

Comcast deal gives it market power on Internet backbone, critic says

A Cogent executive tells lawmakers Comcast is already using its size to extract payments from Netflix

By [Grant Gross](#), IDG News Service
May 08, 2014 03:07 PM ET

IDG News Service - Comcast's proposed purchase of fellow cable television and broadband provider Time Warner Cable would give it even more leverage in an Internet backbone market where the company has already begun extracting tolls from competitors, a backbone provider said Thursday.

Comcast's proposed US\$45.2 billion deal would "threaten the innovative and entrepreneurial character and future of the Internet," said Dave Schaeffer, chairman and CEO of Cogent Communications Group, a backbone provider recently bypassed in a deal in which Netflix agreed to pay Comcast for faster access to its broadband subscribers.

The proposed merger has "the potential to cause grave anticompetitive and consumer harms for tens of millions of Americans who require access to high-speed, high-quality, affordable broadband Internet access," Schaeffer told the U.S. House Judiciary Committee's antitrust subcommittee.

Comcast Executive Vice President David Cohen dismissed Schaeffer's concerns during the hearing, saying it was Netflix's choice to bypass Cogent and sign a traffic priority deal with Comcast.

Comcast's gain in broadband market share through the Time Warner deal shouldn't have "any impact whatsoever" on the separate Internet backbone market, Cohen added.

The Internet backbone market is "an intensely competitive market with dozens of network operators, content delivery networks, peering organizations, transit providers," he said. "The Netflixes of the world, the Googles of the world, the Internet content companies, the young man working in his garage ... who wants to be the next Netflix, has dozens and dozens of choices on how to get his or its content onto the Internet."

But Schaeffer told a different story, saying Comcast has already used its position as the largest U.S. broadband provider to get favorable peering agreements. Since mid-2012, when Cogent and Netflix signed a deal, Comcast has refused to make inexpensive improvements to its connections with Cogent -- and has refused Cogent's offer to pay for those upgrades, he said.

"The result was degradation of service for our customers and for Netflix's viewers," Schaeffer said. "By refusing to augment capacity to reach its subscribers at any time,

Comcast is effectively blocking its subscribers from accessing any Internet content they want and for which they already have paid."

Antitrust authorities don't need to look at the Internet backbone peering market, countered C. Scott Hemphill, a professor at Columbia Law School. Payments to exchange Internet traffic are not new, although in many cases, the payment was a simple exchange of traffic, he said.

"What's really going on is a fight about who should pay for what in this highly competitive business of interconnection," he said.

Schaeffer's criticisms of Comcast's interconnection policies echo recent complaints from Netflix and from backbone provider Level 3. While Netflix signed a deal with Comcast, executives there have complained about paying Comcast to deliver traffic and called for the U.S. Federal Communications Commission to pass strong net neutrality rules prohibiting pay-for-priority arrangements.

This week, [backbone provider Level 3 accused](#) six unnamed broadband providers -- five U.S. and one European -- of deliberately allowing congestion on their networks in an effort to extract payments from widely used Web services.

The backbone peering controversy is also tied to an outcry in recent days after FCC Chairman Tom Wheeler announced new net neutrality rules that would allow broadband providers to engage in commercially reasonable traffic management. Many consumer groups and Internet companies have called on the FCC to pass stronger rules that would prohibit pay-for-priority traffic arrangements.

Several committee members said they are concerned that the Comcast acquisition of Time Warner could raise cable or broadband prices, or give Comcast an incentive to discriminate against online content that competes with its own NBC networks and on-demand video service.

While it may be difficult to kill the deal using existing antitrust law, it raises questions about Comcast's competition with Web-based video, said Representative Darrell Issa, a California Republican. Old antitrust questions may not cover the issues raised in this merger, he said.

Issa questioned if net neutrality rules Comcast agreed to during its 2011 acquisition of NBC Universal would require the company to carry Netflix through its X1 on-demand video service, delivered through a TV set-top box.

"You are a major buyer and reseller of content," he told Cohen. "You are a major owner and developer of content, and your in-house products compete against products that you may choose to buy."

Video delivered through set-top boxes is not covered by that agreement, Cohen said. The X1 is a cable service, not a broadband service covered by net neutrality, he said.

Congress needs to have a "robust discussion" about market access and video competition, Issa said. The cloud-based X1 service allows Comcast to deliver "anything video to that one unit, and there's really no difference in the bandwidth asked for," he said. "There's only a difference whether I'm using a product recorded online or I'm using a different product."

Grant Gross covers technology and telecom policy in the U.S. government for The IDG News Service. Follow Grant on Twitter at GrantGross. Grant's email address is grant_gross@idg.com

NetworkWorld – May 8, 2014

Liberty to Spin Off Cable Assets

Liberty Broadband Will Include Charter Investment 5/08/2014 1:45 PM

Eastern



By: **Mike Farrell**

TakeAway

Liberty Media said it will go ahead with a hard-spin of its cable assets -- mainly its 27% interest in Charter Communications -- into a separate public company to be called Liberty Broadband.

Liberty Media said Thursday that it will go ahead with plans to spin-off its cable interests – mainly its 27% interest in Charter Communications – into a separately traded public company named Liberty Broadband.

Liberty **first announced its intention to spin off the assets in a tracking stock in March**. But the company said the transaction will be a hard-spin, similar to the one it made with former subsidiary **Starz** last year.

"We believe a separate Liberty Broadband will offer investors greater choice and transparency, and is well-timed with Charter's agreements with Comcast, which will result in Charter owning or serving over eight million video customers," Liberty CEO Greg Maffei said in a statement.

The move comes days after **Charter agreed to a deal with Comcast** that would involve the sale, swap and spin of about 3.9 million subscribers valued at about \$20 billion.

With that deal, Charter would acquire 1.4 million customers from Time Warner Cable, would receive a 33% interest in a spin-off company with about 2.5 million customers. In addition, Comcast and Charter would swap systems with about 1.6 million customers.

Liberty Broadband would include Liberty's Charter interest as well as its global positioning satellite subsidiary TruePosition, its minority equity investment in Time Warner Cable and certain deferred tax and deferred revenue liabilities, as well as liabilities related to the Time Warner call option. Liberty Broadband could go off on its own to acquire cable assets, but Maffei said on a conference call with analysts to discuss first quarter results that Liberty's respect for the Charter management team, the benefits of scale and

the synergies inherent in the Charter assets “make it unlikely that we will go outside of them [Charter] inside the U.S.”

In the spin, Liberty shareholders would receive one-fourth of a share of Liberty Broadband common stock for each share of Liberty Media they own. In addition, stockholders will also receive a subscription right to acquire one share of Series C Liberty Broadband common stock for every five shares of Liberty Broadband common stock they receive in the spin-off.

Liberty said the subscription rights are being issued to raise capital for general corporate purposes of Liberty Broadband and will enable the holders to acquire shares of Series C Liberty Broadband common stock at a 20% discount to the 20-trading day volume weighted average trading price of the Series C Liberty Broadband common stock following the completion of the spin-off. Liberty expects to complete the Liberty Broadband spin by the end of the year.

- See more at: <http://www.multichannel.com/news/news-articles/liberty-spin-cable-assets/374436#sthash.D3rqrOpA.dpuf>

Multichannel News – May 8, 2014

FCC revising 'net neutrality' rules after backlash

- Article by: CELIA KANG , Washington Post
 - Updated: May 12, 2014 - 9:42 PM
-

But plan would still let Internet providers to charge firms like Netflix for faster access.

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WASHINGTON – Under public pressure, the chairman of the Federal Communications Commission is attempting to salvage a plan that would allow Internet service providers to charge content companies such as Netflix and Google for faster access into U.S. homes, with added assurances that the agency will punish telecom firms that abuse their new privileges, according to an official at the agency.

FCC Chairman Tom Wheeler will present a revised draft of controversial “net neutrality” rules to other commissioners as early as this week that would still permit paid prioritization of Web content.

The new plan would attempt to explicitly warn Internet service providers such as Verizon and AT&T that they can’t unfairly put the content of Web companies that don’t pay for special treatment on a “slow lane,” according to an FCC official who spoke on condition of anonymity because the rules are still being discussed. The Wall Street Journal first reported on the new proposal.

The plan lays out policy ideas but also presents questions that the agency has yet to resolve, such as whether the FCC should ban paid prioritization, or if the agency should consider treating broadband Internet providers as common-carrier services with far more regulations.

“The proposal clearly reflects the public interest we’ve received on the item,” the FCC official said.

But because the proposal is short on details showing how the FCC would enforce limits on the behavior of Internet service providers, it’s unlikely to assuage consumer groups, high-tech firms and lawmakers who have slammed Wheeler’s proposal.

The official said the new draft asks the public to comment on whether paid prioritization should be banned, but Wheeler will not drop his proposal to allow the controversial practice. The agency will vote Thursday.

Consumer input sought

The public will be able to comment on the proposal for 60 days with the goal of finalizing rules by the end of the year.

Law professors and consumer groups doubt that the FCC can judge if an ISP is unfairly discriminating against Web content firms on the “case-by-case basis” Wheeler has promised.

Wheeler alarmed high-tech firms including Facebook, Microsoft, Google and Amazon and more than a hundred small Web firms that signed a letter last week telling the chairman that by allowing ISPs to charge for better delivery of traffic, he would essentially create a bifurcated Internet with fast lanes for the highest bidders and slow lanes for nonprofit groups and small start-ups.

Wheeler has vehemently protested that characterization, saying all consumers will be guaranteed a baseline of broadband Internet quality and that any pay-for-play deals struck between ISPs and Web firms would only be icing on the cake — a premium experience that doesn’t take away from the experience of basic Internet.

But many legal and technology experts say that's simply not possible.

"With broadband, there is no such thing as accelerating some traffic without degrading other traffic," Columbia University law professor Tim Wu wrote in a recent *New Yorker* piece. "We take it for granted that bloggers, start-ups, or nonprofits on an open Internet reach their audiences roughly the same way as everyone else. Now they won't."

The government has struggled for years to establish guidelines on whether Internet content should be treated equally as it moves through pipes and networks to consumers.

Consumer advocates have argued that the Internet has been able to flourish because companies such as Verizon and Time Warner Cable have delivered content — whether it's a YouTube video or a Netflix movie — with equal speed, regardless of the source.

Star Tribune May 13, 2014

Google, Netflix lead nearly 150 tech companies in protest of FCC net neutrality plan

- BY [BRIAN FUNG](#)

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- May 7 at 7:15 pm

(Andrew Harrer/Bloomberg)

Nearly 150 Internet firms are banding together to call for more stringent net neutrality regulations on broadband providers.

In a letter to the Federal Communications Commission on Wednesday, the companies asked federal regulators to reconsider a proposal that critics fear would allow Internet providers to charge for faster, better access to consumers. The list includes Amazon, Facebook, Google and Microsoft, along with dozens of other firms that called the prospect of paid fast lanes "a threat to the Internet."

With just a week to go before the Federal Communications Commission meets to consider its proposed new rules for ISPs, [the letter](#) represents a late attempt by Silicon Valley to take a stance on the open Internet.

"Instead of permitting individualized bargaining and discrimination," the companies wrote, "the commission's rules should protect users and Internet companies on both fixed and mobile platforms against blocking, discrimination and paid prioritization, and should make the market for Internet services more transparent."

The companies have not gone so far as to demand the FCC "reclassify" Internet providers under Title II of the Communications Act — a move that would allow the commission to regulate ISPs more heavily, as it does with phone companies. The letter does not offer an alternative proposal.

Even as the companies were writing to the commission, however, some at the agency were suggesting that the May 15 meeting be delayed.

"I can tell you right now I have real concerns about process," said FCC Commissioner Jessica Rosenworcel in [remarks](#) at a Washington conference of state library officials.

"Rushing headlong into a rulemaking next week fails to respect the public response to his proposal."

In a [Google Hangout](#) Wednesday, Rep. Anna Eshoo (D-Calif.), who represents the district in which many of the tech companies are based, said Rosenworcel was "on target" in requesting a delay.

"I really don't know how the FCC can absorb everything that's washed over the agency in just a handful of days without some kind of a delay," she said.

FCC Chairman Tom Wheeler indicated Wednesday that he still intends to address net neutrality next week.

"Moving forward will allow the American people to review and comment on the proposed plan without delay, and bring us one step closer to putting rules on the books to protect consumers and entrepreneurs online," said Wheeler spokeswoman Shannon Gilson.

Once the proposal has been publicly unveiled on May 15, the public will still have opportunities to comment on the idea.

Washington Post – May 7, 2014

Comcast-Time Warner Merger Would Hurt Municipal Broadband

BY: [Tod Newcombe](#) | May 12, 2014

Remember Adelphia Cable? How about Susquehanna Communications? Or Renaissance Media? Maybe TCI rings a bell? These largely forgotten cable company names are part of what was once a broad and diversified cable TV industry, with more than 40 players. Today, there are four big players dominating the market: Comcast, Time Warner, Charter and Cox. And soon we may be down to just three.

In March, Comcast announced it would buy Time Warner Cable Inc. The U.S. Department of Justice and the Federal Communications Commission (FCC) will review the proposed merger, which many object to because they say it will create something close to a monopoly in cable service. But the biggest losers if the merger goes through may be cities and towns, who will lose the ability to create high-quality, low-cost, publicly owned broadband services for their citizens.

Comcast claims the deal is good for a number of reasons, starting with lower operating costs from combined efficiencies and economies of scale that could lower prices or raise the quality of service. The companies say competition wouldn't be hurt because they don't have overlapping service areas, and the combined company would only control 30 percent of the pay TV market and approximately 33 percent of the broadband market.

But when you remove satellite Internet services from the equation, Comcast actually has as much as 55 percent of all TV and broadband subscribers, according to the [Economist](#), which also pointed out that three-quarters of households have no choice other than their local cable provider when it comes to Internet access. A combined Comcast-Time Warner, according to the publication, would control 20 of the top 25 cable markets.

As for lower operating costs from a merger turning into lower cable prices, don't count on it. "Between 1995 and 2012 the average price of a cable subscription increased at a compound annual rate of more than 6 percent," the Economist reported, despite the fact that nearly 40 cable companies merged during this time period, supposedly to generate greater efficiencies and lower costs for consumers.

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If previous cable mergers didn't really lower consumer prices, what about better quality, such as faster speeds? Again, evidence seems to indicate that despite the wave of mergers, quality -- in terms of faster Internet speed -- has been mediocre when compared with what's happening elsewhere. Today, the average broadband speed in the United States is 7.4 megabits per second (Mbps), which ranks eighth in the world. Americans also pay an average \$6.14 per Mbps, making our broadband the most expensive in the world, according to Akamai, an Internet technology company.

Christopher Mitchell, director of the Telecommunications as Commons Initiative at the Institute for Local Self-Reliance, believes cities and towns will lose big if the deal goes through. Partially thanks to Comcast and other cable giant's lobbying, 19 states have already passed laws that ban or restrict local communities from setting up publicly owned alternatives to the dominant provider in the area. Municipalities that pursue publicly owned broadband often cite several reasons for their efforts, ranging from lack of competition and choices in the area to a desire for faster speeds at lower costs. But Mitchell fears the lobbying power of a combined Comcast-Time Warner would choke off what little leverage remains for local governments when it comes to gaining state approval to build publicly owned broadband networks.

Lobbyists have told state legislatures that the market is working fine and that any publicly owned broadband and cable services would be the end of American capitalism. A new entity would give Comcast so much more clout in terms of business and with the state and federal governments in terms of lobbying power. According to Mitchell, Comcast has lobbyists in every state capital working to keep local governments from offering alternatives, and last year, the company spent \$18.8 million on just federal lobbying, according to the Center for Responsive Politics.

Cable lobbyists argue that local governments don't know how to run broadband or cable networks and will make bad choices with taxpayer money, leading to higher taxes -- though there's scant evidence this has happened, according to Mitchell. Advocates for local control combat that argument by pointing out that many

cities and towns have been in the electrical and water utility business for decades without harming capitalism and that most cities that want to run their own broadband services usually seek out a trusted private partner to operate the service.

Local governments now realize that high-speed broadband is no longer just a consumer issue, but has become an increasingly important driver of economic development, and that cable and DSL (Internet service over phone lines) just aren't fast or reliable enough in a global economy where high-speed fiber is becoming the new norm. Writing for [Bloomberg View](#), Susan Crawford, a professor at Harvard Law School and outspoken opponent to the merger, wrote, "let's allow mayors to build alternative fiber-optic networks such as the one in Chattanooga, Tennessee, that has lured businesses and spurred economic growth." Crawford says the country needs a new industrial policy brought about by the kind of leadership that gave the country the federal highway system and national electrification.

Chattanooga has some of the fastest Internet services of any city in the country, thanks to its municipal electric power board, which beginning in 2008 installed a fiber-optic network that provides users with connections that start at 50 Mbps and rise to 100 Mbps. Businesses can subscribe to speeds up to 1 gigabit per second, which is 200 times faster than the average speed in the rest of the country. The municipally-owned fiber network generates profits for the EBP, which also uses the network to increase the reliability of its electrical grid, thanks to the installation of thousands of intelligent switches and meters. Since EBP lit up the fiber service four years ago, 56,000 businesses and individuals have become subscribers, and costs have dropped for its fastest 1 gigabit service from \$300 per month two years ago to just \$70 per month today.

Perhaps as a sign that the time has arrived for fiber-optic broadband, AT&T announced in April that it's considering providing very high-speed services in 21 metro areas. Meanwhile, Google has fiber-optic Internet projects underway in Austin, Texas; Kansas City, Missouri; and Provo, Utah. But it's unclear just how robust these investments and initiatives are as an alternative to the long dominant cable services that serve most markets, according to Mitchell.

"Judging by the amount of opposition to the merger, I think people are seeing that we're at a tipping point and that there are ways they can make investments at the local level and control their own destiny," said Mitchell. "A lot of people and local businesses understand that the Internet is really important and that we can't trust it to a few corporations. But I don't see that level of understanding from most elected officials yet."

This article was printed from: <http://www.governing.com/topics/transportation-infrastructure/gov-comcast-time-warner-merger-concerns.html>

NEWS ARTICLES

NCTA Gets Hit by ‘Chair’

TOUGH-TALKING WHEELER TO CABLE: KEEP INTERNET OPEN, OR ELSE 5/05/2014 9:00 PM Eastern

By: **John Eggerton**

TakeAway

Federal Communications Commission chairman Tom Wheeler delivered a forceful keynote address at The Cable Show detailing his Open- Internet views and saying he won't allow manipulation to strangle innovation.

WASHINGTON — The Cable Show in Los Angeles last week was hardly a welcome-home celebration for former National Cable & Telecommunications Association chief Tom Wheeler.

In fact, Wheeler explicitly told attendees to take off the party hats, though he should have warned them to duck their heads, too.

The network neutrality-embattled Federal Communications Commission chairman used his keynote speech last Wednesday (April 30) as a public platform to deliver a message to Internet-service providers — the Open Internet rules are not being gutted, just buttressed with better legal underpinnings, and paid prioritization would still be a tough ask.

The venue may have been The Cable Show, but it was also a message to the Open-Internet activists who have pilloried him over his draft of network-neutrality rules, circulated last week.

PROGRESSIVE IRE

It was not enough to appease his strongest critics. The Progressive Change Campaign Committee, founded by former MoveOn organizer Adam Green, said Wheeler should move on if he didn't get tougher on net neutrality, pointing out that while a candidate in 2007, President Obama promised only to name commissioners who would support an Open Internet.

That drew the following from a White House spokesperson, according to Progressive Change: “The FCC chairman has said that his goal is to preserve an open Internet and that he has all the tools he needs to do it. We have been clear from the start that we support that goal and will be closely following these developments as the FCC launches its proceeding.”

Attendees at the NCTA’s annual event could hardly avoid following the issue, as Wheeler put it in their face from the outset.

The thrust of his speech, when he wasn’t jabbing cable operators as looming threats to Internet openness, was that the FCC is not likely to bless paid prioritization if its impact is to disadvantage edge providers. “If someone acts to divide the Internet between ‘haves’ and ‘have nots,’ we will use every power at our disposal to stop it,” including classifying Internet access as a Title II telecommunications service, Wheeler said.

Reclassification would be the so-called nuclear threat of applying some form of common-carrier mandatory access regulations to Internet access. Also in the threat more- like-a-promise department, the chairman said the FCC would step in to preempt state laws on municipal broadband to boost competition.

Wheeler said that because cable has become the principle provider of broadband, he needed to spell out some expectations behind the new rules. Those include the commission’s judgment that without those rules, “broadband providers represent a threat to Internet openness,” he said, quoting from the U.S. Appeals Court for the D.C. Circuit’s decision in *Verizon v. FCC*, “and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment.”

He seemed to be suggesting that, absent new rules, cable ops were preparing to block and degrade, though he suggested later that was not the case.

Following the speech, NCTA CEO Michael Powell took issue with the suggestion cable was a threat. He pointed out that the industry had not opposed the old rules and would be a constructive partner in the new ones. Wheeler countered that he had “no doubt of that,” though cable ops could be

forgiven for missing that part of his message. That tough talk may have been as much directed to his public-advocacy audience as the one in the hall.

One criticism of allowing for paid priority is that, while such services as Netflix and Amazon could pay for faster video traffic, startups might not be similarly situated. Wheeler addressed that criticism, at least implicitly.

“In the 30 years since I last stood on this stage [as NCTA president], I have built new technology-based companies as an entrepreneur and helped other companies grow as a venture capitalist,” he said. “Now, as chairman of the FCC, I do not intend to allow innovation to be strangled by the manipulation of the most important network of our time, the Internet.”

‘REASONABLE’ DISCRIMINATION

While the old rules disallowed unreasonable discrimination, the new rules would allow discrimination based on a commercially reasonable standard. The FCC suggested in the old rules that paid priority probably would not pass muster as reasonable, and under the new “commercially reasonable” standard for case-by-case analysis of discrimination, Wheeler signaled last week it would be a high bar as well.

Wheeler said flatly, “We will not allow some companies to force Internet users into a slow lane so that others with special privileges can have superior service.” That left some rhetorical room for permitting some to get priority service, though he had clearly indicated that could be an uphill climb in some cases.

Wheeler said the bottom line on the rules is that “the Internet will remain an open pathway. If users can’t effectively use the pathway, then the conduct will be a violation of the Open-Internet rules.”

The devilish detail will be how the FCC defines “effectively use,” which is where the “commercially reasonable” discrimination case-by-case standard will be crucial.

Multichannel News – May 5, 2014

Mapping Out the Comcast-Charter Moves

Swaps Will Beef Up Charter's Midwestern Presence 5/12/2014 8:00

AM Eastern

By: **Mike Farrell**

Take Away

The planned Comcast-Charter systems swap should see Charter expand its existing footprint in Ohio, Wisconsin and Kentucky.

SNL Kagan literally mapped out the new clusters that will be created after Comcast and Charter Communications complete their expected transfer of about 3.9 million customers through a series of sales, swaps and spins expected to begin by the end of the year.

Comcast announced on April 28 its plan to sell about 1.4 million customers, spin out 2.5 million subscribers in a separate publicly traded company and swap another 1.6 million customers with Charter. The deal is valued at about \$20 billion.

The companies have said which markets were involved, but have not said how many subscribers were in each of them.

Charter will beef up several existing markets through the sales, swaps and spins.

It will receive 1.4 million former Time Warner Cable subscribers in Ohio, including about 616,000 in the Cleveland and 408,000 in Columbus areas, according to SNL Kagan.

Charter's Wisconsin cluster — currently at about 578,000 customer relationships — would grow by 372,000 subscribers in Milwaukee. And Charter would gain about 281,000 subscribers in Louisville, Ky.

“All of these assets are physically contiguous and put Charter in an operationally better footprint,” Charter CEO Tom Rutledge said recently. “We think from an operational perspective and the ability to take our existing

successful model of growing our business, that model is enhanced by this enhanced footprint. The whole transaction was a way to allow us to restructure our footprint, increase the size of our company, increase the scale of the company and increase the ability to market the company and operate effectively.”

SpinCo’s largest markets would be Detroit (about 700,000 subscribers), Minneapolis-St. Paul (about 560,000) and Indianapolis (more than 380,000 subscribers).

Charter already has a big presence in SpinCo markets including Detroit, Minneapolis, Grand Rapids and Flint-Saginaw, Mich.

For Comcast, the transactions will beef up clusters in New York; Boston; Dallas/Fort Worth; Northern and Southern California; Atlanta; Tennessee and North Carolina.

Kagan says the transactions would involve about 277,000 subscribers in Los Angeles, 186,000 in Atlanta and 129,000 in Boston.

- See more at: <http://www.multichannel.com/news/finance/mapping-out-comcast-charter-moves/374477#sthash.OgQPgSw2.dpuf>

Multichannel News – May 12, 2014

Why Fi? It's the Next Big Thing

NCTA MAKES CASE TO CONGRESS FOR UNLICENSED SPECTRUM

BY JOHN EGGERTON

WASHINGTON — Cable operators are making a full-court press in the nation's capital for unlicensed wireless spectrum.

"[U]nlicensed traffic will surpass all other modes of communications as the final link to consumers," the National Cable & Telecommunications Association said, and "soon."

The NCTA has been pushing the Federal Communications Commission to make sure it frees up as much unlicensed spectrum in the broadcast-incentive auction as possible. In a response to a House Energy & Commerce Committee White Paper on spectrum policy, the industry group laid out its case to Congress for freeing up more of that unlicensed spectrum for WiFi, which is wired cable's principal competitive mobile broadband play.

The CableWiFi Alliance — a partnership between Comcast, Time Warner Cable, Cablevision Systems, Bright House Networks and Cox Communications — said it has topped 250,000 hotspots. In an interview with *Multichannel News*, NCTA CEO Michael Powell pointed out that if in-home WiFi is counted, Comcast's Xfinity WiFi alone has more than 1 million hotspots.

"Unlicensed wireless technologies are central to U.S. growth and innovation," the NCTA said in its responses to questions from the committee that were presented in the white paper. "Unlicensed spectrum powers the widest diversity of applications of any use of spectrum — including home WiFi networks, large outdoor

WiFi Facts

► The Cable WiFi roaming consortium (Comcast, Time Warner Cable, Cablevision Systems, Cox Communications and Bright House Networks) has collectively deployed more than 250,000 hotspots;

► Comcast intends to expand its WiFi network to 8 million hotspots by year-end (through a mix of hotspots installed outdoors, at business locations, and in home-side DOCSIS gateways that broadcast a second "XfinityWiFi" SSID);

► Comcast is currently at 1 million-plus hotspots.

SOURCE: *Multichannel News* research



WiFi networks like CableWiFi, communications and automation systems used by businesses, short-range connectivity through Bluetooth and ZigBee, RF identification systems, and educational networks in schools and libraries, with more applications emerging each year."

The NCTA talked about a balanced spectrum policy but said promoting unlicensed bandwidth should be its core, including creating new unlicensed spectrum designations "wherever possible;" protecting the unlicensed spectrum already in use; and adopting "pro-growth" technical rules, while preserving protections of incumbents from harmful interference.

One argument that has been made for limiting unlicensed set-asides is that it will reduce the auction revenue since that is valuable spectrum not being bid for in the open market.

Currently, the incentive-auction law does

not allow the FCC to make revenue the basis for concluding a license transfer is in the public interest. But there is a proposal to change that.

Not surprisingly, NCTA isn't on board. "Congress should preserve the prohibition on basing a public interest finding on expected auction revenue. The goal of federal spectrum policy should be to serve the public interest

by maximizing the total utility of the spectrum resource," it told the committee.

NCTA saw "value" in build-out requirements for exclusive use of licensed bands. But what if those requirements aren't met? "[G]rant unlicensed technologies the right to share the underutilized band with the incumbent," the trade group said.

The wireless industry — and its main D.C. advocate, CTIA—The Wireless Association — took a different tack.

"CTIA recognizes the importance of unlicensed spectrum, but suggests spectrum allocation for wireless use should foremost consist of dedicated, exclusive spectrum for commercial use," the association representing those exclusive commercial license users said. The committee is collecting string on a possible overhaul of communications law. **Q**

Stakeholders Want Their Merger Say

WASHINGTON — Potential commenters have reached out to the Federal Communications Commission for guidance on how it plans to handle comments in the Comcast-Time Warner Cable merger and related Comcast-Charter Communications system spinoff deal, but have not yet heard back, according to sources.

The Charter deal was announced April 28. The FCC opened a docket on Comcast-TWC after the deal was officially filed, and dozens of comments have already been made, but most of those are from the public.

The commission has yet to set the official comment dates for that deal, and some lobby-

ists are hoping it combines that with Comcast's proposed deal, announced last week, to spin off almost 4 million subscribers to Charter.

Opponents of the deal particularly will want the comments combined and on the same timetable so they don't have to file in multiple dockets.

An FCC spokesman declined comment.

— John Eggerton

Net Neutrality Battle Line Forms

WHEELER PROPOSAL DRAWS FIRE, IRE FROM INSIDE AND OUT

BY JOHN EGGERTON

WASHINGTON — So much for Federal Communications Commission chairman Tom Wheeler's earnest tour to explain the new Internet rules.

Last week, something of a palace revolt appeared to be taking place as two FCC members, a Democrat (Jessica Rosenworcel) and a Republican (Ajit Pai), each called for delaying the vote on revised network-neutrality rules — the Democrat because of concerns about how the chairman was trying to restore the rules, and the Republican because he was trying to revive them at all.

Meanwhile, Amazon, Yahoo!, Microsoft and a host of Silicon Valley firms registered their displeasure with what they see as a “commercially unreasonable” path to network neutrality, to borrow the phrase the new Internet rules plan to apply to online discrimination.

As if to punctuate the point, sign-bearing protestors pledged to camp out in front of the FCC night and day.

Wheeler had tried, at the National Cable & Telecommunications Association's The Cable Show in Los Angeles, to send a message aimed at both ISPs and his critics back home that his new rules were not gutting the old ones and that paid priority — the hot-button issue — was still going to be a tall order. But the tide was clearly not turned.

TITLE II WORRIES

Cable operators have said they are OK with the rules, pending the fine print, and they certainly don't want Wheeler pushed into exercising the Title II option, as he said he would if push came to shove.

Last week certainly saw a lot of pushing and shoving on net neutrality, with likely much more to come in the comment period that will follow the vote.



FCC chairman Tom Wheeler's earnest and emphatic speech at The Cable Show in Los Angeles failed to win over net-neutrality detractors.

TAKEAWAY

With some calling for delaying the FCC's May 15 vote on network-neutrality rules, chairman Tom Wheeler is moving forward, reserving his option to deploy Title II common-carrier regulations.

rules leading the list.

At press time, a source close to the chairman said he still planned to go ahead with the vote. Wheeler can count those heads, so he must be pretty sure he can collect at least three.

Rosenworcel advised the chairman — very publicly via a speech to a library association meeting, as libraries are big net-neutrality backers — that she had problems with the item and thought the vote should be delayed at least a month to give more time for public comment. That would have the added benefit of putting some space between that vote and the vote on an incentive auction framework, which broadcasters last week were also suggesting was also probably a sufficiently big item not to try to do both on the same day.

Rosenworcel left some wiggle room, however, saying the least the FCC should do was allow for more comment before the May 15 vote by lifting the sunshine rule prohibition on lobbying the commission in the

seven days before a vote on an agenda item.

Sure enough, when the agenda item was released, the sunshine requirement had been waived, and commenters have until 11:59 p.m. on May 14 to make their pitches.

That may be enough to get Rosenworcel on board, particularly since, as the chairman has pointed out, the vote is on a proposed rulemaking, not a final order, so that will leave even more time for comment and tweaking after May 15, months' worth in all likelihood, though the chair-

man has signaled he wants new rules in place by year's end. So do the other Democrats, so long as they are the right rules.

FCC commissioner Mignon Clyburn would not comment on a May 15 vote, or what her vote might be, saying the chairman determines the agenda. But she told *Multichannel News* she “remained an advocate for promoting robust engagement,” and pointed out that the notice of proposed rulemaking itself “officially launches an invitation for everyone on the proposal to adopt new rules. This is why I have been and will continue to be an advocate for an item that is balanced and discusses all options and [is] a pathway to enable parties to submit comments so that we can arrive at the right public policy.”

CLYBURN'S VOTE

That suggested Clyburn could vote for the item as essentially the beginning of a conversation and continued input.

Clyburn has long said the FCC's rules should prevent paid priority. Wheeler has pointed out that the new rules could still prevent paid priority if it were found to be a commercially unreasonable form of discrimination that worked against the goal of getting advanced telecommunications to all Americans. The new rules allow commercially reasonable discrimination, but as determined by the FCC on a case-by-case basis. ●

Behind Comcast's Olympic-Sized Deal

BY MIKE REYNOLDS

Comcast and its programming arm, NBCUniversal, made a \$7.75 billion bet on the Olympics last week, the fiscal outcome of which won't be fully known for a generation as technology continues to transform media consumption.

ANALYSIS

But the deal covering a six-pack of Games from 2022 through 2032 is virtually guaranteed to bring plenty of green to the company. In steeling its position as the U.S. home of the Olympics, NBCU

maintains a property that galvanizes the American populace for 2.5 weeks every other year.

For the Sochi Games, NBC averaged 21.4 million viewers in primetime for its taped telecasts and cumed some 178 million watchers overall. Live presentations on NBC Sports Network posted a host of Nielsen marks for the service, while its expansive digital offerings clicked with 62 million unique users, 29% more than during the 2010 Winter Games in Vancouver.

Comcast/NBCU paid \$875 million in rights for the 2014 Sochi Games and spent \$100 million on production, but rang up \$1.1 billion in ad revenue to finish in the black. Moreover, Sochi served as a key promotional platform for the *Tonight Show* handoff to Jimmy Fallon from Jay Leno and its 17-night Nielsen contribution will help NBC wear broadcast's coveted 18-to-49 crown for the first time in a decade.

"The London and Sochi Olympics on NBC have taken place under Comcast ownership and each posted record performances, giving us the confidence to make this significant commitment today," Comcast chairman and CEO Brian Roberts said on the May 7 conference call announcing the IOC extension.

Still, NBCU faces significant risk given TV's rapidly changing technological universe. While programmers and distributors are currently committed to building TV Everywhere and keeping pay TV customers within that ecosystem, no one is certain how big the cord-cutting movement will become.

Comcast/NBCU will hold all U.S. Olympic platforms rights — and those yet to materialize or be imagined — for another two decades.

"Young people still like live events, and nationalism is not going away," Lee Berke, principal of consultancy LHB Sports, Entertainment and Media, said.

The \$7.75 billion outlay is large, but the 17% rate of increase is not, relative to other recent sports-rights deals. Comcast paid \$4.38 billion, or an average of \$1.1 billion per quadrennial, for its deal covering the 2014-2020 Games, versus an average of \$1.29 billion for its new pact. ○



The \$7.75 billion deal keeps the Olympics in the NBCU fold through 2032.

Minnesota Supreme Court takes field trip to Champlin Park High School

- Article by: [DAVID CHANEN](#) , Star Tribune
- Updated: May 12, 2014 - 11:49 PM


After watching the justices in action, Champlin Park students got to ask them about their lives and their work.




hide

The Supreme Court Justices applauded the students and faculty during a question and answer period at Champlin Park High School.

Photo: **Richard Sennott**, Star Tribune

 [Star Tribune photo galleries](#)

 [view larger](#)

Minnesota's Supreme Court justices don't expect to be treated to a jazz band playing "Welcome to the Jungle" by Guns N' Roses before hearing arguments in a complex case.

But Monday's courtroom was the auditorium at Champlin Park High School in [Brooklyn Park](#), with the justices and attorneys doing their thing on a brightly lit stage as part of a biannual working field trip to a Minnesota school.

More than 700 students packed in to hear the case of Daniel Garcia-Mendoza, then hit up the justices with questions.

The case was labyrinthine but important. The court's eventual decision could affect the rights of people whose property is forfeited during civil cases.

It began in March 2012, when a rookie police officer pulled over Garcia-Mendoza in [Minneapolis](#) in a stop later found to be illegal. He was ticketed for not having a driver's license, and his sport-utility

vehicle was searched and towed without his consent. During the search, officers found and seized 8 ounces of methamphetamine and \$611.

Federal investigators then looked into Garcia-Mendoza's dealings, ultimately charging him with selling drugs. Hennepin County District Court dropped its charges, and in a federal plea deal, he pleaded guilty to one count unrelated to the arrest in Minneapolis. He was sentenced to 10 years in prison.

When Garcia-Mendoza returned to district court to challenge the seizure of his cash and property, the judge said that although the traffic stop was unconstitutional, the forfeiture should stand because he had agreed to it in his federal plea deal.

The case then went to the state Appeals Court. There, Garcia-Mendoza's attorney argued that because the stop was illegal, law enforcement shouldn't have been able to seize the property. He cited a legal principle called the exclusionary rule, which holds that unconstitutionally seized evidence can't be admitted in court.

The Appeals Court disagreed, saying the rule applies only to criminal, not civil proceedings such as Garcia-Mendoza's forfeiture case.

In support of Garcia-Mendoza, the American Civil Liberties Union of Minnesota argued that the exclusionary rule should apply in civil proceedings to counteract "the unfortunate perverse incentives" that prey on law enforcement when a profit motive is injected into police seizure of private property. The ACLU cited the notorious case of the Metro Gang Strike Force, which repeatedly abused its forfeiture authority from 2005 to 2009 in violation of the constitutional rights of Minnesotans.

If a person doesn't contest a forfeiture within 60 days, the arresting law enforcement agency is entitled to all cash and profits from property. When contested, the percentage of profits varies.

Gov. [Mark Dayton](#) signed a bill last week that changed state forfeiture law to say that the government can take property only if it wins a criminal conviction.

Attorney Kirk Anderson, who represented Garcia-Mendoza at Monday's hearing, said that when the state Supreme Court rules on the case, its decision will have broad implications.

As the students listened, the justices peppered Anderson with questions. Justice David Lillehaug said the Minnesota County Attorneys Association was concerned that if the exclusionary rule is applied in civil forfeitures, it could be used in other civil proceedings such as child protection orders and civil commitments of sexually dangerous people.

"Can a line be drawn?" he asked.

The students' turn

The mood lightened when the hearing ended. Chief Justice Lorie Gildea praised the attorneys and thanked them for "coming along on this roadshow."

Then the students got to ask questions.

The justices introduced themselves before taking questions, talking about how small their high schools were compared to sprawling Champlin Park and about trying to convince one justice's child not to become an attorney. The crowd whooped when Justice Wilhelmina Wright said she graduated from Harvard Law School.

Justice Alan Page told the students that being on the state Supreme Court is a great job. “I love what I do, grappling with complex cases,” he said. He said the greatest change he’s seen in the legal world over the years has been the dramatic increase in the number of female and minority attorneys.

Another student wondered whether it made a difference to the justices how a lawyer presents a case. Justice Barry Anderson said no, adding that an attorney’s great stage performance is unlikely to affect the outcome of a case.

Lillehaug commented on the weighty responsibility justices bear when they write rulings that could be viewed and cited by lawyers for the next 100 years.

And Wright talked about potential roadblocks in a person’s legal career, such as low expectations from others. “But you create your own destiny,” she said. That met with loud applause.

But the exchanges weren’t all serious. On a comical note, Page joked that he hoped playing for the Minnesota Vikings didn’t hurt him when he ran for election to the state Supreme Court.

Star Tribune – May 13, 2014

Ramsey County chooses Comcast for broadband

By Frederick Melo

fmelo@pioneerpress.com

POSTED: 05/20/2014 12:01:00 AM CDT | UPDATED: 6 DAYS AGO

After once considering breaking ties, the Ramsey County Board has chosen a familiar Internet provider to build out its high-speed broadband network: Comcast.

The Philadelphia-based telecommunications giant will provide broadband and managed-network services for the county government's building-to-building communications, with tiered levels of service depending upon the location.

For instance, the county's 911 emergency dispatch center in St. Paul would receive "redundant," or backup, services to ensure data access 24 hours a day and seven days a week, while buildings with less communications needs would get a lower-tier data connection.

Johanna Berg, a spokeswoman for Ramsey County, said that unlike the city of St. Paul's I-Net system, which is run by Comcast, the county is served by Comcast and a number of different network providers. The new contract with Comcast will replace those agreements.

"This is connecting county sites by a broadband," Berg said. "Today, we have an amalgamation of owned and leased services. This project is going to replace our current method with a tiered, hybrid approach."

Berg said the county board's decision allows staff to begin crafting a contract with Comcast, but she declined to estimate what kind of price tag the county might be looking at.

"We will have the financing piece completed when we bring the contract back," she said.

The county issued a request for proposals in November and received responses from Comcast, Arvig, CenturyLink, TW Telecom and Zaco Communications.

An evaluation team made up of county personnel from various departments -- including information services, libraries and emergency communications -- unanimously recommended Comcast, based on the company's experience, technical options and hardware costs, "and the lowest monthly cost per site," according to a staff report.

Ramsey County had once planned to build a \$14 million ultra-fast fiber-optic, or "dark fiber," network through a partnership with a private company, the Minnesota Fiber Exchange.

The network, which would have been built underground, would have allowed businesses and the city of St. Paul to lease space on the lines and transfer large data files between buildings at super-quick speeds. The plan received heavy criticism from Comcast and the St. Paul Area Chamber of Commerce, which called the proposal risky and expensive. The deal fell apart in late 2012.

St. Paul, which has a cable agreement with Comcast, also uses Comcast for building-to-building communications, but city officials have expressed frustration over outages and modem problems. The city's negotiations with the telecom giant over a new long-term agreement have continued for more than two years. St. Paul's last agreement with Comcast was approved in 1998.

St. Paul will meet with Comcast again in early June.

Pioneer Press - May 20, 2014

Antonin Scalia Totally Gets Net Neutrality

In 2005, the justice told us to imagine the Internet was a pizzeria. We should've taken his advice.

ROBINSON MEYERMAY 16 2014, 2:34 PM ET

[inShare](#)

On Thursday, the Federal Communications Commission [proposed new rules to regulate broadband Internet providers](#).

The rules will effectively let big Internet service providers like Comcast and Verizon create two tiers of Internet speeds: a “fast lane,” available to big content providers like Disney and Netflix; and a normal channel that must adhere to “commercially reasonable” speed standards.

Many supporters of an open web don't like these rules. The agency's suggested regulations, they say, will either sacrifice a key tenet of the Internet—*net neutrality*, [a storied and contested idea](#)—or prove ineffectual.

They say the agency must re-categorize broadband Internet providers, so that they become utilities—*common carriers*. It's obvious, *obvious*, they say, that the FCC categorizes broadband incorrectly in the first place.

Turns out a member of the nation's highest ranking court made their case for them almost a decade ago. That judge's name? Antonin Scalia.

I'll get to his thoughts in a moment. First, though, here's a legal history of the FCC's current predicament—the background you need to understand Scalia's comments.

Two Definitions on Which So Much Hinges

[IF YOU KNOW THE HISTORY, YOU CAN SKIP THIS PART.]

In the 1960s and 1970s, the FCC made a series of investigations into how computers might require changes in its regulatory role. After the second of these inquiries in 1976, the FCC made an important decision: It split communication into two legal categories: *Basic services* and *enhanced services*.

Basic services, said the agency, merely carried information. The voice telephone service is the prototypical basic service. Enhanced services, meanwhile, include information (or computation) on top of that infrastructure. If you sent information through wires, *and then a computer changed that information in some way*, then you were using an enhanced service. Voice mail is an enhanced service.

If there's an original sin in this story—the moment that set in effect the current fight over net neutrality—it came in 2002.

Two decades later, Congress passed the [Telecommunications Act of 1996](#), the largest change in communications law since the 1930s. The law maintained the basic/enhanced dichotomy, but it renamed its two parts. Basic services became *telecommunications services*; enhanced services became *information services*.

Now, into which of these two categories does the Internet fall? The FCC regards the World Wide Web—the entire apparatus of browsers and HTML files, the layers upon layers of computation and presentation—as an information service (i.e., an enhanced service). It would make sense, then, that the wires through which this information service traveled were regarded as a telecommunications service (i.e., a basic service). Indeed, when most people accessed the web through phone wires with a dial-up modem, the agency did categorize phone lines as a telecommunications service—because it regarded *all* phone lines that way.

But that's not how it ended up categorizing broadband web access.

If there's an original sin in this story—the moment that set in effect the entire fight over net neutrality—it happened in 2002. At the time, high-speed, broadband Internet was new and rare. Most Americans still used dial-up. Cable broadband providers often sweetened their product, giving users a free email account or access to a special web portal. Maybe these seemed like an extra-special layer on “top” of the Internet service they already provided; maybe the cable companies just had good lobbyists. Regardless, the FCC decided that broadband cable Internet was an *information service*, rather than a telecommunications service.

At the time, though, some companies made their living selling Internet access via another company's phone wires. As cable companies began to expand broadband services, they wanted access to that faster infrastructure—but they largely couldn't get it as long as cable broadband was “an information service,” a media product; and not a “telecommunications service” and blank infrastructure.

So one of them, an Internet service provider named Brand X, sued the cable companies' trade organization, the National Cable & Telecommunications Association.

The case went to the Supreme Court. And that's how Antonin Scalia, net neutrality's unlikely hero, got involved.

It's Not About the Internet

[IF YOU WERE SKIPPING, NOW YOU CAN REJOIN US.]

The Court [ruled 6-3 on *Brand X*](#). It was okay, the justices decided, for the FCC to consider cable broadband an information service—which means Brand X didn't get what it wanted.

Justice Clarence Thomas [wrote the majority opinion](#). The case as decided, he wrote, was less about wires and cables and more about the latitude which the U.S. courts give federal regulatory agencies. Thomas said Congress' rules about what defined a telecommunications service versus an information service could be unclear, so the FCC got to interpret them. Two decades before, the Supreme Court had ruled that the judiciary should let federal agencies interpret the laws authorizing them. In the *Brand X* case, Thomas extended this judicial deference.

“If a statute is ambiguous, and if the implementing agency's construction is reasonable,” then the Court had to let the agency execute its own regulation, [Thomas wrote](#). It had to do this “even if the agency's reading differs from what the court believes is the best statutory interpretation.”

In other words, Thomas hinted that the FCC's decision to regulate cable broadband as an “information service” struck him as curious, even odd. Perhaps he thought it wasn't even the best interpretation. But he thought it was reasonable, defensible, so he—and the Supreme Court—wouldn't intervene.

Pretend the Internet Was a Pizzeria

Justice Scalia disagreed. [In an ardent dissent](#), he wrote that the FCC's interpretation of the law around “information services” was “implausible.” With its decision to regard cable broadband as an information service, the agency had “[established] a whole new regime of *non*-regulation, which will make for more or less free-market competition, depending upon whose experts are believed.” In ruling that broadband was an information service, the FCC “had exceeded the authority given it by Congress.”

“It would be odd to say that a car dealer is in the business of selling steel or carpets because the cars he sells include both steel frames and carpeting.”

The *Brand X* case, by the way, is distinctly weird for several reasons. Not only is there the spectacle of famously conservative Scalia dissenting from famously conservative Thomas, there's also the relatively liberal Justice David Souter and the reliably liberal Justice Ruth Bader Ginsburg join Scalia's dissent.

But to the document itself. The FCC's argument, says Scalia, turns on whether a cable broadband company can be said to “offer” a service. This is because of the complicated way the 1996 Telecommunications Act defines *telecommunications service*: First by defining *information service*, then *telecommunications*, then, finally, *telecommunications service*. According to the 1996 law, a *telecommunications service* is “the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used.”

In his opinion, Thomas writes that analyzing this is tricky, because *offering* has multiple dictionary definitions. Scalia disagrees. In fact, he says, it's because:

The relevant question is whether the individual components in a package being offered still possess sufficient identity to be described as separate objects of the offer, or whether they have

been so changed by their combination with the other components that it is no longer reasonable to describe them in that way.

In other words: If you sell consumers broadband Internet *and* an email address, do you really offer broadband Internet? Or are you offering a different product entirely?

Scalia starts in:

It would be odd to say that a car dealer is in the business of selling steel or carpets because the cars he sells include both steel frames and carpeting. Nor does the water company sell hydrogen, nor the pet store water (though dogs and cats are largely water at the molecular level).

These are situations where combining products changes what's being offered. But, he adds, this isn't always true: "There are instances in which it is ridiculous to deny that one part of a joint offering is being offered merely because it is not offered on a 'stand-alone' basis.

If, for example, I call up a pizzeria and ask whether they offer delivery, both common sense and common "usage," [...] would prevent them from answering: 'No, we do not offer delivery—but if you order a pizza from us, we'll bake it for you and then bring it to your house.' The logical response to this would be something on the order of, 'so, you do offer delivery.' But our pizza-man may continue to deny the obvious and explain, paraphrasing the FCC and the Court: 'No, even though we bring the pizza to your house, we are not actually "offering" you delivery, because the delivery that we provide to our end users is "part and parcel" of our pizzeria-pizza-at-home service and is "integral to its other capabilities.'"

Not only do broadband cable providers sell users a web connection, he says, but they also brag about the speed of that connection. In a footnote, he relates this to the pizza analogy:

The myth that the pizzeria does not offer delivery becomes even more difficult to maintain when the pizzeria advertises quick delivery as one of its advantages over competitors. That, of course, is the case with cable broadband.

Scalia—as many have done—also highlights that, to consumers, cable broadband replaces dial-up. By purchasing it, they're replacing a telecommunications service... with an information service.

"With dial-up access, the physical pathway comes from the telephone company and the Internet service provider (ISP) provides the functionality," he writes.

Now, Scalia's reasons have as much to do with regulatory law as an open Internet. He finds the *Brand X* case "a wonderful illustration of how an experienced agency can (with some assistance from credulous courts) turn statutory constraints into bureaucratic discretions." He also, though, can see the FCC's regulatory issues of the ruling beginning:

The main source of the Commission's regulatory authority over common carriers is Title II, but the Commission has rendered that inapplicable in this instance by concluding that the definition

of “telecommunications service” is ambiguous and does not (in its current view) apply to cable-modem service.

It’s that exact problem that occasioned this week’s hearing and the FCC’s confusion in crafting net-neutrality regulation.

The Ship That Never Sailed

The FCC’s problem, in fact, goes further than it would have seemed during the *Brand X* case. After that decision cemented the FCC’s regulatory authority, it “began to complete the job it started in 2002,” said [Matt Wood](#), policy director of [Free Press](#), a non-profit organization that supports net neutrality.

That is, the FCC deemed all other kinds of broadband access to be information services, too. Shortly after *Brand X*, the FCC announced it would regulate DSL as an information service. In 2007, it classified mobile broadband as an [information service](#), too. It now treats FiOS as the same.

With that regulation came a matching agency effort to enforce net neutrality—somehow, someday. In 2008, Comcast began [throttling](#) all BitTorrent files sent over its network. The FCC ordered it to uphold net neutrality. The cable giant complied, but, in 2010, the U.S. Court of Appeals ruled the agency [didn’t have the legal authority](#) to enforce its own rule *because it treated cable broadband as an information service*. (The court said that if the FCC treated broadband providers as telecommunication services, and thus as common carriers, it could regulate them that way.) But the FCC drafted new rules, *still* treating broadband as an information service; Verizon challenged them and won its case earlier this year.

The problem that the FCC is now facing—the reason it’s talking about “commercial reasonableness”—is all a result of that 2002 regulatory decision to treat broadband Internet like an information product, rather than as electronic infrastructure. The FCC could cling to its decision, attempting (for the third time!) to enforce net neutrality among broadband providers it chooses to regulate as information services.

Or it could *change its mind*. The FCC could take the opening that Justice Thomas left the agency all those years ago. Back during *Brand X*, the majority ruled that the FCC could change its categorization of cable broadband as an information service at anytime.

So why won’t it?

Just last week, [FCC chairman Tom Wheeler said](#) he hasn’t ruled out reclassification, but—after two failed attempts to enforce net neutrality under the current scheme—net neutrality advocates are left wondering why he’s waiting.

The Atlantic – May 16, 2014

Cable Leaves Telcos in Broadband Dust

Alan Breznick

NEWS ANALYSIS

ALAN BREZNICK, Cable/Video Practice Leader

5/21/2014

Despite the headline-grabbing moves by Google Fiber and AT&T to deploy 1-Gig speeds, cable operators are still running away with the US broadband market.

The top 10 US MSOs netted about 970,000 high-speed Internet subscribers in the first quarter, according to the latest tally by Leichtman Research Group Inc. (LRG) . That total represents a 21% increase over the 800,000 net added in the same period last year and, even more notably, amounts to a whopping 83% of the nearly 1.2 million broadband customers added by the cable and telecom industries in the quarter. (See Cable Pads US Broadband Lead.)

As a result, cable operators now command 59% of the cable-telco broadband market in the US, which consists of more than 85.5 million homes. That's cable's largest market share ever. The top 10 MSOs closed out March with an estimated 50.3 million broadband subscribers while the top seven telcos, still coping with DSL conversions and losses, finished the quarter with 35.2 million broadband subs.

Befitting its status as the largest broadband provider in the land, Comcast Corp. (Nasdaq: CMCSA, CMCSK) once again led the way in Q1, picking up 383,000 high-speed data subscribers, down from 433,000 a year ago. With this latest gain, Comcast now has almost 21.1 million high-speed data customers, giving it close to 25% of the total broadband market.

Re-asserting itself in the first quarter after a sluggish 2013, number two US MSO Time Warner Cable Inc. (NYSE: TWC) captured the second-highest total in the quarter. The reinvigorated TWC, which aims to merge with Comcast by the end of the year, signed up a healthy 283,000 broadband subs, nearly twice the number it signed up a year earlier, to reach almost 11.9 million. Under new Chairman and CEO Rob Marcus, TWC is now aggressively targeting DSL subscribers in its markets with special offers.

Charter Communications Inc. , the fourth-largest US MSO, enjoyed another stellar quarter, adding the third-biggest haul in Q1. Charter -- which stands to grow significantly in size if the Comcast-Time Warner Cable deal goes through because of some side deals with Comcast -- added 148,000 broadband subscribers, up substantially from 109,000 subs in the year-ago period. With almost 4.1 million high-speed data customers, Charter, like TWC, now boasts more broadband subs than video subs.

For their part, the seven biggest US telcos performed much worse in the first quarter than they did a year ago, adding about 200,000 broadband subscribers, down markedly from a collective total of 315,000 in 2013. Weighed down by continued DSL losses, none of the phone companies even came close to netting 100,000 high-speed data customers in the quarter.

AT&T Inc. (NYSE: T), the second-largest broadband provider in the nation, led the way among the telcos in the first quarter. AT&T added 78,000 high-speed data subscribers, down markedly from 124,000 subs in the year-ago period, as it struggled to convert its rapidly dwindling DSL base to its fiber-fed U-verse network. The company closed out March with 16.5 million broadband subs, with U-verse accounting for the lion's share.

Verizon Communications Inc. (NYSE: VZ), the second-biggest US telco and fourth-biggest broadband provider, added an anemic 16,000 high-speed data customers in the quarter, way down from 99,000 a year ago. Verizon, which is apparently reaching the limit of the FiOS buildout in its footprint, ended March with slightly over 9 million broadband subs.

Overall, the 17 MSOs and telcos added almost 1.2 million broadband subs in Q1, up 5% from 1.1 million a year ago and their best quarterly performance in two years. But Bruce Leichtman, president and principal analyst for LRC, warned that the gains will likely be much lower in the next two quarters, based on past performance.

Light Reading – May 21, 2014



THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
LORIE S. GILDEA
CHIEF JUSTICE

(651) 296-3380

May 21, 2014

Ms. Karen George
Quad Cities Community Television
12254 Ensign Avenue North
Champlin, MN 55316

Dear Ms. George:

Many thanks to QCTV and its staff for producing and broadcasting live video for the Supreme Court's visit to Champlin Park High School on May 12. My colleagues and I greatly enjoyed our visit.

The Court's "traveling oral arguments" allow us to reach out and bring in the greater community. On May 12, over 800 students participated in the oral argument program in the auditorium. Through your efforts, countless students and community members were able to view the morning program live on the Internet. Without a doubt, it was a wonderful opportunity to increase the public's understanding of their Judicial Branch.

Champlin Park was one of our most successful visits. That would not have been possible without QCTV and your staff, especially Katherine Lenaburg. Thank you for helping to make this a special day for all involved.

Sincerely,


Lorie S. Gildea
Chief Justice

Study Offers a Glimpse at Cord-Cutter Consumption CONSUMERS FITTING THAT PROFILE STREAM 100 HOURS PER MONTH

5/19/2014 8:45 PM Eastern



By: [Jeff Baumgartner](#)

As broadband caps and usage-based billing of high-speed Internet services become the norm, Sandvine's latest broadband-usage study has shed some timely light on how many bytes so-called "cord-cutters" tend to gobble down in a given month.

Sandvine's new *Global Internet Phenomena Report*, which tabulated data from March from more than 250 Internet-service providers worldwide, found that cordcutters — at least U.S. consumers who fit the profile because they use streaming as a primary form of entertainment — chowed down about 212 Gigabytes of data per month, with 153 GB of that total going toward "real-time entertainment" usage. This group also accounted for 72% of streaming share, represented 53.9% of total traffic, and averaged 100 hours of streaming per month.

Sandvine, the bandwidth management and analytics firm, also calculated trends for the "typical subscriber" who averages nine hours of streaming per month, and "non-streamers" who stream less than 100 Megabytes of audio or video each month.

Interestingly, the average monthly bit consumption still falls below many of the usage-based broadband policies that U.S. MSOs are testing or deploying now.

Comcast, for example, is testing a policy in Atlanta and a handful of other markets that utilizes a soft monthly cap of 300 GB before users are subject to a charge of \$10 for each additional bucket of 50 GB of data. Mediacom Communications, meanwhile, has launched a policy across the board that

charges \$10 for each 50 GB of data if users go beyond a monthly threshold that varies by speed tier.

Speaking last Wednesday (May 14) at the MoffettNathanson Media & Communications Summit in New York, Comcast executive vice president David Cohen predicted that Comcast could have usage-based billing rolled out across its footprint in five years, but added the prediction that “the vast majority of our customers would never be caught in the buying [of] additional buckets of usage.” He also predicted that the cap could rise to 500 GB per month within that same time span.

Among other findings, Sandvine said Netflix traffic continues to rule on North American fixed access networks. It also noted that Twitch, a service that lets users broadcast and watch live streaming of video games, is closing in on top-10 status among individual streaming apps. Twitch now accounts for 1.35% of traffic — enough to outpace HBO GO’s 1.24%

- See more at: <http://www.multichannel.com/news/news-articles/study-offers-glimpse-cord-cutter-consumption/374616#sthash.P3LfPPbY.dpuf>

Multichannel News – May 19, 2014

'Open' Season on Net Neutrality

WHEELER'S DRAFT RULES PASS NARROW VOTE, DRAW IRE

BY JOHN EGGERTON

WASHINGTON — It's not looking like a summer of love for the FCC and network neutrality.

A divided Federal Communications Commission approved a new open Internet rules proposal last week, but just barely, signaling months of lobbying to come on the final rules as FCC chairman Tom Wheeler said he welcomed input on an item that he as much as conceded is a moving target.

Wheeler said the new rules would protect network openness and that speed — as in getting the rules in place quickly — is of the essence, as no regulations exist at present. Commissioners from both parties had advised delaying the vote.

The proposed rules would prevent Internet-service providers from blocking legal content; would allow “commercially reasonable” discrimination on a case-by-case basis; would increase the amount of information ISPs must provide on how they manage their networks; and would create an “ombudsperson” position to help with complaints about possible commercially unreasonable discrimination.

Protesters outside the FCC last week were certainly not assuaged by the rules, toughened in the waning days, if emails from organizers were any indication. The agency can expect more pushback over the coming months as it decides exactly how to proceed.

The May 15 vote was on a proposal and not on final rules, as repeatedly asserted by Wheeler and fellow Democrat Mignon Clyburn, the only other commissioner to vote unreservedly for the item.

Under the proposal, the FCC will use its existing authority under Section 706 of the Telecommunications Act of 1996 to retain the scope of the rules. That means wireless broadband isn't subject to the same discrimination rules, though the proposal asks if it should be. A 2010 no-blocking rule remains essentially unchanged, with the clarification that edge providers must also be provided with a minimum baseline of service.

The FCC will use its authority under Section 706 to apply a “commercially reasonable standard” to discrimination not prevented outright by the blocking and minimum-service guarantee, but Wheeler signaled that he thinks paid priority for Internet content providers isn't commercially reasonable. The FCC's appointed “ombudsperson” will investigate and advocate for those who

think they are being unreasonably discriminated against.

Commissioners seemed as divided over the rules as stakeholders and advocates were over their impact on the Internet industry (see Cover Story, page 18). Cable operators and other Internet-service providers were arguing for what they called balanced rules — essentially ones not based on Title II of the Communications Act, which would make Internet service a “common carrier” service akin to telephone service. Advocates of Title II status said reclassification under common-carrier style regulations was the only way to guarantee openness.

Wheeler tried to assure network-neutrality advocates that the new rules would not authorize paid priority. He hammered cable operators again, as he had last month at The Cable Show in Los Angeles, saying they had the motive to block and degrade unless he got rules in place where currently none exist.

TAKEAWAY

The stormy introduction of FCC chairman Tom Wheeler's open Internet rules is likely to lead to months of contentious lobbying.

What Is Network Neutrality?

WASHINGTON — Defining network neutrality is tough. Just ask the guy who coined the term, Columbia University media law Professor Tim Wu.

He attempts to decipher the term for the masses on his website, but the definition is still a bit of a head-scratcher.

“Network neutrality is best defined as a network design principle. The idea is that a maximally useful public information network aspires to treat all content, sites, and platforms equally. This allows the network to carry every form of information and support every kind of application. The principle suggests that information networks are often more valuable when they are less specialized — when they are a platform for multiple uses, present and future. (Note that this doesn't suggest every network has to be neutral to be useful. Discriminatory, private networks can be extremely useful for other purposes. What the principle suggests is that there is such a thing as a neutral public network, which has a particular value that depends on its neutral nature).”

For the other nine-tenths of that iceberg, click through to Wu's website at multichannel.com/May19.

He even said that, as an entrepreneur, he had products and services excluded from “closed cable systems,” though he did not elaborate.

Wheeler did say that those suggesting the new rules were creating fast and slow lanes or necessarily allowing some Internet content providers to pay for priority access were just plain wrong (see Access, page 39). He pounded the lectern repeatedly, as he is wont to do, to emphasize his points.

There has been a huge misconception, he told reporters last week.

“This proposal does not provide or mandate paid prioritization,” Wheeler said. “Nothing in this [item]



Protesters gather outside the FCC during its May 15 hearing, where chairman Tom Wheeler introduced his proposed open Internet rules.

authorizes a fast lane. We ask questions, but do not jump to conclusions.”

But he did not seem to have much luck convincing the MoveOn and Common Cause crowd, indicating the proposed rules will probably generate a lot of comment.

The vote was 3-2, with Republicans Michael O'Rielly and Ajit Pai vigorously dissenting and Democrat Jessica Rosenworcel only “concurring” to the item — that is, offering qualified support. Rosenworcel had wanted the vote delayed, and said it had been too fast to be fair.

The meeting was occasionally interrupted by protestors shouting for Title II, as the Republicans complained about not getting to see the revised draft until late in the game. Having signaled their dissent early on, they got second dibs on the draft after a preview for the Democratic commissioners.

The vote had hardly been recorded when headlines such as “FCC Vote to Kill Net Neutrality,” and “Kiss the Internet Goodbye?” began slipping over the electronic transom.

Wheeler insisted the rules were a work in progress, would get plenty of input (120 days for comment) that he welcomed, and that they could change, including shifting to Title II as a legal justification.

As FCC staffers vowed to take a day off and ISPs kept hammering away at Title II, MoveOn was using the pushback to raise some money.

“Can you chip in \$3 today to ramp up our campaign to save the Internet?,” it asked would-be donors in an email. ○

MORE ONLINE

For more coverage of the net-neutrality issue, go to multichannel.com/May19.

Title Fight

WHAT CABLE OPS — AND CONSUMERS — CAN EXPECT FROM TITLE II INTERNET RULES BY MIKE FARRELL

After his new Open Internet plan narrowly passed its first test — the recent 3-to-2 vote in favor of the proposal, which sent it into the public comment phase — Federal Communications Commission chairman Tom Wheeler is in for the fight of his career.

While the new chairman has taken a hardline stance to safeguard Internet availability, vowing to keep the spirit of network neutrality alive, his decision to allow Title II reclassification of broadband to remain on the regulatory plate has set off a firestorm of controversy.

Cable operators have argued that Title II rules, which would essentially regulate Internet service as a “common carrier,” like phone service, would unravel all the advances made by Internet-service providers over the past decades.

On the other side, technology and Internet giants like Google, Facebook, Yahoo and Twitter proclaim that a free and open Internet should be devoid of individualized bargaining and discrimination, tenets which some believe are the cornerstones of Title II.

The cable industry has faced down the threat of Title II before — most recently in 2010, when then-FCC chairman Julius Genachowski proposed using the reclassification as part of his national broadband plan. While the industry managed to dodge that bullet in the short term, this time it appears that Title II is closer to becoming reality than ever before.

About 150 technology firms, including Google, Amazon, Facebook, Netflix and Twitter, fired off a letter to the FCC recently urging the agency to adopt policies that prohibit “blocking, discrimination, and paid prioritization” that would “make the market for Internet services more transparent,” which some have interpreted as a veiled endorsement of Title II. One doesn’t have to look far back in history for proof of the sheer power of these tech giants when they decide to back a policy issue.

Motion Picture Association of America chairman and CEO Chris Dodd had his proverbial head handed to him during his campaign to stop piracy in a rout by some of the same companies now calling for reform. The failed Stop Online Piracy Act (SOPA)



FCC chairman Tom Wheeler speaks prior to the May 15 vote on his Open Internet proposal.

“In a period of seven or eight days, you have the unprecedented action where 7 or 8 million emails showed up on the computers of members of Congress; 13 million at the White House,” Dodd told *Multichannel News* in 2013. “This was a tsunami. [Netflix CEO] Reed Hastings said to me it was almost like a swarm of bees. We’ve never seen anything like it before.”

Many believe the same scenario could take place with Title II, with the Internet giants boiling down the issue into a simple “Free Internet or Not?” debate, as the government bogs down in explaining the minutiae of the issue while its earnest message of punishing bad players gets lost on confused consumers.

“It’s hard to argue against a bumper sticker,” Moffett-Nathanson principal and senior analyst Craig Moffett said. “And net neutrality is a bumper sticker.”

Already the battle lines are being drawn. Last Thursday (May 15), several public advocacy groups were staging protest rallies to drive home their Title II agendas — liberal groups Free Press, MoveOn.org and CREDO Action planned a 19-city rally, including one in front of FCC headquarters in Washington, D.C., to push net neutrality. In Congress, 20 House Democrats urged Wheeler to take Title II off the table, claiming it would stifle competition, while another three dozen Democratic House members called for Title II to be adopted.

Over the next 120 days — the length of the FCC public-comment period — Wheeler, the other FCC commissioners, private business, public-interest groups and

In This Corner ...

About 150 Silicon Valley companies jointly filed a letter with the FCC in favor of securing Open Internet regulation including such tech giants as Google, Amazon, Netflix, Facebook, Yahoo and Twitter.

| SIGNEE: | | |
|-----------------------|--------------------------|-----------------|
| Amazon | Contextly | O'Reilly Media |
| Cogent | Coursera | OfficeNinjas |
| Dropbox | CrowdTilt | Open Materials |
| Ebay | Cube Co. | Open Spectrum |
| Etsy | dasData | OpenDNS |
| Facebook | Digg | Opera Software |
| Foursquare | Distinc.tt | ASA |
| Google | DuckDuckGo | PayTango |
| Kickstarter | Duolingo | Pocket/ReadItL |
| Level 3 | DynaOptics | Poll Everywhere |
| LinkedIn | Embedly | Printrobot |
| Lyft | Fandor | Publitas.com |
| Microsoft | Floor64 | Rallyware |
| Netflix | Flowroute | Recruit |
| Reddit | Flurry | Redbubble |
| Tumblr | Fonebook | Rewheel/Digital |
| Twitter | Funeral Innovations | Fuel Monitor |
| Vonage Holdings Corp. | Gawker | Reylabs |
| Yahoo! Inc. | General Assembly | Rogue Labs |
| Zynga | GitHub | Shapeways |
| 2600hz, Inc. | Grid | Sidecar |
| 2redbeans | Handy Networks | Sift Science |
| 4chan | Haystack.tv | Simpolaris |
| 8x8, Inc. | Heavybit Industries | SketchDeck |
| Addy | HelloSign | Skytree |
| AdviserDeck | HeyZap | SlidePay Inc. |
| Agile Learning Labs | iFixit | Socialscope |
| Airdroids | iLost | Solidoodle |
| AirHelp | Imgur | SpiderOak |
| AnalyticsMD | Instapaper | SpoonRocket |
| Appar | inXile Entertainment | Spotfront |
| Apportable | Kaltura | StackExchange |
| AppRebates | LawGives | StartX |
| Apptology | LeafLad | Stanford |
| Assembly Made | LendUp | Statwing |
| Authentise | Linearair | Tastemaker |
| Automattic/ | Linknovate | The Next Web |
| WordPress.com | littleBits | Triggitt |
| BadgerMapping | Lucifer.net | Tsumobi |
| Bitnami | MDDHosting LLC | Tucows |
| BitTorrent | Medium | Twilio |
| Blu Zone | Meetup | UberConferen |
| CBeyond | Meteor Development Group | UltiMachine |
| Chirply | Minds + Machines | Ustream |
| Clef | Misk | Vidmaker |
| CloudFare | MixRank | Volary Founda |
| Codecademy | MobileWorks | Voys Telecom |
| CodeCombat | Motionry | Waxy |
| CodeHS | MozartMedical | Worldly |
| CodeScience | Mozilla | Xola |
| Colourful Rebel | NOTCOT Inc. | Yanom |

SOURCE: Individual companies

1. Title II could lead to higher prices for broadband service, as ISPs are allowed to charge transport and termination fees and usage-based pricing becomes the norm.

While Wheeler has stressed that he has no intention of creating “fast lanes” and “slow lanes” on the Internet that would give priority to content providers that pay for faster access, Title II does not prohibit

... and at Ringside

CEOs from the top cable and telecom companies made their case against Title II in their own letter to the FCC, urging the agency to consider the dire consequences new regulation could bring to the broadband industry.

Thomas R. Stanton, chairman & CEO, ADTRAN
Amy Tykeson, CEO, BendBroadband
Glen Post, president & CEO, CenturyLink
Robert Currey, chairman & CEO, Consolidated Communications
Gary Shorman, president & CEO, Eagle Communications
Anand Vadapalli, president & CEO, Alaska Communications
Steve Miron, chairman & CEO, Bright House Networks
Tom Rutledge, president & CEO, Charter Communications
Patrick J. Esser, president, Cox Communications
Paul H. Sunu, CEO, FairPoint
Randall L. Stephenson, chairman & CEO, AT&T
Brian Sweeney, president, Cablevision Systems
Brian L. Roberts, chairman & CEO, Comcast Corp.
Steve Largent, president & CEO, CTIA-The Wireless Association
Maggie Wilderotter, chairman & CEO, Frontier Communications
Ronald Duncan, president & CEO, GCI
Patrick McAdaragh, president & CEO, Midcontinent Communications
Chris French, president & CEO, ShenTel Communications
Grant Seiffert, president, Telecommunications Industry Association
Walter B. McCormick Jr., president & CEO, USTelecom
Eric Yeaman, president & CEO, Hawaiian Telcom
John Evans, chairman & CEO, Nelson County Cable and Evans Telecommunications Co.
Richard J. Sjoberg, president & CEO, Sjoberg's Cable
Rocco Commisso, chairman & CEO, Mediacom Communications
Michael Powell, president & CEO, National Cable & Telecommunications Association
Jerald L. Kent, chairman & CEO, Suddenlink Communications
Robert D. Marcus, chairman & CEO, Time Warner Cable
Lowell C. McAdam, chairman & CEO, Verizon

SOURCE: Individual companies

ISP's from charging for transport and termination of service. While pricing would be set by the government — by way of tariffs like those for electric utilities — it also would not stop providers from charging more based on bandwidth usage.

While cable operators are loathe to utter “usage-based pricing” in mixed company, in a letter to the FCC they alluded that Title II would not prevent ISPs from going down that route.

“In defending their approach, Title II proponents now argue that reclassification is necessary to prohibit paid prioritization, even though Title II does not discourage — let alone outlaw — paid prioritization models. Dominant carriers operating under Title II have for generations been permitted to offer different pricing and different service quality to customers.”

This could backfire for online subscription video-on-demand providers like Netflix, Amazon Prime and Hulu Plus, which use large amounts of bandwidth to deliver their service. It is estimated that Netflix alone accounts for one-third of Internet traffic.

“It's possible that a net-neutrality ruling would push the industry into usage-based pricing territory. That would be a disaster for Netflix,” Moffett said. “For all the online video companies, usage based pricing would be the worst thing that could happen.”

Title II could place a mountain of regulation on Internet service — including pricing limits — to ensure that it is available to everyone at every time. Then there is the danger of the traditionally nimble Internet being mired in government bureaucracy and inefficiency.

As the NCTA said recently, there were 307 electric blackouts across the country in 2011 (up from 76 in 2007); one in three U.S. roads are in poor or mediocre condition and there are an estimated 240,000 water main breaks annually.

2. A new regime of rules could force a wave of consolidation among small operators, forced to sell their companies because they cannot keep up with the new regulations.

Already, some small MSOs have said privately that they foresee scores of providers from within their ranks throwing in the towel in the wake of Title II.

Buford Media CEO Ben Hooks said that for small operators, Internet service is the main reason for existence. The government setting prices and heaping more regulation onto broadband would only serve to destroy the business for the small operator. For that reason, he hopes that the FCC won't implement Title II.

“When operators say [Title II] will be the last straw, it will be,” Hooks said. “I'm just hoping that Title II doesn't happen.”

Cable operators are governed under Title VI of the Communications Act of 1936, which does not require nondiscrimination at the level that the Open Internet rules do.

“The Title VI world never had to know Title

II,” Precursor LLC president Scott Cleland said. “This is a morass that is alien to them.”

3. Cable operators say Title II will stifle future investment and innovation in broadband, a network of fiber and coaxial cable created by private investors — not the government.

With the government setting prices — and profit margins — on broadband service, cable operators and telephone companies alike will have little incentive to continue investing in the broadband business. According to a letter sent to the FCC on May 13 and signed by top cable and telecom executives (see box), about \$60 billion is spent on cable, fiber, fixed and mobile wireless, phone and satellite broadband networks each year.

“Reclassification of broadband Internet access offerings as Title II telecommunications services would impose great costs, allowing unprecedented government micromanagement of all aspects of the In-

“It's hard to argue against a bumper sticker. And net neutrality is a bumper sticker.”

CRAIG MOFFETT, MOFFETT/NATHANSON

ternet economy,” the letter said. The CEOs noted that the last Title II threat in 2010 had an “investment-chilling effect” by erasing about 10% of the market cap of some ISPs.

“Today, Title II backers fail to explain where the next hundreds of billions of dollars of risk capital will come from to improve and expand today's networks under a Title II regime,” the CEOs stated. “They too soon forget that a decade ago we saw billions newly invested in the latest broadband networks and advancements once the Commission affirmed that Title II does not apply to broadband networks.”

Innovation, once the watchword of the Internet, also could go by the wayside under Title II, the CEOs claimed.

“Under Title II, new service offerings, options, and features would be delayed or altogether foregone,” the CEO letter said. “Consumers would face less choice, and a less adaptive and responsive Internet. An era of differentiation, innovation, and experimentation would be replaced with a series of, ‘Government may I?’ requests from American entrepreneurs. That cannot be, and must not become, the U.S. Internet of tomorrow.”

In a recent blog posting, American Enterprise Institute Center for Internet, Communications and Technology Policy visiting fellow and president of Entropy Economics Bret Swanson said that keeping Title II out of the Internet was “one of the best economic policies of the last generation. Unleashing Title II on the Internet could spread an epidemic of confusion and litigation across an Internet environment that over decades has

developed millions of fruitful technical and commercial connections outside (and often oblivious to) the old Title II regime. In short, Title II would threaten Internet innovation at its very foundation.”

4. A new set of rules will certainly spark a wave of lawsuits from nearly every side of the issue, from distributors who would seek to block the move to Title II and protect their current multibillion-dollar investments in Internet infrastructure to content providers looking to ensure their placement and availability on the Web.

Cleland likened the advent of Title II to a crowd of people firing machine guns in a circular metal room — you never know who or what is going to get hit. The Precursor LLC president said Title II would set off a firestorm of litigation. “It would create a free-for-all for interested parties to interpret things their own ways. You could come up with dozens of scenarios over several years.”

Cleland added that Title II has about 1,000 separate items, all of which would be up to countless numbers of interpretations.

“It would be a litigation frenzy from almost every angle,” Cleland said. “It would only be limited by the imaginations of the people who want to sue.”

5. How the government implements the rules could change the way distributors and content providers do business with each other.

No one — not even government regulators — can say exactly how Title II could affect programming deals. According to Moffett, under the strictest Title II interpretation, cable TV is technically illegal because operators designate specific blocks of spectrum (a 6-Megahertz cable channel) to a specific content provider at a specific price.

“Allocating a 6-MHz channel for an analog stream of ESPN, and another six tenths of a digital channel for a digital stream of ESPN and another 2.4 GHz channel for an HD stream of ESPN; they're all illegal in a pure net neutrality world,” Moffett said. “They're all contractual carriage deals. Does it really matter if the traffic is encoded in MPEG and QAM or if it's encoded in IP?”

While the FCC could waive that provision under some form of forbearance, Cleland said it is not that simple. The FCC is allowed to “forbear,” or basically ignore, certain aspects of a regulation for the public good. But any forbearance must be detailed and written into the regulation, he said, which could add a lot of time to the process.

“They can't do an omnibus forbearance,” Cleland said. “You have to literally write out what you mean and what you don't mean. Each issue is different and there are legal decisions as to why you do one and not the other. It would take months or years just to figure out how to do it.”

John Eggerton contributed to this report.

Lobbyists (And, Oh Yes, Everyone Else), Start Your Engines: FCC Opens The Floor For Comments On Net Neutrality

from the *and-we're-off* dept

As was mostly expected, the FCC this morning **voted 3 to 2** (along expected party lines) to move forward with Tom Wheeler's Notice of Proposed Rulemaking (NPRM), which effectively flings open the doors to the public comment period concerning what the FCC should do about net neutrality. As we've been discussing, the basic idea the FCC is proposing will **open up** a potentially bifurcated internet with fast lanes and slow lanes, even as the FCC insists this isn't true. Of course, the main point the FCC has been making, which is accurate, is that what happened today doesn't change anything. They're basically just setting up the process for the eventual changes that could have a very large impact.

After folks on Wheeler's own side **threatened** to revolt, combined with a lot of public pressure, Wheeler apparently did a **last minute** revising of the plans, to make it more explicit that he'd like the public to weigh in on paid prioritization and Title II reclassification. It also appears he's added in this vague concept of a "ombudsperson" who will supposedly try to make sure that we don't end up with ISPs behaving badly.

At this point, what we basically have is open season on lobbyists trying to influence the FCC one way or another, eventually leading to some sort of rulemaking, followed (inevitably) by a bunch of lawsuits from broadband providers who aren't going to be happy with any solution. And, of course, the potential (unlikely as it may be) for Congress to get involved.

Stacey Higginbotham over at GigaOm has the **best rundown** of the issues up for comment in the NPRM. If you're trying to understand what exactly people are really commenting on (beyond the broad claims of "net neutrality" "open internet" "fast lanes" "reclassification" "common carriers" and the like), that's a good place to start. I know folks like to view this on a more simplified yes/no level, but this isn't an issue that neatly fits into a series of simple yes or no options, in part because of two big reasons: (1) telecommunications law *is a massive mess* and (2) this is all a symptom of the real problem: the lack of meaningful competition.

And while Wheeler has **suggested** that the FCC is willing to knock down laws that block competition, we'll believe it when we see it in action. On top of that, Wheeler made it clear today that he still sees the interconnection issue as a separate issue, even though it's becoming clear that **that's where the real problem** is. Oh, and while lots of people are calling for Title II reclassification, and there are many reasons to believe that may be the best solution, it's also exceptionally messy as well, because Title II has *lots* of problems as well. The FCC would need to deal with those problems, via **forbearance**, which creates a whole different set of headaches.

In short: this is a very messy process, and there are many, many places where it can (and likely will) go wrong.

But, that doesn't mean that everyone should just throw up their hands and go home to their (increasingly slow) internet. The broadband lobbyists will not be doing that. And, of course, they know quite well how to play the lobbying game and how to work the ins-and-outs of everything above. It is why it's going to become increasingly important to become much more informed on a variety of these issues and the true implications of the choices the FCC makes in the coming months. If you would like

to weigh in, and I do suggest everyone seek to share their comments with the FCC, I would suggest first spending a little time more deeply reading through the full set of issues and what the pros and cons of different options may be. You can file comments **directly with the FCC** or via a very, very handy **Dear FCC** tool that the EFF put together.

Update: And... many hours later, the FCC has **finally released the actual NPRM**. Take a look.

Tech Dirt – May 15, 2014

FCC Website Crashes Under Load of Neutrality Commenters

by Karl Bode 08:48AM Tuesday Jun 03 2014 Tipped by [newview](#) 



The FCC's website crashed rather hard yesterday, likely after the agency was overwhelmed with users commenting on the agency's net neutrality proceeding (which you yourself can do [here](#) if you haven't done so yet). Many wondered if John Oliver's [popular rant about cable companies and neutrality](#) was to blame for the crash, though Reddit appears to be [driving an ocean of annoyed traffic](#) the FCC's direction this week as well.

Searching through the [tens of thousands of filed comments here](#) (proceeding 14-28), most are urging the agency to reclassify ISPs as utilities under Title II of the Communications Act, something agency boss Wheeler continues to insist is an option that's still on the table. While quantity isn't an issue with the comments quality may be; Oliver's tirade urged the trolls of the Internet to descend on the FCC and flood the FCC with their thoughts.

"This is the moment you were made for," Oliver said in his rant. "We need you to get out there and for once in your lives focus your indiscriminate rage in a useful direction. Seize your moment, my lovely trolls. Turn on caps lock and fly, my pretties."

The FCC's comment system appears to have recovered today. Users can also share their thoughts on neutrality via openinternet@fcc.gov, and have them automatically added to the FCC proceeding.

Broadband DSLReports.com – June 3, 2014

Comcast Files Spin-Off Application With FCC That Completes All Initial Filings for Comcast/TWC Merger

6/05/2014 11:00 AM Eastern

By: **John Eggerton**

1

Comcast has now filed both parts of its proposed merger with Time Warner Cable at the FCC and the heavy lifting on vetting the deal, and comments about the deal, can begin in earnest.

Comcast Thursday filed with the FCC the public interest statement, exhibits and license applications for its spin-off of 3.9 million customers, which it promised to do to try and assuage concerns about the size of the combined company. A key public interest point the company makes is how the creation of the new company, SpinCo, will bring more competition to the marketplace-- while the TWC merger will not reduce it, Comcast has already pointed out.

"The SpinCo transaction will create substantial public interest benefits," says Comcast. "While SpinCo will be a new company, it will be larger than all but four other cable companies in the United States and will have a tightly integrated, contiguous service footprint. This scale and geographic scope will facilitate investment in innovation and high-quality services within SpinCo's footprint. From the outset, SpinCo will be well positioned to compete aggressively in the highly competitive markets for high-speed Internet, voice, and video services."

Comcast will not own shares in either Charter or SpinCo after the closing of the spin-off, the company says, and for the first eight years would not be allowed to own more than 1% of SpinCo shares. "In short, SpinCo will be entirely independent of Comcast," the cable operator told the FCC.

As to the public benefit of trading systems with Charter, Comcast says the "geographic contiguity" (clustering) of its system swaps and the "expanded" presence of the combined Comcast/TWC "will produce economies of scale and

scope and other efficiencies for Comcast, which will ultimately redound to the benefit of Comcast's residential and business customers."

For its part, Charter says by increasing its scale and better clustering its footprint, it will be "better positioned to compete with regional telco video providers, DBS providers, incumbent local exchange carriers ("ILECs"), and other service providers, while bringing its class-leading services and products to former TWC customers."

The complicated system switch consists of:

"Transfer of cable systems from Charter to Comcast as part of an exchange of systems,

"Transfer of cable systems from Comcast to Charter as part of an asset sale and exchange of systems, and

"Transfer of cable systems from Comcast to a new, independent, publicly traded company ("SpinCo")

"Comcast-TWC Supplement Letter providing an update on the Comcast-TWC merger."

"We have now filed the Public Interest Statement and other documents associated with our planned divestiture of 3.9 million subscribers at the conclusion of the Time Warner Cable transaction, Comcast said in a statement. "Concurrently, Charter has filed their documents for these deals. In addition to the Public Interest Statement for the systems we will obtain directly from Charter, we've filed updated maps and other information which shows, among other things, how the divestitures will change the Comcast footprint after the TWC transaction. With these filings, all necessary applications have been submitted to the FCC and we look forward to continuing to work with the FCC and the DOJ as the review process moves forward.

- See more at: <http://www.multichannel.com/comcast-files-spin-application-fcc/374964#sthash.IyImlJld.dpuf>

Multichannel News – June 5, 2014

Comcast Files Spin-Off Application With FCC

That completes all initial filings for Comcast/TWC merger 6/05/2014 11:00:00 AM Eastern

By: John Eggerton

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The Comcast Way: First, Kill PEG Access Television

6/02/2014 10:30 PM Eastern

By: JOHN A. ROCCO

Simultaneous to projecting itself as a corporation that has the public's best interest at heart in order to push through approval of its merger with Time Warner Cable, Comcast is waging war on public, educational and government (PEG) access television in America's heartland.

I find it ironic that Comcast is desperately trying to position itself worthy of merger approval when in Minnesota it's trying to cut the PEG access-support fees by 90% and reduce the number of channels by as much as 50%. Comcast is turning the idea of negotiating in good faith on its head.

On Feb. 13, Comcast announced its merger with Time Warner Cable, assuring regulators and the public that, ultimately, the combined companies would deliver a new and improved product that benefits consumers while not harming competition and consumer choices. In that same announcement, Comcast stated, "In every transaction, we have overdelivered on our public-interest commitments."

Further in the announcement, Comcast stated: "PEG channels would be protected from migration to digital in the acquired systems that are not yet all-digital (unless otherwise agreed by the LFA), and would be protected from material degradation."

Making a concession to a digital transition of PEG channels does us no good if those channels are stripped of their funding or reduced in number. As usual, Comcast shows open hostility toward PEG access television and shows its true colors when it comes to meeting the public interest.

There are over 40 PEG access operations in the state of Minnesota. We at American Community Television are monitoring the situation in Minnesota with interest.

Over and over again, American Community Television has learned a bitter lesson: that once a cable operator is able to run roughshod over one community, it will do the same to other communities. We believe the Federal Communications Commission and the Justice Department should be watching the situation unfolding in Minnesota.

John A. Rocco is president of American Community Television, a non-profit organization dedicated to the preservation of public-, educational- and government-access television channels.

- See more at: <http://www.multichannel.com/news/news-articles/comcast-way-first-kill-peg-access-television/374865#sthash.IehN7Vqn.dpuf>

Multichannel News – June 2, 2014

Peer Pressure from Wheeler?

WASHINGTON — Federal Communications Commission chairman Tom Wheeler has said that Internet-service provider peering arrangements were outside the scope of the agency's new open Internet order.

But in a speech to the Progressive Policy Institute, Wheeler's chief of staff, Ruth Milkman, indicated that could change.

Citing disputes between Comcast and Level 3 in 2010 and Comcast, Cogent and Verizon Communications earlier this year, Milkman said the FCC did not have the answer to whether those were business negotiations getting resolved in the marketplace, or signs of a breakdown in interconnection and traffic exchanges on the Internet.

Netflix has complained that it was essentially forced

into a paid peering arrangement with Comcast, while the cable company has said it was Netflix that wanted to cut out the middleman and deal directly.

Milkman said Internet interconnection was outside the scope of the 2010 open Internet order, but only outside the "proposed" scope of the 2014 Notice of Proposed Rulemaking. She pointed out



JOHN STALEY

FCC chairman Tom Wheeler's chief of staff indicated peering could be within scope of new Internet regulations.

that some parties have sought to expand the scope of the 2014 network-neutrality rule effort to include Internet backbone issues like traffic exchanges and peering. She said the FCC will vet those comments and "learn from [them]."

She also signaled the FCC welcomed examples of interconnection practices that raise concerns. Wheeler has signaled interconnection and peering are issues on his radar.

— John Eggerton

Cord-Cutters Could Be Tough to Win Back

MOST ARE HAPPY WITH THEIR DECISION, STUDY FINDS

BY JEFF BAUMGARTNER

Cord-cutters represent a small-yet-growing group, but a new nScreenMedia study has found that they also represent a segment of content consumers that will be tough to bring

TAKEAWAY

Finding ways to win back pay TV defectors could prove tough, according to a new nScreenMedia study of cord-cutters.

back to the pay TV fold.

Roughly 84% of cord cutters are “at least somewhat happy with their decision,” while 37% claim to be so thrilled that they have no plans to ever take a traditional pay-TV service again, California-based nScreenMedia found in a survey of 1,000 U.S. adults with broadband access.

The report, titled View My Video: Consumer Digital Media Consumption, also found that 17% of U.S. broadband subscribers surveyed say they once subscribed to pay TV but have since left their provider; 10% are “cord-nevers” who have yet to subscribe to pay TV; and 74% said they subscribe to a TV service.

“A growing group of broadband consumers are finding that life without pay TV is not only plausible, but also pleasurable,” Colin Dixon, founder and chief analyst of nScreenMedia, said in a statement.

Just 31% of this cord-cutting group said they miss TV shows they can’t get elsewhere, but a mere 9% said they missed sports channels — a category that is typically seen as the glue that can help

to keep traditional video-service bundles together.

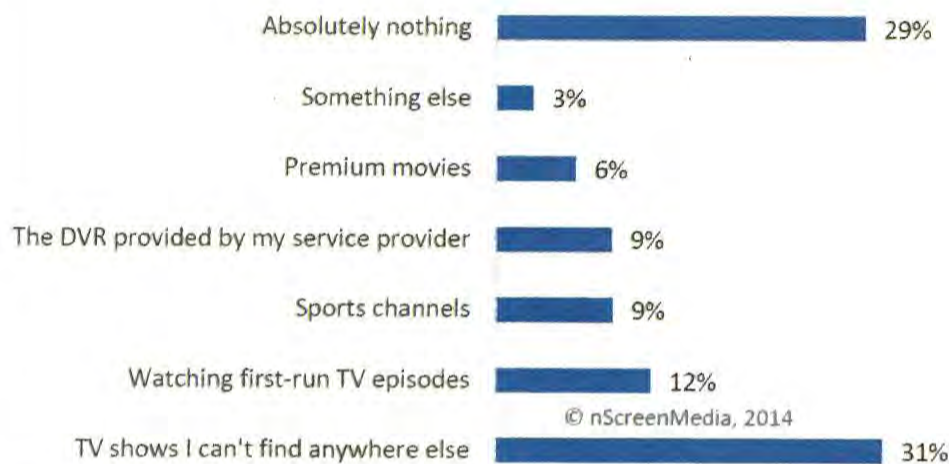
Dixon surmised that these findings indicate that cable operators and other pay TV providers will face a significant challenge as they seek out new ways to appeal to defectors.

The good news for pay TV is that the service still dominates usage among customers who haven’t fled. According to nScreenMedia, pay TV subscribers spend a median 12.98 hours each week using the service, followed by Internet-based subscription VOD (4.89 hours), free over-the-air TV (4.72 hours), free Internet video (3.49 hours) and owned digital movies and TV shows (3.12 hours).

Another silver lining — pay TV, as a whole, just registered a decent quarter. The top 13 U.S. multichannel video programming distributors, representing 94% of the market, added 260,000 net video subs in the first quarter, with the largest MSOs shedding 50,000 subs for the fewest quarterly losses in the category over a five-year span, according to Leichtman Research Group.

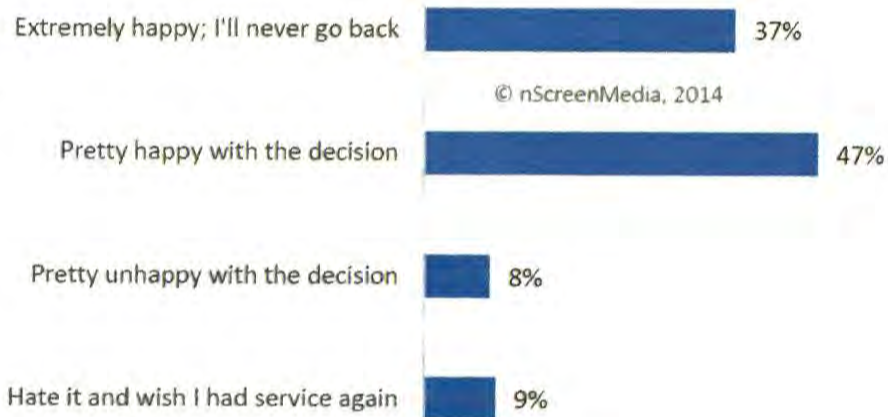
The nScreenMedia study also shed light on which sites were most popular among online video users, with YouTube having established a big lead. **Q**

Pay-TV Content Missed Most by Cancellers



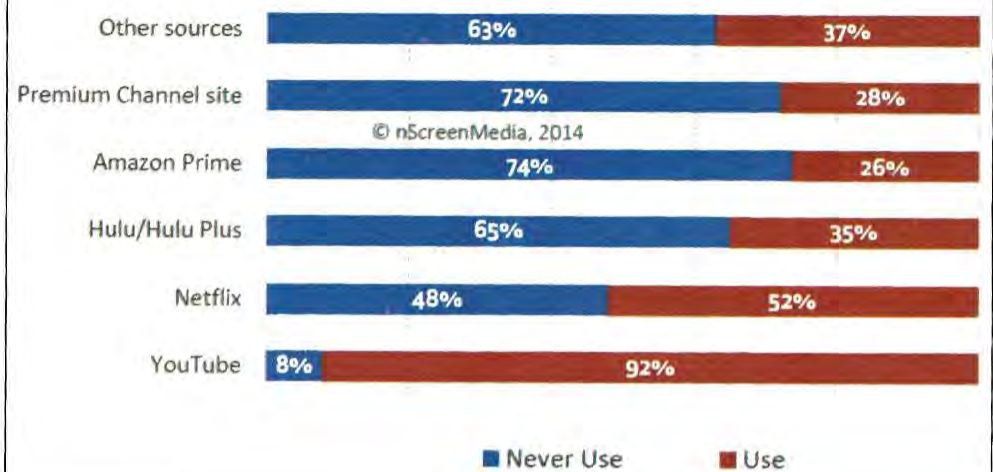
Q - Which, if anything, do you miss the most since cancelling your pay TV service? (n=168)

Level of Happiness With Decision to Cancel Pay-TV



Q - How satisfied are you with your decision to cancel your pay TV service? (n=168)

Sites used by online video viewers (n=854)



Time Warner Cable's Internet service was 236th out of 236 companies in customer satisfaction. Its TV service rated 25th.

MARK LENNIHAN • Associated Press,

Survey puts Time Warner-Comcast merger in a harsh light

- Article by: Bob Fernandez
- Philadelphia Inquirer
- June 4, 2014 - 8:01 PM

The American Customer Satisfaction Index has pegged Time Warner Cable Inc. as the nation's most unloved company.

Based on phone and online surveys, it rated Time Warner Cable's Internet service as 236th out of 236 companies in customer satisfaction — a list that included Coke, Campbell Soup, Nissan, Allstate and Verizon Communications. Time Warner Cable's TV service rated 25th.

Comcast Corp.'s Xfinity Internet service placed at 234 out of 236 and its TV service landed at 232 in the list released in May.

Would merging these two cable giants in a megadeal benefit consumers? Comcast says that it will, and that the perceptions of its poor customer service are outdated.

Certainly, the cellar-dwelling ratings of the two companies will stoke the political and regulatory debate in Washington over the proposed merger that has faced fierce opposition.

"This doesn't pass the straight-face test," said U.S. Rep. Rochelle M. "Chellie" Pingree, a Maine Democrat who has posted an online petition opposing Comcast's \$45.2 billion acquisition of Time Warner Cable with 161,000 signatures. "Nobody believes that by combining these two companies they will be twice as good.

"People think they will be twice as bad."

A Time Warner Cable subscriber at her home in southern Maine and a Comcast subscriber in Washington, Pingree says that if people are angry with their TV and Internet service providers now, they have no idea what sort of problems they may face if the two companies merge.

David VanAmburg, managing director of ACSI, the private company that produces the American Customer Satisfaction Index, said he doesn't see a boost to customer satisfaction through a Comcast-Time Warner Cable combination because they both have such low ratings.

"They are among the lowest scores of any company of any industry we measure," VanAmburg said.

The index's top-rated company was Mercedes-Benz, followed by Amazon, H.J. Heinz, Lexus and Apple.

Star Tribune – June 5, 2014

Community Broadband Networks – Link – June 3, 2014

<http://muninetworks.org/content/understanding-title-ii-and-network-neutrality-community-broadband-bits-podcast-101>

Wonder if one of the asks for the FCC's approval of the Comcast/TWC merger is changing the consumer optout to an optin for their Wifi hotspot service?

<http://techcrunch.com/2014/06/11/comcast-is-turning-the-us-into-its-own-private-hotspot/>