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November 14, 2016 HIGHLIGHTS

- The FCC released the [agenda](#) for its November 17, 2016 Open Meeting. The FCC will consider: a Report and Order on the second phase of the Mobility Fund; an NPRM on roaming obligations of CMRS providers and the regulatory classification of voice over LTE service; a Report and Order and Second FNPRM on business data services; and a Report and Order on video accessibility. The FCC will also consider two items as consent agenda.
- Chillicothe Telephone and Horizon Telecom filed [comments](#) on the [Public Notice](#) that asked what measures should be considered to address the high level of interest in A-CAM model-based support.
- NTCA [discussed](#) resolution of USF budget concerns due to oversubscription for model-based support with Chairman Wheeler's Legal Advisors and Wireline Competition Bureau staff, and with Legal Advisors to [Commissioners Rosenworcel, O'Rielly, and Pai](#). Shirley Bloomfield, NTCA's CEO, posted [a blog](#) urging the FCC to provide sufficient funding to cover both the severe budget shortfall on the non-model side and to satisfy the demand for model-based support needed over ten years.
- TDS, Great Plains Communications, and ITTA [discussed](#) allocation of sufficient additional funding for model-based support to overcome the budgetary shortfall in the initial \$150 million annual allocation.
- IAMO Telephone [seeks waiver](#) of any FCC rules or policies that would preclude acceptance of its late-filed election to accept model-based USF support.
- [Carriers informed](#) the FCC and CenturyLink that they currently serve some of the census block that CenturyLink recently proposed to serve using CAF Phase I incremental support.
- NTTA and Gila River [discussed](#) Tribal broadband deployment proposals. The Navajo Nation Telecommunications Regulatory Commission filed [reply comments](#) supporting a Rural Tribal Area Plan modeled on the Alaska Plan.
- The WCB [approved](#) NECA's [2017 Modification of Average Schedule High Cost Loop Support Formula](#).
- The FCC [announced](#) the Consumer and Governmental Affairs Bureau will host a webinar on robocalls on December 14, 2016.
- The FCC [announced](#) [NASUCA, et al.](#) and [NTIA](#) filed Petitions for Reconsideration of the [Technology Transitions Order](#). Oppositions will be due 15 days from the Federal Register publication of this Notice; replies will be due 10 days after the time for filing oppositions has expired.

Other Key Upcoming Dates

- Nov. 14 - Due date for parties to submit *ex partes* on measures to address the high level of interest in A-CAM model-based support. [Public Notice](#)
- Dec. 2 - Comments [due](#) on AT&T's [Petition](#) for forbearance from certain tariffing rules. Replies due December 19.
- Dec. 6 - Comments due on the [FNPRM](#) on eliminating duplicative high-cost funding in areas where more than one carrier is receiving support for the provision of 4G LTE service. Replies due January 5. [FR](#)

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USF Reform

- Chillicothe Telephone Company and Horizon Telecom filed [comments](#) on the Wireline Competition Bureau's [Public Notice](#) seeking comments on what measures should be considered to address the high level of interest in A-CAM model-based support. CTC recommended the Bureau accept and freeze the A-CAM support and associated build-out obligations elected by it and other section 54.311(e) glide-path companies, submitting this is in the public interest because it will free up additional amounts of funding each year for the A-CAM mechanism as transition payments decrease and will eliminate the adverse impacts on the budget for the remaining RoR companies. It indicated that if its ultimate annual A-CAM support is reduced, or if its per location support benchmark/or build-out obligations are revised significantly, it will have to reconsider its initial election.
- NTCA [met separately](#) via telephone with Commissioners Rosenworcel and O'Rielly's Legal Advisors on November 8, 2016, to urge the Commission to provide sufficient funding to overcome the USF budget shortfall for both the model option and the non-model mechanisms as part of final implementation steps of USF reform. NTCA said recent Commission releases reporting on model oversubscription and the application of a significantly increased "budget control" for non-model support reinforce concerns that the reformed USF programs are underfunded, suggesting the deficit in USF support amounts to be about \$260 million per year. NTCA also suggested the Commission recalibrate buildout obligations in light of any USF support shortfalls and avoid any adverse impact on the hundreds of companies that did not elect model-based support.
- NTCA [met with](#) Chairman Wheeler's Legal Advisors and Wireline Competition Bureau staff on November 3, 2016, to discuss resolution of USF budget concerns due to oversubscription for model-based support. NTCA suggested any resolution relating to model oversubscription must ensure calibration of build-out obligations to available model-based support to the extent the increases that each model elector is slated to receive would be reduced and must not have an adverse impact on the companies that did not elect model-based support. NTCA also discussed methods for enacting the measures in the 2016 RoR Reform Order that placed RLECs on a more equal footing with all other BIAS providers with respect to USF contributions. NTCA also [met with](#) Commissioners O'Rielly and [Pai's](#) Legal Advisors to discuss similar issues.
- Shirley Bloomfield, NTCA's CEO, posted [a blog](#) on NTCA's website on November 8, 2016, urging the FCC to provide sufficient funding to cover both the severe budget shortfall on the non-model side and to satisfy the demand for model-based support needed over ten years to enable small, community-based telecom companies to deliver high quality, affordable voice and broadband services in rural America. She said it has been clear for years that the federal high-cost USF program is underfunded and in the past few weeks, the underfunding of both the model and non-model high-cost USF programs "finally came home to roost." NTCA asked the FCC to take the same bold and visionary steps that it did with the other USF programs to come up with sufficient funding levels to satisfy need and demand.
- TDS Telecommunications, Great Plains Communications, and ITTA [spoke with](#) Chairman Wheeler's Legal Advisors and Wireline Competition Bureau staff on November 7, 2016, to suggest the Commission allocate sufficient additional funding for model-based support to overcome the budgetary shortfall in the initial \$150 million annual allocation. ITTA urged that, at a minimum, the FCC allocate sufficient additional funding to enable every RoR company that accepted model-based support to receive a minimum of \$146.10 per location, the same amount of per-location support that CAF Phase II provides to price cap carriers. ITTA also urged the FCC to implement the model-based plan as soon as possible, making it effective no later than January 1, 2017. They also [met separately with](#) Legal Advisors to Commissioners Clyburn, Pai, Rosenworcel, and O'Rielly on November 2-3, 2016, to discuss the same issues.
- IAMO Telephone Company filed a [Petition for Waiver](#) on November 4, 2016, of any Commission rules or policies that would preclude acceptance of its attached letters, dated October 31, 2016, electing to accept model-based USF support and committing to satisfy the associated service obligations for its Iowa and Missouri study areas. It said it submitted both letters via email to the Bureau on October 31st,

but an error in the email address made them undeliverable, and the fcc.gov server did not notify IAMO that the emails did not go through.

- Citizens Cablevision (VA) filed [a letter](#) on November 4, 2016, to notify the FCC and CenturyLink that it is a local exchange carrier currently offering qualifying broadband service in some of the 9,703 census blocks CenturyLink recently proposed to serve using CAF Phase I incremental support. It said the identified census block should be considered “served” for the purposes of CenturyLink’s upcoming 54.312(c)(4) certification. The following companies filed similar notices: [Rural Telephone](#), [Knology Total Communications](#), [Wilkes Communications](#), [New Wave Communications](#), [Tri-County Telephone Membership](#), [Wiregrass Telecom](#), [Paul Bunyan Rural Telephone Coop](#), [Hiawatha Broadband](#), [Tekstar Communications](#), [All West Communications](#), [ATN International](#), [Boycorn](#), [Cable One](#), [Charter Communications \(Excel exhibit\)](#), [Comcast](#), [Gardonville Cooperative Telephone Association](#), [Mediacom Communications](#), [Northland](#), [Shentel Cable Television](#), [StarVision](#), [Suddenlink Communications](#), [Sweetwater Cable Television](#), [Viaero Wireless](#), [Wave Division Holdings](#), [Allens Communications](#), and [Vast Broadband](#).
- The National Tribal Telecommunications Association and Gila River Telecommunications [met with](#) Wireline Competition Bureau staff on November 7, 2016, to discuss Tribal broadband deployment proposals. They reiterated their request for waiving or modifying the OpEx limitation rule for carriers with a majority of locations in census blocks on Tribal lands by comparing such carriers’ study area OpEx cost per location to a regression model-generated OpEx per location plus 2.5 standard deviations. They also discussed two primary objectives for the Tribal Broadband Factor, increasing broadband deployment to unserved Tribal locations and providing additional support to carriers serving Tribal locations to enable continued maintenance and enhancements to existing broadband networks.
- The Navajo Nation Telecommunications Regulatory Commission filed [reply comments](#) on November 10, 2016, in response to ex partes filed by Smith Bagley and NNTA on a Tribal Broadband Plan. The NNTRC supports adoption of a “Remote Tribal Areas Plan” patterned after the “Alaska Plan,” and argued Tribal Governments must be involved in the process and approve deployment plans. It also said: a Rural Tribal Area Plan should include all types of carriers; the FCC should provide more flexibility in the OpEx limits to reflect the higher cost of doing business in Indian Country by allowing carriers to increase their OpEx using a formula that includes a 2.5 standard deviation factor; and the FCC should adopt a Tribal Broadband Factor of 25 percent.
- AT&T met separately with staff from [Chairman Wheeler’s office](#) and [Legal Advisors](#) to Commissioners O’Rielly and Rosenworcel on November 3 and 4, 2016, to urge the Commission not to reinvent the wheel with Mobility Fund II, but instead strive for consistency among all CAF programs. AT&T suggested incorporating the CAF Phase II term length, deployment milestones, and compliance framework into MF II and basing it on POP coverage, claiming this is how mobile networks are designed, rather than on the artificial road miles metric. AT&T opposed the proposed immediate flash cut of legacy support for nationwide carriers, noting it violates the statutory requirements for USF support to be “predictable” as well as competitively neutral. AT&T also [met with](#) Legal Advisors to Commissioners Clyburn and Pai on November 7 and 8, 2016, to discuss the same issues.
- U.S. Cellular [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Rosenworcel, Pai, Clyburn, and O’Rielly on November 3 and 4, 2016, to express support for the proposal for the Mobility Fund II set forth by Chairman Wheeler in the Fact Sheet, including a rational phase down of legacy high-cost support. It discussed the need to improve data submitted in the Form 477 process, asserting the most recently available data appears to overstate coverage and claiming the overstatement of coverage is unlikely to be corrected through a challenge process. U.S. Cellular also expressed support for minor changes in performance requirements, such as increasing permitted latency, which would increase the geographic area covered by Mobility Fund II support.
- Smith Bagley filed a [letter](#) on November 7, 2016, to provide supplemental information on the need for special treatment in the upcoming Mobility Fund II item for Tribal lands. SBI said it is an unacceptable result for any Tribal Mobility Fund Phase II process to conclude with such areas receiving no support, or having legacy support being discontinued. SBI asserted it has provided ample record evidence

demonstrating the demographic challenges on the Tribal lands it serves, as well as the extraordinary costs required to bring such areas up to modern standards.

- The Competitive Carriers Association [met separately with](#) Legal Advisors to Chairman Wheeler and Commissioners Clyburn, Rosenworcel and O’Rielly, and Wireless Telecommunications Bureau staff on November 3-4, 2016, to discuss the FCC’s proposal to reform the Mobility Fund II program. CCA recommended the Commission consider using speed benchmarks to measure performance, and reiterated the importance of providing for an equitable phase-down period for legacy support recipients. CCA encouraged the Commission to incorporate steps necessary to correct data inaccuracies and suggested the Commission implement a more robust challenge process to provide stakeholders with an opportunity to address specific coverage inaccuracies prior to funds being dispersed. CCA also recommended the Commission direct the Wireless Telecommunications Bureau to review how best to update and improve the current coverage data.
- John Deere, the National Corn Growers Association, and the American Farm Bureau Federation, on behalf of the Agricultural Broadband Coalition, [met with](#) Commissioner Pai’s Legal Advisor on November 3, 2016, to urge the Commission to address the expanding need for advanced telecommunications capability in active agricultural areas as it designs Phase II of the Mobility Fund. The ABC also expressed concerns that coverage maps submitted in the Form 477 process are based on advertised coverage that does not necessarily identify areas where wireless broadband is actually available, and discussed the need to identify accurately areas without mobile broadband coverage, both in the initial list of eligible areas and through a challenge process based on empirical evidence.
- Deere & Company and the Agricultural Retailers Association [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O’Rielly and Rosenworcel on November 4, 2016, to urge the Commission to address the expanding need for advanced telecommunications capability in active agricultural areas as it designs Phase II of the Mobility Fund and strives for more accurate measures of where 4G LTE coverage is actually available. They suggested weighting unserved road miles that also serve cropland and explicitly including cropland in construction milestones and coverage requirements. They also expressed concerns that coverage maps submitted in the Form 477 process are based on advertised coverage that does not necessarily identify areas where wireless broadband is actually available.
- Atlanta Tele-Network filed [a letter](#) on November 9, 2016, to provide further information on the structure of a challenge process to perfect Form 477 data on wireless coverage for the Mobility Fund Phase II and to recommend a timeline for the auction. ATN said challenges to Form 477 data should be supported by drive test results based on a standardized drive-test approach. It suggested the auction could then be held in late 2017 or early 2018.
- Blue Wireless filed [a letter](#) on November 9, 2016, to urge the Commission to adopt a challenge process for the Mobility Fund Phase II based on drive test data, to ensure that any letter of credit requirements are not so burdensome that they discourage participation by small, regional facilities-based wireless carriers, and to move forward with the competitive bidding process without further delay.
- Joan Marsh, AT&T Senior Vice President of Federal Regulatory, wrote an [AT&T Blog](#) on November 7, 2016, suggesting three areas in which the Commission could make the Mobility Fund II program stronger, more sustainable, and more attractive to participants. She suggested the FCC use sensible build-out milestones similar to those adopted in CAF II, define service obligations and assess compliance based on population coverage rather than road mile coverage, and provide clearer guidance regarding compliance. She also claimed there is no lawful justification for targeting nationwide carriers for a flash cut transition from prior support, saying the proposed Order should be modified to give those carriers time to plan and budget for the lost support.

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ICC

- The FCC is [circulating](#) an item entitled “Sandwich Isles Communication, Inc.”

Broadband

- Gardonville Cooperative Telephone filed a [letter](#) on November 7, 2016, to provide notice of its intent to discontinue offering wireline broadband internet access transmission service on a tariffed basis. It said effective January 1, 2017, it plans to offer wireline broadband internet access service on a permissive de-tariffed, common carriage basis. [Paul Bunyan Telephone](#) and [West Central Telephone Association](#) also filed similar letters.
- Smart City Telecom filed [a letter](#) on November 9, 2016, to notify the FCC of its intention to cease offering its broadband internet transmission service as a separate component of its broadband internet access service effective January 9, 2017, pursuant to the 2015 Open Internet Order. It indicated that, pursuant to the RoR Reform Order and the subsequent Clarification Order, the revenues associated with its broadband internet transmission service would no longer be subject to the federal universal service assessment.

IP Transition

- The FCC issued a [Public Notice](#) on November 9, 2016, announcing [NASUCA, et al.](#) and [NTIA](#) filed Petitions for Reconsideration of the [Technology Transitions Order](#) that updated the FCC’s review and notice procedures governing the filing and processing of section 214 applications to discontinue, reduce, or impair service. Oppositions to the Petitions will be due 15 days from the Federal Register publication of this Notice; replies will be due 10 days after the time for filing oppositions has expired.

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Call Completion

- Comcast filed a [letter](#) on November 8, 2016, to respond to reply comments filed by [ERTA](#) and [Flowroute](#) on its [Petition for Limited Waiver](#) of the rural call completion record retention and reporting obligations. Comcast said both of these reply comments are without merit and provide no basis for a denial of Comcast’s Petition. Comcast asserted the record in this proceeding demonstrates Comcast’s commitment to call completion best practices and its implementation of extensive internal safeguards have led to consistently high call completion rates to both rural and non-rural exchanges in 2015 and 2016. Comcast claimed there is no credible basis for any suggestion that Comcast’s inadvertent omission of certain calls from its previously filed FCC Form 480 reports was somehow related to its call completion performance.

Open Internet

- CTIA sent a [letter](#) to Chairman Wheeler on November 7, 2016, to urge the Commission to permanently exempt small businesses from the enhanced transparency requirements adopted in the Open Internet [Order](#) and adopt a more realistic definition of the small business entities to which the exemption would apply. CTIA asserted the enhanced transparency rules are unnecessary and unduly burdensome for all broadband providers, particularly smaller providers.

USF

- The Wireline Competition Bureau released an [Order](#) on November 9, 2016, approving NECA's [2017 Modification of Average Schedule High Cost Loop Support Formula](#), filed on August 25, 2016. The formula is effective January 1, 2017.
- The Wireline Competition Bureau issued a [Public Notice](#) on November 9, 2016, seeking comment on proposed changes to the annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A, 499-Q) and accompanying instructions to be used in 2017 to report 2016 revenues. Comments are due December 9.
- GVNW filed [comments](#) on November 10, 2016, in support of NTCA and WTA's [Petition](#) for 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. GVNW claimed it is contrary to the public interest to compel RLECs to offer a standalone broadband product, whether specifically directed to Lifeline customers or offered to all customers, if such a service would be less affordable than an RLEC's bundled voice and broadband product. GVNW said whether such a product is offered on a tariffed or untariffed basis, the administrative burdens of developing, offering and advertising standalone broadband for Lifeline customers would infinitely outweigh the benefits to low-income rural consumers if the product is less affordable than the bundled voice and broadband product an RLEC currently offers.
- The Oregon PUC filed a [Petition](#) on November 8, 2016, seeking a temporary waiver of the December 2, 2016 effective date for the benefit portability regulation (section 54.411). The OPUC requests a waiver until June 1, 2017, which it says will allow it time to implement the complementary technical, administrative, and operational changes.
- The New York Department of Public Service [met with](#) Wireline Competition Bureau staff on November 3, 2016, to discuss the DPS's support for USTelecom's [Petition for Waiver](#) of the implementation of the changes in Lifeline eligibility criteria set forth in the Lifeline Modernization Order. The DPS said a waiver for New York would not delay any receipt of Lifeline benefits to new categories of customers, including those receiving Veterans' benefits.
- TracFone filed a [letter](#) on November 9, 2016, on the revised Lifeline eligibility rules, which will become effective December 2, 2016. TracFone said it will modify its Lifeline enrollment application forms to list only those Lifeline qualifying programs based on the December 2, 2016 rule revisions, and said applicants will only be allowed to indicate on the forms in which of the qualifying programs they are enrolled. TracFone said, however, it is uncertain which of those state databases will be revised so as to exclude no longer qualifying programs on or about December 2, 2016, and suggested it is likely that a few applicants will qualify through enrollment in an eliminated program which remains in a state database.
- The Public Utility Division of the Oklahoma Corporation Commission filed a [request](#) on November 9, 2016, asking the FCC to hold in abeyance the processing of TracFone's request for designation as a Lifeline Broadband Provider in Oklahoma and other jurisdictions. The PUD expressed concerns with: whether or not the FCC has authority to preempt the states and to issue its own ETC designations; what role, if any, state regulatory agencies will have in monitoring the activities of these federally designated LBPs; and the FCC's streamlined approval process. The PUD said these issues are pending before the FCC and the D.C. Circuit.
- FreedomPop filed a [Petition](#) on November 8, 2016, requesting designation as a Lifeline Broadband Provider ETC in the non-Tribal areas of 48 states and Washington D.C., with the exception of Hawaii and Oklahoma, for the sole purpose of receiving universal service Lifeline support for the provision of broadband internet access service. Airvoice Wireless filed a similar [Petition](#) on November 9, 2016.

- The Wireline Competition Bureau issued a [Public Notice](#) on November 8, 2016, approving TerraCom's [amended compliance plan](#), subject to the Bureau's approval of TerraCom's domestic section 214 transfer of control application, as a condition of TerraCom continuing to provide Lifeline service under new ownership.

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Misc.

- The FCC released the [agenda](#) for its November 17, 2016 Open Meeting. The FCC will consider: 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; a Report and Order and Second FNPRM on business data services; and a Report and Order on video accessibility. The FCC will also consider two items as consent agenda.
- The FCC issued a [Public Notice](#) on November 7, 2016, announcing the Consumer and Governmental Affairs Bureau will host a webinar on robocalls on December 14, 2016. The webinar will provide information about consumers' rights and the steps they can take to prevent robocalls. To participate by WebEx, go to the event page at: www.fcc.gov/newsevents/events/2016/12/consumer-info-session-how-deal-robocalls
- Warm Springs Telecom filed a [reply](#) on November 4, 2016, to comments on its [Petition](#) for an Order declaring WST to be an incumbent LEC in the Warm Springs Wire Center and Wanapine Exchange. Warm Springs Telecom responded to issues raised in [CenturyLink's](#) comments on interconnection obligations, ETC status, the impact on CenturyLink, COLR obligations, and WST's network, among other things. [Public Notice](#)
- USTelecom [met with](#) Legal Advisors to Commissioners Clyburn and Rosenworcel on November 7, 2016, to assert multiple regressions and other data in the record provide no evidence of market power on which the Commission could lawfully regulate prices for Ethernet at any speed. USTelecom also reiterated its support for the decision not to impose ex ante pricing regulation on Ethernet services either directly or indirectly through conditions or other mandates that limit providers' ability to charge market-based rates. USTelecom said the FCC cannot justify imposing new pricing rules everywhere indiscriminately and questioned the FCC's basis for regulating transport prices as part of its price cap reform.
- ITTA filed a [letter](#) on November 4, 2016, to respond to the proposal in the business data services [Fact Sheet](#) indicating that because price caps for business data services have not been adjusted since 2004 and, in order to "restore fairness," the Order would update price caps through a one-time downward adjustment of 11 percent, phased in over three years. ITTA claimed the opposite of fairness will result should the FCC implement the downward adjustment for price cap carriers that were subject to rate-of-return regulation at the time the *CALLS Order* was adopted. ITTA said to the extent its members have not operated under price cap regulation all of that time, they should not now be treated as if they were subject to price cap regulation the entire time and subject to the effective rate freeze.
- AT&T [met with](#) Wireline Competition Bureau staff, and spoke separately with Commissioner Pai's Legal Advisor, on November 7, 2016, to discuss AT&T's position on certain regulatory outcomes indicated in the BDS [Fact Sheet](#). AT&T asserted the 3 percent X-factor and percent total price cap adjustment are not supported by the facts or the record.
- CenturyLink filed a [letter](#) on November 4, 2016, to address the treatment of special access transport. CenturyLink asserted the record is bereft of evidence necessary to support the application of a rate reset or an annual X-factor to transport offerings, or the re-application of price caps to transport services in areas currently subject to pricing flexibility. CenturyLink said the FCC should exempt transport BDS from its new regime or, in the alternative, issue a FNPRM to assemble a sufficient record on the treatment of BDS transport.

- CenturyLink filed a [letter](#) on November 10, 2016, to respond to claims regarding BDS reform. CenturyLink asserted the record reflects widespread competition for offerings at and below 50 Mbps, and argued the Commission must reject efforts to apply benchmarking requirements to Ethernet rates. CenturyLink suggested the Commission reject calls for a fresh look opportunity following its decision and, in all event, must apply any fresh look equally to all parties involved, not just purchasers of BDS offerings. CenturyLink also argued there is no legal or policy basis for the “parity pricing” rule proposed by Windstream and INCOMPAS.
- CenturyLink and Frontier [met with](#) Commissioner Rosenworcel’s Legal Advisor on November 4, 2016, to explain how the draft BDS proposal would unduly affect mid-size ILECs. They also emphasized the importance of the Commission carefully considering the current state of market competition in how it implements any reform to existing grants of Phase II pricing flexibility.
- Frontier [spoke with](#) Commissioner Rosenworcel on November 7, 2016, to emphasize the draft BDS proposal would still unduly affect mid-size ILECs like Frontier that do not have a wireless or significant CLEC presence. Frontier requested the Commission consider an additional transition period for midsize ILECs as well as a lower rate of reduction.
- Windstream filed a [letter](#) on November 9, 2016, to respond to [Verizon](#) and [USTelecom](#) letters, claiming neither letter presents compelling reasons for why the Commission should not buttress the complaint process outlined in the BDS Fact Sheet to give full meaning to the proposal that wholesale rates are presumptively unreasonable if they exceed retail rates for like services. Windstream said the Commission should make clear that this proposal will compare the price of last-mile connectivity used in a finished input to the price of the same when offered on a standalone wholesale basis.
- Windstream [spoke with](#) Commissioner Clyburn’s Legal Advisor on November 7, 2016, to emphasize the importance of retaining the protections the Commission established last year in the Technology Transitions [Order](#) to ensure that customers are not required to pay higher prices for wholesale Ethernet inputs that are comparable to the rate-regulated TDM inputs being discontinued by incumbent providers. Windstream asserted the interim rules must remain in place until the Commission identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable and such rules become effective.
- Windstream [spoke with](#) Commissioner Rosenworcel’s Legal Advisor on November 4, 2016, to discuss its October 31, 2016, meeting with Commissioner Rosenworcel at which it urged the Commission to ensure its new regulatory framework for business data services preserves the availability of competitive choice and affirms existing protections against unjust and unreasonable price increases. Windstream said the Commission, at a minimum, should adopt rules that make clear that incumbent providers cannot unreasonably discriminate against competitors by charging more for last-mile connectivity when purchased on a wholesale basis and should maintain measures put in place last year that protect customers of DS1 and DS3 service from price shocks when their incumbent providers switch to IP-based services.
- Verizon [spoke with](#) Commissioner Clyburn’s Legal Advisor on November 4, 2016, to express support for 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. Verizon also recommended if the Commission intends to delink the Technology Transition [Order’s](#) interim rule for discontinuing wholesale voice platform services from the Business Data Services proceeding, it should establish a reasonable, firm sunset date for the rule.
- INCOMPAS filed a [letter](#) on November 10, 2016, to supplement Sprint’s [response](#) to AT&T’s and CenturyLink’s claims on competition in the provision of interoffice transport. INCOMPAS said Sprint provided evidence that ILECs exercise market power in the provision of interoffice transport for DS1 and DS3 channel terminations. INCOMPAS said an analysis of wire centers within LATAs in AT&T’s and Verizon’s ILEC regions shows that AT&T is required to provide unbundled DS1 transport on approximately 99 percent of routes and unbundled DS3 transport on approximately 98 percent of

routes; and Verizon is required to provide unbundled DS1 transport on approximately 99 percent of routes and unbundled DS3 transport on approximately 98.5 percent of routes.

- INCOMPAS [met with](#) Commissioner Rosenworcel's Legal Advisor on November 7, 2016, to ask that the rate relief for TDM services occur as quickly as possible. INCOMPAS expressed support for an implementation date of January 1, 2017, and the adoption of a two-year catch up on these savings as set forth in the Verizon/INCOMPAS proposal. INCOMPAS also asserted without ex ante price reform of the packet-based services that the incumbents offer when they discontinue their TDM-based services, the Commission must maintain the protections in the Technology Transitions Order to ensure that reasonably comparable service remains available at reasonably comparable prices when the ILEC transitions to IP technology so that competition will continue.
- INCOMPAS [met with](#) Commissioner Clyburn's Legal Advisor on November 3, 2016, to state the market for business data services at and below 50 Mbps is noncompetitive and reform is needed regardless of the technology. INCOMPAS urged the Commission to adopt a reform mechanism for packet-based services, in addition to TDM reform, to ensure the rates are just and reasonable, especially for BDS at 50 Mbps and below. INCOMPAS also said if the Commission does not adopt price reform for packet-based services, it should strengthen and provide more pricing guidance for the complaint process to provide more certainty to the market.
- TDS Metrocom [spoke with](#) Commissioner Rosenworcel's Legal Advisor on November 3, 2016, to express support for a strong wholesale-retail rule in any BDS Order. It asserted the FCC needs to act to ensure competitors, like the 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.
- Consolidated [met with](#) Legal Advisors to Commissioner O'Rielly, Clyburn, and Pai on November 3, 2016, to suggest that the proposed 11 percent one-time downward adjustment to the price cap index for all price cap carriers be pro-rated for "non-CALLS" ILECs that have not been regulated under price caps for the entire period of efficiency gains the downward adjustment purports to address. Consolidated also said due to the pending reduction in switched access transport rates to \$0.007 effective July 1, 2017, and the significant financial impact that will have on the business, any impacts resulting from an order in this proceeding be effective July 1, 2018.
- Cincinnati Bell [met with](#) Commissioners Pai and O'Rielly and their Legal Advisors, Legal Advisors to Chairman Wheeler and Commissioners Clyburn and Rosenworcel, and Wireline Competition Bureau staff on November 2 and 3, 2016, to discuss business data services. Cincinnati Bell claimed the BDS Fact Sheet fails to recognize the competitive landscape in the mid-size price cap ILEC markets, and said mandatory rate reductions have no place in competitive markets like Cincinnati.
- Sprint [met with](#) Legal Advisors to Commissioners Rosenworcel and Clyburn on November 3, 2016, to claim the record supports a reduction to TDM price caps of at least 11 percent over a two-year period to account for the gap in productivity accounting and an X-factor of at least 3 percent annually. Sprint also claimed the Commission is justified in adopting rules that impose price caps in all areas for BDS at or below 50 Mbps based on its findings that all but a tiny percentage of locations are inadequately competitive, and said the FCC should reject the request of some ILECs to carve-out critical transport service elements from its reform proposal.
- Sprint [met with](#) Commissioner Rosenworcel and her Legal Advisor on November 7, 2016, to claim the record supports a reduction to TDM price caps of at least 11 percent over a two-year period to account for the gap in productivity accounting and an X-factor of at least 3 percent annually. Sprint also claimed the Commission is justified in adopting rules that impose price caps in all areas for BDS at or below 50 Mbps based on its findings that all but a tiny percentage of locations are inadequately competitive, and said the FCC should reject the request of some ILECs to carve-out critical transport service elements from its reform proposal and establish a method of monitoring this market, particularly given the recent flurry of consolidation in the providers of BDS.

- NASUCA sent a [letter](#) to Chairman Wheeler and the Commissioners on November 4, 2016, to express support for certain elements of the BDS [Fact Sheet](#), including the importance of BDS and the need for targeted action to encourage competition and fair access in a new framework. NASUCA expressed support for the proposal to mandate fair BDS terms and conditions based on the findings in the Tariff Investigation [Order](#), including barring new “all-or-nothing” plans and reining in excessive penalties. NASUCA said greater BDS reductions than those in the Chairman’s proposal are needed.
- Level 3 filed a [letter](#) on November 4, 2016, responding to AT&T’s October 25, 2016 [letter](#), which asserted the BDS [Fact Sheet](#) effectively ignores the FCC’s unprecedented data collection and proposes Phase I regulation for all ILEC DS1 and DS3 services. Level 3 said AT&T’s claim that the FCC cannot re-impose price cap regulation on DS1 and DS3 services not currently subject to price caps relies on a vast overstatement of the level of competition in the provision of DS1s and DS3s. Level 3 claimed the Fact Sheet’s proposal to afford Phase I pricing flexibility to all price cap LECs confirms the application of price caps to DS1 and DS3 services is appropriate to constrain incumbent LEC prices in a market characterized by both incumbent LEC market power and pockets of competition.
- U.S. TelePacific [met with](#) Wireline Competition Bureau staff on November 9, 2016, to discuss unintended consequences of the proposed rules outlined in the BDS [Fact Sheet](#). TelePacific suggested the Commission direct ILECs not to increase the generally available rate for any DS1 or DS3 service during the three-year transition to the new price cap regime and leave it to each ILEC to determine how best to accomplish that within the constraints of the price cap rules.
- CALTEL filed a [letter](#) on November 9, 2016, to support U.S. TelePacific’s October 19, 2016 [ex parte](#) discussing California-specific concerns and proposing solutions for BDS reform. CALTEL claimed TelePacific correctly identifies that the proposed rules in the BDS [Fact Sheet](#) could cause DS1 and DS3 rates in California to increase as a result of transitioning to price cap rates from Phase II pricing.
- Charter Communications filed [a letter](#) on November 9, 2016, to claim there is no basis in the record for price regulating Ethernet services at any speed and that regulating Ethernet would not only be arbitrary and capricious and counter to Commission precedent, but also could fundamentally harm and alter this dynamic and evolving market. Charter said the Commission should refrain from regulating Ethernet services at any speed, or, at a minimum, should seek further comment before adopting any regulations that directly or indirectly impact Ethernet pricing.
- Cox Enterprises, Comcast, Charter Communications, and NCTA [met separately](#) with Legal Advisors to Commissioners Clyburn and Rosenworcel on November 7 and 8, 2016, to express support for Chairman Wheeler’s proposal not to impose ex ante rate regulation on Ethernet services. They claimed excessive BDS regulation would undermine investment in markets that are currently experiencing robust competition, and asked the Commission to reject a [proposal](#) by Windstream and the Ad Hoc Telecommunications Users Committee seeking to require ILECs to provide “avoided cost wholesale discounts” to retail customers that are similarly situated with carrier resellers.
- ACA filed a [letter](#) on November 10, 2016, to respond to a request from Commission staff seeking additional information on how its members were providing business data-like services as private carriers. ACA said hundreds of its members provide BDS on a common carrier basis to commercial and institutional customers, wireless providers, and other entities, and in doing so, compete with the incumbent price cap local exchange carrier and numerous other non-incumbent providers. ACA also said many of its members provide business data-like services as private carriers, and asserted that by forcing its members and other providers of business data-like service to be common carriers, the Commission will inhibit entry or the provision of service by providers to additional customers.
- Lightower Fiber Networks, Lumos Networks, and Unite Private Networks filed a [letter](#) on November 9, 2016, submitting supplemental declarations by Eric Sandman, Chief Financial Officer of Lightower, and Jason Adkins, President of UPN. They said these declarations supplement prior submissions urging the Commission not to apply the proposed benchmark regulation to them and other similarly situated competitors.

- The Ad Hoc Telecommunications Users Committee filed a [letter](#) on November 9, 2016, to respond to certain key proposals in the [BDS Fact Sheet](#). Ad Hoc urged the Commission to adopt a BDS Order that: fulfills the promise of a technology-neutral regime for BDS; adopts higher values for critical components of the updated price cap rules; and ensures that Phase I rules and rates apply to price cap services. Ad Hoc also asked that the Order retain tariff filing requirements for price-cap-regulated services.
- BT Americas [met with](#) Commissioner Rosenworcel's Legal Advisor on November 4, 2016, to ask for Commissioner Rosenworcel's support for using price cap concepts to require ILECs to post BDS rates for services that are 50 Mbps and under. BT asserted the Commission should use concepts from price cap regulation to set a presumption for what would be considered just and reasonable rates in a complaint proceeding and require carriers filing price caps for TDM services to also file proof that the weighted average of their posted Ethernet service rates that are 50 Mbps and under is below a price guideline index set by the Commission.
- BT Americas [spoke with](#) and e-mailed Commissioner Clyburn's Legal Advisor on November 4, 2016, to ask for Commissioner Clyburn's support for using price cap concepts to require ILECs to post PBDS rates for services 50 Mbps and under. BT asserted the Commission should use concepts from price cap regulation to set a presumption for what would be considered just and reasonable rates in a complaint proceeding and require carriers filing price caps for TDM services to also file proof that the weighted average of their posted Ethernet service rates 50 Mbps and under is below a Price Guideline Index set by the Commission.
- BT filed a [letter](#) on November 7, 2016, submitting into the record an *ex parte* it sent to Chairman Wheeler's Legal Advisors on November 3, 2016, about a meeting to discuss the Verizon/XO merger and special access. BT asked the Commission to require Verizon to agree to maintain XO's EoC platform for a period of five years after the close of the transaction, at existing rates, terms, conditions, speeds and coverage. BT also asked the Commission to apply the TDM rate cuts over a two-year period, beginning in January 2017, and said for Ethernet services at 50 Mbps and under, the market is non-competitive and the Commission should find price cap regulation is appropriate for this market.

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Upcoming Filing Dates

- Nov. 14 - Due date for parties to submit *ex partes* on measures to address the high level of interest in A-CAM model-based support. [Public Notice](#)
- Dec. 2 - Comments due on AT&T's [Petition](#) for forbearance from certain tariffing rules. Replies due December 19. [Public Notice](#)
- 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. 5 - Replies 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. [Public Notice](#)
- Dec. 5 - Comments due on what rules should be modified or repealed as part of the 2016 biennial review. Replies due January 3, 2017. [Public 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. 9 – Comments due on proposed changes to the annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A, 499-Q) and accompanying instructions to be used in 2017 to report 2016 revenues. [Public Notice](#)
- Dec. 19 - Due date for broadband-only loop service tariffs made on 15-days' notice; petitions due Dec. 27; replies due Dec. 30. [Order](#)
- Dec. 19 - Replies due on AT&T's [Petition](#) for forbearance from certain tariffing rules. Replies due December 19. [Public Notice](#)
- 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. 3 - Replies due on what rules should be modified or repealed as part of the 2016 biennial review. [Public Notice](#)
- 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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