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NOVEMBER 22, 2017

SPECIAL BULLETIN

FCC's November Open Meeting *Summary of Activity*

The Federal Communications Commission (FCC) held its monthly Open Meeting last Thursday, November 16 (see 10-27-17 *Alexicon Insider*). A number of important items were adopted and, as has been normal since Ajit Pai took over the chairmanship, the meeting was not without some controversy.

Lifeline Order(s), NPRM, and NOI

The FCC decided to take up a few issues surrounding Lifeline service in Tribal areas—limit support to only rural Tribal areas (*i.e.*, solving the so-called “Oklahoma problem”), and eliminate support for services provided by wireless resellers—and to eliminate the prohibition on allowing customers to switch carriers right away. In addition, the FCC clarified that mobile broadband support is only available for 3G or better levels, and not for “premium Wi-Fi” services that require use at a Wi-Fi hotspot.

In the NPRM, the FCC proposes a number of changes to the Lifeline program, including:

- Limit Lifeline credits to services provided by facilities-based carriers only
- Provide states with the authority to designate Lifeline Broadband Providers (LBP), where the last Lifeline Reform order provided that authority only to the FCC.
- Enact a self-enforcing budget cap mechanism, but with priority given to (1) rural Tribal areas and (2) rural areas.
- Establishing a maximum discount level for Lifeline-supported services

Finally, the NOI seeks comment on how to best utilize the Lifeline program to close the digital divide, including by increasing the Lifeline credit in rural Tribal areas and tackling digital redlining.

Commissioner Clyburn, who has made the Lifeline program one of her signature issues, wondered if the FCC should be renamed the Federal Punitive Rulemaking Commission (while recognizing that the FPRC may be a bit over the top). Clyburn’s main beef seems to be with the elimination of support for services provided by wireless resellers, saying “the federal Lifeline Program is not, nor should it be, an infrastructure program. It is certainly a complement to infrastructure programs, but ulti-

Federal Punitive
Rulemaking
Commission
- Mignon Clyburn




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mately it is an affordability program.”

The News Release is available [here](#), and the individual Commissioner statements are also available ([Pai](#), [Clyburn](#), [O’Rielly](#), [Carr](#), [Rosenworcel](#)). Once the Order(s), NPRM, and NOI are released, we will provide further information.

Accelerating Wireline Broadband Deployment

The Commission also adopted a Report and Order, Declaratory Ruling, and FNPRM on accelerating broadband deployment by removing barriers to infrastructure investment. In this item, the FCC tackles two main issues: (1) access to utility poles, and (2) copper retirements.

Access to Utility Poles. The FCC revises rules to prohibit pole owners from charging for make ready costs that have already been recovered from others, adopts a 180 day “shot clock” for addressing pole attachment disputes, and allow local providers equal access to each other’s poles.

Copper Retirements. The Commission revises the copper retirement rules initially adopted in 2015, including (1) allowing providers to notify customers earlier of upcoming network changes and copper retirements, (2) reducing consumer confusion and carrier burden cause by duplicative copper retirement notices, and (3) reversing a 2014 interpretation requiring carriers to receive FCC approval before upgrading legacy services.

As of this writing, only the [News Release](#) and Commissioner statements are available. Once the item is released, we will provide further information.

Robocall Blocking

The Commission acted to allow companies to “proactively block illegal robocalls” by adopting a [Report and Order](#) that would, among other things, “expressly authorize voice service providers to block robocalls that appear to be from telephone numbers that do not or cannot make outgoing calls, without running afoul of the FCC’s call completion rules” and allow voice providers “to block calls purporting to be from a phone number placed on a ‘do not originate’ list by the number’s subscriber. They will also be allowed to block calls purporting to be from invalid numbers, like those with area codes that don’t exist, from numbers that have not been assigned to a provider, and from numbers allocated to a provider but not currently in use.”

In the year since August 1, 2016, we have received nearly 185,000 complaints about calls that consumers did not want.

For the most part, this Report and Order *allows* (does not *require*) carriers to preemptively block calls in specific situations from reaching the customer, instead of the customer requesting the action (as in Robocall blocking services, for example). However, there are certain technical hurdles to clear before any of the blocking adopted in the Report and Order can take place, mostly surrounding how to properly identify the offending numbers and to cut down on false positives.

We recommend carriers determine the volume of robocalls falling under the definitions in the order and then carefully review the available sources of information about each type of call prior to embarking on any proactive blocking program. The Robocall Strike Force [Report](#) is a good source of information.



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Other Items

Accelerating Wireless Broadband Deployment. The Commission took action designed to accelerate wireless broadband infrastructure deployment by tweaking rules regarding the historic preservation review of certain utility pole replacements. While the associated NPRM raised a number of issues of concern to Tribal entities, the FCC did not address most of them. The News Release is available [here](#) and the Report and Order is available [here](#).

Next Generation Wireless Technologies. From the FCC’s [Press Release](#): “The FCC took additional steps today to make available spectrum above 24 GHz to help ensure American leadership in wireless broadband, which represents a critical component of economic growth, job creation, public safety, and global competitiveness.” and “This high-frequency spectrum will support innovative new uses enabled by fiber-fast wireless speeds and extremely low latency. In recent years, technological advances have increased the ability to harness millimeter wave (mmW) technology for fixed and mobile wireless communications in high band spectrum, while demand for connected products and services continues to grow. The actions taken today will allow for the development of innovative services to the benefit of the public.” ([Order, etc](#))

Broadcast Ownership Rules. According to the [Press Release](#): “The Federal Communications Commission today voted to modernize its broadcast ownership rules and to help promote ownership diversity in the broadcast industry. These actions will provide broadcasters and local newspapers with a greater opportunity to compete in the digital age and will help ensure a diversity of viewpoints in local markets.” ([Order on Recon and NPRM](#))

Next Generation TV Broadcast Standard. Per the FCC’s [Press Release](#): “—The Federal Communications Commission today adopted new rules to let television broadcasters use the Next Generation broadcast television transmission standard, also called ATSC 3.0, on a voluntary, market-driven basis.” ([Report and Order and FNPRM](#))

Coming Up—Net Neutrality

In a highly reported item, Chairman Pai announced that the Commission will vote on an Open Internet Order that will in essence eliminate the previous rules and replace them with a “light touch” regime. Among other things, the ruling would restore the information service classification to broadband Internet access service, and would adopt transparency requirements that ISPs disclose information about their practices to consumers, entrepreneurs, and the Commission. For some light Thanksgiving reading, the draft ruling is available [here](#).

While this [move](#) by Chairman Pai should surprise no one, nonetheless the specter of eliminating the thrice-attempted Open Internet rules is seemingly [haunting](#) the [country](#). Indeed, Commissioner Clyburn released her own “[fact sheet](#)” that, unsurprisingly, has a different view of the proposed ruling. Unless something shocking happens with the public outcry, or perhaps the FCC’s comment system is [manipulated](#) further, it can be expected that the Order will pass on a 3-2 vote on December 14. Once we’ve had a chance to review the draft item, we will issue a further update of any items that merit attention prior to the FCC’s open meeting.

It eliminates all prohibitions against blocking and throttling (slowing down) applications by broadband providers, and enables them to engage in paid prioritization and unreasonable discrimination at the point of interconnection. It ignores thousands of consumer complaints and millions of individual comments that ask the FCC to save net neutrality and uphold the principles that all traffic should be created equal.
- Mignon Clyburn

