

FCC Won't Revamp Retrans Oversight

Broadcasters had feared losing leverage in high-stakes carriage deals 7/25/2016 8:00 AM Eastern

By: [John Eggerton](#)

TakeAway

The FCC has closed its probe into “good-faith” retrans negotiations without taking action, dealing a blow to MSOs.

WASHINGTON — Broadcasters have won a big victory at the Federal Communications Commission in their battle with cable operators over retransmission consent.

When FCC chairman Tom Wheeler announced in a blog post that the agency was closing its inquiry into its definition of good faith retransmission-consent negotiations without taking any action at all, TV-station owners breathed a big sigh of relief and cable operators cried foul, and probably a few unprintables.

The broadcast and cable industries have been in a pitched battle over the issue since Congress directed the FCC to look into whether it should update the factors in its “totality of circumstances” test for what constitutes good-faith — or alternately bad-faith — negotiations.

Broadcasters feared that the FCC could decide to make the blacking out of stations a de facto bad-faith move; prevent the bundling of TV stations and cable networks in retrans negotiations; mandate arbitration; or make any number of moves that cable operators had been pushing for.

Broadcasters said adding new, specific prohibitions would weaken their negotiating positions and tinker with a system that was working. Cable

operators have contended that retransmission consent is broken and skewed toward broadcasters.

Wheeler has suggested that he holds the same view of the marketplace as broadcasters, but one veteran D.C. broadcast-industry lobbyist said he may also have lacked the votes to enact retrans reform.

“Though commenters complained about a variety of negotiating practices, none showed that those practices are the causes of the blackouts that occur,” Wheeler said in closing the review. “Further, a number of the practices complained of were said to have been engaged in by a single negotiating party or in a small number of negotiations and do not appear to be gaining currency in the marketplace.”

Adonis Hoffman, chairman of Business in the Public Interest and a former chief of staff to Democratic FCC member Mignon Clyburn, suggested Wheeler was turning to battles he could win.

“When the chairman looked at the calendar, I think he realized that a potentially bloody battle on retrans was not in his — or the public’s — interest,” he said. “There would be several congressional leaders who would have been adverse to another rulemaking on the subject.”

Wheeler has a full docket with the FCC’s just-announced game plan for freeing up 5G spectrum, his push for broadband-privacy rules and the set-top box plan stemming from yet another congressional mandate related to the STELAR renewal of the satellite compulsory license.

Wheeler signaled that the current “totality of circumstances” test for negotiations is better left as a general catch-all.

“Based on the staff’s careful review of the record, it is clear that more rules in this area are not what we need at this point,” Wheeler said. “It is hard to get more inclusive than to review the ‘totality of circumstances.’ To start picking and choosing, in part, could limit future inquiries.”

The chairman's take on retrans mirrors his support for a general-conduct standard in the Open Internet order. Rather than come up with a lot of new bright-line prohibitions, the totality of circumstances test leaves the FCC free to step in, or not, depending on what all those circumstances are.

For instance, at the same time he was closing the book on that retrans review, the FCC was stepping into the ongoing retrans fight between Dish Network and Tribune Media.

Wheeler said the FCC has issued "comprehensive" data requests to both sides to it can figure out whether they are negotiating in good faith. "If that review reveals a dereliction of duty on the part of one or both parties, I will not hesitate to recommend appropriate commission action," he said.

And as with the FCC's review of zero-rating plans under the general-conduct standard of the network neutrality rules, Wheeler does not have to wait for a complaint.

"The commission can investigate a potential good-faith violation on its own and take enforcement action when a party fails to fulfill its statutory obligations," he said.

But that was pretty much lipstick on a pig for the cable operators who have been arguing that new rules against program bundling and joint negotiations and blackouts are just what the process needs.

"Today is a sad day for television viewers," American Television Alliance spokesman Trent Duffy said following Wheeler's decision. ATVA has been carrying the flag for cable operators in the retrans fight.

The chairman's office was not commenting, but it is a pretty clear signal this is it for revamping the FCC's approach to retrans negotiations under Wheeler.

<http://www.multichannel.com/fcc-won-t-revamp-retrans-oversight/406583>

Multichannel News

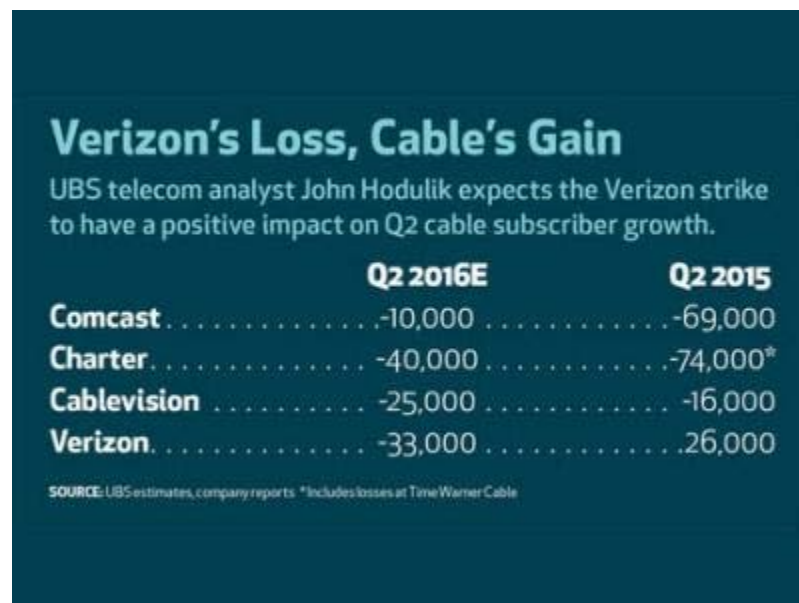
Cable Ops to Come Roaring Out of Q2

Analysts predict Verizon strike will help MSOs maintain momentum 7/25/2016 8:00 AM Eastern



By: [Mike Farrell](#)

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Analysts expect the Verizon strike to have a positive impact on other operators' Q2 subs numbers.

TakeAway

Analysts expect cable operators to report strong Q2 results, propelled in part by the strike at Verizon.

As the earnings season rapidly approaches, analysts see a strong second quarter for cable distributors, a combination of continued momentum and

benefits from the six-week strike by Verizon Communications employees in April and May.

Comcast is expected to be the first cable operator out of the earnings blocks, releasing its Q2 results on July 27.

Consolidation catalysts Charter Communications and Altice N.V. — Charter completed its acquisition of Time Warner Cable and Bright House Networks on May 18, while Altice finished its purchase of Cablevision Systems on June 21 — are both slated to release results on Aug. 9.

Actual numbers for Verizon — expected to show subscriber declines, or at least slower increases — aren't expected until July 26, when the telco officially releases results. That hasn't stopped some analysts from estimating the damage.

Verizon employees walked off the job on April 13 and stayed out until May 27, when a deal was struck that increased hourly wages and avoided pension cuts for nearly 46,000 unionized workers. The six-week standoff ground Fios installations to a crawl, as contractors were brought in to take up the slack.

UBS Securities telecom analyst John Hodulik predicted Verizon would lose about 33,000 Fios subscribers in Q2, compared to a gain of 26,000 customers in the year-ago period.

Verizon has experienced a steady decline in Fios TV customers over the past several three-month periods: it gained about 178,000 customers in 2015, down from 387,000 additions in 2014. But the strike apparently pushed the telco into the red in the second quarter. Hodulik expects the telco to return to positive video subscriber growth in the third and fourth quarters (about 10,000 each), but at a slower pace.

Verizon chief financial officer Fran Shammo has said in the past that total wireline customers, including non-video subscribers, could flirt with negative territory because of the strike. At a Bank of America Merrill Lynch media conference in London in June, Shammo said because most of the strikers were

in installations and maintenance, Verizon was in “catch-up mode” and expected broadband additions to be negative in Q2.

Comcast is expected to continue to temper basic-video subscriber losses in Q2, shedding just 10,000 video customers compared with a loss of 69,000 subscribers in the same period in 2015.

In a note to clients, Hodulik said the results were helped by the Verizon strike as well as the transition of former Fios properties in California, Texas and Florida to Frontier Communications, which wasn't ready to do a lot of subscriber acquisition marketing while absorbing the territories with some 1.2 million Fios customers.

Overall, Hodulik estimated cable operators would lose a collective 500,000 video subscribers in the second quarter, slightly better than a year ago.

Other analysts weren't quite as optimistic. Morgan Stanley media analyst Ben Swinburne expects Comcast to shed about 24,000 video customers in the quarter, with Charter dropping 86,000. Analysts share an enthusiasm for improvements in the cable sector for the full year, though. Swinburne estimated Comcast and Charter will both end 2016 on a positive basic-video subscriber note, with Comcast adding 100,000 subscribers and Charter adding 58,000 customers.

“We see another strong sub quarter for cable at the expense of its telco/satellite competition,” Swinburne wrote.

Pivotal Research Group CEO and senior media & communications analyst Jeff Wlodarczak reduced his estimates for Q2 subscriber losses at Comcast from 50,000 to 20,000, based on his belief that churn trends continue to be solid and to better reflect the effects of the Verizon strike.

“We expect a solid cable result in the seasonally weak 2Q,” he wrote.

<http://www.multichannel.com/cable-ops-come-roaring-out-q2/406581>

Multichannel News

Opponents Plot a Title (II) Rematch

Stakeholders look for weaknesses in appeals court decision 7/11/2016 8:00 AM Eastern

By: [John Eggerton](#)

TakeAway

ISPs will need to find a weakness in an appeals panel's ruling on the FCC's network-neutrality rules or get used to common-carrier status.

WASHINGTON — The Federal Communications Commission won a big victory in a federal appeals court with a ruling that the agency had sufficiently justified its Title II-based approach to network-neutrality rules. But the last chapter has yet to be written in the years-long legal battle.

Internet-service providers have vowed to continue the fight, either by appealing the three-judge panel decision to the full U.S. Court of Appeals for the D.C. Circuit, or by going straight to the U.S. Supreme Court.

Some interested parties huddled with reporters after the decision to talk about the implications of the court's call and prospects on appeal.

POTENTIAL LINES OF APPEAL

Network-neutrality detractors seemed to agree that the FCC's decision to reclassify wireless under Title II of the Communications Act might be fruitful ground for appeal, given the distinctions the FCC had previously drawn between wired and wireless, though they were not handicapping prospects for success.

Another possibility at the Supreme Court, said Russ Hanser, partner at Wilkinson Barker Knauer, was what might be a nascent doctrine at the Supreme Court regarding reviews of particularly important agency decisions, in which agencies have “reshaped” the statutory authority bestowed by Congress.

Attorney Andrew Schwartzman, who supports the Title II-based rules, wasn’t buying that argument. He called “fanciful” the suggestion the Supreme Court wants to cut back on traditional deference by suggesting some cases are “too big” for Congress to have meant to delegate its authority.

“The Supreme Court has already said [in the *Brand X* case upholding the FCC’s previous definition of Internet access as an information service] that the reclassification issue was properly delegated to the FCC,” Schwartzman said. “I doubt that there is any other statute in the last few decades which so clearly delegated so much to the FCC for decision.”

Hanser cited a case involving the Affordable Care Act (aka Obamacare), in which the Supreme Court said in cases of such national importance, the court’s traditional deference to agency decisions might be more limited. That calls into question how much discretion agencies have, he said.

When Congress gave FCC forbearance authority, Hanser added, most people saw that as a deregulatory move. “There seems to be something strange to use it to vastly expand regulation, just not as far as it otherwise would have been expanded,” he said.

He would not be surprised if appeals of the rules to the Supreme Court focused on how much authority agencies have to create regimes different from the ones anticipated in the statute, he said.

Seth Cooper of free-market think tank Free State Foundation thinks the FCC’s general-conduct standard is another weak spot in the court decision.

“The D.C. Circuit’s light-touch review of a heavy-handed regulatory order offered an unsatisfying analysis of the general conduct standard, too eagerly downplaying its vagueness,” Cooper said in a blog post.

Cooper said the vagueness issue should be brought up on appeal, but an as-applied challenge could also be the legal vehicle to challenge the network-neutrality rules. If the FCC was to make a ruling based on the general-conduct standard — by disallowing zero-rating plans, for instance — an as-applied challenge to that decision could be a way to get a fuller vetting than the D.C. Circuit provided.

LOW ODDS ON REVERSAL

Schwartzman was not shy about offering up odds on an appeal, saying the chances for reversal are “close to zero.”

Given that the dissenter in the case — Judge Stephen F. Williams would have remanded the decision back to the FCC — was focused not on the agency’s power to reclassify (which the court upheld), but on how the FCC applied the law, the “core legal issue” is not in play, Schwartzman pointed out.

The only reason to seek rehearing is a tactical one to put off going to the Supreme Court until there is a ninth justice in place, Schwartzman said.

As to the Supreme Court, Schwartzman said there is no split in the circuit for it to resolve, and “it has already said that the central provision is ambiguous, and even Judge Williams agreed that the FCC has the power to reclassify. The only other issues in the case are garden variety administrative law statutory questions of no interest to the Supreme Court plus a nearly frivolous First Amendment question.”

<http://www.multichannel.com/opponents-plot-title-ii-rematch/406212>

Multichannel News

Looking for User-Generated Content To Be Built Into Broadcasts

Burst CEO has a plan to make consumer videos part of the production
7/11/2016 8:00 AM Eastern

By: Chris Tribbey

In recent years, traditional broadcasters have dabbled with the inclusion of user-generated content. A tweet here, a Facebook post there, maybe even a video if they're feeling bold. Bryant McBride wants broadcasters to stop dabbling, and start making user-generated content an everyday part of their productions.

“The production quality used to be a concern, always asking whether the footage was good enough, that we didn't just want anything [broadcast],” the founder and CEO of Boston-based Burst, which specializes in mobile-to-broadcast solutions, said in a statement. “That wall has crumbled, quickly. The quality of the capture device in your pocket is such that it's more than good, it's the norm.”

On July 11, Burst announced it's releasing Burst User-Generated TV (BUG TV), a digital platform offering that allows broadcasters to insert user-generated video into linear content, or even create entire shows using just user-generated content, and do so in real time. Combined with Burst's over-

the-top solution, McBride said he believes his company has found a way for broadcasters to profit off a largely untapped market.

“What we haven’t seen offered in depth is participation,” he said. “To put it in text context, many people will skip articles and simply go to comments to get a gist of what’s going on, for texture about what the main article is about. To put that into OTT, there are pieces of that already out there that allows viewers to participate with the stars, directors and producers.” He pointed to *Talking Dead*, the after-show for *The Walking Dead*, which puts fan discussions about the popular AMC show front and center. Now imagine every show having the ability to do that, McBride said.

“We want to allow viewers to participate directly with the show, if they see something they like, see something they want to comment on, to be able to use a very simple interface to comment on and lend to the production, in which then the show can use it as shoulder programming, to complement their stories, use it in any way, shape or form, like picture-in-picture, that allows for an element that is becoming a standard, especially among younger viewers,” McBride said. “The industry has said quite clearly that viewers want to participate.”

Burst—which counts Sinclair Broadcast Group, Fox Sports Australia and AccuWeather among its customers—is hoping that what viewers currently do with comment sections, social media and blogs will happen with video as well. Further, they’re hoping broadcasters will latch on to the idea of turning traditional TV into something more akin to YouTube. “It’s really just harnessing the ubiquitous nature of that capture device in your pocket, and doing that in a way, in a very short time period, [that] allows a storyteller or producer to harness all of that gold, and curate it quickly, and showcase it quickly, not just on digital, but on traditional television, at unit production costs that are pennies compared to what a traditional effort like this would take,” McBride said.

Before its latest announcement, it had already been a busy few weeks for Burst—in late June, the company launched its Burst On TV platform and Burst Real- Time Commercial Solution.

The former allows journalists, consumers and others to put their video into live media streams, without requiring the use of a mobile app; the latter lets advertisers create ads with real-time, curated, user-generated content for broadcast, OTT and digital applications.

“Burst’s new offerings serve as a conduit for brands and consumers to engage around shared passion points,” said John Finger, director of business strategy for Horizon Media, one of Burst’s customers. “Whenever that type of authentic, one-to-one interaction or dialogue is achieved, there are real and measurable benefits to both parties.”

<http://www.multichannel.com/looking-user-generated-content-be-built-broadcasts/406224>

Multichannel News

House Sets July 12 Set-Top Talks

Top Democrat looking for progress on compromise proposal 7/11/2016 8:00 AM Eastern

By: [John Eggerton](#)

Rep. Frank Pallone (D.-N.J.)

TakeAway

A top House Democrat is looking to a July 12 FCC oversight hearing to move the needle forward on the industry-backed “ditch the box” compromise to the agency’s proposed set-top rules.

WASHINGTON — Federal Communications Commission chairman Tom Wheeler will face a House Communications Subcommittee FCC oversight hearing this week (July 12), and probably some grilling on the status of his controversial “unlock the box” proposal.

Rep. Frank Pallone (DN. J.), chairman of the subcommittee and ranking member of the House Energy & Commerce Committee, is one legislator likely to be looking for progress on a “ditch the box” compromise proposal from cable operators that could potentially reunite his fractured subcommittee. FCC staffers signaled last week there are points of agreement, but also sought many clarifications.

Cable operators and other stakeholders have been meeting with Wheeler’s office after it became clear that the chairman did not have a lock on three votes for his original proposal to make set-top data and programming available to third parties.

The set-top issue continued to draw a crowd last week, particularly after [Comcast and Netflix](#) announced that Netflix would be available on Comcast's X1 platform.

Easier access to both traditional and online fare is one of the big drivers behind Wheeler's proposal.

[Read more about the FCC's proposed set-top rules.](#)

Pallone has a particular interest in seeing movement on a proposal that both cable ops and the FCC could sign off on, and Wheeler has said he was looking forward to engaging in a "constructive dialogue" with stakeholders.

Pallone signaled to *Multichannel News* in an e-mailed statement that he likes the direction set-top box compromise talks are taking, so long as the final destination is consumer-friendly and protects content.

"One thing everyone can agree on is that our set-top boxes can be clunky, bad for the environment and expensive," Pallone wrote. "The recent proposal from industry and the reaction from the FCC has brought us closer to a positive resolution."

The FCC-industry talks followed the introduction of an apps-focused ["ditch the box" compromise proposal](#) by the National Cable & Telecommunications Association and others, as well as the signal from Democratic commissioner Jessica Rosenworcel, whose vote is needed to pass a final order, that the FCC needs to find another route to the shared goals of competition for leased set-tops and access to over-the-top content.

[Pallone](#) is said to be focused on a couple of things: first, protecting content, and second — as ranking member — reuniting committee Democrats split over the FCC's set-top proposal.

New York Democrat Yvette Clarke, for example, has pushed back strongly on the FCC plan, while House Communications Subcommittee ranking

member Anna Eshoo (D-Calif.) has tried to marshal her colleagues' support for the proposal.

While Comcast's agreement to add Netflix to its video navigation platform might suggest the marketplace is already wedding traditional and online content without the thumb of government on the scale — something cable ops have been arguing — backers of Wheeler's original set-top proposal wanted to make sure that was not the takeaway.

“We think that in a competitive market, consumers shouldn't have to look to special deals between large companies like this just to access video programming from multiple sources all in one place,” said John Bergmayer, senior staff attorney for Public Knowledge. “A competitive market will deliver lots of video apps on many different devices.”

The Consumer Video Choice Coalition, which has been pushing for the proposal, said: “Yay, Comcast customers can now watch Netflix! Now what's wrong with unlocking the box and letting consumers watch the rest of the Internet as well?”

Pallone is looking to the July 12 oversight hearing for some encouraging words about compromise. “I look forward to continued discussion on this topic at the FCC Oversight hearing,” he told *Multichannel News*.

If the FCC can work out a compromise with industry, the hearing would be a good place for Wheeler to signal it is in the works — or that at least a compromise is a possibility.

The FCC may have already signaled that there is hope. Staffers have sought answers from cable operators on a host of key points in the ditch the box proposal, and signaled there are many general points of agreement, according to a copy of staff questions obtained by *Multichannel News*.

“FCC staff continues to meet with a wide range of stakeholders to discuss the industry's proposal,” said a Wheeler spokesperson. “While conversations have been constructive, there is more work to do to fully

understand the scope of the proposal and clarify important details. Our goal is to find the best path forward to ensure that consumers finally have the competition and choice they deserve.”

<http://www.multichannel.com/house-sets-july-12-set-top-talks/406205>

Multichannel News

From: policy-bounces@lists.natoa.org <policy-bounces@lists.natoa.org> on behalf of Joseph Van Eaton <Joseph.VanEaton@bbklaw.com>

Sent: Friday, August 12, 2016 2:35 PM

To: 'policy@lists.natoa.org'

Subject: Re: [Policy] Minnesota Department of Commerce sends "cease and desist" letter to Mobilitie

I guess you did see it...sorry to crown your in-box.



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From: policy-bounces@lists.natoa.org [<mailto:policy-bounces@lists.natoa.org>] **On Behalf Of** Watza, Michael J.

Sent: Friday, August 12, 2016 9:03 AM

To: policy@lists.natoa.org; members@lists.natoa.org; policy@lists.natoa.org

Subject: Re: [Policy] Minnesota Department of Commerce sends "cease and desist" letter to Mobilitie

Love it. A State PUC with authority and the guts to exercise it.

From: Jodie Miller [<mailto:JMiller@townsquare.tv>]

Sent: Thursday, August 11, 2016 7:11 PM

To: members@lists.natoa.org; policy@lists.natoa.org

Cc: STraylor@natoa.org

Subject: [Policy] Minnesota Department of Commerce sends "cease and desist" letter to Mobilitie

On August 4th the Minnesota Department of Commerce sent a letter to Mobilitie stating that nothing in Minnesota statutes or rules would exempt a PUC certificate holder from local government authority over the rights-of-way.

The letter closes with the following statement:

“The Department requests that Mobilitie cease from asserting that PUC authority has

exempted it from the regulatory requirements of local government units. If such

communications continue, the Department will pursue whatever remedies it may have

available to it under Minnesota law.”

Jodie Miller

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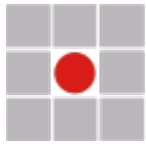
www.NATOA.org



NEWS: NATOA Statement on Chattanooga Case

FOR IMMEDIATE RELEASE -- August 10, 2016 -- The National Association of Telecommunications Officers and Advisors (NATOA) believes that today's court ruling rejecting the FCC's order preempting state laws that limit or restrict local governments from providing fast, affordable broadband service is lamentable. When private industry fails to step up to the plate and provide Internet services that will enable our communities to thrive in today's fast paced and worldwide economy, local governments should have every option available to right this wrong.

###



Public Knowledge

The FCC's proposal to "[unlock the box](#)" would stop cable companies from forcing their customers to pay rental fees for set-top boxes, which average \$231 per household per year. Instead, cable companies would be required to also support third-party devices, such as TiVo and Roku. The proposal has received ample support from [the public](#), [device makers](#), [independent and minority programmers](#), [civil rights groups](#), [copyright experts](#), [content creators](#), [members of Congress](#), and [President Obama](#).

But members of Congress supported by the cable industry [snuck in an unnecessary rider](#) to a [must-pass government funding bill](#) that will require the FCC to [conduct additional studies on the proposal](#).

This is simply a delay tactic from incumbents who want to maintain their stranglehold on the market. Congress instructed the FCC to reform the video marketplace [20 years ago](#), and the FCC has been working hard to do so. After multiple [rounds of public comments](#) on the proposal, the Commissioners are thoroughly examining and addressing the concerns of all stakeholders, and are preparing to move forward with a solution.

Consumers will pay at least \$1.6 billion per month while we wait on unnecessary delays by Congress--and we've been [keeping track](#) of every second we wait.

Click [here](#) to contact key Senators and your representatives in Congress to tell them to put a stop to this rider and eliminate the language in the Appropriations bill that will delay #UnlockTheBox. Let them know you are ready for choice and competition in the video marketplace, ***without delay***. The necessary processes have been completed, and it's time for the FCC to [#UnlockTheBox](#).

[Tweet this](#): Tell Congress it's time to let the #FCC do its job and #UnlockTheBox, *without delay*:
<https://goo.gl/sb9Tmn>

Thanks,
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www.publicknowledge.org

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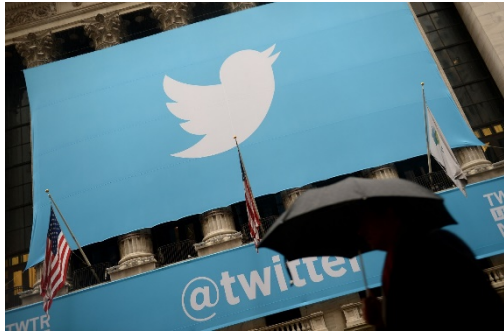
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News: Smaller cable companies are telling the FCC that the agency's plan to open the old cable box up to competition will put them out of business. Under the
