December 19, 2016 HIGHLIGHTS

- Chairman Wheeler announced he intends to leave the FCC on January 20, 2017. Statements by Commissioners Clyburn, Rosenworcel, O’Rielly, and Pai.

- The Wireline Competition Bureau, on its own motion, issued an Order granting a waiver of sections 69.311 and 69.416 to limit the costs that must be shifted from the Special Access category to the Consumer Broadband-only Loop category in cases where use of the surrogate cost methodology would result in unintended rate reductions. This waiver applies only to the December 2016 tariff filings.

- The WCB clarified the Access Recovery Charge imputation obligation, as required in the RoR Reform Order, applies not only to rate-of-return LECs that receive support from CAF BLS, but also to those receiving support from A-CAM.

- The WCB issued an Order conditionally approving NECA’s interim average schedule modifications to its 2016 average schedule formulas, subject to the tariff review process that will take place in conjunction with NECA’s December 19, 2016 tariff filing.

- The WCB authorized $3,491,280.18 in rural broadband experiment support for Lake Connections, bringing new broadband service to 845 census blocks in Minnesota.

- The WCB announced providers have 45 days to notify Frontier if they already serve the census blocks identified by Frontier in its further modified CAF Phase I Round 2 broadband support plan.

- Commissioner Clyburn spoke at the NTCA Executive Policy Summit to discuss rate-of-return reform, rural call completion, technology transitions, and Lifeline. She said the FCC should make the additional $50 million available to the A-CAM electors and should have a condition that if carriers accept the model and the FCC makes more high-cost funds available, carriers will be required to fully build out their locations.

- The FCC released a Public Notice announcing the rules in the Broadband Privacy Report and Order are effective January 3, 2017, except for the new data security requirements and certain other provisions subject to PRA approval by OMB.

- The FCC announced OMB approved the 2015 enhancements to the Open Internet transparency requirements for fixed and mobile broadband Internet access service adopted in the 2015 Open Internet Order. Commissioners Pai and O’Rielly issued a statement on the expiration of the small business exemption from the Open Internet Order’s expanded reporting requirements.

- Sandwich Isles Communications filed a Motion for Extension of Time for the submission of responses to the FCC’s proposed Forfeiture Order and the December 5, 2016 Order.

- The Wireline Competition Bureau granted Cisco WebEx’s Request for Review, confirming its online collaboration service is an information service.

Other Key Upcoming Dates

- 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. Public Notice
- Dec. 19 - Replies due to oppositions on Petitions for Reconsideration filed by NASUCA, et al. and NTIA of the IP Transitions Order. FR, Public Notice
USF Reform

• The Wireline Competition Bureau, on its own motion, issued an Order on December 14, 2016, granting a waiver of sections 69.311 and 69.416 to limit the costs that must be shifted from the Special Access category to the Consumer Broadband-only Loop category in cases where use of the surrogate cost methodology would result in unintended rate reductions. The Bureau said this waiver will apply in circumstances in which subtraction of surrogate CBOL costs from a carrier’s Special Access category would result in the need to reduce the carrier’s special access rates other than broadband transmission rates associated with provision of retail broadband Internet access service. The Bureau indicated carriers will have the option to limit the level of costs subtracted from the Special Access category to the amount only affecting those broadband transmission rates, pending further consideration of current surrogate cost estimation rules. As a condition of this waiver, the Bureau requires carriers electing this option to limit their CBOL revenue requirement reported to USAC for CAF BLS purposes to this amount. This waiver applies only to the December 2016 tariff filings.

• The Wireline Competition Bureau issued an Order on December 14, 2016, clarifying that the Access Recovery Charge imputation obligation, as required in the March 2016 RoR Reform Order, applies not only to rate-of-return LECs that receive support from CAF BLS, but also to those receiving support from A-CAM. The Bureau said RoR LECs must impute an amount equal to the ARC they assess on voice/broadband lines on their Consumer Broadband-only Loops receiving support either from CAF BLS or A-CAM.

• The Wireline Competition Bureau issued a Public Notice on December 12, 2016, authorizing $3,491,280.18 in rural broadband experiment support for Lake County, Minnesota d/b/a Lake Connections, bringing new broadband service to 845 census blocks in Minnesota.

• The Wireline Competition Bureau released a Public Notice on December 14, 2016, announcing providers have 45 days to notify Frontier if they already serve the census blocks identified by Frontier in its further modified CAF Phase I Round 2 broadband support plan, submitted December 8, 2016, at speeds of 3 Mbps/768 kbps or higher. The Bureau also indicated Frontier must certify that to the best of its knowledge the locations it plans to serve are in fact unserved before it may commence construction. Existing providers have until Monday, January 30, 2017, to notify Frontier. A machine-readable list of the census blocks Frontier intends to serve is available here.

• Commissioner Clyburn spoke at the NTCA Executive Policy Summit on December 13, 2016, to discuss rate-of-return reform, rural call completion, technology transitions, and Lifeline. She said the FCC should make the additional $50 million available to the A-CAM electors and should have a condition that if carriers accept the model and the FCC makes more high-cost funds available, carriers will be required to fully build out their locations. She said it is unacceptable that calls to rural areas are still not being completed, even after the rural call completion reforms the FCC adopted. She also said the technology transitions effort is far from done and the FCC must address questions about the regulatory treatment of VoIP, VoIP interconnection, and universal service contributions issues. Clyburn indicated support for a limited waiver of the standalone broadband requirement in the Lifeline Order.

• Home Telecom met separately with the Legal Advisors of Commissioners Rosenworcel, Pai, and O’Rielly on December 13 and 15, 2016, to discuss the initial elections for A-CAM support. Home Telecom asked that the Commission provide additional funding to cover the existing budget shortfall for A-CAM electors, and requested that the Commission act expeditiously to fund and implement the model-based support so that the universal service reforms approved by the Commission can begin. Home Telecom and Comporium Communications also met with Commissioner Clyburn and her Legal Advisor on December 13, 2016, to discuss the same issues.

• Empire State Development and the Washington D.C. Office of New York Governor Andrew Cuomo met separately with Commissioner Pai and his Legal Advisor, Commissioner Clyburn’s Legal Advisor, and Commissioner O’Rielly’s Legal Advisor on December 13, 2016, to discuss New York’s Petition for Expedited Waiver of the CAF Phase II auction rules. They explained the New York broadband program is technology neutral and open to wireline, fixed wireless, and satellite broadband providers, and said
while broadband services providing 100 Mbps or greater download speeds are preferred in the auction, only if bids for such services are cost reasonable. They claimed grant of the waiver is not controversial as it has received strong bipartisan support and widespread backing from New York carriers (including Verizon), as well as other states. Empire State Development and the Washington D.C. Office of New York Governor Andrew Cuomo also met with Wireline Competition Bureau staff on December 13, 2016, to discuss similar issues.

- ViaSat and WISPA met with Commissioner Rosenworcel’s Legal Advisor on December 12, 2016, to discuss concerns over New York State’s Petition for Expedited Waiver, which seeks to direct a portion of CAF Phase II auction funds to New York State for distribution through the State’s broadband program. They claimed the NY State program effectively grants a right-of-first-refusal to certain relatively costly technologies without allowing other technologies to compete for funds, and also claimed much of the concerns with the Petition stem from the fact that New York State’s broadband program incorporates some of the most controversial elements that were considered, but ultimately rejected, during the course of the CAF II proceeding. They suggested the FNPRM is a better process for resolving questions for all states where model-based support was declined by price cap carriers.

- The National Tribal Telecommunications Association and Gila River Telecommunications met separately with Legal Advisors to Commissioners Clyburn, Rosenworcel, O’Rielly, and Pai on December 13, 14, and 15, 2016, to call for the Commission to move forward with a vote to adopt a tribal-specific mechanism before the end of the year to target additional support for increased deployment on tribal lands and modify the rate-of-return carrier operations expense limitation rule for carriers serving primarily Tribal locations to mitigate the serious harm that will be caused to some tribal carriers when the rule takes effect on January 1, 2017.

- ATN International filed a letter on December 15, 2016, to argue that the use of road miles as the bidding unit in the Mobility Fund II auction would best serve universal service goals, maximize coverage of the other types of units, and can be implemented with available data. ATN recommended the Commission adopt road miles as the bidding and coverage unit for the Mobility Fund II, suggesting this can be maximizing by setting the minimum coverage requirement to 85% or above.

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ICC

- The FCC issued a Public Notice on December 13, 2016, announcing Smart City Telecommunications filed a Petition for Reconsideration on November 21, 2016, of the Order denying its Petition for Waiver of section 51.917, the ICC Eligible Recovery rule. Opposities are due 15 days after Federal Register publication of this Public Notice; replies due 10 days after the time for filing oppositions has expired.

- TEXALTEL filed a Reply on December 12, 2016, on AT&T’s Petition asking the FCC to forbear from the tariffing of access charges for tandem switching, tandem-switched transport, and toll-free data queries for all LECs, including intermediate LECs, on all calls to or from LECs engaged in access stimulation. TEXALTEL claimed forbearance is the wrong process to consider the complex issues involved with AT&T’s proposal. Replies are due December 19. Public Notice

- Sprint met with Chairman Wheeler’s Legal Advisor and Wireline Competition and Wireless Telecommunications Bureau staff on December 13, 2016, to assert the Commission has repeatedly made clear that the “intraMTA rule” superseded the access charge regime. Sprint also said the imposition of access charges on intraMTA traffic cannot be reconciled with the Commission’s regulations, which classify intraMTA traffic as “Non-Access Telecommunication Traffic,” and therefore LECs are only entitled to reciprocal compensation in connection with intraMTA calls and may not impose access charges on other carriers, including IXCs, carrying such calls. Sprint urged the Commission

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Broadband

- The FCC released a Public Notice on December 14, 2016, announcing the rules in the Broadband Privacy Report and Order are effective January 3, 2017, except for the new data security requirements and certain other provisions subject to PRA approval by OMB. The data security obligations (new section 64.2005) will be effective on March 2, 2017; the new breach-notification requirements (new section 64.2006) will become effective the later of PRA approval or June 2, 2017; and the notice and customer approval provisions (new sections 64.2003, 64.2004, and 64.2011(b)) will become effective the later of PRA approval or December 4, 2017. Small providers will also have an additional 12 months before the new notice and customer approval rules are effective. Federal Register

- USTelecom released its annual broadband investment research Brief on December 14, 2016, finding the industry invested approximately $1.5 trillion in network infrastructure from 1996-2015. USTelecom said the wireline industry invested $76 billion in 2015, $1 billion lower than the previous year. It claimed the steepest investment declines occurred in the 2001-2003 economic slump, but spending picked up in 2004 and has moved in a positive direction most years, with the exception of the 2008-09 economic slowdown, and with modest spending increases from 2012-2014 before last year’s drop-off in spending. Press release

IP Transition

- The Wireline Competition Bureau issued an Order on December 12, 2016, dismissing as untimely the Ad Hoc Telecommunications Users Committee’s Petition for Reconsideration of the July 2016 Declaratory Ruling, which determined that ILECs are no longer dominant in the provision of interstate switched access services. The Bureau stated Ad Hoc expressly sought reconsideration only of the Declaratory Ruling and did not seek reconsideration of the Second Report and Order and Order on Reconsideration. The Bureau stated Ad Hoc's Petition was filed on August 22, 2016, which is not within 30 days from public notice of the Declaratory Ruling.

- The FCC published a Notice in the Federal Register on December 15, 2016, seeking PRA comments on changes to an information collection resulting from the Commission’s new rules on notices of planned copper retirements. In July 2016, the Commission revised section 51.329(c) of its network change disclosure rules to make available to filers new titles applicable to copper retirement notices. Written comments are due January 17, 2017.

Open Internet

- The FCC released a Public Notice on December 16, 2016, announcing on December 15, 2016, OMB approved the 2015 enhancements to the Open Internet transparency requirements for fixed and mobile broadband Internet access service adopted in the 2015 Open Internet Order. The FCC also said it has sent a notice to the Federal Register announcing OMB approval and an effective date of January 17, 2017, for the enhanced disclosure requirements.

- Commissioners Pai and O’Rielly issued a statement on December 16, 2016, on the expiration of the small business exemption from the Open Internet Order’s expanded reporting requirements. They said they remain committed to protecting small businesses and their customers from the higher costs and disproportionate impact that would accompany the implementation of these requirements and remain hopeful that a consensus exemption can still be achieved at the Commission in the months ahead, in addition to reviewing the application of the overall burdens themselves.

- Eight members of Congress sent a letter to Chairman Wheeler on December 13, 2016, urging extension of the exemption for small providers from the enhanced transparency requirements adopted in the Open Internet Order before the current exemption expires on December 15, 2016. They also suggested the Commission begin the process of considering whether the exemption should be made
permanent and whether the definition of small business entities to which the exemption applies should be modified. **Press release**

- The Competitive Carriers Association, WISPA, NTCA, and ACA sent a letter to Chairman Wheeler and the FCC Commissioners on December 13, 2016, to urge the Commission to extend the exemption from the Open Internet Order’s enhanced transparency requirements for small providers before the current exemption expires on December 15, 2016.

- CTIA spoke with Commissioner Clyburn’s Legal Advisor on December 15, 2016, to urge the Commission to permanently exempt small businesses from the enhanced transparency requirements and to adopt a more realistic definition of the small business entities to which the exemption would apply. CTIA noted that both the House of Representatives and the Senate Committee on Commerce, Science, and Transportation have proposed to extend the exemption and increase the number of entities to which the exemption would apply.

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**USF**

- The FCC issued a Public Notice on December 13, 2016, announcing Chairman Wheeler appointed six members to the USAC Board of Directors. The new members are: representative for ILECs, Joel Lubin, a consultant for AT&T; representative for libraries, Robert Bocher, Consultant, Wisconsin Dept. of Public Instruction; representative for schools, Dr. Daniel A. Domenech, American Association of School Administrators; representative for state consumer advocates, Cynthia Kinser, Office of the Tennessee Attorney General; representative for CMRS providers, Matt Gerst, CTIA; and representative for cable operators, Beth Choroser, Comcast.

- Sandwich Isles Communications filed a Motion for Extension of Time on December 16, 2016, for the submission of responses to the FCC’s proposed Forfeiture Order, certain Commission authorizations in the Order, and the December 5, 2016 Order. SIC requested an extension of 60 days after what it claimed is the required Public Notice inviting comments on the latter two items.

- TracFone filed a letter on December 9, 2016, to discuss delays it experienced in having Lifeline enrollment applicants’ eligibility verified and de-enrollments processed through the National Lifeline Accountability Database. TracFone claimed all of its IP addresses used in connection with the NLAD were disabled, preventing it from having access to the system, and claimed the issue was not resolved for several days. TracFone asserted this could have been avoided if the NLAD revisions had been thoroughly tested with Lifeline provider participation and adjusted as necessary prior to being placed into service to accommodate the December 2 effective date.

- The Benton Foundation, the Institute for Public Representation, Georgetown Law, and the SHLB Coalition met with Wireline Competition Bureau staff on December 8, 2016, to discuss Lifeline and E-rate issues. They asserted the Alaska Order serves as precedent for granting petitions seeking to include off-campus use of existing E-rate supported connectivity. They also said the FCC’s rules requiring cost allocation for ineligible use implicitly accepts that there can be off-campus use of E-rate supported connectivity, and discussed possible safeguards schools and service providers can use to ensure the E-rate supported connectivity at home is compliant with the Children’s Internet Protection Act.

- Guam Cellular and Paging and Guam Telecom and Cellular One of North East Arizona filed supplements on December 9, 2016, to their requests seeking forbearance from the requirement for Lifeline-only ETCs to offer Lifeline-supported BIAS services. They provided the lists of census blocks and associated Federal Information Processing Standards codes representing the areas in which they are availing themselves of forbearance. **List of all requests available to date.**
• TeleCircuit Network filed a supplement to its Request for Forbearance from Lifeline BIAS Requirements on December 13, 2016. TeleCircuit provided a list of census-recognized geographic areas for which it requests forbearance. A list of all requests available to date.

• Kajeet met with Wireline Competition Bureau staff on December 13, 2016, to discuss its Petition for designation as a Lifeline broadband provider. Kajeet also discussed its Education Lifeline™ model, in which it will partner with accredited schools and school districts to identify households whose enrolled K-12 students lack adequate broadband access for a modern digital education.

• Western Wisconsin Communications filed a Petition on December 13, 2016, seeking designation as a Lifeline Broadband Provider ETC for the sole purpose of receiving USF Lifeline support for the provision of broadband internet access service. It provided a list of states and zip codes in which it seeks designation.

• Wabash Independent Networks filed a Petition on December 12, 2016, seeking designation as a Lifeline Broadband Provider ETC in 430 census blocks in the state of Illinois.

• TerraCom and Northland Cable Television and Northland Cable Ventures filed petitions on December 14, 2016, seeking designation as Lifeline Broadband Providers. TerraCom seeks designation in all 50 states and Puerto Rico and the Virgin Islands, and Northland provided a list of designated service areas where it proposes to provide service.

• Red Pocket filed a letter on December 14, 2016, to update the record and encourage the FCC to grant its Petition seeking designation as a Lifeline Broadband Provider. Red Pocket said it is the only LBP applicant with wholesale relationships that enable it to offer service on each of the country’s four major wireless network providers and possesses unique and strategic distribution relationships that will allow it to reach segments of the U.S. population that may heretofore have been unexposed to the Lifeline program.

• Cisco WebEx spoke with Legal Advisors to Commissioners Pai and O’Rielly and Wireline Competition Bureau staff on December 9 and 12, 2016, to urge the Commission to resolve WebEx’s Request for Review and confirm WebEx is an information service.

• The Wireline Competition Bureau released an Order on December 16, 2016, granting Cisco WebEx’s Request for Review, confirming it is an information service. The Bureau reversed USAC’s decision and found that Cisco’s PSTN minutes, when used in conjunction with the desktop and document sharing application, are integrated into a single Cisco WebEx information service that is not subject to universal service contribution requirements.

• No comments were filed 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

Misc.

• Chairman Wheeler issued a statement on December 15, 2016, announcing he intends to leave the FCC on January 20, 2017. Statements were made by Commissioners Clyburn, Rosenworcel, O’Rielly, and Pai.

• The Wireline Competition Bureau issued an Order on December 16, 2016, approving NECA’s November 30, 2016, interim average schedule modifications to its 2016 average schedule formulas on a conditional basis, subject to the tariff review process that will take place in conjunction with NECA’s December 19, 2016 tariff filing. The Bureau said the conditional nature of the approval will expire as of January 3, 2017, unless the Bureau takes action to suspend or reject the December tariff filing. The Bureau said although public comment is ordinarily sought prior to Bureau action on average schedule
formula modification requests, given the need to act on the modification request quickly to enable the upcoming December 19, 2016 tariff filing that is required by the Rate of Return Order implementation, the Bureau must modify its process. The Bureau said interested parties may file petitions relating to the tariff filing in accordance with applicable rules prior to the January 3, 2017 scheduled tariff effective date.

- The FCC deleted the following items from its December 15, 2016 Open Meeting agenda because they have already been adopted: an NPRM to update, clarify, and streamline the FCC’s rules on satellite systems; an Order updating its FOIA regulations; an Order on Reconsideration and Memorandum Opinion and Order on the assignment of licenses held by Maritime Communications/Land Mobile; and an Order evaluating the Wireless Network Resiliency Cooperative Framework. The FCC also deleted a Report and Order and FNPRM to enhance the Emergency Alert System, an Order addressing a Petition for Reconsideration of a Forfeiture Order for slamming and deceptive marketing, and one consent agenda item. The FCC will still consider a Report and Order and FNPRM on the transition from TTY technology to real-time text communication over wireless IP networks at the Open Meeting.

- The FCC released the Report and Order and FNPRM adopted at its December 15, 2016 Open Meeting on December 16, 2016, amending its rules to allow phone companies to replace support for TTY technology with support for real-time text communication over wireless IP networks. The FCC said to fulfill the accessibility requirements on wireless networks, real-time text services must be both compatible with existing TTY services and interoperable with real-time text applications on other networks. The accompanying FNPRM seeks comments on next steps in the process of integrating these services into telecommunications relay services and the need for certain RTT features for people with cognitive disabilities and who are deaf-blind. News Release

- ATIS and the SIP Forum met via telephone with Wireline Competition Bureau and Office of Strategic Planning staff on December 12, 2016, to discuss their work to facilitate IP interconnection and to answer Commission questions about this work that have arisen in relation to the pending waivers of the Commission's call signaling rules. They discussed IP interconnection agreements, SIP-T, SIP signaling information, and phantom traffic.

- The FCC issued a Notice in the Federal Register on December 16, 2016, seeking PRA comments on an extension of a currently approved information collection associated with section 69.123, on density pricing zone plans. The FCC stated Tier 1 LECs are required to provide expanded opportunities for third party interconnection with their interstate special access facilities and must file and obtain approval of their pricing plans, which will be used by FCC staff to ensure the rates are just, reasonable, and nondiscriminatory. PRA comments are due February 14, 2017.

- Warm Springs Telecom filed a letter on December 12, 2016, to amend its Response 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 clarified it is not an ETC throughout the state of Oregon, and WST was only granted ETC status for the Warm Springs Wire Center serving the Warm Springs Reservation. WST said this does not impact the entirety or veracity of the rest of the filing, and WST only serves customers with Tribal Lifeline on the Warm Springs Reservation.

- The North American Portability Management LLC filed a letter on December 13, 2016, to respond to Neustar’s letter regarding NAPM’s November 29, 2015 letter about Neustar’s Number Portability Administration Center Transition Status Report. The NAPM said each of the statements in its earlier letter was accurate, and urged Neustar promptly to sign a non-disclosure agreement, without insisting on non-standard provisions.

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Upcoming Filing Dates

- Dec. 19 - Replies due to oppositions on Petitions for Reconsideration filed by NASUCA, et al., and NTIA of the IP 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. **FR, 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. **Public Notice**

- Dec. 21 - Oppositions due on ACS’ **Petition for Reconsideration** of the meaning of “high-cost” in the context of the **Order** establishing voice and broadband service obligations for Alaska Communications. Replies due January 3. **Federal Register**

- 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. 3 - Replies to oppositions due on ACS’ **Petition for Reconsideration** of the meaning of “high-cost” in the context of the **Order** establishing voice and broadband service obligations for Alaska Communications. **Federal Register**

- 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**

- Jan. 17 - PRA comments due on changes to an information collection resulting from the Commission’s new rules on notices of planned copper retirements. **Notice**

- Feb. 14 - PRA comments due on an extension of a currently approved information collection associated with section 69.123, on density pricing zone plans. **Notice**

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