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Clyburn Seeks Stronger Authority

Key Questions Up in Air as Net Neutrality Order Approaches Approval

While the FCC is expected to approve proposed net neutrality rules Thursday, discussions were continuing there on some significant details in the order reclassifying broadband. A change apparently sought

by Commissioner Mignon Clyburn to remove a specific legal relationship between edge providers and ISPs appears to be out, said a commission official Wednesday. Neither Clyburn nor the agency would comment.

Cable and commission officials didn't expect the agency to forbear from Communications Act Section 201(b), which requires "reasonable rates"—a key part in the industry's complaints that the order would create rate regulation for broadband. A former FCC official familiar with the agency's deliberations told us that Clyburn has been pushing for the change, which Google, as well as Free Press, had lobbied for. Despite a [report](#) in *The Hill*, officials inside and outside the agency said Clyburn wasn't trying to weaken the order at the last minute by proposing the deletion, but to strengthen its legal authority. A commission official said the move weakens the order's legal authority because what Clyburn wants to remove would reduce two legal justifications in the draft order to one.

According to the agency's fact sheet on the draft order (see [1502040055](#)), and comments by a senior agency official at the time, the FCC based the draft's authority on both Communications Act Title II and Telecom Act Section 706. As a backstop, the agency noted that the U.S. Court of Appeals for the D.C. Circuit (see [1401150046](#)) raised the question of the legal relationship between ISPs and edge providers in last year's ruling striking down much of the 2010 open Internet rules. Google and Free Press told agency officials in recent days that creating the new relationship unnecessarily creates a legal uncertainty that could harm the agency's ability to withstand the expected legal challenges (see [1502230054](#)). Google also feared the new legal relationship could open the door to ISPs demanding payment from edge providers for delivering their content, said an ex parte filing by Austin Schlick, director-communications law at Google, who was general counsel to the FCC when it approved the original net neutrality rules in 2010.

While saying he didn't know about Clyburn's proposal firsthand, Free Press Policy Director Matt Wood said she's apparently seeking to remove the provision "that's strengthening the legal authority and the rules tremendously." The sentiment was the consensus of several lobbyists who've been working on net neutrality.

CTIA, NCTA, USTelecom and others have suggested they may appeal the order (see [1502130049](#)). "I don't think you'll see any" petitions for FCC reconsideration from broadband providers "as they'll be heading straight to court," said a cable attorney. There may be multiple challenges because wired and wireless providers have different interests over whether wireless should be subject to the rules, the attorney said.

Public Knowledge Senior Vice President Harold Feld doesn't expect "challenges on rates or conditions any time soon," he said. "Or really at all unless something outrageous happens. This isn't about rate regulation." Other consumer advocates agreed. "ISPs have been behaving themselves as the policy process played out over the past year," said Michael Calabrese, director of the Wireless Future Project at the New America Foundation's Open Technology Institute. The order will "nip in the bud" the possibility of paid prioritization "even if [the benefits] never becomes obvious since the harms will have been preempted," he said.

Small cable and wireless ISPs were also uncertain about a push to be forborne from Title II regulations (see [1502200048](#)). Commissioner Mike O'Rielly, expected to be in the minority in Thursday's vote, [told](#) the WISP America 2015 conference in St. Louis Tuesday that he's "particularly concerned" about the impact of regulating small, wireless ISPs under Title II. "We've all seen the ads and the rhetoric: a big bad cable company intends to nip the next garage-start up in the bud. What gets lost in the debate is that there are numerous small ISPs that will be caught in a Title II trap," O'Rielly said, according to prepared remarks. Comptel and others that have been pushing for a strong rule against paid prioritization, blocking and throttling for interconnection were uncertain if it would be included in the final order.

“Any so called ‘tech’ company that has fiber connectivity should be careful what they wish for,” said former Commissioner Robert McDowell, now at Wiley Rein. “The Supreme Court said in its 2005 *Brand X* decision that an information service provider that uses telecom input to deliver its content or application will become a telecom service provider after reclassification because it’s too difficult to parse the delivery service from the information service.” The sweeping nature of Title II has been a “pitfall” of reclassification from the start, McDowell said. “If tech companies are just now waking up to this fact, it may be too late. Title II is very sticky and it will only grow like a virus. . . . Silicon Valley may rue the day that they pushed for Title II.”

The commission has disputed charges the order would regulate rates because it would not call for broadband providers to get agency permission before setting rates. However, the draft order “belies the claim that [the agency] will not regulate rates for broadband service,” wrote Daniel Lyons of Free State Foundation, an associate Boston College law professor, in a [paper](#) Wednesday. Noting Section 208 allows complaints against carriers, he said this part of the order “not only invites but demands that the Commission intervene in the market, at least upon request, to pass judgment regarding whether individual carrier rates are just and reasonable.” — *Kery Murakami and Howard Buskirk*

Buying Used Car

Zero Rating a Tough Issue for FCC

Zero rating remains one of the most controversial issues heading into a vote on FCC net neutrality rules Thursday, industry and agency officials said in interviews. Commissioner Mignon Clyburn has been particularly concerned about prohibitions on zero rating because of the possible negative implications for some of the poorest U.S. wireless subscribers, the officials said. The Multicultural, Media, Telecom and Internet Council has opposed rules against zero rating (see [1411140046](#)), highlighting why the issue is tricky, especially for FCC Democrats, officials said.

FCC officials said earlier this month that the order, as proposed by Chairman Tom Wheeler, won’t prohibit zero-rating, per se, though such practices could be blocked if they’re found to be anticompetitive or unreasonably harm consumers under the agency’s new general conduct standard (see [1502040055](#)). One oft-cited example of zero rating is Sprint’s launch last summer of a prepaid data plan for Virgin Mobile customers giving them unlimited access to Facebook or other social media sites for \$12 per month. T-Mobile said it will let subscribers stream music on iHeartRadio, iTunes Radio, Pandora, Rhapsody and a growing number of apps without that counting against the monthly data cap, in what T-Mobile bills as “music freedom.”

Hal Singer of the Progressive Policy Institute said zero rating will likely be subject to case-by-case FCC review, with the presumption against the practice. No one loves the idea of limited Internet access at lower rates, but the alternative could be no service at all, he said. “Consider a consumer whose willingness to pay for mobile broadband is \$30 per month, but the cheaper all-you-can-eat plan is \$45 per month,” Singer said. “He is excluded from the market. A sponsored data plan, underwritten in part by a large content provider, could bring that consumer into the market.” Singer cited a November [study](#) from the FCC that found that the Internet is \$10-15 per month too expensive for some Americans. “It is crazy to deny them a subsidy from large content providers just because the ‘next Google’ couldn’t afford the subsidy,” he said.

“When you start to inhibit experimentation in the marketplace, inevitably who gets hurt most are consumers who are less well off,” said former Commissioner Robert McDowell, now at Wiley Rein. “There

are a lot of possibilities that could be brought to market that would help low-income consumers that now may be snuffed out, especially if this rumor is true that the FCC is establishing a ‘mother may I’ panel for industry to submit its business plans before rolling them out.”

Free Press Policy Director Matt Wood takes a more skeptical view of the practice: “When carriers are offering a break from the caps the carriers themselves impose, and touting that as a benefit, we always have to ask what’s the justification for the cap in the first place? If people are allowed to stream all they want from a certain site but not others, it’s certainly not a congestion rationale.” Viewing zero rating as a good deal for consumers is like “thanking the used car salesman” for knocking a few thousand dollars off the price, he said. The question is why was the price so high, or the cap so low, to start with, he said.

Todd O’Boyle, program director at Common Cause’s Media and Democracy Reform Initiative, agreed. Zero rating offers a “superficial veneer of consumer benefit, but unquestionably threatens the public interest,” he said. “It privileges monied incumbents over upstarts, hindering innovation.” The FCC has other tools it can employ, like promoting affordable universal and open Internet connectivity, before sanctioning zero rating, O’Boyle said.

Free State Foundation President Randolph May said commissioners are right to worry about the potential effects for the poor. “Low-income persons are the ones most likely to be hurt when the FCC goes after zero-rated plans because they are, by definition, most attractive to persons who are least able to pay more,” he said. “Zealous” advocates of net neutrality don’t seem to care, he said. “They are determined to enforce a rigid form of neutrality that prohibits any form of differentiation in business models, no matter the effect on low-income subscribers, or any others for that matter.”

Doug Brake, telecom policy analyst at the Information Technology & Innovation Foundation, said zero rating is a mixed bag, and the FCC should err on the side of permitting the practice. “In a wired context, as long as the cap is reasonably designed to reign in the long tail of bandwidth use and overage fees are reasonable, there is little reason to think zero-rated services would have a significant impact on the ability of new services to succeed on the open Internet,” he said. “In the wireless context, where capacity is far more constrained, we should expect lower data caps but the same general idea applies.” But any service that allows a subscriber to access only a handful of apps would be problematic, he said. — *Howard Buskirk*

'Game Is Not Over'

Republicans Push Democrats To Come to the Table on Net Neutrality Legislation

The specter of net neutrality legislation loomed as barbs flew at the House Communications Subcommittee hearing on the issue Wednesday. The chamber’s Republicans dug into FCC Chairman Tom Wheeler’s net neutrality order slated for a vote Thursday, dwelling on its Communications Act Title II reclassification of broadband, and pressed for legislation, as did three of four witnesses (see [1502240062](#)). Wheeler didn’t testify later that afternoon despite an invitation from the House Oversight Committee, which postponed its hearing.

Republicans circulated net neutrality draft legislation last month, hoping to codify net neutrality principles while cutting into the FCC’s ability to use Title II or Telecom Act Section 706.

“Let’s talk about how we can work together to solve the problem and end this uncertainty,” said House Communications Subcommittee Chairman Greg Walden, R-Ore., in his opening statement. “The door is

open.” Commerce Committee Chairman Fred Upton, R-Mich., is “both surprised and disappointed that we haven’t yet been able to engage in a negotiation,” he said. “We’ve actually said we’re not going to do a markup until we see what the FCC does,” Walden said later to Public Knowledge President Gene Kimmelman.

“The game is not over in terms the legislative dance,” Walden told reporters after the hearing, predicting a possible court injunction stopping the FCC from executing the order. “Hopefully the White House would allow more cooperation on the legislative front.” President Barack Obama, a Title II backer, “has prevented the Democrats from working with us,” Walden said.

“We have to wait to see what the FCC actually puts forward,” Walden said. “We don’t know the timeline when we’ll see regulations. My understanding is that the 2010 Open Internet order took roughly 10 months before it was made public.” But he suspects pressure will make the agency get this order out more quickly, he said: “It’s clear our draft legislation can be the vehicle—and the only vehicle—to give legal certainty and protection on the Internet for the principles the president talked about, my colleagues on both sides of the aisle have talked about, to protect consumers.”

Bicameral GOP Concern

Upton and House Oversight Committee Chairman Jason Chaffetz, R-Utah, issued a joint statement Wednesday outlining “disappointment” that Wheeler wouldn’t testify. “After hearing from over four million Americans on such an important topic to our economic and cultural future, it’s striking that when Congress seeks transparency, Chairman Wheeler opts against it,” they [said](#). “The last time a rule of this magnitude was voted on by the FCC, then-Senator Obama was motivated to call for transparency at the commission.”

Chaffetz is investigating the White House’s influence over net neutrality and requested from the FCC relevant communications with the administration. His deadline was Friday, and the FCC has still not supplied those documents but is working with the committee, a Chaffetz spokeswoman said. The FCC did provide unredacted copies of the emails it had sought in a second request Friday (see [1502200049](#)), the committee spokeswoman added. Chaffetz followed up with Wheeler in another [letter](#) Wednesday, expressing disappointment and asking for copies of all preservation notices relating to his inquiry by Friday. Chaffetz requested briefings by March 11 from the Wireline and Wireless Bureau chiefs and from agency officials who worked on the net neutrality order.

“Any claims that Republicans have conceded or surrendered to the Obama administration’s power grab of the Internet through FCC action is a mischaracterization of our ongoing efforts,” said Senate Commerce Committee Chairman John Thune, R-S.D., in a statement Tuesday. “One way or another, I am committed to moving a legislative solution, preferably bipartisan, to stop monopoly-era phone regulations that harm Internet consumers and innovation.” Thune initially had told us he wanted to move legislation ahead of the FCC’s vote, which failed as no Democrats were willing to publicly join him following what he saw as pressure from the administration and FCC. Thune plans private net neutrality stakeholder sessions in March. Sen. Jerry Moran, R-Kan., blasted the FCC’s “profound lack of transparency” in his own statement, saying the FCC leaves Congress with “no choice but to consider all options to scrutinize these rules.”

Senate Democrats dismissed legislation. One key is beating “Republicans who are intent on attacking the FCC’s rules” and putting together legislation to “dismantle” the rules, Sen. Al Franken, D-Minn., said during a call with Democracy for America Tuesday. Franken championed Wheeler’s order: “They’re not going to set rates, they’re not going to do that kind of thing,” he said.

Senate Judiciary Committee ranking member Patrick Leahy, D-Vt., joined with Sen. Richard Blumenthal, D-Conn., for a *Slate* [op-ed](#) lambasting draft legislation that “would not adequately protect consumers and small businesses online—nor would it provide the FCC the tools it needs to ensure that broadband service remains accessible to everyone.” Leahy and Blumenthal predicted the draft bill would yield “an avalanche of litigation” whenever the agency tried to protect the open Internet.

Democrats Defend Title II

House Democrats strongly backed FCC action rather than legislation. Subcommittee ranking member Anna Eshoo, D-Calif., read a Feb. 18 “really eloquent” [letter](#) from Engine Advocacy to the FCC in support of Wheeler’s order rather than delivering an opening statement. “There are problems in the legislation because there’s no follow-up with the agency of jurisdiction,” Eshoo said. “There is a distance to go, and this really needs to be addressed if there’s ever really any hope.” Walden disagreed: “The FCC would have complete and total enforcement capability to enforce the law.”

“Now is not that time,” House Commerce Committee ranking member Frank Pallone, D-N.J., said, despite willingness to “enshrine” the FCC rules into law. “Now is the time for the FCC to do its work.” Pallone was “baffled” at the hearing, citing the subcommittee’s Jan. 21 net neutrality hearing, he said, urging it to do more than “just obsess over one topic.”

“Once the Commission acts, some may be freed up to be more engaged legislatively,” Walden told reporters of Democrats, citing December meetings with them. He doesn’t see any change in leverage for either party after the FCC votes. He warned of “international implications” of Title II and other issues such as losing FTC “authority over bad behavior; it defaults all to the FCC now.”

The White House consumer privacy bill, which Pallone said is coming very soon, also worried Democrats. Pallone hasn’t seen it yet but industry has, he said. In considering potential “problems,” Pallone emphasized how some companies would not be covered by Title II Section 222. “I certainly hope what you have heard is not accurate,” Kimmelman told him. Doyle also pressed Kimmelman on the implications of the FCC’s losing that authority over privacy. Kimmelman called it a “very serious concern” if true, and pointed out that people rely on communications networks to protect their privacy. “It would be extremely unfortunate if that were thrown out the window at this moment,” Kimmelman said.

Some Democrats denied reclassification would chill investment. “Mr. Downes, you’re really lathered up about this,” Eshoo told Larry Downes, one witness with the Georgetown Center for Business and Public Policy. She cited T-Mobile’s downplaying implications of Title II on investment and similar comments from Sprint. “It’s a very heavy charge that’s been made,” Eshoo said. “Can you reconcile it? Do you have proof? Is there lack of investment? ... Do you have information from the New York Stock Exchange or others?” Rep. Mike Doyle, D-Pa., said he looked at telecom stocks that morning: “Clearly investors don’t think the sky is falling either.”

“Now it seems the GOP wants to sue on everything,” Pallone lamented, arguing they should not act based on potential Title II litigation.

Commerce Committee Vice Chairwoman Marsha Blackburn, R-Tenn., pressed on potential taxes and fees that could follow reclassification. Kimmelman told Blackburn he doesn’t expect the order will bring about new fees, due to its forbearance. Doyle dismissed the figure about billions in taxes as “debunked.” — *John Hendel*

Regulatory Action Unlikely

Title II Reclassification Seen Presenting Potential for Increased FCC Cybersecurity Authority

The FCC's expected vote Thursday to reclassify broadband as a Communications Act Title II service has the potential to unintentionally expand its regulatory authority on communications sector cybersecurity, ex-agency officials said in interviews. They conceded it's unlikely the commission has any plans to exercise that authority in the near future given the strong likelihood of legal challenges to new net neutrality rules. Industry lawyers have said the FCC can claim authority on cybersecurity at least via Title I, and could stake a claim via Title II and Section 706 (see [1406240037](#)). FCC Chairman Tom Wheeler has been championing improving cybersecurity risk management within the communications sector since last year via voluntary private sector-led work in the Communications Security, Reliability and Interoperability Council's (CSRIC) Working Group 4 and the Technological Advisory Council (see [1406130056](#)).

Title II "is so vast and powerful that it could conceivably be leveraged to expand the FCC's reach into a number of areas," said former Commissioner Robert McDowell, now at Wiley Rein. "Maintaining the security of telecom networks is one of the pillars of Title II, so an argument could be made that new Title II authority could lay the foundation to reach further into cybersecurity." Section 222 is limited in its scope and companies that would fall under Title II regulation under the new net neutrality rules would likely argue that "the FCC has no more authority over cybersecurity than it did for telecom proprietary network information for all these decades," McDowell said. The FCC didn't comment.

Reclassification "raises questions" about whether Title II authority could more fully apply to cybersecurity regulation on protecting the security and reliability of broadband networks, said former Public Safety Bureau Chief Jamie Barnett, now representing 911 wireless accuracy stakeholders and other telecom companies at Venable. He said telcos "pushed back very hard" on including broadband outage reporting requirements in 2012 VoIP outage reporting rules (see report in the Feb. 16, 2012, issue) "even though VoIP runs on broadband." The telcos eventually reached a détente with the FCC and agreed to the VoIP rules sans broadband reporting requirements based on the FCC's authority on 911 reliability, Barnett said. The FCC could have a stronger hand to seek cybersecurity-related requirements if the broadband-related issues included in the 2012 VoIP rulemaking "come under the Title II umbrella," particularly reliability concerns like packet loss, jitter and latency, he said.

It's too early to know how exactly Title II reclassification will affect the FCC's cybersecurity authority, but there's "some possibility" that Title II reclassification "could be perceived as enhancing the FCC's authority to regulate with cybersecurity considerations in mind," said former Public Safety Bureau Chief David Turetsky, now at Akin Gump. It's likely the FCC "won't intend for the new rules to be an impediment to stopping distributed denial-of-service attacks and other sorts of destructive activity," Turetsky said. The 2010 net neutrality rules gave carriers "broad discretion" to manage their own cybersecurity as "reasonable network management," he said. "My guess is that they'll be sensitive to that in the new rules as well."

The extent to which the FCC's cyber authority actually expands with Title II reclassification will depend on the actual language of new net neutrality rules and how courts interpret them in widely anticipated challenges to the order, Barnett and Turetsky said. "We'll have to see" which Title II provisions the FCC forbears from before any changes in authority become clear, Turetsky said. "We're going to have a long road through the courts." Wheeler's statements on FCC involvement on cybersecurity have always pointed in favor of fostering voluntary action rather than seeking regulation, "and I take him at his word on that,"

Barnett said. “It’s a little bit of a different game if the FCC could impose regulations and that their authority is clear. That may not be quite as clear until any litigation clouds are cleared up.”

McDowell said he believes the FCC may choose not to wait for courts to decide legal challenges against Title II reclassification before it determines how to proceed on cybersecurity, particularly since the net neutrality order will take effect after approval unless a court stays it. “I’d expect that as aggressive as the Wheeler FCC has been on enforcement matters, they’ll want to define the scope of their new Title II authority through enforcement proceedings as quick as possible,” he said.

The future trajectory of the net neutrality rules won’t affect CSRIC Working Group 4’s ongoing work on its cybersecurity best practices report, said Working Group 4 Co-Chairman Robert Mayer. The group submitted a draft of its final report to CSRIC last week. The report, which will focus on how to adapt the National Institute of Standards and Technology’s Cybersecurity Framework for communications sector use, is set for consideration at CSRIC’s March 18 meeting (see [1502200046](#)). “Nothing in the report implicates traditional authorities that the FCC operates under because it was understood from the beginning that this was a voluntary initiative,” said Mayer, USTelecom vice president-industry and state affairs. “I’m confident that the report will validate that consideration.” — *Jimm Phillips*

'Lots of Tools'

FCC Watching ATSC 3.0 Development for Incentive Auction Repacking Process, Lake Says

The FCC is closely watching the development of the ATSC 3.0 standard for potential use in the incentive auction repacking process, said Media Bureau Chief Bill Lake in a low-power TV LEARN webinar Tuesday (see [1502240071](#)). Broadcasters disagreed the next day in interviews about ATSC 3.0’s time frame. Some said the commission could recover more spectrum in the auction with 3.0.

The commission is moving forward with the auction time frame, but will consider a standard if one is presented, Lake said in an interview Wednesday. “If the standard is available and has been considered by the commission during the 39-month period, certainly it would be a possibility that that standard could be used in the repack of full-power stations and by low-power stations as they’re being displaced,” he said on Tuesday’s webinar. The commission requires full-power and low-power stations to use the existing ATSC standard, he said.

ATSC 3.0 “is on track to become a candidate standard by year-end and we are confident that it will be a solution that works for high-power and low-power broadcasters alike,” ATSC President Mark Richer told us Wednesday.

The new standard would make the commission’s auction task easier, said LPTV lawyer Peter Tanenwald of Fletcher Heald. Updating to 3.0 would let the commission recover more spectrum because of the capability to repack tighter, he said. ATSC 3.0 is OFDM-based (orthogonal frequency-division multiplexing) and allows a smaller amount of interference protection, said Mike Gravino, director of the LPTV Spectrum Rights Coalition. “If the FCC waited for the standard or allowed the standard to be implemented in the repack, it could repack more tightly,” he said. “It could conceivably fit four more low powers per market in the repack. That’s half of the low-power service. For us it’s a major deal.” Lake suggested LPTV and translator stations take advantage of 3.0 when it’s available and use single-frequency networks to use spectrum more efficiently. The 3.0 standard will make it possible to do more with less spectrum, Lake said in Wednesday’s interview. “That can actually make channel sharing more attractive” as an option, he said.

“Having that standard out as soon as possible and being able to repack with it is key,” Gravino said. Broadcasters have to update to a new standard anyway, he said. “We shouldn’t be forced to repack to a 20-year-old standard.” ATSC 3.0 will be developed during the repacking time frame, Tannenwald said. But several organizations have to endorse the standard before the commission will adopt it, including the ATSC, NAB and major networks, he said. “I’m not confident it will get all the way through the process within 39 months,” he said. “The commission has a lot on its plate right now. It’s a big ask to do this while they’re trying to do the auction. They’re not in a hurry to referee what the standard should be.”

The ATSC is a private body, and “that’s the rub,” Gravino said. The FCC has to wait for a standard to be decided and then put it forward and “the rest of us have to wait,” he said. Sinclair proposed its own next-generation TV standard (see [1405090042](#)), said Mark Aitken, the company’s vice president-advanced technology and chairman of the ATSC Television Systems Committee. Next-gen TV standards will offer more video capacity, he said. “There’s lots of tools in the toolbox of next-gen that can offer some opportunities for survival for low-power stations.” A question facing broadcasters is should they transition during or after the repack, he said. “You’re not going to change out a facility until you know where you’re going to end up.”

ATSC 3.0 won’t necessarily be backward-compatible, Gravino said. Until the consumer electronics industry creates TVs for the standard, users will need a dongle on the receiver end, he said. These TVs can be made today, but it comes down to patents, he said. Actually, 3.0’s framers from the beginning have said the next-gen system won’t be backward-compatible and needs to be that way to represent a big fundamental shift from the existing ATSC standard (see [1204170095](#)). The commission should concern itself only with the physical transmission mechanism of the standard, Aitken said. “That piece which produces our frequencies,” he said. “They regulate all the constraints of operating within that spectrum—power level, density, emission characteristics, how much spills over into adjacent bands, the interference criteria.”

Over the past six months, the commission has homed in on the message that if ATSC 3.0 is ready, “there’s every likelihood that broadcast operators will be in a position to use ATSC 3.0,” Aitken said.

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Lake's message is reflective of a consistent message to broadcasting to get the standard done and present it for approval, Aiken said. "I don't think the FCC can answer all of the questions that all of the broadcast industry has asked. There's too many open questions." — *Marlena Chertock and Paul Gluckman*

'Until Tomorrow'

OTT as MVPD, Net Neutrality Rule Show Wheeler Interest In Online Video, Says Blum

The FCC's focus on tough protections against online blocking and throttling and its current proceeding on extending multichannel video programming distributor (MVPD) privileges to online video companies show that FCC Chairman Tom Wheeler is interested in the future of online video, said Dish Deputy General Counsel Jeffrey Blum at The Federalist Society's Telecommunications & Media Practice Group Future of Media conference Wednesday. Speakers at the event discussed the permutations of the over-the-top/MVPD notice of proposed rulemaking and the FCC's looming net neutrality rulemaking, set for Thursday's FCC meeting.

The FCC's proposed plan to regulate ISPs as common carriers will unnecessarily displace the FTC from its role in protecting the Internet as an antitrust agency, FTC Commissioner Jacob Wright said in his keynote speech. If ISPs engage in throttling or blocking "we have a legal regime specifically designed to address these problems," Wright said, referring to the FTC's antitrust duties. "At least, until tomorrow," he said. The planned Title II regulation is "categorically prohibitive," Wright said, and will eliminate prioritization deals that would have benefitted consumers along with those that harm them. Under Wheeler's plan "there are no false negatives, only false positives," Wright said.

Depending on antitrust cases to stop companies from blocking Internet competitors has the disadvantage of taking too long and costing too much, Blum said. Few have the resources to pursue antitrust cases against large companies, and few new entrants can afford to wait for them to be resolved, he said.

FTC's Wright conceded that a more discriminating open Internet order would require more resources to administer, but said the Title II plan is likely to use up just as much in protracted legal battles. The net neutrality rules will also have the consequence of making the FTC's jurisdiction over the Internet unclear, Wright said. Some in the FTC believe the agency's common carrier exemption will be lifted by Congress, but Wright said they shouldn't "hold their breath." It's also possible the new FCC rule could lead to challenges of previous FCC rulings, Wright said.

The net neutrality and OTT/MVPD proceedings show "a recognition by Wheeler that there are a lot of exciting things happening in over-the-top," Blum said. The FCC is "trying to figure the best framework" to handle that evolution, he said. He pointed to a third ongoing proceeding that might also affect online video: the Comcast/Time Warner Cable deal. "Comcast doesn't necessarily want OTT to be successful," said Blum. Dish opposes the deal, and Blum has previously spoken on behalf of the anti-Comcast/TWC group Stop MegaComcast Coalition. "Sometime you need to regulate and sometimes you need to say 'no' to a merger," Blum said.

The importance of the NPRM broadening the definition of MVPD has been overstated, said NAB Executive Vice President Rick Kaplan. Since the OTT companies it affects would still have to negotiate for copyright and wouldn't be eligible for compulsory licenses, it wouldn't have much of an effect, he said. Netflix and Amazon have been able to amass millions of subscribers through individually negotiating rights to content, said Ryan Radia, associate director-technology studies at the Competitive Enterprise Institute.

Cable, DBS and broadcast executives are concerned about the FCC's plan to broaden the definition because it doesn't apply the same obligations to the OTT companies as to existing MVPDs said Kaplan, Blum and Cox Enterprises Vice President Regulatory Affairs Barry Ohlson. Though the language requiring those companies to abide by must-carry rules and other obligations specifically mentions the cable and satellite industries, Congress intended those rules to apply to MVPDs, Kaplan said. Any order broadening the definition should also address other services that are MVPD-like, said Ohlson, referring to AT&T's U-verse, which isn't classified as an MVPD. "The order should address IPTV providers who say they aren't MVPDs, Ohlson said. Cable providers like Cox have to bear more of a burden than "way larger companies" in other industries, he said. — *Monty Tayloe*

'NOT Future-Proof'

12 Bits 'Simply Not Enough for HDR Video,' Argues Paper To Be Presented at NAB Show

All sides in the high dynamic range (HDR) debate agree that more bit depth is crucial to transporting peak brightness with any future-proof fidelity. But targeting higher bit depths for HDR is a real-world challenge, as Philips HDR engineer Joop Talstra described when he told us last spring that going from the 8-bit depth in most current interfaces to 10 bits or even 12 bits would be "painful" for chip makers and that going beyond 12 bits won't happen "anytime soon" in the consumer domain (see [1405070057](#)).

Nevertheless, a paper titled "12-bits Is Simply Not Enough for HDR Video!" is due to be presented April 12 during the NAB Show's Broadcast Engineering Conference. Alan Chalmers, a professor of visualization at the University of Warwick in the U.K., wrote the paper, according to an NAB Show [session description](#). "To facilitate the widespread uptake of HDR, standards bodies are currently investigating whether existing video coding standards are already able to support HDR or whether changes are needed to meet this new requirement," the description said. "One approach gaining popularity is to consider some form of single layer transfer function to map the HDR content to a fixed number of bits, typically 10 or 12. While it is true that many scenes do contain a dynamic range of lighting that is sufficiently low to be adequately contained within 12 bits, there are many others for which 12 bits are not enough."

Chalmers agrees with Talstra "that it is going to be very difficult for consumer devices to go much beyond 10 bits," Chalmers emailed us. "This is why I say in my paper to be presented at NAB that a two-stream approach to HDR video compression is much more future-proof than the one-stream methods which are currently getting so much attention." Chalmers also is innovation director at goHDR, a U.K. technology firm that advocates such a two-stream solution and plans to demonstrate it at the NAB Show.

With one-stream HDR compression, "a single HDR input stream is transformed into a single compressed stream using some form of transfer function," Chalmers said. "These methods take advantage of the higher bit-depth support in the latest video encoders, but will be constrained by the number of bits the consumer market is willing to accept." The Philips "PQ" method for HDR typifies the one-stream approach, as do HDR proposals from others, Chalmers said.

In the two-stream approach espoused by goHDR, "the single HDR video input stream is separated into two (typically 8-bit) streams containing some form of base and detail components," Chalmers said. "Each of these streams are then compressed separately." A "key difference" of the two approaches is "you can get the full range of HDR data delivered from capture right through to display (so called true-HDR) on existing 8-bit

infrastructure, and of course even better quality HDR data with 10-bits,” he said. “It is very unlikely that two-stream methods will ever need 12-bits to deliver all the scene detail that HDR can provide ... whereas the one-stream approach will still be missing significant scene detail even with 12-bits.”

Chalmers “firmly” believes that “this rush to one-stream HDR video compression is a big mistake as it is NOT future-proof,” he told us. “Although you may get some slightly brighter images when the 10-bit infrastructure appears, if the consumer market does not go above 10-bits anytime soon, then this will be as good as it gets.” Talstra and other Philips representatives didn’t comment.

At the NAB Show, goHDR will have a stand in the NAB Labs Futures Park pavilion of the Las Vegas Convention Center’s North Hall, Chalmers said. “We will be showing a complete professional HDR pipeline from capture through manipulation using Vicomtech’s HDR-enabled mixing suite to a Sim2 HDR display, all enabled by goHDR’s two-stream codec.” — *Paul Gluckman*

A 'Real Problem'?

ICANN Board Provision, Administration's Legal Authority Over IANA Questioned at Hearing

NTIA Administrator Larry Strickling replied to challenges by Senate Commerce Committee members about the Internet Assigned Numbers Authority transition’s purpose and political viability Wednesday. The hearing was the first on the IANA transition this Congress. Strickling told us it signaled a shift in opinion on Capitol Hill about the transition, one that’s moved from rejection to cautious acceptance. Also testifying were ICANN CEO Fadi Chehade and attorney David Gross of Wiley Rein on behalf of the Internet Governance Coalition, as expected (see [1502240059](#)). Chehade said last year’s proposal (see [1408210028](#)), which would have required a two-thirds vote by the ICANN board to reject advice from the Governmental Advisory Committee—rather than the current simple majority—has been “taken off the table.”

Strickling said after the hearing that his and the committee’s opinions of the transition are in the “same place.” Both believe the transition must be “done right,” he said. That shows an “interesting pivot” since the transition’s announcement almost a year ago, Strickling said. “Some of the initial reaction was, ‘Don’t do it.’” Strickling pointed to the Senate’s recent passage of S. Res. 71 (see [1502060057](#)), which affirmed the multistakeholder model, as emblematic of a larger shift on the transition. The resolution suggested “how the transition should happen,” rather than “not at all,” said Strickling.

Chehade told the committee that although authoritarian countries wouldn’t be persuaded by the success of the multistakeholder model, the transition’s success would convince many “middle governments” of the model’s viability. Chehade told Chairman John Thune, R-S.D., that ICANN’s board would be willing to send a transition proposal to NTIA that would reduce the board’s power as long as the proposal had the community’s consensus. Thune pointed out that if the FCC decides to classify broadband as a Title II Communications Act service, it might allow the ITU to include Internet governance matters in its remit. That would contradict the longstanding U.S. position that the ITU should only deal with telecom matters, Thune said.

The committee was “engaged and knowledgeable and ready for this hearing,” said NetChoice Executive Director Steve DelBianco afterward. Sens. Steve Daines, R-Mont., and Dan Sullivan, R-Alaska, “showed in-depth knowledge of the industry, as well as the politics behind decisions” like the transition, he said. DelBianco said he appreciated that some of the committee’s Democratic members quizzed the witnesses on “stress tests” for the transition and accountability proposals.

“Is there a problem with one government having a unique role, particularly” when it’s “done a fantastic job?” asked Sullivan. “If there’s not a problem, what are trying to fix?” Sullivan said he wasn’t “convinced” Strickling’s argument that the transition was delayed after the Sept. 11, 2001, terrorist attacks. The transition didn’t happen because there wasn’t a “problem,” he said. Sullivan also questioned the “legal authority” of the administration to transition ICANN, which is the “federal government’s property.”

“There is no government property that is the subject of the [IANA] contract,” Strickling said in response. “All the contract does is designate ICANN to perform the IANA functions; they were given no assets” of the U.S. to perform the functions, he said. “Is there a Commerce Department legal opinion on this issue?” asked Sullivan. Strickling said there is such an opinion, but he didn’t have it on hand. “I think a lot of people would dispute what you’re saying,” Sullivan said. “I think the GAO would agree with us as well” based on a previous study, said Strickling.

Sullivan asked Strickling whether there was a real problem that prompted the transition, considering IANA’s success within U.S. jurisdiction. “There has been a problem, sir,” said Strickling. He cited the 2012 World Conference on International Telecommunications, where about 80 countries voted for the ITU’s increased involvement in Internet governance. “Part of the impetus” behind the votes “was, at that time, the continued irritation” many countries felt, and which was “exploited” by authoritarian countries,” that the U.S.’s special relationship with ICANN allowed it to “control the Internet” in developing countries, Strickling said. After the announcement of the IANA transition, many countries changed their position in favor of the multistakeholder model, he said, citing the last year’s NETmundial conference in Sao Paulo, Brazil. The “exploitation” of the IANA issue by authoritarian governments has been “taken off the table,” Strickling said.

The ICANN community should have the ability to remove board members, said committee member Kelly Ayotte, R-N.H. That should be a “deal breaker” for the transition, she said. “Oligarchs in Russia” are “technically private citizens,” but the concept of private interests is vastly different between Russia and the U.S., Ayotte said, referring to the possibility of the installation of board member from an authoritarian regime. Strickling said such a proposal wouldn’t “necessarily” be a mandatory stipulation of the transition, because such a proposal would need to be evaluated in the “context of our condition.” “Just so we’re clear ... that [proposal] is not a deal breaker?” asked Ayotte. “I’m saying we’d have to evaluate it,” Strickling said.

The transition is a “business issue,” said Sen. Claire McCaskill, D-Mo. U.S. businesses are being hurt internationally due to the perception that “this isn’t a true multistakeholder process,” she said. McCaskill expressed concern about the international blowback of extending the transition tentative Sept. 30 deadline by another two years. She asked about the possibility of granting an extension for a “matter of months.” Strickling said ICANN and NTIA could “mutually agree” on a shorter extension if necessary. McCaskill asked Strickling whether he didn’t want to address whether an extension would be “necessary because you’re afraid if you do, an extension is going to be necessary?” “Thank you, senator,” he responded. — *Joe McKnight*

Comm Daily® Notebook

Commissioner Ajit Pai touted FCC progress on indoor location accuracy, at a National Emergency Number Association awards gala Tuesday. The FCC approved rules 5-0 at its January meeting (see [1501290066](#)). Pai said the input from carriers, APCO and NENA was critical. “We’re now on a path to providing emergency responders with a ‘dispatchable location’—that’s the room, office, or suite number where the 911 caller is located,” Pai said, according to [prepared remarks](#). “Public safety organizations have described

this as the ‘gold standard’ for indoor location accuracy because it tells first responders exactly which door they need to knock on, or in some cases, kick in during an emergency. This is a great next step in improving our nation’s 911 system.” Pai said Americans should realize how lucky they are to be able to call a single number in an emergency. He recounted a recent trip to India. “In India, there isn’t a [unique] single number that people can call for help,” he said. “There’s one number to reach the police, another for the fire department, and yet another if you need an ambulance. There are even different numbers for senior citizens, women, and children to use.” Pai also said hotel chains have made substantial progress in another key area—letting customers call 911 from their rooms without having to dial 9 first to get an outside line. By the end of the year, all Country Inn & Suites, Crowne Plaza, Doubletree, Embassy Suites, Fairfield Inn, Four Points, Gaylord, Hampton Inn, Hilton, Holiday Inn, Hyatt, InterContinental, La Quinta, Marriott, Motel 6, Park Plaza, Radisson, Residence Inn, Ritz-Carlton, St. Regis, Sheraton, Staybridge, W and Westin properties will have that capacity, he said.

Correction: The transmission method used for the two streams that FCC Incentive Auction Task Force Vice Chairman Howard Symons clarified that he meant to say were shared in last year’s channel sharing pilot between Los Angeles’ KLCS and KJLA were in HD (see [1502240035](#)). Dynamic reserve pricing is a limited exception to the rule that the commission freezes stations at a certain price rather than put them into the wireless portion of the 600 MHz band, an FCC official said.

Capitol Hill

The House approved the FCC Consolidated Reporting Act (HR-734) in a 411-0 vote Tuesday. House Communications Subcommittee Chairman Greg Walden, R-Ore., had requested a counting of the votes rather than advancing it under suspension of the rules. The bill “actually reduces the workload at the FCC and streamlines the reporting process that for years and years has been outdated,” said Majority Whip Steve Scalise, R-La., in a statement. “This is an important, bipartisan reform that shows that Congress can work together to get the kinds of things done that actually make things simpler in the real world and make an agency like the FCC operate more efficiently and in a manner consistent with the innovative era in which we live.” The Senate Commerce Committee is marking up companion legislation Thursday at a 10 a.m. executive session.

Commerce Committee ranking member Bill Nelson, D-Fla., took to the Senate floor to talk about the privacy concerns he raised with the FCC in a recent letter (see [1502240056](#)). “We have major privacy questions,” Nelson said Wednesday, referring to his concerns about the StingRay devices that local police have used and the FCC certifies. “Employed for our national security, for our personal safety, which is the job of government, then it’s a good thing. Employed, however, for other reasons of invading our constitutional right of privacy is another thing, and it’s time for us to stand up for the individual citizen of this country and their right to privacy.”

The reintroduced Local Radio Freedom Act ([H. Con. Res. 17](#)) has 94 House co-sponsors, NAB said in a [news release](#) Wednesday. Senate (S. Con. Res. 4) and House versions of the resolution were introduced

Tuesday (see [1502240067](#)). The resolutions would oppose terrestrial radio stations from paying any new taxes or royalties. John Barrasso, R-Wyo., and Heidi Heitkamp, D-N.D., are the principal sponsors of S. Con. Res. 4; Reps. Michael Conaway, R-Texas, and Gene Green, D-Texas, headed up the resolution's introduction in the House. "NAB applauds lawmakers for standing with hometown broadcasters in opposing a job-killing performance royalty that would damage the No. 1 platform for exposing new music," CEO Gordon Smith said in the release. House Judiciary Committee ranking member John Conyers, D-Mich., members Darrell Issa, R-Calif., Jerrold Nadler, D-N.Y., and House Commerce Committee Vice Chair Marsha Blackburn, R-Tenn., sent a letter to lawmakers Tuesday asking that they not support LRFA. They called terrestrial broadcasters' exemption from public performance royalties an "unjust business model." The musicFIRST Coalition, which advocates for terrestrial broadcasters to pay public performance royalties, in a [blog post](#) Tuesday criticized NAB's claim that such broadcasters can't afford to pay new royalties. MFC cited a GAO study that said a public performance royalty would cost major broadcasters 2 percent of their revenue. Despite efforts to thwart the resolutions, NAB expects the number of co-sponsors to grow "considerably" in the coming months, said a spokesman.

Wireline

The FCC should "stand up for taxpayers in North Carolina and Tennessee" Thursday by rejecting petitions seeking pre-emption of anti-municipal broadband laws in those states, said National Taxpayers Union President Pete Sepp in a [statement](#) Wednesday. The agency is expected to approve the petitions from the Electric Power Board of Chattanooga and from Wilson, North Carolina (see [1502020037](#)). There have been "numerous examples of failed municipal broadband networks," Sepp wrote: "From Oregon to Florida, Utah to Vermont, hard-working" residents "have suffered—paying higher taxes or bearing the burden of lower debt ratings—when their local leaders decided to enter the broadband market." Officials from Highland Springs and Holly Springs, North Carolina, as well as business and nonprofit leaders from North Carolina and Tennessee told Chairman Tom Wheeler aide Gigi Sohn and other agency officials in a phone call Tuesday of their inability to get high-speed broadband, said an ex parte [filing](#) posted in dockets 14-115 and 14-116 Wednesday. Matthew Shuler, Highlands town director, said small businesses are frustrated about broadband prices and speed limitations, according to the filing. It said Dukenet had offered faster speeds, but when the company was acquired by Time Warner Cable, "the service offerings went away." Comcast and TWC didn't comment.

CenturyLink was the only one of the top eight ethernet providers nationally that's subject to dominant carrier and tariffing requirements, wrote Melissa Newman, senior vice president-federal policy and regulatory affairs, to the FCC, according to an ex parte [filing](#) posted in docket 14-9 Wednesday. CenturyLink is seeking forbearance from tariffing regulations that are not required of other non-incumbents (see [1412170045](#)). "There is simply no justification for this disparate treatment," the letter said. The areas where the company is subject to the regulations are no less competitive than areas where other companies, including AT&T, Verizon and Frontier, have been granted the forbearance CenturyLink is seeking, Newman wrote.

Wireless

Allowing unlicensed operations to use the TV guard bands after the TV incentive auction, as proposed by the FCC, is a doubly bad idea, Brattle said in a [report](#) filed Wednesday and paid for by Qual-

comm. The policy will be ineffective because operations in the guard bands won't attract investment, Brattle said. "Their limited bandwidth makes the 600 MHz guard bands inferior to the unlicensed bands at 2.4 GHz and 5 GHz for Wi-Fi-type applications, and the necessarily limited transmit power precludes use of 600 MHz unlicensed devices altogether for long-range applications such as rural broadband." All use of the spectrum would yield is "Wi-Fi on tranquilizers," the report said. The potential interference will also mean carriers are less likely to buy spectrum in the incentive auction, Brattle said. "Our analysis of an LTE network in a band similar to 600 MHz shows that a 5 percent loss of capacity due to interference from unlicensed operations in the guard bands will lower the value of the affected spectrum by 9 percent; a 20 percent loss of capacity will lower its value by 43 percent; and a 35 percent loss of capacity will eliminate most (93 percent) of its value." Michael Calabrese, director of the Wireless Future Project at New America's Open Technology Institute, told us he's not surprised by the report because Qualcomm has long opposed unlicensed use of TV spectrum, including the TV white spaces. "It simply reemphasizes our concern that Qualcomm is attempting to kill Wi-Fi in everything but the 2.4 GHz band," said Public Knowledge Senior Vice President Harold Feld. —**HB**

A recent FCC order changing the definition of broadband from 4 Mbps downstream and 1 Mbps upstream to 25/3 Mbps ignores the big role played by wireless ISPs, FCC Commissioner Mike O'Rielly told the WISPAmerica 2015 conference in St. Louis Tuesday, according to [a transcript of his remarks](#) released Wednesday. "I'm sure it came as a shock to many providers that the high-quality broadband services that their consumers know and love no longer qualify as real broadband service," he said. "One small provider I spoke with talked about how frustrating it is to predict just how far the FCC will move its broadband goal post from year to year." O'Rielly dissented to the order changing the FCC's definition of broadband, approved at last month's FCC meeting (see [1501290043](#)). O'Rielly said it was a more positive note that the FCC has made real progress on getting more spectrum in play. "But we cannot rest on our laurels, more needs to be done," he said. The explosion in wireless data "will require additional spectrum resources" beyond what is in the pipeline, he said. "Locating, repurposing and clearing spectrum takes time, so a long-term strategy is needed."

Comments are now being accepted regarding the Federal Aviation Administration's proposed rules on the operation of small unmanned aircraft systems, or drones, in the National Airspace System (see [1502160003](#)). Comments are due April 24 and can be made on the regulations.gov [website](#), after the FAA NPRM [appeared](#) in Monday's *Federal Register*.

Texas Instruments introduced a new SimpleLink platform of ultra-low-power wireless microcontrollers for Internet of Things connectivity that helps OEM customers "go battery-less with energy harvesting or enjoy always-on, coin cell-powered operation for multiple years," it said Wednesday. The platform is an "industry-first technology" that gives OEMs "the flexibility to develop products that support multiple wireless connectivity standards using a single-chip and identical RF design," it said. The platform supports Bluetooth Smart, 6LoWPAN, Sub-1 GHz, ZigBee and ZigBee RF4CE, as well as "proprietary modes" up to 5 Mbps, it said. The CC2640 for Bluetooth Smart and the CC2630 for 6LoWPAN and ZigBee will be the

first devices introduced on the new platform, TI said. “Leveraging this multi-standard support, customers can future-proof their designs and configure their chosen technology at the time of installation in the field.” Additional devices on the new platform will become available later in 2015, TI said.

Internet

The FCC’s expected approval Thursday of petitions seeking pre-emption of anti-municipal broadband laws in North Carolina and Tennessee is likely to unleash a spate of additional pre-emption petitions from other municipalities seeking to build or expand networks, said Michael Santorelli, director of the Advanced Communications Law and Policy Institute at New York Law School, during a webinar Wednesday. Multiple petitions “have probably already been drafted” by municipalities that are waiting for the FCC to vote on the existing petitions, Santorelli said during the Digital Policy Institute event. The FCC has made clear that its draft order applies only to the specific petitions from the Electric Power Board of Chattanooga and the city of Wilson, North Carolina, but it’s likely to set a precedent for future petitions, he said. The FCC’s draft pre-emption order stands on very shaky legal ground and contains logic that also would allow state public utility regulators to pre-empt laws created by their own state legislatures, said Wilkinson Barker lawyer Russ Hanser. The order is nearly certain to face challenges in federal courts and the Supreme Court, which could send the commission’s entire legal view of its Telecom Act Section 706 authority “crashing down,” Hanser said. FCC pre-emption can sometimes be legally justifiable, particularly if it clears barriers to private sector entry into state markets, said Phoenix Center President Lawrence Spiwak.

Altair Semiconductor said it’s sampling FourGee-1160 and FourGee-1150 Category-1 and Category-0 chipsets for Internet of Things applications with plans to deploy commercially later this year. The company said carriers, device makers and module vendors have “shifted gears” in recent months to prepare for an “aggressive introduction” of smart IoT applications when LTE CAT-1 and CAT-0 chipsets become available. CAT-1 and CAT-0 are lower speed/lower power versions of the LTE standard that expand the addressable market for carriers and chip makers, enabling targeted IoT features, extended battery life and a lower cost entry point for LTE connectivity, said Altair Wednesday.

Civis Analytics and Discovery Communications are forming a partnership to explore the implications of big data and predictive analytics to optimize performance in the current data-driven culture, Discovery said Wednesday in a [news release](#). The partnership will focus on issues including predictive targeting and data infrastructure to ratings forecasting and marketing spending optimization using the Civis Media Optimizer platform, it said.

The Digital Advertising Alliance released AppChoices and a consumer choice page for the mobile Web—new tools for consumers to provide ad transparency to those not using desktop browsers, DAA said in a Wednesday [news release](#). The change adapts consumer-friendly, independently enforceable privacy controls to the fast-growing mobile medium, it said. The apps will let consumers choose between individually named com-

panies or all companies at once. It gives the user access to control mechanisms for mobile browsers and in-mobile apps. AppChoices is available as a free download from the Amazon Store, Apple App Store and Google Play, DAA said. “These new tools for transparency and choice will lead to greater trust and engagement between brands and consumers no matter which screen is being used to interact,” said DAA General Counsel Stu Ingis.

State Telecom

The Kentucky House passed HB-152 71-25 Tuesday to significantly reduce the Public Service Commission’s oversight of wireline service and completely end its jurisdiction over consumer wireless complaints and consumer broadband complaints. AT&T, Cincinnati Bell and Windstream no longer would be required to provide basic wireline phone service in most cities and major suburbs, including state capitol Frankfort and Lexington. The telcos instead could opt to provide basic service in those areas solely through wireless or VoIP, said the bill’s [text](#). Customers in rural areas can seek to retain wireline service, the bill said. HB-152, which requires state Senate approval via SB-3, would retain PSC jurisdiction over wholesale issues, carrier-to-carrier issues and anti-competitive telecom practices. State Rep. Rick Rand, a Democrat who sponsored HB-152, said in a speech prior to the vote that AT&T and other telcos are “asking us to allow them to move from old technology to new technology.” Rep. Chris Harris, a Democrat who voted against the bill, said during debate on the bill that he’s worried “that what we’re doing here is leaving behind that section of the state ... that our regulations were meant to protect—poor, rural families who do not have lobbyists here to represent their interests.” Kentucky Gov. Steve Beshear, a Democrat, endorsed HB-152 in a statement as “an important piece of legislation that strikes a right balance between providing consumer protection and creating economic development opportunities that result from robust broadband accessibility in communities all across the commonwealth.” —*JP*

A coalition of consumer advocates said they collected 90,000 signatures on a petition urging the California Public Utilities Commission (CPUC) to reject the Comcast’s planned buy of Time Warner Cable. The entities—Common Cause, Consumers Union, Courage Campaign, Credo, Daily Kos, Greenlining Institute, Media Alliance, Presente, The Utility Reform Network and Writers Guild of America, West—said they planned to deliver the signatures to the CPUC San Francisco headquarters Wednesday in advance of an all-party meeting on the deal. The meeting is seen as likely to be crucial to the outcome of the CPUC review given that the commission is now considering a draft decision that would approve Comcast/TWC with significant conditions. Public advocates and the telcos involved in Comcast/TWC appeared likely to criticize portions of the proposed decision during the meeting (see [1502190054](#)).

The Virginia Cyber Security Commission held the first of a planned series of town hall meetings on the commission’s work and related cybersecurity issues Tuesday in Blacksburg, Virginia, [said](#) Gov. Terry McAuliffe’s (D) office. The next town hall will be March 23 at New College in Martinsville, with additional meetings April 24 at James Madison University in Harrisonburg, May 19 at the University of Virginia in Charlottesville and June 9 at Norfolk State University. “The cyber security industry is a cornerstone of the new Virginia economy, and these town hall meetings are a great way for our commission members to hear concerns and suggestions from citizens, academia, and industry across the state,” said McAuliffe in a news release. McAuliffe has made cybersecurity one of his administration’s priorities since taking office last

year, adopting the National Institute of Standards and Technology's "Version 1.0" Cybersecurity Framework soon after its release in February 2014 (see [1502230063](#)).

International Telecom

The number of apps downloaded to smartphones and tablets is expected to grow roughly 28 percent this year to over 235 billion, said a Juniper Research report. Fueling the projected rise is "phenomenal growth" in downloads in the Chinese market, which last year accounted for six in 10 downloads worldwide, said Juniper. Local digital storefronts have benefited from Google's near exclusion from the China market, said Juniper, and search engine company Baidu has been the primary beneficiary. Baidu's app store, which is effectively integrated into the search engine, has passed iTunes to become the second-largest app store globally in download volume, said Juniper. While five of the top seven app stores in download volume are China-based, China still lags the U.S. and Japan in app revenue, it said. Revenue per download is nine times higher in the U.S. and 14 times higher in Japan, said the researcher. Games are the most mature and lucrative app sector and offer "significant scope for growth" in both developed and developing markets, said Juniper, citing a migration from handheld game consoles to mobile devices and "continued social gaming growth." Adoption and monetization of multimedia apps is likely to be fueled further by network operators bundling multimedia applications with customer subscriptions, it said. "Broadcasters are now offering distinct and bolt-on mobile packages, a trend which will gain further impetus as customers migrate to larger screen phablet devices," said analyst Windsor Holden.

Intellectual Property

Nearly 150 U.S. universities wrote Congress expressing [concern](#) over patent reform legislation. They said a large portion of the legislation goes "well beyond what is needed to address the bad actions of a small number of patent holders, and would instead make it more difficult and expensive for patent holders to defend their rights in good faith." Mandatory fee-shifting and involuntary joinder are the most concerning because they would "make the legitimate defense of patent rights excessively risky and thus weaken the university technology transfer process," the letter said. The patent system needs to provide strong protection for inventions to enable universities to license them to private sector enterprises, it said. Congress should take these concerns into consideration when assessing changes to the patent laws, it said. "It is imperative that any legislation avoid sweeping changes that would weaken our overall patent system and hinder the flow of groundbreaking advances from university research to the private sector, which catalyzes economic growth, creates jobs, and improves the lives of all Americans." The letter was sent to Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa; ranking member Patrick Leahy, D-Vt.; House Judiciary Committee Chairman Bob Goodlatte, R-Va.; and ranking member John Conyers, D-Mich. Among the signers were Boston University, Johns Hopkins University, Massachusetts Institute of Technology, New York University, Pennsylvania State University, Rutgers University, University of Pennsylvania and Yale University.

Apple was ordered to pay \$532.9 million because its iTunes software infringed three patents owned by Smartflash, said a verdict from U.S. District Court in Tyler, Texas. The case, filed in May 2013, alleged that Apple's software infringed three patents held by Smartflash and originally Patrick Racz and Herman-ard

Hulst, who signed the patents over to the company in 2002. The jury ruled Apple's software infringed on those patents, and did so willfully. Apple said it refuses to pay another company for its own ideas and has been left with no choice but to take the fight up through the court system, in a statement Wednesday. It said Smartflash "makes no products, has no employees, creates no jobs, has no U.S. presence, and is exploiting our patent system to seek royalties for technology Apple invented." The patents covered a portable data carrier for storing data and managing access to the data via payment information and/or use status rules, court documents said. They also cover a computer network that serves data and manages access to data by, for example, validating payment information. The complaint said the parts that infringe on Smartflash's patents include the software components responsible for buying digital content or applications from iTunes, the software components responsible for providing digital content or apps upon payment validation, the software components that provide in-app payment functionality, the software components that provide in-app advertising functionality, the software components that store payment distribution information indicating to whom payments should be made for purchased digital content or apps, and the software components that install, on a computer or server, any version of iTunes that can access the iTunes Store, any version of the App Store app, or any version of the Mac App Store. A lawyer for Smartflash didn't comment.

Broadcast

The FCC Media Bureau's rejection of the pending quadrennial review order as a reason to grant a waiver of the newspaper/broadcast cross-ownership rule requested by a Fredericksburg, Virginia, newspaper owner is inconsistent with a previous waiver granted to Fox and shows why the Fox waiver should be reversed, said the Rainbow PUSH Coalition and United Church of Christ in an [ex parte filing](#) posted in docket 07-260 Wednesday. The bureau said the pending media ownership proceeding didn't constitute justification for a waiver to let Free Lance-Star License own a paper and a radio station in the same city, UCC and RPC said. The licensee was granted a temporary 12-month waiver that the bureau said would likely not be renewed, UCC and RPC said. The bureau has said the Fox request has unique circumstances that don't apply in the Fredericksburg case, but UCC and RPC disagreed. "Fox's permanent waiver request had been pending through ten years and two court remands of the relevant standard," the bureau said in the order on the Fredericksburg waiver request. "The Bureau has applied *post-hoc* justifications for treating Fox differently that do not appear anywhere in the order granting Fox's indefinite waiver," said the ex parte filing. "We ask that the Commission act promptly to reverse the Media Bureau's decision."

The Federal Aviation Administration dropped its proposal of the regulation of FM stations, said a [letter](#) posted at the FCC Jan. 28 in docket 12-338. The FAA is no longer pursuing its proposed frequency notification requirements for FM stations operating in the 88.0 to 108 MHz band, it said. The Fletcher Heald law firm [blogged](#) about the letter Wednesday.

The FCC Media Bureau Video Division issued several admonitions Tuesday to KMCB, Coos Bay, Oregon; KMTR, Eugene, Oregon; and KOGG, Wailuku, Hawaii, for failing to comply with the commercial limits in children's programming, in dockets [15-246](#), [15-248](#) and [15-250](#). The stations showed URLs during advertisements for several seconds or less, violating the commercial limits, the bureau said. The Children's

Television Act of 1990 limited the amount of commercial matter that commercial TV stations can air during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays, the bureau said. The commission also restricts showing web addresses during children's programming, it said.

The National Religious Broadcasters approved a resolution opposing "a power grab of the Internet" by the FCC, NRB said in an email Tuesday. NRB urged the commission to reject Communications Act Title II reclassification of broadband. The commission's net neutrality and Title II plan will "send a poor signal to nations that have or are considering more state governance of the Internet," encouraging "repressive regimes that would like an international body like the International Telecommunications Union to have increased authority over the Internet," said the association.

The FCC should require broadcast executives to sign an ethics statement before the TV incentive auction, pledging not to engage in collusion on selling their licenses, said Jim Snider, president of iSolon.org, in a [filing](#) at the FCC. The statement should hold them responsible for reporting any such behavior to the FTC or FCC if they detect violations outside their company, he said. Snider said broadcast executives have every incentive to engage in price fixing, and it would be difficult to detect. Snider made the filing in docket 12-268.

Media Notes

Information and comments for the FCC Media Bureau to use in preparing a required Satellite Television Extension and Localism Reauthorization Act report on designated market areas and "considerations for fostering increased localism" are due May 12, the bureau said in a [public notice](#) Wednesday. Replies are due June 11, and the report itself is due to Congress June 3, 2016, the PN said. The bureau wants comment on the appropriate methodology for analyzing consumer access to broadcast stations outside their designated market areas (DMAs), the PN said. The bureau also wants comment on alternatives to DMAs and how they would affect localism, and how to increase localism in counties served by DMAs outside their own state, the PN said.

Satellite

Delta Air Lines chose Gogo to upgrade 250 planes from ATG-4 (air-to-ground) in-flight connectivity to 2Ku technology, Gogo said in a [news release](#) Wednesday. Gogo will begin the upgrade in 2016, it said. The 2Ku technology will deliver speeds of 70 Mbps, it said.

Communications Personals

Information Technology Industry Council hires **Josh Kallmer**, ex-Crowell & Moring, as senior vice president-global policy ... Syniverse promotes **Steve Gray** to permanent president-CEO ... Nexstar names **Mark Overstreet**, who was at Florida TV stations WTLV Jacksonville and WJXX Orange Park, as vice president-general manager, WZDX Huntsville, Alabama, and associated digital operations ... Telltale Games adds to board **John Riccitiello**, Unity Technologies, and **Jon Feltheimer**, Lionsgate, which also is investing in the company.