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### November 21, 2016 HIGHLIGHTS

- The FCC [deleted](#) items from the agenda for its November [Open Meeting](#), including items on Mobility Fund Phase II and business data services. These items remain on circulation.
- Energy and Commerce Committee Chairman Fred Upton (R-Mich.) and Communications and Technology Subcommittee Chairman Greg Walden (R-Ore.) sent a [letter](#) to Chairman Wheeler, to express concern about FCC decisions during the presidential transition.
- The Wireline Competition Bureau [announced](#) the posting of revised information on the application of the operating expense limits and deployment obligations for ten RoR carriers under the high-cost support legacy funding mechanisms.
- NTCA, USTelecom, Moss Adams, JSI, GVNW, and NECA [discussed](#) possible means by which RLECs could avail themselves of relief from existing USF contribution obligations for broadband transmission services, as articulated in the RoR Reform Order and several subsequent Bureau-released items.
- [Comments were filed](#) on the WCB's [Public Notice](#) on measures that should be considered to address the high level of interest in A-CAM model-based support.
- NTCA, Premier Communications, and Golden West Communications [urged](#) additional funding of up to \$260 million for both the cost model and non-model USF mechanisms.
- ITTA [said](#) there is sound justification for the Commission to allocate sufficient additional funding for the A-CAM plan to overcome the entire budgetary shortfall.
- Great Plains, Consolidated Companies, et al. [asked](#) the FCC to fund the model-based support program at a level to ensure the 274 study areas that opted for the model continue to do so.
- Montrose Mutual Telephone filed a [Petition for Waiver](#) of the deadline to file its election letter to adopt A-CAM support, stating its letter was inadvertently addressed to an incorrect FCC email address.
- Arctic Slope Telephone [filed](#) revised performance obligations in connection with its election of the Alaska Plan.
- The D.C. Court of Appeals issued an [Opinion](#) on AT&T's [Petition for Review](#) of the FCC's Declaratory Ruling on the "VoIP symmetry rule," vacating and remanding the Order for further explanation.
- The FCC is [circulating](#) an item entitled "AT&T Application for Review; Sandwich Isles Communications, Inc. Petition for Declaratory Ruling."
- Seven Senators [asked](#) the Commission to take enforcement action against zero-rating offerings that violate the principles of the Open Internet [Order](#).

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#### Other Key Upcoming Dates

- Dec. 2 - Comments [due](#) on AT&T's [Petition](#) for forbearance from certain tariffing rules. Replies due December 19.
- Dec. 5 - Comments [due](#) on the 2016 biennial review. Replies due January 3. [Public Notice](#)
- 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

- The Wireline Competition Bureau issued a [Public Notice](#) on November 15, 2016, announcing the posting of revised information on the application of the operating expense limits and deployment obligations for ten RoR carriers under the high-cost support legacy funding mechanisms. The Bureau made corrections to those carriers' data where the issue raised by these carriers was caused by an error or omission made by the Bureau. The Bureau said no correction will be made for carriers in situations where the carrier submitted revised December 2015 FCC Form 477 data, explaining carriers had six months to revise their data and allowing additional carriers to change their deployment information now would result in a need to re-calculate carrier OpEx limitations and deployment obligations for all RoR carriers, which would be detrimental to the objective of providing all carriers advance notice of their obligations under the legacy mechanisms prior to implementation of the reforms in 2017.
- Comments were filed on November 14, 2016, 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. [WTA](#) said the Commission should fully fund the A-CAM at the \$200 per location benchmark and at a budget that would entail an additional allocation of approximately \$310 million annually in additional funding and, at the same time, fully fund the existing and new RoR Path support mechanisms so it can conduct a fair test of A-CAM versus RoR broadband deployment. WTA said if the Commission is unable to fully fund the A-CAM and RoR mechanisms, it proposes the following alternatives: reduce the per location funding cap for A-CAM from \$200 to \$175 and modify the associated fully funded and partially funded build-out obligations; accept and freeze the initial A-CAM offers and associated obligations of rule 54.311(e) "glide path" companies; and make additional funding available for RoR Path companies that will enable them to actually offer supported broadband-only services at reasonably comparable rates. [NTCA](#) said the Commission should seize this opportunity to address and remedy both the shortfall in 2017 of approximately \$100 million in non-model support and the gap of \$160 million per year for model-based support. It said the Commission can do so by providing additional resources for these programs, noting this additional funding is a fraction of the increases provided in recent years for other USF programs, and said the networks the high-cost program supports are essential to enable the success of these other programs in rural America. NTCA estimated there is already at least \$50 million per year in "cash-on-hand" in the high-cost program, and the remaining \$210 million per year represents less than a third of the approximately \$750 million budget increase authorized for the Lifeline program earlier this year and less than 15 percent of the \$1.5 billion increase that E-Rate received a few years ago. [ITTA](#) said there is sound justification for the Commission to allocate sufficient additional funding for the A-CAM plan to overcome the entire budgetary shortfall; but if the Commission is not able to fully fund it, it should allocate an additional \$95 million of funding annually for model-based support to enable all carriers that accepted such support to receive \$146.10 per location, the same amount of per-location support the CAF Phase II program provides to price cap carriers. ITTA expressed support for fully funding all support mechanisms applicable to RoR carriers regardless whether they have elected to participate in the A-CAM plan or remain under revised RoR support mechanisms, saying it recognizes that increased funding of RoR path support mechanisms is needed to "enable RLECs actually to offer supported broadband-only services at reasonably comparable rates, and to avoid support reductions from the 'budget control' mechanisms," as pointed out by WTA. [USTelecom](#) said the Commission should fully fund the A-CAM by making an additional allocation of \$160 million in annual support to meet the current budget shortfall, and also suggested the Commission fully fund the CAF BLS mechanisms for non-model electors. It said if the Commission is not able to fully fund the A-CAM and RoR mechanisms, it should: reduce the per location funding cap from \$200 to \$175 and modify the associated fully funded and partially funded build-out obligations accordingly, estimating this would require an additional allocation of \$125 million; and for those entities that have elected A-CAM support at levels that are less than their current RoR support, their A-CAM support should be frozen at the initial support offer, as this will free up additional funding over the years for the A-CAM mechanism and avoids potential adverse impacts on the RoR budget from glide path companies that elect to return to RoR regulation. [Five Area Telephone Coop](#) said it is now readily apparent that there is simply not enough funding being allocated to meet the demands of Congress' goal of rural broadband expansion, and noted other USF programs (Lifeline, E-rate, RHC) are being funded and given inflation-based

increases and suggested the same consideration be given to rural America's customers. It said it agrees with NTCA that the Commission should recalibrate build-out obligations in light of any USF support shortfalls and avoid any adverse impact on RoR companies that did not elect model-based support but already face significant USF support reductions due to the budget controls. [James Valley Cooperative Telephone Company](#) said the Commission should: commit to allocating, at the very least, the additional \$50 million per year that it contemplated adding to the preliminary \$150 million annual budget; first fully fund those electing carriers that have the most significant build-out obligations still ahead of them, proposing the Commission withhold model-based funding from any electing carriers that, as of their June 30, 2015 477 filing, have already met the 10/1 Mbps service level in 70% of their eligible locations; and to the extent the two measures above do not fully mitigate the shortfall for the remaining electing carriers, it suggested any shortfall must proportionately reduce the number of locations in which 10/1 deployment must be achieved. [JSI](#), on behalf of its A-CAM elector companies, recommended the Commission allocate enough additional funding to cover the more than \$160 million annual overage, claiming the FCC currently has a surplus of available funding which could be applied to the oversubscription. It also claimed the A-CAM determined a considerable number of eligible locations in many study areas in excess of the real number of locations, an adjustment for which could reduce the amount needed to meet all A-CAM needs. JSI said for companies electing A-CAM whose model-based support is less than legacy support, they should not be penalized and none of the companies that remain on legacy support should be penalized if A-CAM electors opt to return to legacy support. [Fred Williamson and Associates](#) recommended the Commission fully fund A-CAM-based support and increase budget amounts for companies remaining under RoR-based support. It said the additional \$160 million of funding required for the A-CAM represents only approximately 2% of the current Federal USF funding (including Low Income, Rural Health Care, and Schools and Libraries funding), and argued the Commission should increase budget amounts available to rural broadband providers to ensure the availability of quality consumer broadband services at affordable rates. [List of all available A-CAM filings](#).

- NTCA, USTelecom, Moss Adams, JSI, GVNW, and NECA held [a conference call](#) with Wireline Competition Bureau staff on November 17, 2016, to discuss possible means by which RLECs could avail themselves of relief from existing USF contribution obligations for broadband transmission services, as articulated in the RoR Reform Order and several subsequent Bureau-released items. They noted these Orders appear to outline two means by which a RLEC would not be subject to USF contributions for broadband: a "private carriage option" and a "retail approach." The Rural Representatives also described a third potential scenario, wherein a retail BIAS provider would provide a resale certificate to the RLEC indicating that no contributions should be assessed in connection with RLEC wholesale broadband transmission because it is only one input component of the retail Internet access service provided to end users by the BIAS provider who, but for previously granted temporary forbearance from the Commission, would be responsible for such contributions. The Rural Representatives underscored the importance of obtaining clear written near-term direction and guidance from the Commission and Bureau on these issues.
- NTCA, Premier Communications, and Golden West Communications [met separately](#) with Legal Advisors to Chairman Wheeler, Commissioners Clyburn, Pai, O'Rielly, and Clyburn, and Wireline Competition Bureau staff on November 17, 2016, to urge additional funding of up to \$260 million for both the cost model and non-model USF mechanisms to ensure the intended reforms can be achieved. NTCA said its members provided recently available data for the non-model mechanism that explained the budget control that will apply as of January 1, 2017, will result in broadband-only loop rates that are \$20 to over \$100 per month higher than the \$42 broadband-only benchmark specified by the Commission, noting this is only the broadband-only loop component of the retail service provided to consumers. NTCA said the Commission should grant its Petition with respect to remedying the insufficiency of the non-model USF budget.
- ITTA [met separately with](#) Legal Advisors to Commissioners Rosenworcel, Pai, and O'Rielly and Wireline Competition Bureau staff on November 14, 2016, to reiterate its position that there is sound justification for the Commission to allocate sufficient additional funding for the A-CAM plan to overcome the entire budgetary shortfall. It said if the Commission is unable to fully fund the A-CAM plan, it should allocate an additional \$95 million of funding annually for model-based support, and in no event allocate anything less than the additional \$50 million contemplated in the Rate-of-Return Reform Order. ITTA

also urged the Commission to act expeditiously so the A-CAM plan can become effective by January 1, 2017.

- Great Plains Communications, Consolidated Companies, Reynolds Schultheis Consulting, and Parrino Strategic Consulting [met separately with](#) Commissioner O'Rielly and his Legal Advisor, Legal Advisors to Chairman Wheeler and Commissioners Clyburn and Rosenworcel, and Wireline Competition Bureau staff on behalf of the Nebraska Companies on November 9 and 10, 2016, to urge the Commission to fund the model-based support program at a level to ensure the 274 study areas that opted for the model continue to do so and not to take any actions that would disqualify any of those study areas from remaining on the model. They provided a build-out comparison of the model and legacy build-out requirements for these 274 study areas, as well as three maps to show the national impact of additional model funding at \$150 million, \$200 million, and \$245 million, and the resulting funding per location. They urged the Commission to expeditiously release the final model offer so that companies can make their final election as soon as possible so the model can be effective by January 1, 2017.
- Montrose Mutual Telephone Company filed a [Petition for Waiver](#) of any relevant rule, practice, policy or order that would preclude the acceptance of its election letter to adopt A-CAM support. It claimed its acceptance letter was timely sent but inadvertently addressed to an incorrect FCC email address.
- Arctic Slope Telephone Association Cooperative filed a [letter](#) on November 17, 2016, to file revised performance obligations in connection with its election of the Alaska Plan. It also said it anticipates changes to the middle mile in the near future and as that service becomes operational, it will refresh its performance obligations in near real time in response to those changes, per the Order's mandate.
- Javier Rua Jovet, Chairman of the Puerto Rico Telecommunications Regulatory Board, sent [a letter](#) to Chairman Wheeler and the Commissioners on November 17, 2016, to urge the Commission to follow his June 2015 recommendations that all high-cost funding in Puerto Rico be maintained at current levels until a tailored approach to solving the broadband gap is implemented. He said simply phasing out USF funding levels for CETCs without implementing his other initiatives would be a disservice to the people of Puerto Rico.
- Empire State Development and the Washington D.C. Office of New York Governor Andrew Cuomo [met with](#) Wireline Competition Bureau staff on November 8, 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. They stressed the need for the Commission to quickly approve the Petition to align the federal and state broadband funding programs.
- The Rural Wireless Association [met separately with](#) Commissioners O'Rielly, Pai, and Rosenworcel and their Legal Advisors, and Legal Advisors to Chairman Wheeler and Commissioner Clyburn on November 8 and 9, 2016, to urge adoption of the proposed \$470 million annual funding level for the Mobility Fund Phase II and to encourage the Commission to provide for an ability to increase MF II funding at a future date. RWA also: expressed support for the currently-proposed transition from legacy support discussed in the Fact Sheet; expressed concern about the lack of an objective reporting standard for Form 477 data; suggested areas eligible for MF II support should include any portion of a census block not fully covered by unsubsidized LTE coverage at speeds of 10/1 Mbps; recommended the same objective standard and methodology be used both for coverage reporting on Form 477 to determine eligible areas and to assess whether MF II funding recipients meet the Commission's build-out requirements; and argued the Commission must not rely on a challenge process to fix Form 477 data nationwide, among other things.
- Deere & Company and the American Farm Bureau Federation, on behalf of the Agricultural Broadband Coalition, [met with](#) Commissioner Clyburn's Legal Advisor on November 9, 2016, to urge the Commission to address the expanding need for real-time 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 urged the Commission to make explicit that agriculture is a factor that should be accounted for in the eligibility or bidding process, suggesting weighting unserved road miles that also serve cropland. 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.

- Verizon [spoke with](#) Jim Schlichting of the Wireless Telecommunications Bureau on November 10, 2016, to discuss the phase-down of identical support provided to wireless CETCs. Verizon said to the extent the Commission adopts different phase-down schedules for small CETCs and nationwide carriers, partnerships between small rural entities and nationwide carriers should be subject to the same phase-down schedule as other small CETCs.
- US Cellular [met with](#) Commissioners Rosenworcel and O’Rielly’s Legal Advisors on November 10, 2016, to express support for including a rational phase-down of legacy high-cost support in the Mobility Fund II Order that will enable carriers to adjust and develop alternative revenue streams. U.S. Cellular said it generates most of its revenue from customers in rural areas, and as such, it more closely resembles smaller rural wireless carriers and should be treated the same during the phase-down.
- T-Mobile [spoke with](#) Legal Advisors to Commissioners Clyburn, O’Rielly, Rosenworcel, and Pai on November 9, 2016, to discuss opposition to the proposed immediate flash cut of legacy high-cost support for nationwide carriers. T-Mobile said the majority of its legacy high-cost support funds its operations in Puerto Rico, and said to ensure continuity of service throughout Puerto Rico and other supported jurisdictions, including facilities-based Lifeline service, it urged the Commission not to eliminate support for existing CETCs until it begins disbursing Mobility Fund II support.

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## ICC

- The D.C. Court of Appeals issued an [Opinion](#) on November 18, 2016, on AT&T’s [Petition for Review](#) of the FCC’s Declaratory Ruling on the scope of the "VoIP symmetry rule." The court found the Declaratory Ruling does not disclose the Commission’s reasoning with the requisite clarity to enable the court to sustain its conclusion. The court vacated and remanded the Order to the Commission for further explanation. Commissioner Pai issued a [statement](#).
- The Commission is [circulating](#) an item entitled “AT&T Application for Review; Sandwich Isles Communications, Inc. Petition for Declaratory Ruling.”
- NECA [spoke with](#) Legal Advisors to Commissioners Clyburn, O’Rielly, and Rosenworcel on November 14 and 15, 2016, to discuss the proceeding addressing Sandwich Isles Communications’ Petition for Declaratory Ruling.
- The Department of Hawaiian Home Lands [met with](#) Wireline Competition Bureau and General Counsel staff on November 15, 2016, to discuss the proceeding on USF payments and NECA tariff issues relating to Sandwich Isles Communications. DHHL said its primary concern is that native Hawaiians currently served by SIC continue to receive quality telecommunications services, and said it is available to assist the FCC in telecommunications matters under FCC jurisdiction that relate to the Hawaiian Home Lands.

## Broadband

- Alaska State Representative David Guttenberg (D-4<sup>th</sup> District) and Mary J. Pavel, representing the Tanana Chiefs Conference, [met with](#) staff from the Office of Native Affairs and Policy, Office of Intergovernmental Affairs, Wireline Competition Bureau, and Wireless Telecommunications Bureau on November 17, 2016, to discuss opportunities for improving broadband service for Alaska consumers. Rep. Guttenberg discussed House Bill No. 346, which he introduced in the Alaska State Legislature on February 24, 2016, “An Act creating the Broadband Development Corporation; and establishing the Alaska Broadband Task Force.” Rep. Guttenberg asked for feedback on any changes the FCC might

recommend to his bill to ensure that a state entity formed to develop, deploy, and operate middle mile facilities would be able to receive federal USF funding if any became available in the future.

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## Call Completion/Robocalls

- The FCC issued a [News Release](#) on November 17, 2016, announcing the FCC's Enforcement Bureau and the Canadian Radio-Television and Telecommunications Commission signed a [Memorandum of Understanding](#) to combat unlawful robocalls and caller ID spoofing. It said the agencies have committed to exchange information about investigations and complaints, share knowledge and expertise, provide information about legal theories and economic analysis, keep each other abreast of significant legal developments, and provide other appropriate assistance.
- The U.S. House of Representatives [passed H.R. 2566](#), the Improving Rural Call Quality and Reliability Act of 2016, on November 14, 2016, which requires intermediate providers to register with the FCC and comply with the service quality standards set by the agency to improve call quality in rural areas. The legislation would give the FCC 180 days to issue rules to establish a registry of providers and one year to establish service quality rules.

## Open Internet

- Seven Senators sent a [letter](#) to Chairman Wheeler on November 18, 2016, asking the Commission to take enforcement action against zero-rating offerings that violate the principles of the Open Internet [Order](#). They said without proper oversight and enforcement action, zero-rating can discriminate against certain services, potentially distorting competition, stifling innovation, and hampering user choice and free speech. They asked the Commission to take into consideration competition, paid zero-rating, user choice, and application agnostic plans.
- CTIA [met with](#) Legal Advisors to Chairman Wheeler and Commissioners O'Rielly, Pai, Clyburn, and Rosenworcel on November 9 and 10, 2016, to urge the Commission to permanently exempt small businesses from the enhanced transparency requirements in the Open Internet Order and to adopt a more realistic definition of the small business entities to which the exemption would apply. CTIA also suggested a permanent Mobility Fund to support mobile broadband in rural and high cost areas.

## USF

- The FCC issued a [Memorandum Opinion and Order](#) on November 17, 2016, denying an Application for Review filed by Lara V. Carlson of the Wireline Competition Bureau's decision granting in part and denying in part her Freedom of Information Act request to access FCC Forms 499-A and 499-Q filed by TDS Long Distance and TDS Metrocom. The FCC said the Bureau properly denied Carlson's FOIA request, and agreed with the Bureau that releasing the information Carlson sought gives Metrocom's competitors a significant advantage by revealing sensitive revenue information at a level of detail not currently available to the public.
- USTelecom filed a [letter](#) on November 11, 2016, to inform the Commission about States that have updated their legal frameworks to a sufficient degree where it is believed the waiver requested in its [Petition](#) is no longer necessary. USTelecom sought a waiver of the revised rules 54.400(j) and 54.409(a), and applicable sections of the Lifeline Reform [Order](#), to permit Lifeline providers to continue enrolling consumers in the federal Lifeline program based on state-specific program and income eligibility criteria in 27 states and territories. USTelecom also provided a list of states and territories where waiver relief remains necessary.

- GVNW filed [comments](#) on November 17, 2016, to support various requests filed by state PUCs for temporary waivers of the revised federal Lifeline eligibility rules and the federal Lifeline benefit portability rules which are scheduled to go into effect December 2, 2016. GVNW said temporary waivers should be granted to allow states to conform their eligibility criteria with the new federal criteria, and claimed the delay in implementation of the new policies is vastly outweighed by the potential for implementation problems adversely affecting states, providers, consumers, and the integrity of the Low-Income Fund.
- Verizon filed a [letter](#) on November 18, 2016, to urge the Commission to grant USTelecom's [Petition](#) for waiver of Lifeline eligibility rules in twenty-seven jurisdictions for Maryland. Verizon said in Maryland Lifeline eligibility requirements and procedures are spelled out in state law. It urged the Commission to grant the Petition with respect to Maryland to provide Maryland with additional time to adjust its Lifeline eligibility database and eligibility criteria to be consistent with the Lifeline Modernization Order's revised eligibility criteria.
- TracFone [spoke with](#) Wireline Competition Bureau staff on November 16, 2016, to provide updated information regarding the status of state Lifeline eligibility databases. TracFone said three additional states have indicated to TracFone that they would be modifying their Lifeline eligibility databases to reflect only Lifeline-qualifying programs as of December 2, 2016, and of the 21 states identified in its November 9 [letter](#), 15 states remain in that situation. TracFone indicated it will provide the Commission with updated information regarding additional state database changes as it becomes available.
- TracFone filed a [letter](#) on November 15, 2016, attaching a letter from the New Jersey Board of Public Utilities that was sent to ETCs in New Jersey indicating that effective December 1, 2016, the New Jersey Lifeline Eligibility Database will be modified to eliminate the state-specific Lifeline eligibility programs that will no longer be Lifeline-qualifying programs. TracFone also said Pennsylvania notified it that its database will be revised prior to December 2, 2016, to exclude two no longer Lifeline-qualifying programs. TracFone said it is imperative the Commission grant limited waivers to certain other states to allow them a reasonable period to modify their state laws and regulations and their state eligibility databases so as to be consistent with the revised Commission-established Lifeline eligibility criteria.
- TracFone Wireless [spoke with](#) Commissioner Clyburn on November 10, 2016, to discuss what it says are the adverse consequences that would result from the impending reduction in the Lifeline de-enrollment for non-usage rule. TracFone asked the Commission to either stay or defer the rule's effective date or grant a blanket interim waiver of the revised rule to prevent the hardship and disruption that will result from implementation of the 30 day de-enrollment for non-usage rule on December 2, 2016.
- The National Consumer Law Center, United Church of Christ, the Benton Foundation, et al. filed a [letter](#) on November 16, 2016, to express support for requests to stay the 30-day non-usage rule, conditioned on leaving the currently operating 60-day non-usage rule in place. They asserted this rule will inadvertently jeopardize the health and well-being of Lifeline consumers who value the Lifeline service, but are inactive due to unforeseen circumstances.
- The National Consumers League filed a [letter](#) on November 18, 2016, to express support for requests to stay the Lifeline 30-day non-usage rule, conditioned on leaving the current 60-day non-usage rule in place. NCL said the transition of Lifeline to supporting broadband service promises to make this program even more useful to the millions of consumers who depend on it, and it asked the Commission to grant the waiver requests.
- The Public Utility Division of the Oklahoma Corporation Commission filed a [response](#) on November 15, 2016, to Q LINK Wireless' [supplement](#) to its [Petition](#) seeking designation as a Lifeline Broadband Provider ETC. The PUD claimed the supplemental filing further supports the need for the FCC to remove the processing of the Petition from the 60 day streamline process because Q LINK's definition of its proposed Oklahoma service area within the filed supplement is not accurate.

- Warm Springs Telecom filed [comments](#) on November 17, 2016, opposing Lifeline broadband providers that have submitted applications to serve in Oregon in the zip code for the Reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon. WST objects to the claim of any company to have the ability to serve any Tribe without engaging in a “Meaningful Tribal Engagement” process, and said it is especially concerned about [Q LINK Wireless](#) and [TracFone](#).
- The National Tribal Telecommunications Association filed [comments](#) on November 18, 2016, to respond to petitions seeking designation as Lifeline Broadband Providers. NTTA expressed opposition to the petitions that purport to effect service in Tribal areas on the grounds that the treatment assumed in the petitions is premature given pending court appeals. It said the notice required to be provided to Tribal governments pursuant to section 54.202(c) is inadequate absent some type of input process by the notified entities, and absent meaningful input from the affected Tribal governments, the petitions are not in the public interest. NTTA also said it objects to the lack of formal public notice regarding the petitions and the resulting public comment period.
- Flat Wireless filed a [Petition](#) on November 14, 2016, requesting streamlined designation as a Lifeline Broadband Provider ETC in areas of Arizona and New Mexico where it provides CMRS service. Flat Wireless said it is not seeking any high cost support.
- Cox Communications filed a [letter](#) on November 17, 2016, to notify the Commission its telecom entities do not provide broadband internet access services in any state and have no plans to provide Lifeline-discounted BIAS offerings in any of the census blocks in which they provide Lifeline voice service. Cox said it plans to avail itself of the blanket forbearance relief granted in the Lifeline Broadband Order. Cox also said it provides BIAS offerings through other wholly owned subsidiaries and intends to seek Lifeline Broadband Provider designations on behalf of these entities to provide Lifeline-discounted BIAS offerings.
- Ztar Mobile filed a [letter](#) on November 16, 2016, withdrawing its October 3, 2016 [Petition](#) seeking designation as a Lifeline Broadband Provider ETC. Ztar said the Petition was filed concurrently with a similar petition submitted by its affiliate, Free Mobile, out of an abundance of caution in case it was determined that Free Mobile could not meet the streamlined processing requirements through its affiliation with Ztar Mobile. Ztar said it has learned Free Mobile’s affiliation with Ztar Mobile satisfies the criteria for streamlined approval of the Free Mobile LBP Petition, and it is therefore withdrawing its Petition.
- EducationSuperHighway [met with](#) Wireline Competition Bureau staff on November 15, 2016, to discuss an analysis of the cost to the E-rate program of the request from the Governors of Texas, New Mexico, and New Hampshire to increase the discount rate to 90% for all E-rate applications for non-recurring costs related to fiber builds to schools without fiber when states provide 10% of the funding. It also provided feedback it received from states and districts regarding the challenges they are experiencing with state matching fund and fiber project approvals.
- The Enforcement Bureau issued a [Notice of Apparent Liability](#) on November 18, 2016, proposing a penalty of \$100,000 against WDT World Discount Telecommunications for an apparent violation of the Commission’s universal service reporting obligations and for transferring, without prior Commission approval, certain assets, including its customer base.

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## Misc.

- The FCC [announced](#) on November 16, 2016, the following items have been deleted from the list of items scheduled for consideration at the November 17, 2016 [Open Meeting](#): 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; a Report and Order on video accessibility; and one enforcement consent agenda item. It noted these items remain on circulation.



- Energy and Commerce Committee Chairman Fred Upton (R-Mich.) and Communications and Technology Subcommittee Chairman Greg Walden (R-Ore.) sent a [letter](#) to Chairman Wheeler on November 15, 2016, to express concern about FCC decisions during the presidential transition. They said the most important challenge for the Commission over the next ten weeks is to ensure a successful broadcast incentive auction to provide needed spectrum to meet Americans' wireless broadband needs, and urged Chairman Wheeler to concentrate the Commission's attention and resources only on matters that require action under the law and efforts to foster the success of the broadcast incentive auction. Commissioners [Pai](#) and [O'Rielly](#) issued statements on the letter.
- The Wireline Competition Bureau and the Wireless Telecommunications Bureau issued an [Order](#) on November 16, 2016, approving Verizon and XO Holdings' applications for approval to transfer control of various licenses and authorizations held by XO Communications from XO Holdings to Verizon in connection with an equity purchase transaction whereby Verizon will acquire XO. The Bureaus found the proposed transaction likely will not cause material public interest harms, and found the relatively modest benefits of the transaction resulting from certain credited operational and economic synergies, the 5G and wireless backhaul enhancements, increased multi-location customer competition, and the minimal benefit to current XO customers gaining first-time access to Verizon services, outweigh any public interest harms.
- USTelecom [met with](#) Commissioner Clyburn and her Legal Advisor on November 10, 2016, to express support for the decision not to impose ex ante price regulation on all Ethernet services, but cautioned that proposals in the record that would mandate a "wholesale" discount structure for the BDS marketplace would, in fact, impose such regulation. USTelecom also said imposition of multiple downward price adjustments on transport services, in addition to channel terminations, would have a disproportionately negative impact on some of its smaller companies.
- USTelecom [met with](#) Chairman Wheeler's Legal Advisors and General Counsel and Wireline Competition Bureau staff on November 10, 2016, to discuss the possibility that the BDS Order may alter the regulatory status of transport services in addition to making changes to BDS loops or end user channel terminations. USTelecom asserted the Commission's consultant and staff economic analyses did not conduct a separate look at transport and other services, and said the record from all sides has not focused on building transport facilities to a relatively limited number of LEC end offices. USTelecom said one of the principle arguments for increased regulation of end user channel terminations – the inability to secure building access – is not applicable to the construction of transport facilities connecting to LEC end offices, and asserted the Commission has longstanding detailed rules under section 251(c)(6) governing the co-location of competitor facilities in LEC end offices.
- AT&T [met with](#) Commissioner Rosenworcel's Legal Advisor on November 10, 2016, to reiterate its objection to the indiscriminate application of price cap regulation to all DS1/DS3 transport services nationwide. AT&T said this is especially troubling because the FCC's own expert, Prof. Marc Rysman, did not separately examine transport market competitiveness and only focused on the market for circuits provided to customers.
- AT&T filed a [letter](#) on November 10, 2016, to respond to Sprint's recent [filings](#) on Chairman Wheeler's proposal for a new annual X-factor of 3 percent and a special one-time adjustment of 11 percent for BDS services. AT&T claimed Sprint's argument of applying a uniform 11 percent reduction in each individual DS1 and DS3 tariff type would be an approach dramatically at odds with longstanding practice and would undermine a principal benefit of the price cap regime. AT&T also said Windstream and Ad Hoc's proposal to mandate wholesale discounts for both carriers and some end-user customers illustrates the unworkability of any wholesale rate proposal.
- AT&T filed a [letter](#) on November 10, 2016, to assert Sprint's [attempts](#) to defend the extension of nationwide price caps to DS1 and DS3 transport services and the X-Factor adjustments fail. AT&T claimed there is no record support for re-imposing price cap regulation indiscriminately on all DS1 and DS3 transport services, saying while Sprint claimed Prof. Rysman's regression analyses found market power for DS1 and DS3 transport services, Prof. Rysman actually conceded he did not separately analyze competition in the transport market.

- CenturyLink filed a [letter](#) on November 10, 2016, to express opposition with several arguments in Sprint's filing justifying rate regulation of transport BDS. CenturyLink claimed Sprint cites no instance in which a party has expressly analyzed the transport segment, as opposed to channel terminations, and said the record is bereft of evidence necessary to support the application of a rate re-set or annual X-factor to these transport offerings. It said at most, the Commission should issue a FNPRM to assemble an adequate record. CenturyLink also said Sprint's new data does not appear to comport with CenturyLink's actual pricing and, absent a meaningful response from the entities that will be subject to Sprint's new transport proposal, the Commission cannot reasonably rely on these arguments or data in its Order.
- Windstream [spoke with](#) Wireline Competition Bureau staff on November 10, 2016, to suggest the Commission make clear ILEC TDM tariff pricing plans cannot charge excessive and duplicative shortfall penalties in the event that an ILEC sells a portion of circuits subject to such pricing plans to a different ILEC. Windstream said in the alternative, the Commission should make a specific finding in the forthcoming Order that a tariff provision is unreasonable and unlawful if it imposes shortfall penalties without allocating the minimum commitment level among the buyer and seller in proportion to the division of circuits at the time of sale, in the event that a provider sells a portion of the TDM circuits subject to the minimum commitment level.
- Windstream filed a [letter](#) on November 14, 2016, to respond to [CenturyLink](#), [AT&T](#), and [USTelecom](#) filings, which it said do not present compelling reasons for the Commission not to give full meaning to the Chairman's Fact Sheet's [proposal](#) that "[w]holesale rates are presumptively unreasonable if they exceed retail rates for like services." Windstream asserted CenturyLink erroneously argues the Commission must sunset the interim protections adopted in the Section 214 Discontinuance [Order](#). Windstream also said the other arguments raised by CenturyLink and AT&T as to the Commission's authority to regulate wholesale input rates and the applicability of the Parity Pricing Principle to the BDS markets have been addressed elsewhere in the record.
- Windstream [spoke with](#) Commissioner Clyburn and her Legal Advisor on November 10, 2016, to urge 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 asserted the Commission should, at a minimum, 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 maintain measures that protect customers of DS1 and DS3 service from price shocks when their incumbent providers switch to IP-based services.
- Frontier spoke separately with [Chairman Wheeler](#) and [Commissioner Clyburn](#) and her Legal Advisor on November 8 and 10, 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.
- Sprint [met with](#) Chairman Wheeler's Legal Advisors and the Wireline Competition Bureau Chief on November 9, 2016, to assert 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. It suggested the Commission phase in the 11 percent one-time adjustment over two years, with additional time for small ILECs, and the Further Notice should reflect the lack of competition for Ethernet services in the majority of the country, even for higher-capacity services. Sprint also spoke with Commissioner Rosenworcel's Legal Advisor on November 10, 2016, to discuss the same issues.
- TDS Metrocom filed a [letter](#) on November 10, 2016, to urge the Commission to adopt the complaint guidance proposed by [INCOMPAS](#). TDS also expressed opposition to AT&T and Verizon's positions that the BDS Order need not address the wholesale-retail relationship for RBOC Ethernet services. TDS said the record shows RBOCs engage in unjust and unreasonable practices that disadvantage

their CLEC competitors in retail markets, and it recommended the Commission exercise its section 201 and 202 authority to identify such practices as unjust and unreasonable and provide the industry needed guidance to achieve the goal of resolving disputes before carriers must resort to the section 208 complaint process.

- Alaska Communications filed a [letter](#) on November 10, 2016, to express support for Cincinnati Bell's [proposal](#) to exclude mid-sized carriers from any mandatory rate cuts and forbear from price regulation of their TDM-based services as well as Ethernet and other advanced, high-speed services. It also said the Commission should extend relief to the carriers whose regulated revenues are below the \$9.18 billion threshold in acknowledgement that mid-sized companies lack market power in the BDS sector.
- U.S. TelePacific filed a [letter](#) on November 14, 2016, to respond to AT&T's November 10, 2016 [letter](#), claiming AT&T mischaracterizes TelePacific's proposal and ignored the Commission's broad authority to protect the status quo during a transition period. TelePacific claimed it did not propose that the Commission set the price for any individual service, but instead asked the Commission to avoid rate shock during a three-year transition period for the 75 percent+ of California DS1 and DS3 circuits that customers purchase in Phase II MSAs.
- U.S. TelePacific [met with](#) Chairman Wheeler's Legal Advisor on November 10, 2016, to discuss unintended consequences of the proposed rules outlined in the BDS [Fact Sheet](#). TelePacific asserted that to avoid any unintended rate increase, the Commission should begin the process of reforming TDM BDS rates by capping the generally-available rates for all interstate TDM rate elements at the levels in effect as of the effective date of the rules, with the cap expiring after the July 1, 2019 annual access tariff filings. TelePacific urged the Commission to include such a transition rule as an explicit and mandatory part of its reform of the price cap rules.
- Public Knowledge, New America's Open Technology Institute, the CCIA, and the Schools, Health & Libraries Broadband Coalition [met with](#) Chairman Wheeler's Legal Advisors and Wireline Competition Bureau staff on November 10, 2016, to urge the Commission to proceed quickly to reform the BDS market to promote competition and address what they say are unjust and unreasonable prices that enterprise, wholesale, and mobile wireless backhaul customers pay for TDM and packet-based BDS services. They said while supportive of the Chairman's TDM proposals, they proposed the Commission adopt a two-year, rather than three year, implementation of the downward adjustment of TDM rates and a larger reduction in rates. They claimed the record justifies a rate reduction of at least 17 percent to 20 percent.
- BT Americas filed a [letter](#) on November 10, 2016, to discuss its proposal that would require carriers filing price cap rates for TDM services to also file proof that the weighted average of their posted Ethernet service rates 50 Mbps and under, i.e., each carrier's Actual Price Index, is below a Price Guideline Index set by the Commission. BT said under its proposal carriers would not file tariffs for their Ethernet services 50 Mbps and under, tariff rules would not apply to Ethernet services 50 Mbps and under, and hence this mechanism would not entail price cap regulation.
- The SHLB Coalition [met with](#) Chairman Wheeler's Legal Advisors and the Wireline Competition Bureau Chief on November 10, 2016, to express support for the FCC's effort to reduce the above-market prices being charged by incumbent providers of high-capacity data. It also said creating two different regulatory regimes based on the type of technology is inconsistent with the fact that they are part of the same market. It asked the FCC to strengthen the proposed Order by adopting a pricing regime for Ethernet services similar to the pricing regime it has proposed for TDM services so that the final Order is technology-neutral.
- Two former Florida and Arkansas state regulators sent a [letter](#) to Commissioner Clyburn on November 10, 2016, to express support for a light regulatory approach in the BDS market that they claim will promote continued investment in Ethernet/broadband networks and the expansion of available internet services in rural America. They urged the Commission to approve new rules that do not apply price regulations to new entrants in the BDS marketplace.

- The FCC's Managing Director [released the section](#) of its FY 2016 Agency Financial Report on improper payment reporting on November 15, 2016. The Managing Director indicated the Office of Management and Budget approved an extension (until March 1, 2017) for the Commission to publish its FY 2016 AFR due to legal concerns associated with disclosure of confidential broadcast incentive auction payment amounts. The OMB did not extend the deadline on the improper payment reporting section. The Managing Director noted the FCC received an unmodified opinion of its financial statements, and noted this is the eleventh straight year of clean audit opinions for the Commission.

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## Upcoming Filing Dates

- 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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