

FCC Finally Tackling Retransmission Regime

9/07/2015 8:00 AM Eastern

By: [John Eggerton](#)

TakeAway

The FCC has finally launched its long-awaited review of what constitutes “good faith” in retransmission-consent negotiations between TV stations and MVPDs.

WASHINGTON — The Federal Communications Commission has launched its review of the definition of “good faith” bargaining in retransmission-consent negotiations, and this time it looks like the effort could result in some changes.

The last retransmission-consent review docket, under chairman Tom Wheeler’s predecessor, Julius Genachowski, had languished for years. Wheeler lit a fire under it in March with an order to eliminate broadcast-exclusivity rules, one of the tentative proposals in that earlier docket.

Wheeler’s March order was teamed with an order to prohibit joint retransmission-consent negotiations, in which stations team up and negotiate as one with a local cable operator.

At press time the FCC had not voted on that exclusivity rules order, circulated last month by the chairman, but it was expected to have enough votes to pass.

While this time around the FCC was under a congressional mandate — included in the STELAR satellite legislation — to review retransmission consent, that mandate appears to dovetail with Wheeler’s tough talk about

protecting viewers and could be a venue for him to get to such related issues as blackouts, standstills and access to online content.

As far back as his confirmation hearing in 2013, Wheeler was signaling that he thought consumers were being held hostage to business disputes and pledged the FCC would take up the retrans issue.

The FCC was directed to look at its totality of circumstances test as one of two elements in its good-faith bargaining test, the other being nine per se violations. But the notice also seeks comment as to whether the agency should expand that list.

The National Association of Broadcasters said last week it thought the FCC was going beyond what Congress had intended. But commenters on the cable side had already been suggesting additional per se violations and the FCC appeared ready to listen.

In fact, the notice of proposed rulemaking, which asks a lot of questions but comes to no tentative conclusions, reads like a laundry list of issues offered up by the American Television Alliance (ATVA), the cable and satellite industry's primary voice in calling for major retrans reforms.

That was not lost on the ATVA. "Today's action by the FCC is a step forward for all of those consumers and the millions more who have been victimized by broadcaster blackouts for far too long," the group said in a statement.

Those questions include whether the bad-faith definition should include blackouts or third-party negotiators (networks negotiating for their affiliates, for example) or blocking online access to TV programming during impasses or bundling TV stations with affiliated networks, all things cable and satellite ops have suggested should be violations.

If those all sound like bad faith on the part of broadcasters, that is because, as the FCC points out, "most of the alleged bad-faith practices discussed in this NPRM are attributed by commenting parties to broadcasters."

The NPRM does not conclude that restricting online access is a bad-faith practice, but its text raises questions such as this: “Should causing consumers harm to enhance negotiating leverage generally be a factor that we should consider as evidence of bad faith under the totality of the circumstances test?”

That certainly sounds like the “consumers held hostage to disputes” scenario the chairman clearly does not like.

Commenters will get 90 days to weigh in after the item is published in the Federal Register, which means the FCC likely won’t take any action until at least early 2016.

<http://www.multichannel.com/fcc-finally-tackling-retransmission-regime/393506>

Multichannel News

Fuzzy Picture, Clear Signal

FCC's Wheeler Declares Internet Authority, But Targets Say It's Still Too Vague
9/07/2015 5:00 PM Eastern

By: [John Eggerton](#)

WASHINGTON — When Tom Wheeler was tapped to run the Federal Communications Commission, opponents in Silicon Valley and elsewhere practically brought pitchforks and torches to the agency, demanding to know how a former cable and telco lobbyist could protect the sanctity of the Internet.

Not to worry. The tech-centric chairman and history buff — keen to the cries of the Internet's potential ruin — was guided by a central principle, a path he signaled clearly: Broadband is a transformative technology, perhaps the most transformative in history, and the FCC must protect it.

That meant when it came to new network-neutrality rules, and with a nudge from President Obama, Wheeler set about drafting an expansive regulatory framework that sent cable operators rushing to court like bulls stampeding Pamplona.

While the FCC majority views the new rules as appropriately flexible, cable operators and other ISPs face what they call an increasingly vague broadband regulatory regime in which the FCC's Enforcement Bureau will play a key role, and in which regulatory certainty about usage-based pricing and interconnection and a host of other issues could be hard to come by, and even harder to plan for from a business standpoint.

Cable operators carp that they've spent almost a quarter of a trillion dollars (\$230 billion) in infrastructure investment in the past two decades to build

out the nation's broadband network, and they cringe at the authority the FCC has taken over their business.

SPOOKED BY UNCERTAINTY

The FCC's new network-neutrality rules may or may not survive; a federal court will have to determine that. But the regulations' allowance for FCC interpretation of conduct unbecoming to an open Internet has clearly struck a raw nerve with ISPs trying to figure out how not to run afoul of the rules, and that uncertainty — perceived or actual — extends beyond Title II.

It's a genie that's unlikely to be put back in the bottle: Not on Wheeler's watch, nor under that of a Democratic successor, should Hillary Clinton win the White House.

Clinton, the front-runner for the Democratic presidential nomination, has declared Internet openness no less than a "Fifth Freedom," along the lines of the "Four Freedoms" declared by President Franklin D. Roosevelt in his 1941 State of the Union speech, delivered just before the United States entered World War II.

Wheeler clearly sees the bounty in the boundless Internet, and has the FCC watching over the Web protectively for fear of the ISP wolf at the door, hungry to discriminate against competitors. But what ISPs see as investment-chilling uncertainty, the reigning FCC philosophy defines as relying on a necessarily flexible approach in a space that is constantly innovating and changing.

Neither Wheeler nor FCC general counsel Jonathan Sallet, who has staked out the legal authority for the chairman's broadband regulatory moves, would comment for this article. But in a speech, Sallet argued that "in a fast-moving world of technological and economic change, a critical requirement of government is that it is constantly learning and monitoring its prior actions against new market, technological, and social evidence."

Any way you dissect it, the FCC is in the broadband-regulation business to stay.

Wheeler has made it clear that he thinks bright-line rules against specific practices are not enough to protect broadband from potential anticompetitive conduct not yet seen or known.

Witness the inclusion, for the first time, of interconnection agreements — for exchange of traffic among the parts of the virtuous network circle between the content and the consumer — under the FCC’s net-neutrality regime, and the general Internet conduct standard that could include everything from pricing to speech.

Without specific guidance, that conduct standard “might be interpreted to require, for instance, a detailed showing of how exactly a specific practice affects application innovation, competition, or free speech,” wrote Barbara van Schewick, director of Stanford Law School’s Center of Internet and Society. “[A] vague, multi-factor standard gives the FCC ample discretion to decide specific cases and so interfere with competitive markets for websites and services, providing opportunities for FCC overreach.”

Critics view the FCC’s recent actions as driven by the view that broadband is so powerful and ubiquitous that the government has a responsibility to anticipate and head off any potential choke points through increased regulation.

It helps the FCC’s case that few could dispute broadband’s power and ubiquity, which are self-evident; it’s a point Wheeler makes to buttress his broadband-centricity.

WEB POWER VS. FCC POWER

“The largest taxi company in the country doesn’t own any vehicles; the largest overnight lodging company doesn’t own any hotels; and the fastest-growing of the top- 10 retailers has no showrooms,” Wheeler said in a speech to the Brookings Institution. “What they do have is easy access to a broadband network.”

But what troubles regulated entities is the FCC's conflating broadband's dominance with a need for the agency to assert its dominion over the Internet space.

Wheeler made clear his views on just how important broadband is at a House Communications Subcommittee oversight hearing two months ago.

"Broadband is the information pathway of the 21st century, and to deny access to that is to deny access to the 21st century. We need to have policies that make sure that everyone has access to that essential pathway."

And standing in the way, Wheeler has suggested, are the ISP gatekeepers with the ability and incentive to harm the other parts of what he calls the Internet's "virtuous circle." That means getting content from the edge through the network to users without blocking, degrading or unfairly prioritizing it.

That rhetoric does not include search engines, which also have the financial incentive and technical ability to harm consumers. So why does the edge appear to get a pass, at least rhetorically?

One critic of the FCC's broadband regulatory bent suggested portraying the ISPs in black hats and edge providers in white ones dovetails with a Democratic storyline of redistribution of wealth from the big guys to the little, a natural follow-on to the Baby Bells vs. competitive carriers plotline.

But viewing the edge as the garage innovators misses the mark when it comes to such companies as Google or Netflix.

Consumers are also capable of messing with the virtuous circle and the fundamental economics that support it. Just ask the Motion Picture Association of America, which for years has been trying to impress upon Web surfers that online content piracy is theft that threatens its own virtuous cycle of content that earns money so more content can be procured.

"An estimated 710 million pirated movies and TV shows were shared on BitTorrent in the U.S. in 2014, including 416 million movies and 294 million TV shows," MPAA spokesman Howard Gantman said. "This estimate covers

the volume of pirated content shared on BitTorrent, but not the volume shared via other types of piracy sites and apps.”

ISPs are concerned that, combined with a muscular Enforcement Bureau looking at complaints on a case-by-case basis, the FCC’s new Open Internet rules could signal a new era in broadband regulation in which ISPs may only know after the fact what interferes with that “circle,” as interpreted by either FCC staffers or a commission majority.

There is some disagreement over the extent to which Wheeler was initially willing to go the Title II route for those rules, which — combined with all those case-by-case, know-it-when-we-see-it elements — sent ISPs to court this time around.

Wheeler’s original plan did not involve Title II authority, and his pivot certainly appeared to dovetail with the Obama Administration’s strong support for using that provision of the Communications Act of 1934. But the chairman had long signaled that he would do whatever it took to protect his vision of network neutrality.

Big questions posed by that Title II regime include just how much authority the FCC will assert over interconnection agreements or usage-based pricing.

Interconnection deals are now under net-neutrality enforcement authority for the first time, and usage-based pricing is implicated by the reigning FCC theory that ISPs are potential bad actors in need of close monitoring, particularly in how they advertise those plans.

For instance, the FCC proposed fining telco AT&T some \$100 million for allegedly deceiving millions of smartphone customers who were billed for unlimited data plans that were later subjected to a bandwidth cap. AT&T said that fine came for conduct the FCC had never signaled was out of bounds — until it did.

And during the approval process for AT&T’s acquisition of satellite-TV provider DirecTV, the FCC signaled that it thought carve-outs from usage

limits for affiliated content were out of bounds, though merger reviews are supposed to be fact-specific and don't necessarily indicate a general prohibition.

Another example of the FCC's interpretative prowess is its recent designated entity decision involving Dish Network. In the recent \$45 billion auction of AWS-3 wireless spectrum, the FCC denied \$3 billion in spectrum-auction bidding credits to designated entities — small, often minority or women-owned businesses, that get a boost via auction rules — associated with the satellite-TV provider.

Wheeler explained to Congress at an FCC oversight hearing that the AWS-3 auction's outcome hinged on applying a "totality of circumstances" test to conduct that appeared to Dish to have been within the rules.

Wheeler pointed out that the FCC had, for the first time, used the "totality of circumstances" test that he emphasized had "never been applied before." The FCC then decided to write that test into a rewrite of those designated entity rules.

"I think that we have shown that there is a total picture you have to look at, and that we have the — whatever it takes — to step up and blow the whistle," Wheeler told Congress.

Aaron Schutt, president and CEO of Doyon, the Dish-backed joint venture that funded the designated entities, disagreed.

"This unfair decision is a reaction to political concerns, and demonstrates that the FCC believes it is authorized to intervene and reinterpret its own rules after an auction is concluded in order to pick winners and losers," Schutt said. "From our perspective, the FCC's decision should be of concern to every regulated entity that wants predictability, and a concern for everyone who values diversity and competition in the wireless sector."

Adonis Hoffman, former chief of staff to FCC commissioner Mignon Clyburn, said Dish shouldn't have been punished for playing by already-set rules.

“If Dish played by the rules at the time of auction — and was more innovative than others — it should not be penalized,” Hoffman said in an op-ed piece he wrote for the Aug. 10 issue of *Multichannel News*. “After the game, the FCC referee determines it did not like the outcome, or the winner, and takes away the trophy.”

Terms like “totality of circumstances” and “unreasonable” conduct leave a lot of room for interpretation, which means a lot of room for the FCC to exercise its power. Regulated entities are not opposed to flexibility. Cable operators could benefit from the “totality of circumstances” test when applied to good-faith negotiations, for example, if it means limiting broadcaster blackouts of on-air or OTT content.

PARSING THE FUTURE

For the industry, the troublesome aspect of flexibility is trying to anticipate what that open-ended language might mean in conjunction with the Wheeler principle that broadband is so important to so many aspects of life, and so large in scope and reach, that regulating it requires aiming at targets not yet in sight.

“The FCC’s ‘modern’ approach to regulating ISPs was supposed to promote Internet innovation while encouraging investment in broadband networks,” blogged Fred Campbell, director of the Center for Boundless Innovation in Technology and former Republican chief of the FCC’s Wireless Bureau. “It has instead encouraged ISPs to adopt a ‘better safe than sorry’ approach to providing Internet services. Fear of unpredictable government sanctions and liability in court won’t motivate investors to bet billions on next-generation Internet infrastructure. It will create pervasive uncertainty that results in the same stagnation that slowed progress on the telephone network in the 20th century.”

Cable and telco ISPs faced with having to divine the will of the FCC told a federal court that was one of their big problems with the new rules.

Given that Wheeler has told Congress that even the FCC isn't sure what could be unreasonable under its new general Internet Conduct Standard, ISPs have said such uncertainty gives them "no principle for determining" when they have passed from the "safe harbor of the permitted" to the "forbidden sea of the prohibited."

For the chairman, the stated mantra is, "Competition, competition, competition." For ISPs, it seems more like, "He knows it when he sees it."

And while ISPs suggest there is no principle for figuring out just what will be off limits, Wheeler has made his overarching principle pretty clear.

And he has not made a secret of the issues that could raise red flags. Interconnection, previously not a net-neutrality issue, is now an issue in both that regime and in merger reviews, if the FCC's just-issued conditions for AT&T-DirecTV are any indication.

The chairman is also high on speed — broadband speed, that is. So anything the FCC thinks might impede fast Internet speeds is in his crosshairs. The chairman launched an inquiry into broadband billing practices, for example, the result of which was the whopping \$100 million fine proposed against AT&T.

In its response to the fine, AT&T hit on the theme of lack of notice, citing the FCC's "failure to provide the required notice of the conduct it now seeks to sanction."

The FCC's flexibility to interpret net-neutrality rules — in this case, the transparency rule that survived a court remand from the 2010 rules — was viewed by AT&T as "the astoundingly broad authority [the FCC] now asserts to police any and all statements for claimed inaccuracies."

Wheeler's view of preserving competition clearly differs from those he regulates, and he has the experience in industry arguments he can use as ammunition against them.

As the former top lobbyist for both the NCTA and CTIA—The Wireless Association — two of the key constituencies in net neutrality and the IP transition — he can combine the “know it when we see it” approach with “been there, done that.” The chairman has pointed out on more than one occasion, in response to arguments from industry, that he has been in the same position and knows where their interests lie.

A source familiar with legal arguments holding sway at the FCC said Wheeler’s case-by-case approach reflects the most basic concept of administrative law, which is that agencies get to choose when they want to use rulemakings to set prescriptive standards and when they want to use adjudication on an individual basis.

In a speech last year, FCC general counsel Sallet framed regulatory flexibility this way: “[I]n a time of constant innovation, strict standards offer a form of certainty, but they leave little leeway for handling the exceptional or unanticipated case — and innovation is almost by definition hard to anticipate.”

Sallet argued that the FCC is providing the flexibility the chairman has said is necessary in the digital age.

That means that rather than or in addition to bright-line rules, there should be provisions for “totality of circumstances tests” or “reasonableness” tests, case-by-case adjudication or rebuttable presumptions.

Ultimately, Sallet cited clear common-law precedent for what he sees as necessary flexibility, quoting from Justice Oliver Wendell Holmes: “[T]he most difficult labor will be to understand the combination of [history and existing theories of legislation] into new products at every stage.”

However uncertain Wheeler’s path appeared at the start, he certainly isn’t looking back now: “What is clear about our network revolution is that the new information networks are the new economy ... We are at a crossroads in the evolution of digital networks. The FCC must play the crucial role of facilitating more dynamic, world-leading change to ensure that the gains of the last

several decades are dwarfed by the wonders of the years to come. At the same time, the commission must also safeguard and nurture and *project into the future* (emphasis ours) the enduring civic values that networks have historically embodied.”

The chairman is clearly committed to using the FCC’s power to to protect his “virtuous circle.”

Cable operators could be forgiven for viewing that circle as a target on their backs.

<http://www.multichannel.com/news/policy/fuzzy-picture-clear-signal/393508>

Multichannel News

Channel Change Divides Cable, Broadcast

Ops, Programmers Just Can't Agree on How to Share 9/07/2015 8:00 AM Eastern

By: [John Eggerton](#)

TakeAway

The nitty gritty of channel sharing provides new ground for disagreements between cable and broadcast interests.

WASHINGTON — Broadcasters and cable operators have found something new to be at odds over: Whether to allow broadcasters to share channels outside of the spectrum auction, including preserving their must-carry rights when they share.

Other fronts on which the two are battling at the Federal Communications Commission, almost too numerous to mention, include the agency's proposal to presume cable video service is competitive in local markets, which lifts basic-rate regulation; a proposal to eliminate broadcast-exclusivity rules; and the launch of a review of retransmission good-faith agreements.

In the latest dust-up, the FCC has proposed allowing channel sharing after the incentive-based auction of broadcast spectrum. The proposal would allow stations to save operating costs and increase profits by sharing equipment as well as spectrum.

'MUST-CARRY' HANGUP

Broadcasters are down with that: The more flexibility and opportunity to preserve their business model in a world gone wireless-mad, the better.

But cable operators have long considered the “must-carry” obligation (under which stations can opt for guaranteed placement on local cable lineups) a government taking of their property — channel space — and an infringement on their First Amendment rights to choose the speakers on their systems. Commercial broadcasters, represented by the National Association of Broadcasters, the Expanding Opportunities for Broadcasters Coalition and the major public-TV associations, all want the FCC to give broadcasters as much sharing flexibility as possible.

In the other corner are the National Cable & Telecommunications Association and AT&T, which want the FCC to limit sharing to stations participating in the auction and, if sharing is allowed, not to extend must-carry rights. Cable operators have been trying to hold the line on must-carry, or roll it back, for years. The broadcast incentive spectrum auction repack is a relatively new front in that fight.

With broadcasters lobbying for must-carry rights for sharing stations outside the auction, the NCTA pushed back in comments to the commission. The cable trade group said it was clear that must-carry rights only applied to a single primary video stream per channel.

The NCTA is not simply concerned about getting the definition right. It said allowing for two shared stations to get must-carry rights post-auction could result in expanding distributors' carriage obligations, which would turn spectrum legislation on its head given that Congress said sharing within the auction should not artificially increase the number of stations MVPDs have to carry.

“It’s hard to imagine that Congress could have intended that if stations waited until after the auction to engage in channel sharing, it would then be permissible to expand the must-carry obligations on cable,” the NCTA said.

Cable providers also say they don't want to provide a disincentive to station participation in the auction.

"Channel-sharing must not be used as a means to expand carriage rights," AT&T told the FCC, also citing the legislative language about not artificially increasing MVPD carriage obligations.

NAB: DON'T FOCUS ON COSTS

The NAB said cable providers have it all wrong.

"Broadcasters will participate in the auction with channel sharing bids if they foresee the potential for an attractive financial return based on spectrum relinquishment by one channel-sharing partner, not due to perceived incremental cost savings associated with sharing facilities," the broadcaster trade group said. "The opening bid prices and estimated high-end compensation levels the [FCC] has published dwarf any savings.

"[A]ssuring broadcasters that entering into channel-sharing agreements will not affect carriage or retransmission rights will help increase participation in the forthcoming broadcast spectrum incentive auction," the group added.

<http://www.multichannel.com/channel-change-divides-cable-broadcast/393518>

Multichannel News

FCC Report Gives Little Play to Leased Access

9/07/2015 8:00 AM Eastern

By: [John Eggerton](#)

WASHINGTON — Supporters of cable leased-access channel opportunities had little to applaud in the Federal Communications Commission's latest video-competition report, and one familiar advocate has let the agency know it in response to a request for comment on what information to collect for the next report.

Charlie Stogner, president of the Leased Access Producers Association (LAPD), read the FCC the riot act for not even mentioning leased access, either in the 2015 report or the request for info on the next one.

Cable operators by law are required to set aside channels — in proportion to their total activated channels — to be leased by unaffiliated programmers.

In the notice of inquiry (NOI), the FCC had asked for information on how many leased channels were carried, on what tiers, and if the totals were more or less than had been carried previously.

Stogner would like to know that, too, but he's not holding his breath.

When the report came out last April, Stogner said, it had no mention of leased access.

For the 2016 report, Stogner said, the FCC isn't even asking for that information any more.

"It is clear the Media Bureau has consistently and repeatedly ignored the leased-access programmers' concerns for many years," he said.

Leased access was meant to be another way to ensure diversity of programming, something the FCC certainly professes a particular interest in.

An FCC spokesperson declined to comment on the omission of leased access in the report or the request for information.

<http://www.multichannel.com/fcc-report-gives-little-play-leased-access/393519>

Multichannel News

NCTA : Extend Lifeline to Cable

9/07/2015 8:00 AM Eastern

By: [John Eggerton](#)

WASHINGTON — Cable operators want the government to give them more bites at the broadband subsidy apple.

In comments on the Federal Communications Commission's lifeline subsidy last week, the National Cable & Telecommunications Association recommended widening the pool of eligible providers by making it easier to apply and allowing eligible subscribers to use the money for more than just basic broadband service.

The Lifeline broadband service program provides subsidies, paid by telecom companies and, ultimately, their subscribers, for essential communications services for low-income Americans. The NCTA's proposals do not deal with the contribution side — that is, whether broadband operators will have to pay into the subsidy, too. That is the subject of a separate proceeding.

Rather than set minimum service standards, the NCTA said, the FCC should let Lifeline service users apply their subsidy on any level of service from any provider, including programs from Comcast and Cox Communications aimed at low-income households.

The NCTA said consumers want choice, something the FCC promotes and one of the takeaways from the FCC's Lifeline Broadband Pilot Program. One way to boost participation in the program, the NCTA said, would be to make it easier for carriers to participate “by reversing [its] prior decision to limit Lifeline support solely to [eligible telecom carriers] and establish a streamlined national eligibility process.”

<http://www.multichannel.com/ncta-extend-lifeline-cable/393520>

Multichannel News

Pay TV Execs: For Viewers, Bundle Is Joy

Content, and Packages, Still Have 'Robust' Demand 9/14/2015 8:00 AM Eastern



By: [Mike Farrell](#)

TakeAway

Cable operators mounted a defense of the bundle last week, saying at an industry conference that the success of “skinny” packages is overblown.

Cable CEOs, despite market volatility over the past few months, showed their love for the bundle last week, defending broader packages of programming over so-called skinny content lineups that have gained an increasing amount of popularity with pundits.

While skinny bundles have been around for a while, their impact wasn't taken seriously by Wall Street until The Walt Disney Co., in its fiscal third-quarter conference call, reduced guidance for its cable operations — particularly sports juggernaut ESPN — because of what it called a slight decline in its subscriber base. Investors took that to mean the impact of skinny bundles, over-the-top video offerings and cord-cutting was even greater than had been feared, sending stocks down a hole during the first week in August that they are still trying to climb out of.

Disney was hit the hardest, dipping as much as 21% during the first three weeks of August, from \$121.69 per share on Aug. 4 to \$95.36 on Aug. 24. September has proven to be a less-volatile month — the stock closed at \$102.60 on Sept. 10, but the shares are still down about 15% since Aug. 3.

DISNEY: MARKET OVERREACTING

At the Bank of America Merrill Lynch Media, Communications & Entertainment conference in Beverly Hills, Calif., Disney chief operating officer Tom Staggs, who many believe is the heir apparent to chairman and CEO Bob Iger, faced the issue head-on. Staggs said the stock-market response was an overreaction, though he conceded that the programming landscape is changing.

“As the market evolves, I think we’re going to continue to see new entrants, we are going to continue to see demand for our programming services, and they will continue to be an important part of those services actually being successful in their launches,” Staggs said.

Sporting events, he added, continue to be the most compelling programming on live TV, but also on other platforms. Staggs pointed to the Sept. 8 U.S. Open tennis quarterfinal match between sisters Venus and Serena Williams, which was ESPN’s second-highest-rated tennis match ever. Viewership for the tournament was up 60% across digital platforms for the weekend and the number of devices accessing ESPN was up more than 50%.

“We continue to see viewership across those platforms grow,” Staggs said, adding that viewers who access content across multiple platforms watch TV four times more content than those who just watch linear TV.

“One reinforces the other, and I think people sometimes think of this as more of a zero-sum game than is appropriate,” he said. “We continue to believe in the bundle and we will continue to look at ways to enhance the value of that.”

Time Warner Cable chairman and CEO Rob Marcus was more blunt, adding that when faced with the option, most customers pick the thicker programming packages.

“The headlines over the last several months have been way ahead of the facts,” Marcus said. “We’re not seeing this mass migration to skinny bundles.”

He added that at TWC, 82% of new customers in the second quarter opted for the “fattest of the fat” bundle.

Steve Burke, CEO of Comcast-owned programmer NBCUniversal, said that declining ratings and skinny bundles cannot erase the fact that more people are watching than ever before. “They’re just watching it in places that many times aren’t rated, that aren’t monetized,” he said.

Burke also pointed to the recent market selloff, adding that in the current climate, small concerns are magnified.

“When 21 million people every month pay you a check of \$100 and they are consuming your products [for] hours and hours and hours every day, these marginal changes get amplified,” Burke added. “I think when \$50 billion in market cap flies out the window in a week, it’s an overreaction. I think these businesses are very robust and we will be around for very long time, they will just have lower growth rates than they’ve had in the last five or 10 years.”

SOME LIKE IT SKINNY

On the flip side, CBS CEO Les Moonves said he welcomed skinny bundles and alternate forms of packaging, mainly because as the top broadcast network, CBS is usually included.

“The average cable bill is \$99 [per month],” Moonves said at the conference. “It’s inevitable that people will be tired.”

Either way, Moonves said, CBS will get its fees.

“If it slips from a large to a small bundle, we will get paid more,” he said. “If everyone watches over the top, we will get paid more money. We’re not selling 30 channels people don’t want to pay for.”

<http://www.multichannel.com/pay-tv-execs-viewers-bundle-joy/393691>

Multichannel News

TV Everywhere Hits a Speed Bump

Usage growth slows to 63%, per Adobe study 9/14/2015 8:00 AM Eastern

By: MCN Staff

TV everywhere viewing is still on the upswing, but its growth rate fell off sharply in the second quarter amid ongoing authentication struggles and the lack of a major “tentpole” event, according to the Adobe Digital Index’s latest *U.S. Digital Video Benchmark* report.

Even without the help of a big TV event like the Olympics, credentialed viewing of authenticated pay TV content online still managed to rise 63% year-over-year, Adobe said. The software maker based its findings on 159 billion online video starts and 1.49 billion TVE authentications from second-quarter 2014 to Q2 2015. As a point of comparison, though, TVE usage soared 246% when Adobe posted similar year-on-year results for first-quarter 2013 through Q1 2014.

SIGN-IN STRUGGLES

Tentpole TV events aside, the report showed that there’s possibly some “friction in the process of setting up TV Everywhere or figuring out which device you want to use might be starting to cause a slowdown,” Tamara Gaffney, principal analyst for ADI, said in the report. “We think generally the demand is there, but we may have reached a tipping point where to get to the next level it needs to be simpler to sign in.”

While in-home automated authentication has helped to make the process easier, companies such as Synacor are developing automated sign-on systems for out-of-home TV everywhere access, a move that could give the overall numbers a boost.

About 12.7% of pay-TV viewers watched content on their devices in second-quarter 2015, per the ADI, a 19% year-over-year gain but down 4% from first-quarter 2015.

The report also found that Apple's iPad was the top device used to view TV everywhere content, with about 22% of users tapping in via Apple's iconic tablet. That was followed by PCs (18.3%), the iPhone (18.2%), the Apple TV (12.8%), Android devices (9.1%), Macs (7.4%), Roku (6.8%), gaming consoles (2%), Amazon Fire TV (1%) and smart TVs (0.7%).

Looking beyond authenticated TVE services, the primary vehicle for watching TV sites is the PC, as the platform averaged 1.68 starts per month, versus 0.44 for smartphones and 0.94 for tablets.

For online viewing of TV-over-the-Internet sites, which do not require authentication, mobile accounted for 21% of viewing — a rise of 35% for smartphones and tablets combined, the report found.

<http://www.multichannel.com/tv-everywhere-hits-speed-bump/393701>

Multichannel News

FCC Defends Its Pivot on Title II

Says ISPS got fair warning, order is reasonable 9/21/2015 8:00 AM Eastern



By: [John Eggerton](#)

TakeAway

Rebutting claims by ISPs, the FCC says its Open Internet order was reasonable and within its authority.

WASHINGTON — The Federal Communications Commission has made its opening case to a federal court as to why its new Open Internet order should be allowed to stand this time around.

The crux of the argument is that the agency had the incentive and ability to change its mind and reclassify broadband Internet access as a telecommunications service under Title II of the Communications Act — thus subjecting it to telco-style common-carrier rules — and that the move was a “reasonable” thing to do.

The same court threw out most of the FCC’s 2010 Open Internet order for lack of justification, but told the agency it was free to repair and restore the order if it could.

In the FCC's opening brief to the U.S. Court of Appeals for the D.C. Circuit, agency lawyers took more than 150 pages to explain why this order should not suffer a repeat of that remand.

The brief also rebutted arguments that cable operators and other Internet service providers leveled in their opening salvo in late July.

The National Cable & Telecommunications Association and other Internet-service providers argued in their July brief that Congress had not meant for the FCC to have the "extraordinary" authority to subject the Internet to central planning-style network-neutrality rules, and that the FCC did not seek comment on its decision to "reverse field" at the urging of President Obama.

The FCC fired back that "it cannot be said that the order upends some 'settled understanding' that Broadband Internet Access Service would be forever free from Title II regulation."

The FCC contends it reasonably reclassified broadband under Title II; that the classification was a reasonable application of authority to interpret a vague statute; and that it reasonably accounted for the impact of Title II on investment, reasonably determined mobile broadband should be subject to Title II and provided adequate notice of everything it was doing.

As to ISP claims that Title II is a First Amendment threat, the FCC dismissed that charge out of hand.

The NCTA has said it is not looking to overturn the bright-line rules against blocking, degrading or anti-competitive paid prioritization, but those rules could be placed in limbo should the court agree they were insufficiently justified by the Title II assertion.

Randolph May, president of the free-market think tank the Free State Foundation and a Title II critic, said he didn't see anything unexpected in the FCC arguments. As to the FCC's assertion that it had made plain its effort to find legal authority "to protect an open Internet," he said: "This is not a game

of hide and seek. Just because the commission keeps trying to seek out new theories, this does not mean it can ‘find’ legal authority that does not exist.”

FCC supporters have to file their briefs by Sept. 21, followed by replies from ISPs, other plaintiffs and their supporters on Oct. 5. Final briefs are due Oct. 13 and oral argument is Dec. 4.

That means no resolution of the issue until sometime in 2016, if then, as the U.S. Supreme Court could be asked to step in after the D.C. Circuit has its shot.

Keys to Victory

The fate of the FCC’s Open Internet rules rests on the case each side can make for their respective answers to the following four questions:

1. Whether the commission reasonably reclassified Broadband Internet Access Service as a Title II telecommunications service.
2. Whether the commission reasonably determined that mobile Broadband Internet Access Service is not a private mobile service.
3. Whether the FCC provided adequate notice of reclassification.
4. Whether the FCC properly recognized its jurisdiction to resolve interconnection disputes.

<http://www.multichannel.com/fcc-defends-its-pivot-title-ii/393923>

Multichannel News

New York Times Supports Local Authority

Tue, September 08, 2015 | Posted by *lgonzalez*

The New York Times

In a recent editorial, the New York Times recognized that cord cutting is the wave of the future. They agree with the Coalition for Local Internet Choice, and other advocates for local telecommunications authority that the FCC should take steps to remove barriers to local Internet choice created by states on behalf of cable and telcolobbyists. The Editorial Board notes that laws limiting municipal networks block the ability for consumers to take full advantage of this phenomenon:

Among other things, they should override laws some states have passed that make it difficult or impossible for municipalities to invest in broadband networks.

Even though consumers are moving away from cable TV subscriptions, large corporate providers are making up for losses by an increase in Internet access subscriptions. As a result, they still maintain a significant leverage and consumers still face the same old problem - a lack of competition. Striking down anti-competitive state laws blocking munis would create a healthier balance, argues the Times Editorial Board.

[... Read the Full Story Here ...](#)

Community Broadband Media Roundup - Sept 11

Tue, September 15, 2015 | Posted by *rebecca*



Featured Stories

FCC's Sohn Urges Cities to Build Own Broadband by John Eggerton, Broadcasting & Cable

Don't wait for incumbents to supply requisite service Sohn told NATOA that rather than viewing themselves as taxers and regulators, her audience should see themselves instead as facilitators of the kind of service they have been "begging" incumbents to provide "for years."

FCC's Sohn: Forget Incumbents, Build Your Own Broadband Networks by Karl Bode,
DSL Reports

Sohn was quick to highlight successes in places like Sandy, Oregon, and the surge in public/private partnerships like the one between Ting and Westminster, Maryland. Sohn also highlighted the important fact that after fifteen years of apathy, the FCC is finally taking aim at protectionist state laws written by incumbent ISP lawyers, which prohibit towns and cities from wiring themselves -- even in cases where nobody else wants to.

[... Read the Full Community Network Roundup Here ...](#)

<http://muninetworks.org/content/new-york-times-supports-local-authority>

Hubbard Elects IP Tech for '16

More broadcasters rely on cellular-bonded product in political coverage 10/05/2015 8:00 AM Eastern



By: George Winslow

One example of how smaller, much lighter IP-newsgathering technologies are likely to transform 2016 election coverage can be found at Hubbard Broadcasting, which is currently testing LiveU's LU200 unit to deliver IP video from cameras back over cellular networks.

Ed Smith, director of engineering at Hubbard Broadcasting, notes that when he first arrived at the company's KSTP-TV ABC affiliate in the Twin Cities in 2012, it was already leasing one of the LiveU units. "Everyone was interested in the technology because our traditional live trucks were expensive to operate and all of them needed upgrades and modification," Smith recalls.

To find a less expensive, more flexible alternative that would let them produce more live video, Hubbard tested all the various IP-newsgathering systems then on the market and eventually settled on LiveU's LU500. It bonds several cellular signals from different providers together to provide enough bandwidth to stream HD video but weighs only 2.2 pounds, about half the size and weight of the LU70 they had been leasing.

Hubbard purchased 10 units for six stations and they have been avidly adopted in the newsrooms, says Smith, who adds that the units have allowed them to cover events in ways that wouldn't have been possible in the past. "We have one in a car for live traffic reporting and even took one up into a roller-coaster ride, which is something you can't do with cabled systems," he said.

For the upcoming election coverage, "they'll help us share content," using the LiveU Central product to manage IP video feeds from the field, he added. "We can share video from Minnesota or Albany, New York or New Mexico without having to FTP video. We can do standups for each other without the cost and complexity of rolling a truck."

Looking forward, they are now testing the LU200, a pocket-sized unit that weighs just over one pound, and they are exploring Ka-band and IP-based microwave feeds. "That is something we can add to an ENG truck so we have different ways to get a signal," Smith said.

<http://www.multichannel.com/hubbard-elects-ip-tech-16/394273>

Multichannel News

Pay TV Faces Growing Flight Risk

46% set to switch provider or cut the cord, according to Digitalsmiths study 10/05/2015 8:00 AM Eastern



By: [Jeff Baumgartner](#)

Offering a fresh look at what's driving the topsy-turvy world of pay TV, a study from Digitalsmiths found that 46.6% of respondents are ready to cut the cord or, at the very least, switch to another provider.

Digitalsmiths, the video search and discovery firm that is now part of TiVo, offered up those findings in its *Q2 2015 Video Trends Report*, based on a survey of 3,210 adults in the U.S. and Canada.

While the cost of service factors into this turbulence — 61.6% of respondents said they pay more than \$100 month — the group that is “unsatisfied” with service rose to 6.1% in the Q2 survey, while 76.6% claimed to be “very satisfied” or “satisfied.” Unsatisfied subscribers cited increased fees and poor customer service among their reasons.

The study also spotlighted the demand for a la carte channel offerings, skinny bundles and the rising popularity of subscription over-the-top video services.

On the OTT front, the surveyed group was most familiar with Hulu (44.7%), followed by HBO Now (31.2%).

Digitalsmiths also found that 79.2% of respondents said they would like to pick only the channels they watch (down 2.2% in Q2 versus the first quarter), and said their ideal TV lineup would consist of a selection of 17 to 18 channels.

ABC was the top network selected by consumers seeking a la carte channel options, followed by Discovery Channel, NBC, History, CBS, A&E Network, National Geographic Channel, the Fox broadcast network, HBO, PBS, Comedy Central and The Weather Channel.

A positive trend for pay TV is increased awareness of authenticated TV everywhere services. In the Q2 survey, 43.3% said they were aware that their pay TV provider offered such products, up 4.8% year-on-year and 11.2% over two years.

<http://www.multichannel.com/pay-tv-faces-growing-flight-risk/394275>

Multichannel News

Netflix Streaming Takes Flight

Virgin America Provides In-Flight Access to OTT Service 9/30/2015
8:00 AM



Author: [Jeff Baumgartner](#)

2



Netflix is joining the Mile High Club...or make that the 6.6 Mile High Club, as the service will be available on select Virgin America flights once they reach an altitude of 35,000 feet.

Netflix has been abundantly clear that it won't follow the footsteps of Amazon, Comcast and Epix and provide its customers with a downloading option that will allow them to enjoy their subscriptions when they are offline or have access to usually pitiful in-flight WiFi connections.

But the scenario is changing in some ways for consumers who fly Virgin America.

While downloading still isn't an option there, Netflix and the "low-fare, upscale airline" announced this week that they will provide complementary in-flight WiFi access that will provide enough pop to support streaming starting next month.

In this case, Virgin America will enable it on jets (10 new Airbus A320 models that are being delivered this fall through mid-2016) that are equipped with a new ViaSat-powered system, and provide that access for free through March 2, 2016. In addition to into ViaSat-1, a Ka-band bird that provides total capacity of 140 gigabits per second, the Virgin America system will utilize ViaSat's new hybrid Ku/Ka-band antenna (ViaSat claims that its Ku/Ka-band network covers 85% of the world's most traveled air routes).

To prime the pump, Virgin America will also offer the first three seasons of Netflix original *House of Cards* for free on its new "Red" touchscreen seatback in-flight entertainment platform.

Neil Hunt, Netflix's chief product officer, told Gizmodo recently that the OTT provider is also interested in providing an in-flight "rack box" that contains the full Netflix library, an apparent twist on the company's Open Connect private content delivery network program that relies on single-purpose edge caches.

Going forward, travelers on ViaSat-equipped Virgin America flights will be able to sign into their existing Netflix accounts or sign up for a 30-day free trial (giving Netflix a subscriber acquisition opportunity) and connect to the service at 35,000 feet.

The airline and Netflix also cheered the launch with a new #NetflixOnboard-branded plane (see image) and an appearance by Michael Kelly (the Machiavellian Doug Stamper on *House of Cards*), who dropped in on Virgin America Flight 1 from San Francisco International Airport to Washington Reagan National Airport.

"We hope our guests enjoy the offering and know that even President Frank Underwood can't get entertainment this good onboard Air Force One," Abby Lunardini, Virgin America VP of brand marketing and communications, said in a statement.

"As WiFi becomes more ubiquitous, it's going to be increasingly possible for members to enjoy Netflix wherever they want," added Bill Holmes, Netflix's global head of business development. "We're delighted to partner with Virgin America to extend the joy of Netflix to our members at 35,000 feet."

Netflix and Virgin America weren't the only ones flying high this week. Separately, Panasonic Avionics and Rovi announced a deal in which Panasonic will tap Rovi's metadata to manage the programming guide for eXTV, its global in-flight TV service. Panasonic provides inflight entertainment and communications (IFEC) systems on more than 3,700 aircraft.

<http://www.multichannel.com/blog/bauminator/netflix-streaming-takes-flight/394181>

Multichannel News

Trade Journal Links

The Pell Center publishes a compendium of resources discussing state-level broadband policy offering "state-level decision-makers and stakeholders an overview of how broadband policy can promote the public good, and why it is so critical." | Report available [HERE](#) (Angela Siefer)

RS Fiber, located in southeastern Minnesota, breaks ground: "By the end of 2015, the RS (Renville-Sibley) Fiber Cooperative plans to connect 1,600 homes and businesses with fiber, with 90 percent of its service area covered by high-speed wireless. It hopes to connect another 2,600 homes and businesses by the end of 2016, with the eventual goal of reaching 6,200 potential customers." | [Community Broadband Networks](#)

"The Internet is slowly but surely killing TV" | [Washington Post](#)

The Benton Foundation asks "Will Centralization, Regulation, and Globalization Kill the Internet?" summarizing a recent speech by Jennifer Granick on the dying dream of a free Internet. | [Benton Blog](#)

<http://www.multichannel.com/news/cable-operators/study-most-millennials-don-t-want-cut-cord/393780>

<http://www.multichannel.com/news/cable-operators/study-most-millennials-don-t-want-cut-cord/393780>

<http://muninetworks.org/content/gigi-sohn-celebrates-self-reliance-among-natoa-members>

<http://www.multichannel.com/news/distribution/nab-fcc-cable-market-anything-competitive/393960>

Podcast with Sean Stokes, principal at Baller Herbst Stokes & Lide, explaining some Right of Way basics: who is responsible for maintaining it, how to get access to it, and distinctions between the Right of Way and pole access. | [Community Broadband Networks](#)

"This is the First Detailed Public Map of the U.S. Internet Infrastructure: The location of major cables was once a secret, but now researchers hope knowledge of it will spark conversations on how to keep the system safe." | [Smithsonian Magazine](#)

"Broadband Internet service 'has steadily shifted from an optional amenity to a core utility' and is now 'taking its place alongside water, sewer, and electricity as essential infrastructure for communities,' says a report released by the White House yesterday." | [Ars Technica](#)

Latest Akamai report is released; the United States was in twentieth place globally with an average broadband speed of 11.7 Mbps (up 2.2% year-on-year) followed by Canada at 11.1 Mbps." | [Broadband Reports](#)

"How Cable Can Capture the Mobile Internet: T-Mobile chief John Legere sees the cable and wireless industries converging. That could mean big companies increasingly treading on each other's turf." | [Washington Post](#)

FCC Media Bureau Chief, Bill Lake: "The Time Has Come to End Outdated Broadcasting Exclusivity Rules" | [FCC Blog](#)

"After years of insisting otherwise, investors seem to have decided that the pay TV business is in decline. Last week, triggered by an admission of weakness from Disney and ESPN, Wall Street pounded all of the big media companies, wiping out more than \$50 billion in value." | [Re/Code](#) (Gary White)

Is the trend towards skinny bundles is going to stifle the creation of unique content? | [POTs and PANs](#)