in any effort to resolve budget concerns. Home offered a possible solution to avoid the need to issue a revised model offer, suggesting the FCC lock in the obligations and support levels of the initial model run for all carriers whose model support is less than legacy support, and then prorate funding to those companies whose model-based support is greater than legacy support.

- Vantage Point filed a [letter](#) on October 27, 2016, to call attention to a [study](#) it filed in July 2015 and a case study analyses it filed on three already-constructed wire-center-wide FTTP networks. Vantage Point said in both studies the A-CAM model overestimated the number of locations. It urged the FCC to use a practical and broad definition of “location” when deciding how to determine compliance with buildout requirements, whether within the model or on non-model support, and suggested the FCC consider providing an additional mechanism for companies who have made the proper investments in their network but still find themselves falling short of model obligations.
- Hayneville Telephone Company filed a [Petition](#) on October 25, 2016, seeking a waiver of the deadline for RoR ILECs to submit revisions to their June 2015 FCC Form 477 data for the revisions to be incorporated in the A-CAM. Hayneville said due to an error caused by a lack of understanding of the FCC instructions, it submitted incorrect data. Haynesville said on September 14, 2016, it revised its June 2015 Form 477 data to correct this error and seeks waiver of the March 30 timeframe to allow the revised Form 477 data for the company’s Alabama study area to replace the incorrect data in A-CAM v2.3.
- Additional comments were filed on October 24, 2016, 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. [Verizon](#) supported the Petition, saying the significant amount of broadband funding provided by New York, the overlap between the CAF program and the New York program, and the timing differences between the two programs represent special circumstances that warrant grant of the requested waiver. It agreed with New York that a “federal-state partnership would be a more efficient means to distribute the [CAF] funding than for both New York and the FCC to conduct separate auctions.” [Cassadaga Telephone](#) supported the Petition, saying grant of the Petition will allow for the establishment of a single auction process that will provide for a greater level of clarity and certainty in its decision-making concerning whether to participate in any auction program. [Middleburgh Telephone](#) also supported the Petition, saying in addition to the benefits achieved through federal-state alignment, the proposal also mitigates concerns presented by holding separate and uncoordinated federal and state auction processes. [WISPA](#) opposed the Petition, arguing granting it would result in New York unreasonably obtaining \$170.4 million in CAF Phase II support, which it said is six times the amount of annual support that Verizon declined in New York, and leave less than \$45 million in annual support available to bidders seeking support for the remaining states and territories. It said not only would grant of the request be unfair to consumers in other states and territories where support is needed, it would also be inconsistent with the policies and principles underlying the Commission’s auction framework and would set a dangerous precedent. The [FairPoint NY ILECs](#) supported the Petition, saying grant of the Petition will allow for the establishment of a single auction process that will provide for a greater level of clarity and certainty in its decision-making concerning whether to participate in any auction program. [ViaSat](#) opposed the Petition, arguing granting it would be contrary to federal universal service policy and the federal statutory framework governing that policy, and would also deprive other states of critical CAF funds they otherwise might receive through the Phase II auction. ViaSat said at the same time, the purported benefits of the requested waiver could be realized even if it is not granted, while the deeper policy issues raised by the Petition are more appropriately addressed in the ongoing CAF rulemaking proceeding. Replies are due October 31. [Public Notice](#) | [All comments available to date](#)
- Empire State Development [met separately with](#) Legal Advisors to Commissioners Rosenworcel and [Clyburn](#) on October 21, 2016, to discuss New York’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. Empire State claimed conducting two auctions in the same territories would raise a host of challenges, including potential funding of duplicative broadband networks and disparate federal-state funding requirements. It said grant of the Petition would resolve these challenges through a simple process by which carriers in New York receive CAF funding in coordination with the state’s broadband program.
- Empire State Development and the Washington D.C. Office of NY Governor Andrew Cuomo [spoke via conference call](#) with Commissioner Pai’s Legal Advisor on October 25, 2016, to discuss New York State’s Petition for Expedited Waiver on CAF Phase II funding. They claimed a waiver of the

competitive bidding rules would allow carriers in New York to receive funding directly from the CAF in coordination with the State's broadband program, and thus would align the federal and state broadband funding processes, dramatically speeding the deployment of broadband infrastructure to rural communities in New York.

- Frontier filed a [letter](#) on October 28, 2016, to respond to StarTouch's challenge to 429 census blocks in Frontier's list of 3,146 census blocks that it identified in its CAF Phase I Round 2 modified deployment plan. Frontier claimed it is more likely than not that StarTouch does not actually make service available in any of these census blocks. ([attachment](#))
- Charter filed a [notice](#) on October 24, 2016, that it provides broadband service at speeds of 3 Mbps/768 kbps in the census blocks identified in the [attachment](#), which were identified in Frontier's modified Phase I deployment plan. Charter claimed the census blocks in Exhibit A are already served by an unsubsidized competitor and thus not eligible for Phase I support. [Armstrong](#), [Shentel](#), [Suddenlink Communications](#) and [WaveDivision Holdings](#) also filed notifications of served census blocks.
- Smith Bagley filed a [redacted letter](#) on October 27, 2016, to provide the Commission with information on the need for continuing support for Tribal lands and to make recommendations for special treatment for carriers serving remote Tribal lands. SBI claimed stable funding and meaningful, achievable performance requirements are essential to advancing universal service and infrastructure development in hard to reach areas. SBI also suggested that legacy high-cost support being provided to carriers serving remote Tribal lands should continue to be frozen until the Commission acts on a new Tribal lands rulemaking.
- NTCA [met with](#) Wireless Telecommunications Bureau staff on October 25, 2016, to discuss the use of Form 477 data to determine which census blocks are considered covered by alleged "unsubsidized competitors" and therefore might be deemed ineligible for Mobility Fund II support. NTCA said it is essential the Commission adopt a robust and accessible 477 data challenge process to confirm purported coverage and a reasonable transition given the long-term nature of the investments that are currently supported. It also suggested the Commission carefully consider how much funding is necessary to achieve the goal of the Mobility Fund program.
- CoBank filed a [letter](#) on October 28, 2016, to express support for the adoption of policies and rules for the Mobility Fund II that recognize the need to promote 4G LTE deployment that will cover areas of agricultural operations. CoBank concurs with the recommendations outlined by Deere & Company for the FCC to begin measuring the cropland areas that lack wireless broadband and that could be eligible for MF-II support. CoBank also urged the FCC to reform contributions to the USF, saying the current mechanism for contributions is outmoded and does not reflect current and future use of communications networks and services by consumers and "is in a death spiral."
- US Cellular and CostQuest [met with](#) Wireless Telecommunications Bureau staff on October 25, 2016, to present a study authored by CostQuest that included drive test data recently performed in South Carolina and revealed consistently lower coverage levels, and fewer successful connections to 4G LTE data networks, than the aggregated Form 477 data might suggest for South Carolina. U.S. Cellular claimed the recently released Form 477 data appears to be inconsistent because the Commission did not require a standardized reporting methodology. It argued standards for Form 477 data that lead to conservative mapping results prevent carriers from overstating coverage to reduce competition, and argued the challenge process should be limited to areas that have an anomaly - not be a process for correcting widespread overstatements of coverage throughout rural America.
- The Rural Wireless Association filed a [letter](#) on October 27, 2016, to express concern about the speed at which the Commission is pursuing an Order on the Mobility Fund II and concern about coverage data accuracy, coverage definition, technological incompatibility, the MF II budget, the funding disbursement mechanism, and transition from current support. RWA urged the Commission to focus on getting MF II done right, rather than done hastily, and suggested the Commission release a FNPRM before the end of the year that seeks comment on the Bureau's newly-raised MF II proposals and on items that have been submitted in the record since the June 2014 FNPRM

- The Competitive Carriers Association, US Cellular, and ClearSky Technologies [met with](#) Wireless Telecommunications Bureau staff on October 21, 2016, to discuss concerns with the quality and reliability of the data compiled on FCC Form 477. It asserted permitting filers to determine their own coverage models and input assumptions as well as use of low-resolution imagery in connection with Form 477 has resulted in a lack of any common context or convention for the mobile broadband coverage data. It said the resulting variations and inaccuracies raise questions about the quality, reliability, and utility of the Form 477 data, and thus it provides an unreliable view of mobile broadband coverage, particularly in rural areas and areas of low-population density.
- C Spire Wireless [met with](#) Legal Advisors to Commissioners Rosenworcel and Clyburn on October 19 and 20, 2016, to discuss Mobility Fund Phase II reforms and the Form 477 data. C Spire claimed carriers have used significantly different methodologies to generate Form 477 coverage data, resulting in significantly different levels of coverage being depicted on Form 477 maps. It said without a consistent set of standards for submitting this engineering data, the overall picture of where coverage and 4G LTE service are available is inaccurate and could negatively impact any particular area's eligibility for additional investment of USF support. C Spire said it is incumbent upon the Commission to insist on a consistent set of standards in the submission of Form 477 coverage data before attempting to redirect billions of support funds in America's vast rural areas.

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## ICC

- Laurel Highland Total Communications filed a [letter](#) on October 27, 2016, to comment on the denial of its subsidiaries' (Yukon-Waltz Telephone and Laurel Highland and Yukon) requests for waiver of the ICC Eligible Recovery rules. It pointed out that for Yukon the decision came 1,378 days after the filing, and for Laurel/Yukon, 1,288 days after the filing, saying this is not a reasonable interval for a decision and may indicate a systemic problem with the Commission in addressing such petitions. It also said, as pointed out in the petitions, at the time the decision was made to convert from average schedule-based settlements to cost-based settlements, the companies could not have foreseen the benefits of such a conversion would last a brief nine months, being negatively affected by the adoption of the 2011 Transformation Order. It said not only did the Commission's Order denying the companies' petitions take nearly four years, but the rationale for denying it did not adequately address the companies' arguments.

## Broadband

- The FCC released a [Notice](#) announcing the Commission has adopted an Order at its October 27, 2016 Open Meeting, containing rules that require broadband ISPs to protect the privacy of their customers. The rules separate the use and sharing of information into three categories: opt-in, opt-out, and exceptions to consent requirements. The rules also include transparency requirements, a requirement that broadband providers engage in reasonable data security practices, guidelines on steps ISPs should consider taking, and common-sense data breach notification requirements. The scope of the rules is limited to broadband service providers and other telecommunications carriers, and do not apply to the privacy practices of web sites and other edge services over which the Federal Trade Commission has authority. The FCC also released a [Fact Sheet](#) on the Order, and [Chairman Wheeler](#) and Commissioners [Clyburn](#) and [Rosenworcel](#) issued statements. (Order not yet released.)
- Verizon [met with](#) Commissioner Clyburn's Legal Advisor on October 20, 2016, to discuss what it says are the benefits of a sensitivity-based approach to privacy and data security. It encouraged the FCC to follow the FTC's approach with respect to de-identified data, and discussed why it believes broadband providers should be permitted to market their services to their own customers without first obtaining opt-in or opt-out consent. Verizon encouraged the Commission to allow providers to share information with affiliates provided such affiliates honor consumers' choices concerning use of their information,

and asserted the Commission cannot, and should not, prohibit arbitration clauses in consumer contracts.

- AT&T [spoke with](#) Matt DeInero of the Wireline Competition Bureau on October 19 and 20, 2016, to discuss the approach to broadband privacy described in the Chairman's [Fact Sheet](#). AT&T suggested the Commission 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 also met with Commissioner Clyburn's Legal Advisor [to discuss](#) the same issues.
- Frontier and ITTA [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Pai, O'Rielly and Rosenworcel and Wireline Competition Bureau staff on October 20, 2016, to discuss consumer consent, data breach notifications, and implementation timelines in the proposed broadband privacy order. ITTA expressed general support for the sensitivity-based approach to consumer consent outlined in the [Fact Sheet](#), but objected to the inclusion of web browsing history and app usage history as being considered sensitive and subject to a requirement that ISPs obtain opt-in consent to use and share such information. ITTA reiterated the data breach notification requirement should be triggered by the ISP's determination of the breach, and advocated for a two-year implementation period for whatever rules the Commission adopts.
- NCTA met with Legal Advisors to Commissioners [Clyburn](#) and [Rosenworcel](#) on October 20, 2016, to discuss the scope of the proposed broadband privacy rules and the circumstances in which they would apply to ISPs. It emphasized the need to make clear the rules would apply to ISPs only in their capacity as providers of broadband access and connectivity to the Web, but not as providers of web-based or edge services from their websites, apps, social media sites and other internet-based platforms. NCTA also discussed the need to harmonize the FCC's broadband privacy rules with the FTC's privacy framework, and said the Commission should refrain from adding new categories of data to the definition of sensitive information beyond those adopted in the FTC's privacy framework.
- Public Knowledge [met with](#) Commissioner Rosenworcel's Legal Advisor on October 20, 2016, to assert both browser and application history should be classified as sensitive. It argued the carriers misconstrue the FTC 2012 Privacy Report and distort its recommendations with regard to broadband internet access service. It asserted the existing carrier practice of examining information to determine sensitivity, making an unreviewed and unchallengeable determination about what browser or application history is sensitive, and acting as it sees fit has never been approved by the FTC and is subject to pending complaints at the FTC and the FCC. It also asserted the Commission has both the authority and evidence in the record to prohibit mandatory arbitration clauses for violations of its privacy regulations.
- Free Press [spoke by telephone](#) with Commissioner Rosenworcel's Legal Advisor on October 20, 2016, to argue that proposals to consider web browsing history and visits to certain URLs non-sensitive, and thus made subject to weaker consent requirements and privacy protections, is infeasible at best and antithetical to the very notion of the common carrier safeguards now rightly applied to broadband internet access service. Free Press said the Communications Act makes clear that carriers must neither interfere unreasonably with their customers' messages, nor profit from the content of those messages without consent. It urged the Commission to adopt strong rules, and in no event heed calls to remove certain types of content, such as web browsing history or visits to particular categories of sites, from the sensitive data category.
- Profs. David Farber and Christopher Yoo of the University of Pennsylvania Law School [met with](#) Commissioner Rosenworcel's Legal Advisor on October 20, 2016, to discuss how the proposed broadband privacy rules would interact with the technology of the internet. They also met with Legal Advisors to [Chairman Wheeler](#) and Commissioners [Pai](#), [O'Rielly](#) and [Clyburn](#) to discuss the same issues.

- The Future of Privacy Forum [met with](#) Commissioner Clyburn's Legal Advisor on October 20, 2016, to discuss ways in which the Commission could ensure that its proposed broadband privacy rules are consistent with the FTC's privacy framework and aligned with generally accepted privacy regimes around the world. It 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. It attached a copy of its presentation that explained digital marketing and de-identification, the de-identification infographic that was provided, *A Visual Guide to Practical Data De-Identification*, and a document detailing data exchanges in the internet ecosystem.
- Public Knowledge, New America's Open Technology Institute, Center for Democracy and Technology, Center for Digital Democracy, Consumers Union, Access Now, Consumer Action, Free Press, Common Sense Kids Action, Electronic Privacy Information Center and the American Civil Liberties Union [met with](#) Chairman Wheeler and his staff and staff of the Wireline Competition Bureau and Office of General Counsel on October 20, 2016, to urge the FCC to stand firm on its proposal to categorize web browsing and app usage histories as sensitive. They expressed concern that the exception for de-identified data could become an exception that swallows the rule. They also claimed there is evidence in the record documenting the ubiquity of mandatory arbitration clauses in telecommunications service contracts and the harm they cause to consumers, and said the Commission should use its authority pursuant to section 201(b), 338(i), and 631 to prohibit enforcement of mandatory arbitration clauses.
- DMA, IAB, 4A's, AAF and ANA [met with](#) Commissioner O'Rielly and his Legal Advisor on October 20, 2016, to discuss their proposal for categorizing web browsing and application-use history information as non-sensitive, and to subject the use of that data to a requirement to provide "clear, meaningful, and prominent notice that permits the customer to take action to opt-out" of its use, which they said is similar to existing industry self-regulatory standards developed by the Digital Advertising Alliance. They also expressed concern the record does not support the approach to sensitive information set forth in the Fact Sheet.
- 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 24, 2016, to respond to Free Press' [ex parte](#), which they claimed incorrectly presumes that broadband internet access service providers can operationalize the standard the 4A's [proposed](#) only by examining the content of a communication. The 4A's said companies across the internet have used a combination of administrative and technical controls to limit the use of sensitive data for marketing and advertising purposes, and these practices were developed to comply with the FTC's privacy framework and the self-regulatory program administered by the Digital Advertising Alliance. They argued the current online ecosystem subsidizes content and programming that consumers value, promotes innovation and grows the economy, and the continued health of this ecosystem depends on access to data.
- Jon Leibowitz from Davis Polk [spoke separately with](#) Commissioner Pai and [Matt Del Nero](#), Chief of the Wireline Competition Bureau, on October 20, 2016, to discuss where the Chairman's broadband privacy [Fact Sheet](#) differs from the 2012 FTC Privacy Report. He also discussed the treatment of IP addresses under the proposed rule, where sensitive data would include all web browsing data, and the FTC's approach to the use of customer data for first-party marketing purposes.
- The Multicultural Media, Telecom and Internet Council, NAACP, Hispanic Technology and Telecommunications Partnership, and National Action Network [met separately with](#) Commissioner Rosenworcel and her Legal Advisor and Commissioner Clyburn's Legal Advisor on October 20, 2016, to urge the Commission to be sensitive to the thousands of constituents served by their organizations who will be vulnerable if edge providers and ISPs are subjected to different privacy rules. They also expressed support for beneficial customization of consumer data to promote access to new and innovative products and services offered over the internet.

## Open Internet

- The FCC is [circulating](#) an item entitled “Small Business Exemption from Open Internet Enhanced Transparency Requirements.”

## USF

- The Commission released an [Order](#) on October 26, 2016, denying SureWest Telephone’s [Application for Review](#) 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. The Commission said special circumstances did not exist, nor were they persuaded by SureWest’s other arguments.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 27, 2016, to provide guidance regarding implementation of the rolling re-certification process, as established by the 2016 Lifeline Modernization [Order](#). The Bureau clarified that the rolling re-certification process for each subscriber must be completed, not merely begun, by 12 months following the subscriber’s service initiation date and every 12 months thereafter, and clarified the time period in which carriers generally should attempt rolling re-certification efforts. The Bureau also clarified that the service initiation date is the date on which the subscriber began to receive Lifeline-supported service from the current ETC.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 28, 2016, to announce it is extending the deadline for E-rate participants with an October 28, 2016 invoice deadline for Funding Year 2015 to request an extension of the invoice deadline due to technical problems that might have prevented parties from filing. Entities and service providers with an October 28, 2016 invoice deadline now have until 11:59 p.m. on October 31, 2016, to submit extension requests.
- The Wireline Competition Bureau released a [Public Notice](#) on October 28, 2016, granting, denying, and dismissing various petitions related to actions taken by USAC on E-rate. Petitions for reconsideration or applications for review of these decisions must be filed within 30 days of the Public Notice.
- NTCA and WTA filed a [Petition](#) on October 24, 2016, seeking a temporary waiver of the language contained in the Lifeline Reform [Order](#) that requires ETCs receiving high-cost support to offer a Lifeline-supported standalone broadband offering where the ETC is required to offer Lifeline-supported BIAS. NTCA and WTA said the high-cost USF programs that enable the provision of standalone broadband offerings by RLECs in rural areas provide insufficient support to ensure reasonable comparability between the rates paid by rural and urban consumers. They also argued until the High-Cost USF mechanism enables access by all rural consumers to standalone broadband services at reasonably comparable rates, it would be futile for RLECs to undertake the effort to create and track specialized standalone broadband Lifeline offerings for low-income rural consumers.
- The Lifeline Connects Coalition filed a [Petition](#) on October 25, 2016, seeking a waiver of certain new Lifeline [rules](#). It asked the Bureau to waive sections 54.405(e)(3) and 54.407(c)(2), which replaces the 60-day non-usage period with 30 days, because the new 30-day non-usage rules will harm and endanger consumers. The Coalition also asked the Bureau to direct USAC to rescind its guidance that would implement the 30-day non-usage rule prior to the December 2, 2016 effective date, which it argued is unlawful and impractical for ETCs to administer, and to waive section 54.407(c)(2) because it is in direct conflict with section 407(a) of the Commission’s rules. Rule 54.407(a) establishes that Lifeline service providers will be reimbursed on the first of the month based on the total number of subscribers enrolled in Lifeline that they serve, while rule 54.407(c)(2) bars reimbursement for Lifeline service provided to subscribers enrolled in Lifeline who are in a non-usage cure period.
- TracFone Wireless filed a [letter](#) on October 28, 2016, to express support for the Lifeline Connects Coalition [Petition for Waiver](#) of sections 54.405(e)(3) and 54.407(c)(2), which would replace the 60-day non-usage period with 30 days. TracFone said LCC’s Petition seeks relief similar to that sought by



TracFone, and claimed the Lifeline Modernization Order articulates no explanation or reason for reducing the non-usage period for de-enrollment from the Lifeline program based on consumer non-usage from 60 days to 30 days, nor for reducing the customer notification and cure period from 30 days to 15 days.

- GCI [met with](#) General Counsel and Wireline Competition Bureau staff on October 19 and 21, 2016, to discuss GCI's pending [Petition](#) seeking reconsideration or clarification of the new rolling recertification procedures adopted in the Lifeline Reform [Order](#). GCI asserted the new rolling recertification rule was adopted without any prior notice and as a result the Commission was not informed about the costs to subscribers and ETCs from the change. GCI urged the rule be interpreted to permit ETCs to continue to have sufficient flexibility in the timing of recertification to allow GCI to continue to recertify the substantial majority of its subscribers through the customer-initiated approach it has used successfully to date.
- The Public Utility Division of the Oklahoma Corporate Commission filed a [reply](#) on October 28, 2016, to Q LINK Wireless' [opposition](#) to its [request](#) to hold in abeyance Q LINK's application for designation as a Lifeline Broadband Provider ETC. The PUD asserted Q LINK incorrectly asserts the existence of its current ETC designation precludes PUD from having any interest in the LBP ETC designation it now seeks in Oklahoma, and said Q LINK fails to mention this existing ETC designation is limited to the non-rural service areas in Oklahoma for which Q LINK is authorized to provide Lifeline service.
- Q LINK Wireless filed an [opposition](#) on October 24, 2016, to the Oklahoma Corporation Commission's [request](#) to hold in abeyance Q LINK's application for designation as a Lifeline Broadband Provider ETC. Q LINK argued the OCC has no possible interest since Q LINK already holds an ETC designation from the OCC, is subject to the OCC's jurisdiction as a state-designated ETC, and has been operating successfully in Oklahoma pursuant to that ETC designation and an FCC-approved compliance plan. Q LINK also said this is not an objection to its application, but is actually a request for stay of the Lifeline Broadband Provider rules pending judicial review of the Lifeline Modernization Order and the Pennsylvania PUC's Petition for Clarification of that Order.
- Q LINK Wireless filed a [Petition](#) for Reconsideration on October 28, 2016, of the Wireline Competition Bureau's September 30, 2016 [Public Notice](#) that clarified ETCs do not meet the broadband minimum service standard with service offerings that decrement based on subscriber voice or broadband usage if decrementing results in the customer not having available at least the minimum required amount for the supported service. Q LINK asserted the Bureau has failed to articulate any rationale for its conclusions and its conclusion is arbitrary and capricious.
- Cintex Wireless filed a [Petition](#) on October 24, 2016, requesting streamlined designation as a Lifeline Broadband Provider ETC in all areas of the United States in which Cintex provides 3G or LTE CMRS data services only for purposes of participation in the USF Lifeline program. It indicated it will not seek High Cost support
- Spot on Networks filed a [Petition](#) on October 26, 2016, requesting streamlined designation as a Lifeline Broadband Provider ETC for the limited purpose of providing broadband internet access service supported by the USF Lifeline program. Spot On said it satisfies all of the requirements for streamlined designation as an LBP ETC and is committed to complying with all of the Commission's rules and regulations for ETCs providing broadband, including the minimum service standards.
- IVANS and Ability Network [met with](#) Wireline Competition Bureau and General Counsel staff on October 25, 2016, to discuss IVAN's [Request for Review](#) of a USAC decision on whether enterprise services using MPLS and Frame Relay are USF assessable. They discussed previous submissions made by IVANS that they claim demonstrate IVANS over-reported its assessable revenues even if: the double-counting from AT&T's payments is not eliminated; IVANS were required to file Form 499s back more than five years; and MPLS services are assessable.

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**Misc.**

- The FCC released the [tentative agenda](#) for its November 17, 2016 Open Meeting. It will consider: a Report and Order and Second FNPRM on business data services; a Report and Order on the second phase of the Mobility Fund; an NPRM on roaming obligations of commercial mobile service providers and the regulatory classification of voice over LTE service; and a Report and Order on video accessibility. Chairman Wheeler also released a [Fact Sheet](#) on access to 4G LTE mobile voice and broadband service.
- The FCC released the four Orders it adopted at its October 27, 2016 Open Meeting rejecting petitions for reconsideration of \$20 million in fines issued against four prepaid calling card companies - [Locus Telecommunications](#), [Lyca Tel](#), [NobelTel](#) and [Touch-Tel USA](#) - for deceptively marketing their products. The Commission has referred these matters to the U.S. Department of Justice, which leads the process of collecting outstanding fines in federal court. [News Release](#). The FCC [deleted](#) three consent items from the meeting agenda, as they had been approved by the Commission.
- The FCC's Robocall Strike Force provided an [update](#) on its work at its October 26, 2016 meeting, identifying three goals, what the group has delivered to date, and the work that remains to be done. The three goals are: robust call blocking and filtering tools for consumers, faster implementation of caller authentication standards, and solutions to detect and mitigate unwanted calls. Commissioner Clyburn gave [remarks](#) at the meeting, noting that during her #ConnectingCommunities tour the issue of robocalls regularly arose, even when it was not the topic of the scheduled visit. She said while we can talk about authentication, signaling, certificate governance and other technical functions, the focus should be on easily implemented, workable solutions to end this practice. Commissioner Rosenworcel also gave [remarks](#), saying there is no mission accomplished until the calls stop. She asked the members of the Strike Force to "work harder, faster, better," and said the Commission will help.
- The Wireline Competition Bureau issued a [Public Notice](#) on October 28, 2016, listing Acknowledgements of Confidentiality filed by parties seeking access to confidential information filed in the special access data collection proceeding since the September 2, 2016 Public Notice. Parties that submitted confidential information in response to the collection have until November 4, 2016, to object to the disclosure of their data and information to any of the parties listed in the attachment to this Public Notice.
- Alaska Communications [met separately with](#) Chairman Wheeler's Senior Counselor and Legal Advisor, FCC General Counsel, Commissioners Clyburn, Pai and O'Rielly and their Legal Advisors, and Commissioner Rosenworcel's Legal Advisor on August 11, 2016, to urge the Commission to defer any consideration of changes to the regulation of BDS in Alaska in light of the state's unusual market dynamics and because the Commission's special access data does not reflect complete information on the size or relative market positions of all of Alaska's BDS providers. ACS said if the Commission nevertheless moves forward with re-regulation of BDS in Alaska, it should impose new price regulation on the state's most dominant BDS provider that controls the large majority of the market, GCI.
- AT&T filed a [letter](#) on October 24, 2016, to assert the BDS [Fact Sheet](#) effectively ignores the Commission's unprecedented data collection and proposes Phase I regulation for all ILEC DS1 and DS3 services nationwide. AT&T said the Fact Sheet's proposal for a new annual X-Factor of 3 percent and special one-time adjustment of 11 percent is also arbitrary. AT&T also said while the Fact Sheet does not propose any formal rate regulation of Ethernet services, it does outline a series of presumptions and circumstances that will elicit greater scrutiny in complaint cases, and urged the Commission to ensure the design and implementation of these scrutinized circumstances do not become a back-door form of the benchmarking or other rate regulation for which the Fact Sheet acknowledges there is no record support.
- CenturyLink filed a [letter](#) on October 28, 2016, to respond to the [Fact Sheet](#) describing Chairman Wheeler's proposal for regulating the business data services marketplace. CenturyLink claimed the record evidence provides no basis for the contemplated rate cuts of a one-time downward adjustment of 11 percent for DSn BDS offerings, and asserted the Fact Sheet significantly understates the actual

rate cuts proposed. CenturyLink also expressed concern with the proposed annual X-factor reduction of 3 percent minus inflation, saying its attached declaration shows that in no circumstance would the appropriate X factor exceed 1.81 percent. CenturyLink said the Fact Sheet asserts that all TDM services nationwide will be subject to price cap regulation, claiming the Fact Sheet's approach contravenes the principles governing the identification of geographic markets.

- Sprint [met with](#) Legal Advisors to Chairman Wheeler and Commissioner Rosenworcel and the Chief of the Wireline Competition Bureau on October 20, 2016, to urge the Commission to move ahead with the BDS Order being considered by the Commission. Sprint also discussed the need to: transition to new rules as quickly as possible; recognize that wholesale rates must be lower than retail rates; and reflect in the Further Notice the lack of competition for Ethernet services in the majority of the country, even for higher-capacity services.
- Sprint [met with](#) Wireline Competition Bureau staff on October 19, 2016, to provide additional support for one aspect of Chairman Wheeler's [proposal](#) to reform the BDS marketplace, the "update of legacy TDM rules governing LECs designed to address the artificially high prices being charged." Sprint asserted the record shows that such action is overdue and urged the Commission to implement the proposed reforms as quickly as administratively practicable.
- Level 3 [met with](#) Chairman Wheeler's Senior Counselor and Legal Advisor, Commissioner Clyburn's Legal Advisor, and Chief of the Wireline Competition Bureau on October 24 and 25, 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 suggested 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 [spoke with](#) Commissioner Rosenworcel's Legal Advisor on October 27, 2016, to discuss points described in its October 20, 2016 [ex parte](#). In that filing, Level 3 expressed support for Chairman Wheeler's proposal to apply ex ante rate regulation to DS1 and DS3 business data services provided by ILECs.
- Frontier [met with](#) Paul de Sa, Chief of the Office of Strategic Planning and Policy Analysis, on October 26, 2016, to discuss ways in which the draft BDS proposal would unduly affect mid-size ILECs. Frontier emphasized the importance of ensuring the Commission carefully consider the current state of market competition in how it implements any reform to existing grants of Phase II pricing flexibility, noting the particularly competitive nature of the transport market.
- Frontier [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly on October 19, 2016, to discuss the ways in which the [draft BDS proposal](#) would unduly affect mid-size ILECs like Frontier in ways that it claims would be deeply harmful to investment in American broadband connectivity and jobs. Frontier also emphasized the importance of ensuring the Commission carefully considers the current state of market competition in how it implements any reform to existing grants of Phase II pricing flexibility, noting the particularly competitive nature of the transport market.
- Windstream and Prof. Robert Willig of Princeton University [met separately](#) with Legal Advisors to Commissioners Clyburn, Rosenworcel and Chairman Wheeler, FCC General Counsel, and the Wireline Competition Bureau Chief on October 19, 2016, to discuss Willig's [declaration](#), which set out the economic underpinnings of the Parity Pricing Principle and its application to business data services sold by incumbent facilities owners to competitive providers who combine that input with additional services to create business communications solutions. Windstream asserted regulation of wholesale prices for BDS based on the Parity Pricing Principle need not address every implementation detail upon adoption to have meaningful benefits for competition. Windstream also said a rule that defines the relevant finished communication solution and identifies the types of costs that are avoided when a facilities owner provides connectivity on a wholesale basis would help guide commercial negotiations and could enable parties to reach agreement without the need to file a complaint.

- INCOMPAS [spoke with](#) Commissioner O’Rielly’s Legal Advisor on October 20, 2016, to urge the Commission to ensure the rate decreases described in the Chairman’s [Fact Sheet](#) occur as quickly as possible. INCOMPAS also 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.
- INCOMPAS, the Competitive Carriers Association, the Computer & Communications Industry Association, Public Knowledge, the Open Technology Institute at New America, Engine, Sprint, Level 3, US Cellular, and BT Americas sent a [letter](#) to Chairman Wheeler on October 27, 2016, to express support for BDS reform, and to urge the Commission to include the BDS Reform Order on the FCC’s November Open Meeting agenda.
- Charter Communications [met with](#) Legal Advisors to Commissioners Clyburn and O’Rielly on October 20, 2016, to assert the Commission cannot lawfully regulate the large universe of BDS provided on a private-carriage basis. Charter also argued that 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, and said the Commission should refrain from regulating Ethernet services at any speed, or, at a minimum, seek further comment before adopting any regulations that directly or indirectly impact Ethernet pricing.
- Public Knowledge, New America’s Open Technology Institute, the Computer & Communications Industry Association, and Common Cause [met with](#) Commissioner Rosenworcel’s Legal Advisor on October 20, 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 Commission released its [Section 257 Triennial Report to Congress](#) on October 27, 2016, which examines the market entry barriers for entrepreneurs and other small businesses in the communications industry, FCC actions to eliminate these barriers, and proposals for legislative changes that would further this goal. The Report delineates Commission actions to reduce the barriers to entry for entrepreneurs and small businesses, to improve its own procedures and processes, and discusses a number of legislative proposals that would help entrepreneurs and other small businesses compete more effectively in the communications marketplace.
- Chairman Wheeler [announced](#) on October 27, 2016, the appointment of Lisa Hone as his Legal Advisor, with responsibility for wireline telecommunications issues. She will replace Stephanie Weiner.

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## Upcoming Filing Dates

- 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.
- 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. 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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