

FCC: Cable Market Is Competitive

Divided Agency Reverses a Regulatory Presumption 6/08/2015 8:00 AM Eastern

By: John Eggerton

WASHINGTON — After more than 20 years of requiring cable operators to play “Mother, may I” to get out from under basic-tier rate regulation, a divided Federal Communications Commission has freed cable operators from that procedural burden and cost, primarily thanks to the rise of satellite-TV competition.

That will save cable operators of all sizes from having to expend the time and money to ask for the agency for rate-regulation petitions — petitions it has not denied in several years.

The decision was a victory for cable operators and a smackdown for broadcasters. TVstation owners had argued that a parade of horrors — such as higher prices and moving broadcasters and public, education and government (PEG) channels off the basic tier to more expensive packages — was sure to ensue. Three of the five FCC members were unpersuaded that any of that was going to happen.

BIPARTISAN EFFORT

But FCC chairman Tom Wheeler needed two Republican votes to reverse the effective competition presumption for all cable operators, as the agency’s other two Democrats suggested that with the move, the FCC had exceeded its congressional directive.

That directive, which came in the STELAR satellite-TV license reauthorization bill approved at the end of last year, was to produce an order by June 2 to

streamline the effective competition process for smaller, especially rural, operators.

The FCC majority looked at the changing competitive landscape — satellite-TV now comprises more than 30% of the U.S. pay TV market, while cable's market share is down from 95% when the Cable Act was passed to a little over 50% at present — and decided to kill two birds with one order. The agency's order streamlines the petition process for all operators, while preserving a rebuttal mechanism for local authorities, though the FCC suggested that would be a hard case for most cable franchisors to make.

Wheeler may argue there is not sufficient broadband competition, but the order he circulated and that was approved last week said that when it comes to traditional video, the threshold has generally been met.

“[C]ompetitors have garnered far in excess of the market share Congress deemed necessary to free cable operators from the vestiges of rate regulation,” the order said.

The FCC treated the order as a procedural change, not as one that opens the barn door to price increases and moving broadcasters off the basic tier — the result predicted by broadcasters. Wheeler made that point in his statement, which read like an argument from the cable lobbyist he once was.

“[O]ur most recent report on cable industry prices concludes that the average rate for basic service is lower in communities with a finding of Effective Competition than in those without such a finding,” he said. “This is not surprising, since competitive choice is the most efficient market regulator. Similarly, there has been no evidence in this proceeding to suggest that our previous findings of Effective Competition in thousands of communities led to any changes in the tier placement of local broadcast stations.”

Broadcasters argued that MSOs were waiting to make those moves en masse, but the FCC was unconvinced.

“Despite widespread findings of Effective Competition, commenters have not pointed to a single instance in which cable operators have even attempted to move broadcast stations or PEG channels off the basic service tier. [The National Association of Broadcasters] argues that cable operators may not have moved broadcast stations or PEG channels to a higher tier in communities with a finding of Effective Competition at least in part because they do not wish to do so on a fragmented ‘patchwork’ basis, but they have provided no support for this assertion. Moreover, a patchwork of communities with and without Effective Competition will continue to exist after the adoption of this Order if any franchising authorities are able to rebut the new resumption and remain certified.”

The decision does not affect franchise-fee collection, PEG channel provisions or customer-service standards, Wheeler said.

ROOM FOR REBUTTAL

Franchise authorities can still file petitions to rebut the presumption; cable operators would then have to produce evidence to refute such a claim. The FCC doesn’t anticipate that many of those franchise authorities can make an initial case, and assumes petitions would be dismissed before cable operators needed to do anything.

In their dissents, Democratic commissioners Jessica Rosenworcel and Mignon Clyburn said they could not support expanding the STELAR mandate to all MSOs because it unnecessarily exceeded the FCC’s congressional directive.

According to a source familiar with the majority’s thinking, the idea was that if a market is competitive, it is competitive for operators large and small.

- See more at: <http://www.multichannel.com/fcc-cable-market-competitive/391148#sthash.3453sdwX.dpuf>

Multichannel News

Legal Eagles Claw at Title II

Olson, Estrada Outline Strategy to Overturn FCC Ruling 6/08/2015 8:00 AM Eastern

By: **John Eggerton**

WASHINGTON — The National Cable & Telecommunications Association's high-profile legal team laid into the Federal Communications Commission last week as they outlined their strategy for challenging the agency's decision to reclassify Internet access as a common-carrier service under Title II.

Unless the U.S. Court of Appeals stays the reclassification decision, as the NCTA and others have sought, the rules go into effect June 12. And in any event, the underlying case must be made over the next few months in briefs and oral argument.

Ted Olson and Miguel Estrada, partners in the law firm Gibson Dunn who teamed up to help win George W. Bush the White House in *Bush v. Gore*, have paired to help cable win back the information service status the attorneys will argue was changed by a divided FCC without due explanation or notice, in violation of the law.

Olson said that by reclassifying broadband into a telecommunications service, the FCC defied the express intent of Congress that broadband not be "fettered by federal or state laws." He also said the agency had violated the Administrative Procedures Act in various ways, including a rulemaking that mislead everyone and a final decision that did not allow for sufficient public input.

In a briefing with reporters last week, with NCTA president and CEO Michael Powell taking the third chair, Olson and Estrada looked to soften up their opponent with some shots to the legal solar plexus, with Olson saying the

reclassification was the smothering and suffocating heavy hand of government.

Estrada argued that while the FCC had said it would follow the court's blueprint for new rules — after the old ones were remanded — the FCC came up with “an entirely different outcome that could not have been anticipated in the rulemaking.” He said that outcome was tantamount to the FCC “legislating” a new Title II for the 21st century.

“We’re pretty sure that will not be an outcome that will be palatable to the courts,” Estrada said.

The legal duo also said the Title II case was one of the most important challenges to regulatory authority in recent memory, if not ever.

Powell said the NCTA still favors a legislative solution (one actually produced by the legislature) and even signaled that he remained somewhat optimistic after meeting with Hill Democrats last week. That solution would be to legislate the FCC's bright-line rules against blocking, throttling and paid prioritization.

In the absence of legislation, the rules will be the subject of lengthy legal action. Estrada suggested the best-case timeline for a circuit decision would be oral argument by December or January of 2016, and a decision three months later. After that comes the likelihood of seeking Supreme Court review of that decision.

- See more at: <http://www.multichannel.com/legal-eagles-claw-title-ii/391150#sthash.cxDfDmxm.dpuf>

Multichannel News

Who's Watching Whom?

FCC, Cable Ops Ready to Rumble Over Internet Privacy 6/08/2015

8:00 AM Eastern

By: **John Eggerton**

TakeAway

The rules for Internet privacy, and who has the right to enforce them, are at the heart of one of the most contentious debates roiling the broadband industry today.

WASHINGTON — What exactly, are the rules for Internet privacy, and who has the right to enforce them?

Those two issues are at the heart of one of the most contentious debates roiling the broadband industry today. The Federal Communications Commission's reclassification of Internet access as a common-carrier service under Title II of the Communications Act gives the agency new powers to create rules for "protecting" broadband customer proprietary network information (CPNI).

That new authority could lead to creating "opt-in" methods for collecting online personal information that many public-interest groups have been clamoring for, and could take a bite out of targeted behavioral advertising. It is unclear just how the FCC will approach its self-given power to regulate in the space, which is the main dissenting issue that Internet-service providers have with much of the Title II order.

The new broadband CPNI oversight has also created a jurisdictional tug-of-war between the FCC and the Federal Trade Commission, which has been overseeing broadband privacy but must relinquish those duties to the agency under the new rules, unless Congress steps in.

“To have the FCC usurp the authority of the Federal Trade Commission is a very bad idea,” Rep. Bob Goodlatte (R-Va.), the House Judiciary Committee chairman, told C-SPAN in an interview. “It’s going to lead to regulation of the Internet in ways that some of the people who have been calling for that have not imagined.”

UNCERTAINTY BREEDS WORRY

The fear of the FCC’s regulation of broadband privacy is similar to industry fears about the Internet conduct standard contained in the new Open Internet rules, which is fear of the unknown.

The FCC tried to give Internet-service providers some guidance in an Enforcement Bureau advisory issued May 20, but that guidance was essentially a call for ISPs to make good-faith efforts to protect privacy (and if you are unsure, run it by us and we’ll try to advise you).

That is the sort of “you’ll know it when the FCC sees it” approach that has ISPs taking the agency to court over its Internet conduct standard, a plan to potentially take government action against a broad “catch-all” (the FCC’s term) standard to sweep up conduct not prevented specifically under its bright-line network neutrality rules but that could “harm internet openness.”

Among the Title II provisions the FCC decided to impose were the customer-privacy provisions in Section 222 of the Communications Act of 1934.

“Section 222 makes private a customer’s communications network information — i.e. with whom they communicate and from where they communicate — unless a user provides express consent for its commercial use,” said Scott Cleland, chairman of NetCompetition, a pro-competition online forum supported by broadband interests, who added that the FCC has some “big decisions” to make. (See sidebar)

The FCC opted to forbear, or choose not to apply, the specific telephone-centric language of the section, preferring to come up with some new

definitions for broadband CPNI protection. Just what those new definitions are and what they might cover is at the heart of the debate.

TURF WAR

In pushing to retain jurisdiction over online data security, Jessica Rich, director of the Federal Trade Commission's Bureau of Consumer Protection, told Congress at a March hearing that the FCC's decision to reclassify ISPs under Title II, which removes the issue from FTC purview, had made it harder to protect consumers.

A bill that passed out of the House Energy & Commerce Committee would move some of the CPNI authority the FCC has just given itself back to the Federal Trade Commission by giving the latter agency authority over data privacy when that privacy has been violated due to a breach. The bill would make not protecting personal information *per se* false and deceptive, empowering the FTC to sue any company — including a cable operator or telecom carrier — that fails to do so. The measure says companies must “implement and maintain reasonable security measures and practices” to protect that information, so the FTC would have to decide what would pass muster.

Rep. Frank Pallone (D-N.J.), ranking member of the House Energy & Commerce Committee, has expressed his concern that moving that oversight back to the FTC could be an “enormous problem” because it could allow those ISPs to get out from under FCC privacy oversight through self-regulatory mechanisms at the Federal Trade Commission.

While the FCC has rulemaking authority — and has signaled it could come up with broadband-specific rules — the FTC is limited to using its power to sue companies over false and deceptive conduct.

Under the proposed new legal regime, the FCC and the FTC would share jurisdiction over broadband personal information. The bill gives the FTC cybersecurity and breach oversight, but leaves privacy protections to the FCC,

though FCC chief counsel for cybersecurity Cleve Johnson has said that is a distinction without a difference.

Johnson told Congress that the way the bill divides up accountability and narrowly defines what information could be protected, the FCC would lose the authority over protecting a subscriber's viewing-history information, including the shows they watch and the movies they order. At present, what a Congressman watches in Las Vegas stays in Vegas, and under the protection of the ISP there.

“[W]hether a company (either by human error or technical glitch) mistakenly fails to secure customer data or deliberately divulges or uses information in ways that violate a customer's privacy rights regarding that data, the transgression is at once a privacy violation and a security breach,” he said.

But getting Congress to pass a bill is a tall order, so unless the courts reject the FCC's Open Internet rules for a second time, the agency is going to be coming up with some form of privacy-protection enforcement regime for broadband information.

CALL FOR HELP

At a panel at last month's INTX in Chicago, National Cable & Telecommunications Association executive vice president James Assey said that folks trying to comply with the law are looking for help from the FCC as they try to figure out how to comply and get “some assurance” that what they are doing won't run afoul of the law.

At a meeting of the Advanced Television Systems Committee in Washington, D.C., NCTA president and CEO Michael Powell warned against the government inserting itself into the role data can play in tailoring consumer experiences. He conceded that the use of personal data had troubling elements, but cautioned the government could “distort the market” if it acted prematurely.

The NCTA had no comment on the FCC's Enforcement Bureau advisory, but it did not weigh in with thanks for the new guidance.

The NCTA and other ISPs outlined their concerns over the Section 222 issue in their May 13 request that the U.S. Court of Appeals for the D.C. Circuit stay the Title II reclassification and its attendant new broadband CPNI authority.

Telco AT&T estimated it would lose hundreds of millions of dollars in revenues if it had to stop using broadband-related CPNI while it implemented consent mechanisms based on having to "guess" what future FCC rules might be.

While broadband providers can, and do, lawfully use information about customers' Internet service to develop customized marketing programs, the ISPs said they now can't be sure what will be acceptable under the new rules and could be held liable if they guess wrong.

The FCC appears to have the votes to flex its muscle on privacy.

A month ago, the FCC held a workshop essentially launching the process of figuring out what it was going to do with its new privacy authority. FCC chairman Tom Wheeler framed the issue in historical terms, citing the *Federalist Papers* and intercepted telegraph messages during the Civil War.

"Consumers have the right to expect privacy in the information networks collect about them," he said, adding that in a digital world, everybody is leaving digital footprints "all over the place."

Privacy is unassailable, as the virtuous circle of innovation begetting innovation essential, he said.

Wheeler clearly views privacy — like competition and access — as one of those issues that must be viewed in the sweep of history and with the long view from the high hill. That could make it difficult for opponents of strong new FCC

privacy regulations to dissuade him from that course with an argument that lies in the weeds of policy.

That's the same view that helped move his position toward Title II in the first place.

At INTX, Democratic FCC member Jessica Rosenworcel signaled that there were a number of areas where the agency needed to be looking, including monetization of customer data and ad analytics. She said it would be important to align those obligations with the FCC's traditional cable privacy oversight and suggested the agency needed to have a rulemaking — and that the chairman had acknowledged as much — because it was an area “where time and technology have made really significant changes and we are going to have to figure out how to protect consumer privacy and manage all those benefits from the broadband ecosystem at the same time.”

“You can dial a call, write an email, post an update on a social network and purchase something online, and you can be sure that there are specialists in advertising and data analytics who are interested in exactly where you are going and what you're doing,” she said. “And then, finally, we all know that the monetization of data is big businesses, and that slicing and dicing is only going to continue.”

Commissioner Mignon Clyburn has said the public demands a “regulatory backstop” on broadband privacy and she is ready to use that power.

SKEPTICAL GOP

The FCC's Republican minority is hardly convinced — but they are the minority.

Commissioner Ajit Pai told cable operators at INTX that one thing he gleaned from the FCC's privacy workshop was that nobody really knows where the agency goes from here.

Commissioner Michael O’Rielly told an INTX crowd that the FCC’s understanding of privacy was “prehistoric” and “to now say that we are going to jump in the middle of this space is extremely problematic.” As to the impact on monetizing data, he pointed out that was why a lot of Internet content was free.

Privacy advocates definitely see a chance to push for tough privacy provisions.

Jeff Chester, executive director of the Washington, D.C.-based Center for Digital Democracy and a leading advocate for online privacy law and regulation, said the FCC has “long looked the other way as phone and cable companies, with their broadband partners, secretly grabbed customer data so they could do more precise set-top box and cross-device tracking and targeting.”

The FCC needs to use its new powers under Title II to force privacy protection on broadband giants, he said. But the FCC should also look at how “Google, Facebook and other data technology companies work alongside the Verizons and Comcasts, in order to develop effective safeguards for the public,” he added, suggesting his own sweeping change.

“The FCC should issue a new ‘Bill of Consumer Rights’ for the digital video era,” Chester said.

The public still has a strong expectation of privacy, said Harold Feld, senior vice president of Washington, D.C.-based public-interest group Public Knowledge. That point was supported by a recent Pew Research study that found that more than 90% of respondents said it was important for them to control who can access information about them online and what information is being collected.

Feld told the FCC at its privacy workshop that “rock solid” phone-network privacy protections need to move into the IP-delivered world. “This is not about, ‘Well, the universe is an awful place for privacy, so who cares anymore.’”

Clearly the FCC cares, but until it weighs in with a new regime — and starting June 12, unless the Title II reclassification is stayed by the courts — ISPs will have to trust their gut and likely verify with the FCC as well.

Privacy's Big Three

If the Federal Communications Commission's reclassification of broadband as a Title II telephone service is not stayed in court, the ISP industry's business model could be dramatically affected by how the agency implements Section 222 "Privacy of Customer Information."

Section 222 makes private a customer's communications network information, i.e., with whom they communicate and from where they communicate — unless a user provides express consent for its commercial use.

The FCC has some big and telling decisions to make:

Privacy Protection Predictability: Does the FCC believe in a consumer-centric implementation of Section 222, where consumers enjoy privacy protection predictability because the FCC interprets that consumers own or legally control their Section 222 private-network information, and that anyone who wants to commercialize it, must first get the consumer's express consent? If not, can everyone but an ISP use this legally private Section 222 information in any way they want, whenever they want for most any commercial purpose they want, without notifying or securing the affected consumer's consent?

Competitive Privacy Policy Parity: Does the FCC want to promote competition, consumer choice and a level playing field by ensuring that all competitors compete based on the same consumer privacy protection rules? If not, will the FCC pick market winners and losers by allowing only FCC-favored competitors to earn revenues in targeted advertising?

FCC Do Not Track List: Will the FCC create a Section 222 Internet "Do Not Track" list like the FTC created the "Do Not Call" list enjoyed by three-quarters of Americans? Why would it not be in the public interest for the FCC

to use Section 222 to make available a similarly simple and convenient mechanism for Americans to choose to opt out of unsolicited tracking of where they go on the Internet via a national FCC Do Not Track list that would protect consumers' private information from commercialization without permission?

In short, how the FCC implements its newly asserted Section 222 "Privacy of Customer Information" authority will speak volumes about the FCC's true priorities. Will the FCC choose to protect consumers' privacy interests, or Silicon Valley's advertising interests?

*Scott Cleland is chairman of **NetCompetition.org**, an e-forum promoting broadband competition and backed by broadband providers.*

- See more at: <http://www.multichannel.com/news/technology/who-s-watching-whom/391151#sthash.83PsV6Ts.dpuf>

Multichannel News

Senate Subpoenas OTT Video Pricing Info

Investigations Subcommittee Targets MVPDs: Sources 6/15/2015
8:00 AM Eastern

By: John Eggerton

TakeAway

Pay TV operators are being subpoenaed to provide info on OTT video pricing and programmer contracts to the Senate Permanent Subcommittee on Investigations.

WASHINGTON — The Senate Permanent Subcommittee on Investigations is sending subpoenas to cable operators and other multichannel video programming distributors (MVPDs) seeking information, including program contract information, related to over-the-top video service, according to multiple sources.

The Senate panel is the subcommittee with sweeping jurisdiction; its past investigations have included everything from trying to weed out Communists under chairman Joe McCarthy in the 1950s to rooting out the cause of Enron's financial collapse in the early 2000s.

The information sought this time includes data on video pricing, one industry source said. That would make sense, given the presence of a pair of longtime cable price critics on the panel: Sen. John McCain (R-Ariz.), a member of the majority, and ranking member Sen. Claire McCaskill (D-Mo). McCaskill has criticized cable operators in the past over a variety of issues, and has asked for anecdotal evidence from constituents and others about their cable complaints.

Subpoenas for documents and records can be issued by any member of the subcommittee, so long as the request is authorized by the chairman and notice is provided to the ranking member — and in this case, that would be McCaskill.

Multiple sources said they understood McCaskill was a driving force behind the subpoenas. A McCaskill spokesperson declined comment, as did Matt Owen, chief counsel for the subcommittee.

LETTERS IN THE MAIL

An industry source who said the letters had gone to cable operators did not know whether they went to telco or satellite video operators as well. Another source said some cable operators and at least one satellite operator had received notices. All the major players were expected to receive them, that source said.

A spokesperson for Comcast, the largest U.S. cable operator, had no comment. The National Cable & Telecommunications Association and American Cable Association, the cable industry's two main trade groups, declined comment as well.

The Senate is widely expected to take the lead on video issues in Congress's planned bicameral review of communications laws, and over-the-top video is expected to figure prominently in that review. The government is puzzling over how it should treat over-the-top video providers and how Internet-service providers — many of whom are also cable operators with traditional video offerings and their own OTT products — should treat them.

The Federal Communications Commission has made it clear that affording broadband access to competing over-the-top video providers will be a key factor in its reviews of proposed mergers among and between telco and cable ISPs, as well as with program distributors.

Programmers are coming off a federal court victory in which the U.S. Court of Appeals for the D.C. Circuit held that the FCC could not avail third parties to

massive amounts of sensitive contract data in the Comcast- Time Warner Cable merger-review process. (That merger has since been scuttled.)

They now face the potential that such documents could be put in the hands of a committee that has had a history of strategic leaks, or that could produce those documents in the context of a hearing.

The investigation could take months as the targets of the subpoenas first try to figure out exactly what the subcommittee needs, in the interest of refining what they must provide. Senate staffers must then vet the information.

It is unclear how that information might be used — say, in upcoming hearings — or how the subcommittee will ensure that sensitive information is not shared (or hacked).

‘RATHER AGGRESSIVE’

One Washington, D.C.-based cable executive speaking not for attribution said the document requests could take a long time. And coming from the Investigations subcommittee, the source added, the move appeared more hostile than a matter of simple fact-finding for a planned Communications Act rewrite.

The source called the subpoenas a “rather aggressive” move.

The process, the source explained, is basically that the subpoenas are issued, then the targets — in this case, the MVPDs — start negotiating over which documents the subcommittee specifically needs, to try to understand what lawmakers really want and avoid over-delivering boxes of sensitive information. Then the Senate staff will have to absorb it.

Given what was understood to be the broad scope of the request, the source said, the subpoenas appear to be a lot of fishing for information — and what becomes of the info will depend on what the panel finds.

It was unclear what role the programmer side of those contracts would have in the process.

One unintended consequence of the request is that it could make industry players less amenable to frank discussions in planned Communications Act rewrite hearings in other committees, such as the Senate Commerce Committee, the cable executive said. It could also turn cable executives from friendly witnesses into ones in litigation mode, since they would no longer just be called to testify but would have to do so knowing members of Congress have highly confidential documents. He said it could make those executives less forthcoming, given they would have to calculate what they are saying in the context of what Congress already knows.

- See more at: <http://www.multichannel.com/senate-subpoenas-ott-video-pricing-info/391342#sthash.bQulXupU.dpuf>

Multichannel News

Title II Rules Stand — What Happens Now?

6/15/2015 8:00 AM Eastern

By: [John Eggerton](#)

TakeAway

Now that the FCC's Title II-based network-neutrality rules have kicked in, cable operators are bracing for what they expect to be unintended consequences.

WASHINGTON — It wasn't a big surprise to cable operators, but a federal court said last week that both cable and telco Internet-service providers had not met the strict standard for obtaining a stay of the June 12 effective date of the FCC's Title II reclassification of Internet access as a common-carrier service.

The U.S. Court of Appeals for the D.C. Circuit's decision meant the Federal Communications Commission's three bright-line network-neutrality rules went into effect last Friday, so ISPs are now barred from blocking or throttling or paid prioritization.

ISPs weren't complaining about those regulations — at least publicly — having already pledged to abide by them. Their stay request, which was more about the FCC using Title II as a justification for network neutrality, did not even include those rules.

FCC chairman Tom Wheeler was quick to bang the drum after the court ruled last Thursday (June 11). "This is a huge victory for Internet consumers and innovators!" he said in a statement (adding the exclamation mark). "Starting

Friday, there will be a referee on the field to keep the Internet fast, fair and open.”

The National Cable & Telecommunications Association’s response was, essentially: Bring it on — in court.

“We are now ready to get to the merits of the case and are confident as ever that we will prevail,” the cable industry’s primary trade group said. NCTA lawyers had signaled they could lose the stay request, but that would not mean the industry group would lose the underlying case.

But for all the legal bravado, NCTA members are concerned about having to defend themselves against complaints about their business practices while the FCC figures out what won’t adversely impact an open Internet.

Whatever ISPs thought about the bright-line rules — beyond seeing them as unnecessary — their real concern is about the FCC’s case-by-case review of interconnection agreements and anything the agency decides is actionable under a vague, “know-it-when-we-see it” general conduct standard, both of which also went into effect June 12.

NCTA president and CEO Michael Powell, in advance of the decision, told reporters that despite the FCC’s assertions that ISPs’ concerns were melodramatic, “I have heard that Cogent’s CEO said he would run in there the first chance he gets.

“I don’t know why we wouldn’t expect Netflix to run in there the first chance it gets,” Powell continued. “You’re going to tell me that public advocacy groups may not bring rate complaints?”

Then, there are the plaintiff’s lawyers, who can bring class-action suits on behalf of cable’s customers over rate or term violations.

“You’re telling me that no plaintiff lawyer out there is looking for a career?” Powell said, adding that he would not be comforted unless the FCC planned to

tell all those would-be plaintiffs and complainers to stand down. But Powell has also been looking to the Hill for help and could just find it.

The leaders of the Senate Commerce Committee — Sens. John Thune (R.-S.D.), chairman, and Bill Nelson (D-Fla.), ranking member — both said they would work on legislation that would clarify the FCC's network-neutrality regulatory authority. The NCTA is hoping that means supporting the bright-line rules without Title II while jettisoning the general conduct standard and applying net neutrality beyond the last mile to interconnections.

Elsewhere, the House Financial Services Subcommittee approved an amendment to an FCC budget bill that would prevent funding the implementation of the rules.

- See more at: <http://www.multichannel.com/title-ii-rules-stand-what-happens-now/391343#sthash.NcMSmGVh.dpuf>

Multichannel News

TV Everywhere Viewing Surges: Adobe

Apple TV doubles share of premium viewing, overtaking Roku
6/15/2015 8:00 AM Eastern

By: **Jeff Baumgartner**

LIBERTY MEDIA CHAIRMAN JOHN MALONE recently issued a harsh assessment that “TV Everywhere is TV no where,” but recent numbers show that authenticated video viewing is starting to take off.

TV Everywhere viewing grew by 282% in the first quarter of 2015, versus the year-ago quarter, according to a new online video report from Adobe Digital Index that based its findings on more than 200 billion online video starts and 2.8 billion TVE authentications for “premium video content.”

Adobe said the surge in authenticated viewing can’t be attributed to tent-pole, one-off events such as the FIFA Women’s World Cup, noting that TVE is now starting to see broader, organic growth.

Adobe also found that over-the-top devices such as Apple TV boxes and gaming consoles now represent one in every four TVE authentications.

Per Adobe’s findings, the Apple TV doubled its share of premium video viewing in the span of just one quarter — growing from 5% in the fourth quarter of 2014, to 10% in the first quarter of 2015, enough to overtake Roku. Adobe attributed that in part to the recent price drop on the Apple TV (from \$99 to \$69) and access to additional programming, including HBO Now, HBO’s new standalone streaming service.

On a broader platform basis, Apple's iOS represented 47% of premium video viewing in the first quarter, up from 43% a year earlier, while Android remained flat, at 15%. Viewing premium video via a Web browser sunk to a new low: 14%.

The study also found that iOS devices such as the iPad and iPhone were responsible for 24% of unauthenticated viewing, enough to lead the category.

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Multichannel News

Cable Operators Push FCC on Poles

MSOs: Utilities Already Seeking Title II -Driven Rate

Hikes 6/15/2015 8:00 AM Eastern

By: **John Eggerton**

TakeAway

Cable operators warn that Title II classification of Internet access could bring massive pole-fee hikes.

WASHINGTON — Cable operators said they are facing steep pole-attachment increases that could run into the hundreds of millions of dollars — just another one of the bones they have to pick with the Federal Communications Commission's move to reclassify cable broadband- Internet service as a telecom offering subject to common-carrier regulations.

A pair of cable lobbying groups — the American Cable Association and the National Cable & Telecommunications Association — are urging the FCC to act ASAP on a petition from NCTA and Comptel to ensure the FCC's effort to lower pole-attachment rates really does that in a world where ISPs are regulated under Title II of the Communications Act.

The ACA said utility pole owners have begun informing its members — mainly smaller, independent cable operators — that attachment rates could go up as much as 80% in the wake of the reclassification of broadband ISPs as telecoms under Title II. Its assertion came in comments on the FCC's request last month for more input on the petition. The NCTA, which represents larger MSOs, cited an example of an 81% increase.

STEEP POLE CLIMB

The industry-wide boost in rates under Title II could be \$200 million, the NCTA estimated.

Telecoms have historically paid pay more for those attachments than cable operators. In the interest of promoting broadband, though, the FCC in 2011 tried to harmonize the rates by lowering the telecom rate to match cable's.

In practice, that move turned out not to have worked “in all circumstances,” said cable operators, and pole owners were given a cost-allocation alternative that allowed them to still charge a higher rate. MSOs asked the FCC to fix that, but it has yet to act on a petition.

As of June 12, cable broadband became a telecom service subject to those potentially higher rates. The ACA and the NCTA had urged the FCC to fix the problem before it took action on new network-neutrality rules.

In a filing with the FCC, the ACA said “as long as the FCC fails to take the action on a petition by the National Cable & Telecommunications Association and others to shield cable operators from pole hikes, pole owners can levy higher attachment rates, deterring investment and broadband deployment by affected cable operators.

“[T]he consequence of the reclassification decision is that cable operators, including ACA members, that have not provided and do not otherwise provide a telecommunications service, potentially face much higher pole-attachment rates,” the ACA said.

The NCTA said fixing the problem would promote broadband deployment, which, along with broadband adoption is the FCC's current regulatory focus. It cited Vyve Broadband, a small, mostly rural cable operator that it said had recently received a notice from an electric utility “that its telecommunications attachment rate was increasing to a level that is 81% higher than its cable attachment rate.” That rate would apply to 27,000 poles, the NCTA said — it takes Vyve more than an average of three poles to reach its rural subscribers.

That increased cost “significantly increases the cost of operating its existing network and reduces its ability to expand the reach of that network to new customers,” the NCTA said.

Comcast said that one pole owner, American Power, recently notified the MSO that, as a telecom, its going pole-attachment rate would be \$21.65 — a 72% increase over the cable rate of \$12.54.

The FCC declined to forbear from the pole-attachment rate provisions in Title II, but the NCTA pointed out that in the network neutrality order, the regulator did caution that “any increase in the rates” prompted by the reclassification would be “unacceptable as a policy matter.”

But given its American Power notice, Comcast said: “While the commission’s efforts to rein in pole-attachment rate increases triggered by the Open Internet Order’s reclassification ... are appreciated, the reality is that such pole rate increases are coming.”

INTENTIONS VS. REALITY

NCTA president and CEO Michael Powell raised the issue of what the FCC wanted to happen after Title II reclassification and what would happen in a call with reporters where he laid out his legal argument against Title II.

While it’s all well and good to claim “this and that won’t happen,” Powell said, no one should be mollified by such an assertion.

Not surprisingly, the Utilities Telecom Council has told the FCC to reject the petition.

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Multichannel News

Cable Operators Push FCC on Poles

MSOs: Utilities Already Seeking Title II -Driven Rate

Hikes 6/15/2015 8:00 AM Eastern

By: **John Eggerton**

TakeAway

Cable operators warn that Title II classification of Internet access could bring massive pole-fee hikes.

WASHINGTON — Cable operators said they are facing steep pole-attachment increases that could run into the hundreds of millions of dollars — just another one of the bones they have to pick with the Federal Communications Commission's move to reclassify cable broadband- Internet service as a telecom offering subject to common-carrier regulations.

A pair of cable lobbying groups — the American Cable Association and the National Cable & Telecommunications Association — are urging the FCC to act ASAP on a petition from NCTA and Comptel to ensure the FCC's effort to lower pole-attachment rates really does that in a world where ISPs are regulated under Title II of the Communications Act.

The ACA said utility pole owners have begun informing its members — mainly smaller, independent cable operators — that attachment rates could go up as much as 80% in the wake of the reclassification of broadband ISPs as telecoms under Title II. Its assertion came in comments on the FCC's request last month for more input on the petition. The NCTA, which represents larger MSOs, cited an example of an 81% increase.

STEEP POLE CLIMB

The industry-wide boost in rates under Title II could be \$200 million, the NCTA estimated.

Telecoms have historically paid pay more for those attachments than cable operators. In the interest of promoting broadband, though, the FCC in 2011 tried to harmonize the rates by lowering the telecom rate to match cable's.

In practice, that move turned out not to have worked “in all circumstances,” said cable operators, and pole owners were given a cost-allocation alternative that allowed them to still charge a higher rate. MSOs asked the FCC to fix that, but it has yet to act on a petition.

As of June 12, cable broadband became a telecom service subject to those potentially higher rates. The ACA and the NCTA had urged the FCC to fix the problem before it took action on new network-neutrality rules.

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Multichannel News

FCC ‘Connects’ With ISP Critics

Interconnection Drives Initial Net Neutrality Complaints, Threats 6/29/2015 8:00 AM Eastern

By: **John Eggerton**

TakeAway

Interconnection is becoming a crucial issue as the FCC’s new network-neutrality regulations take force.

WASHINGTON — Fans of the Federal Communications Commission’s network-neutrality rules have not wasted any time staking out new ground in regulating Internet-service providers, with interconnection, newly added to the agency’s agenda, getting much of the early attention.

Last week saw the first publicly announced network neutrality complaint under the new rules, when Web-content hosting company Commercial Network Services filed an informal complaint against Time Warner Cable.

CNS wants the FCC to force TWC into a settlement-free peering deal, and require that other ISPs using public-network interchanges adopt an “open” peering policy, which means free as well.

It is unclear how the FCC will react to that complaint. The complaint asserts that TWC interconnection policies violated new bright-line rules against throttling and paid prioritization, while the FCC, in adding interconnection to its net neutrality rule regime, said those bright-line rules did not apply. The FCC took a case-by-case approach to complaints about whether or not interconnection policies impeded an open Internet.

But no matter how the FCC rules, that complaint, in concert with warnings from backbone providers, made it clear that cable-operator concerns about the

leverage the complaint process would give them in interconnection negotiations was bearing out.

“This wholly predictable complaint confirms the harms created when the government intervenes in healthy markets and encourages disgruntled businesses to seek regulatory rents,” cable’s biggest trade group, the National Cable & Telecommunications Association, said following the complaint’s filing.

Elsewhere, Cogent and Level 3 Communications, two backbone providers who have complained about peering issues — congested ports, having to pay for interconnections — signaled the “or else” behind the new complaint process.

Level 3 senior vice president and general counsel Mike Mooney said the company was pleased to have struck deals with Verizon, AT&T and Comcast, but had a message for those that had not reached agreements with the company.

“If an ISP refuses to add the necessary interconnection capacity required to prevent consumers from suffering bad online experiences, we will have little choice but to make the FCC aware of it, particularly since such conduct would be inconsistent with the behavior of the rest of the industry,” he told *Multichannel News*.

Cogent CEO Dave Schaeffer provided even more insight into what he was looking for from ISPs — or else.

<http://www.multichannel.com/fcc-connects-isp-critics/391769#sthash.pX0kmNEZ.dpuf>

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Trade Journal Links

<https://medium.com/@Fredjohnsn/the-clash-is-the-internet-a-utility-or-cable-television-ba050fc47ad9>

"An Early Net-Neutrality Win: Rules Prompt Sprint to Stop Throttling" | [Wall Street Journal](#)

Time Warner Cable will be the first company to get hit with a Net Neutrality complaint: "The company behind the complaint says it'll submit the paperwork "in the next couple days, tops" and that it plans to accuse Time Warner Cable of charging the San Diego-based firm, Commercial Network Services, unreasonable rates to deliver its streaming videos to Time Warner's customers" | [Washington Post](#)

"The White House told Republicans in Congress yesterday that the nation's budget should not be used to enact "unrelated ideological provisions," including a proposal to prevent the Federal Communications Commission from enforcing its net neutrality rules." | [Ars Technica](#)