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SPECIAL BULLETIN

Upcoming FCC Actions

Chairman Wheeler’s office has been busy in the past few days, releasing “Fact Sheets” on upcoming FCC actions related to broadband privacy and additional federal Lifeline program changes. These Fact Sheets come on the heels of Commissioner O’Rielly’s blog post criticizing this practice, but do provide interested parties with a preview of what the full Commission will discuss at the March 31, 2016 Open Meeting.

Broadband Consumer Privacy—ISPs, Meet CPNI

Chairman Wheeler [announced](#) that a Notice of Proposed Rulemaking will be considered at the FCC’s next Open Meeting on March 31 that addresses issues surrounding the privacy of customer information gathered by broadband Internet access providers. The announcement contains a rough outline of what is expected to be in the NPRM, but it is fairly clear that the Chairman is looking to apply CPNI, or CPNI-like, rules to broadband ISPs. To date, CPNI (Customer Proprietary Network Information) rules are applicable only to voice telephony and certain other telecommunications services. In addition, the Chairman’s proposals appear to rely heavily on the Title II (common carrier) approach the Commission took in adopting Net Neutrality rules, which of course is currently the subject of a court case.

The likely NPRM will address broadband privacy in three main areas: (1) Choice, (2) Transparency, and (3) Security. Similarly to CPNI rules, ISPs will be allowed to utilize certain data if it relates to the performance of providing the service. In addition, customer opt-out and opt-in rights will be proposed for ISP access to certain other customer data.

Also addressed in the upcoming NPRM is the ISP’s duty to keep customer data secure, which would require “broadband providers to take reasonable steps to safeguard customer information from unauthorized use or disclosure” and “broadband providers to adopt risk management practices; institute personnel training practices; adopt strong customer authentication requirements; to identify a senior manager responsible for data security; and take responsibility for use and protection of customer information when shared with third parties.”

Finally, the NPRM will propose rules designed to require ISPs to notify customers when data has been compromised. According to the Fact Sheet, providers would be required to notify:

- * Affected customers of breaches of their data no later than 10 days after discovery.
- * The Commission of any breach of customer data no later than 7 days after discovery.
- * The Federal Bureau of Investigation and the U.S. Secret Service of breaches affecting more than 5,000 customers no later than 7 days after discovery of the breach.

The reaction thus far has been mixed, with large ISPs (such as AT&T) complaining that broad-



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Questions? Comments?

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band ISPs appear to be held to a standard different than those applicable to web sites or other edge providers, such as Twitter, Facebook, and Google. Chairman Wheeler took to the “airwaves” with an [op-ed](#) in the Huffington Post, and Commissioner O’Rielly predictably issued a [statement](#) criticizing the news by stating “the FCC is doubling down on its misguided and broken Net Neutrality decision by imposing troubling and conflicting ‘privacy’ rules on Internet companies...”

The next steps are adoption of the NPRM and establishing a comment cycle. Obviously, the Chairman would like to see action on the broadband privacy proposals prior to year end when he may be scheduled to step down as Chairman. This means rules could be in place by year end, but a more likely scenario is first quarter of 2017 (notwithstanding any legal challenges).

Lifeline to Get a Boost

Chairman Wheeler and Commissioner Clyburn also released last week some high level features of yet another Lifeline order adopting additional revisions to the program ([Fact Sheet](#)). The order has been circulated and will be addressed at the FCC’s March Open Meeting. Some highlights of the order are:

- ⇒ Lifeline credits can be applied to stand alone mobile or fixed broadband Internet access service.
- ⇒ Establishes a budget of \$2.25b (Commissioner O’Rielly has recently been calling for a \$1.63b budget)
- ⇒ No apparent increase in the \$9.25 Lifeline credit. The summary does not mention the enhanced Tribal credit.
- ⇒ Credits for mobile voice-only services will be phased out. Mobile lifeline providers must offer broadband by 12/1/19.
- ⇒ Adopts a national third party verification system.

Once again, Commissioner O’Rielly issued a [statement](#) criticizing the upcoming (and yet to be read) order, paying particular attention to the apparent increase in the overall Lifeline budget from \$1.63 billion to \$2.25 billion.

Soon after the Fact Sheet was released, the National Telecommunications and Information Administration (NTIA) weighed in with 22 pages of (ex parte) [comments](#) that in general backed the Chairman’s plan. A couple of notable differences are a strong recognition of the continuing importance of voice services, and support for calls from the industry to not adopt minimum broadband standards.

The White House Weighs In

In a related action, President Obama announced the “[ConnectALL](#)” initiative, designed to “help Americans from across the country, at every income level, get online and have the tools to take full advantage of the Internet. Today, the Administration is submitting its recommendation that the Federal Communications Commission (FCC) reform a \$1.5 billion per year Reagan-era phone subsidy program to turn it into a 21st Century national broadband subsidy to help low-income Americans get online.” At the same time, the Administration released a [new study](#) on the economic importance of broadband services.

Conclusion

The rest of March and early April promise to be one of the most active at the FCC in recent months. In addition to the above items, the FCC is also expected to act soon on an order adopting reforms to rate-of-return carrier USF policies. We will continue to keep you informed as further details are made available.

If you have any questions, please let us know.